

**SOCIAL WELL-BEING OF MARGINALIZED PRISONERS INSIDE  
A MODEL CENTRAL PRISON- A CASE STUDY OF BEUR IN BIHAR**

*Dissertation submitted to Jawaharlal Nehru University in partial fulfilment of the  
requirement for the award*

*of the degree of*

**MASTER OF PHILOSOPHY**

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This is to certify that the dissertation titled, “**Social wellbeing of marginalized prisoners inside a Model Central Prison- A Case Study of Beur in Bihar**”, submitted by **Mr. Praveen Kumar** in partial fulfilment of the requirements for the award of degree in **Master of Philosophy** at Jawaharlal Nehru University, New Delhi, has not been previously submitted in part or in full for any other degree of this university or any other university.

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*Dedicated to*

***My Grandmother, SAHODARI DEVI***

***My Grandfather, BHAGIRATH PRAJAPATI***

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## **Chapter 1: Social Wellbeing of Under-trial Prisoners**

### **1.1 Introduction**

Exclusion from society will truly deteriorate the overall social well-being of an individual. Even if a normal person is kept aloof his/her social well-being will start getting affected. Since in the present research dissertation our respondents are the undertrial prisoners (UTPs) community thus predominately the research dissertation will focus on the social wellbeing of UTPs. The societal reaction towards crime had always been towards control and restriction so that the criminals do not commit offences time and again. This purpose is better served by the prisons as it provides a space for the UTPs and criminals, to stay away from society so that they do not get the opportunity to perpetrate any more crimes. The research dissertation tries to limit itself broadly under three objectives.

In the past, those who had committed crimes against society were made to endure physical torment as a kind of punishment through the use of incarceration. In comparison to this, modern incarceration practices aim at three main areas i.e., Punishment, Deterrence and Rehabilitation. The combination of these allows the society to seclude these criminals from the public which serves some form of retributive justice to satisfy the masses' desire, persuade the would-be criminals to not pursue these activities, and consequently condition them into being productive and law-abiding citizens. In theory, a practice like this might seem beneficial for society's overall well-being but an array of psychological problems faced during incarceration obstruct the implementation of this otherwise well-thought-out plan.

This time around, let's start with the three most fundamental purposes and responsibilities of convicts. These goals include ensuring the safety of all detainees, providing for the convicts' maintenance and advancement, and achieving all of these aims while minimising wasteful spending and maximising resource use. In general, safe keeping entails isolating inmates through the process of incarceration, counting and controlling them while allowing them to have isolated intervals of welfare activities such as recreation, education, and counselling to meet their requirements. This is done in order to keep inmates safe. Unfortunately, an inmate's well-being and psychological freedom are defined by how he lives and interacts with the other inmates who make up their vital and significant surroundings, not by how much counselling, recreation, or education he receives. What an inmate experiences in the prison, the satisfaction they get and the way they avoid negative consequences of incarceration



determine how if ever, they will emerge. It has also been shown through simulations of jail settings that confinement and isolation tend to dehumanise the prisoner by making him feel worthless, nameless, and nurturing negative feelings as a result of society's rejection and condemnation. It is also essential to be aware that criminals originate from societies in which concepts of personal value are intricately intertwined with concepts of personal worth, according to a number of different cultural views. On the other hand, while they are incarcerated, criminals are only provided with the bare necessities for survival. When an inmate is surrounded by other inmates, of which 20% have a mental illness and 5% are mad, it has a greater psychological influence on the inmate's judgement of his or her own worth than whatever physical suffering this detention may produce. This is especially true when the inmate is held in solitary confinement (Haney, 2001). Isolation and solitary confinement are the cornerstones of the entire judicial system. To begin, the offender is isolated from the rest of the world and from anything that played a role in the events that led to their illegal behaviour. Second, the distance between them is quite considerable. In this process the UTPs are completely severed off from the community and their social wellbeing is jeopardized.

Pre-trial imprisonment of UTPs is a serious measure that can negatively impact the individual and his rights. Hence, is it possible to use pre-trial imprisonment in a legal manner? In order to justify pre-trial detention, national legislation depicts variety. Arrest and continuing custody are combined in certain systems (e.g., Germany), while they are formally classified in others (e.g., England and Wales, the Netherlands) as different measures. Some nations recognize maximum periods of custody e.g., in Italy the maximum period of detention is 6 years while in Spain it is 4 years. Maximum period of detention is not taken into consideration while the pre-trial detention can be renewed for indefinite period of time (Netherlands, Germany, Hungary) In review methods, there is considerable diversity. Detention directives are evaluated every eight days in Ireland, every sixty days in Romania, and every year in France. Legal diversity is frequently accompanied with linguistic diversity. In English-speaking countries, the term "remand in custody" is frequently used than "pre-trial imprisonment." The phrase 'preventive detention' is commonly used in other countries (e.g., Belgium), alluding explicitly to some of its goals. In India, under-trial detainees account for 67.6% of the total prison population. In 2016, there were 3927 undertrials who had spent more than 5 years in prison and were waiting for their case to be finished. These high figures also result in high vacancy rates of 113.7 percent, which are linked to substandard jail living conditions. Approximately 2.8 lakh Indians are imprisoned without being charged with a crime during their trials or ongoing court cases. Most will be on trial for years, possibly even

longer than their entire legal term. These 'undertrials' compensate for two out of every three offenders in Indian jails, a figure far higher than in most other countries. The third-largest sub-trial community in Asia is found in India.

## **1.2. Socioeconomic status mutually inclusive to Social Wellbeing**

Socioeconomic status is an intricate and multifaceted category that considers both subjective (e.g., self-assessment of one's socioeconomic status) and Objective (e.g., money and education). Subjective indicator of SES has largely centred around the use where Individuals compare themselves to others using visual rank-related social ladders, which take into account their educational level, money, and occupation in society. Access to material and social factors has traditionally been used to determine SES. As a result, this type of SES is typically operationalized by taking into account a variety of objective variables that may eventually reflect inequalities in people's access to material and social resources. Three unique features of SES emerge rather clearly among the numerous objective indices: income, educational level, and employment. Income, among other things, determines who has access to desired services, material possessions, and enjoyable experiences. Furthermore, earlier research has demonstrated that wealth is linked to a wide range of psychological factors, including social trust, personality, and prosocial tendencies, demonstrating the importance of this indicator. Education, along with income, is frequently considered to be a canonical indication of objective socioeconomic status (SES). To summaries, the educational level allows for the collection of pertinent sociocultural and psychosocial repercussions (e.g., behavioural patterns, lifestyle). In addition, higher levels of educational achievement have been linked to positive economic outcomes, such as a lower likelihood of experiencing difficult financial times. Because of its close relationship to incomes and educational level, as well as its ability to significantly shape psychological experiences, occupation has been proposed as an additional proxy for objective SES. Nonetheless, this objective SES measure is employed in social wellbeing less than wealth and education. Objective socioeconomic status is frequently measured in community-based samples as well as in samples (by employing a global index that includes family income and parental educational level).

These objective aspects of SES are modestly inter-correlated, according to previous research, suggesting that these indicators should be separable. Rather than combining the measures, it is often more instructive to analyze the many components of SES and comprehend how each aid to the outcome under consideration. Material resources do not shape SES alone. Indeed, modern approaches emphasize the importance of subjective judgements based on Social comparison procedures (e.g., comparing one's socioeconomic status with other individuals or

groups) in shaping SES. Subjective SES is defined as people's discernment of their own social status in comparison to others, which aligns with this new approach. Although there are other ways of determining subjective SES, the MacArthur SSS scale is one of the few that is clearly grounded on a comparative social comparison procedure. Further, this is the most used method of assessing subjective SES. Individuals calculate their SES by comparing their SES to that of others in society or in a distinct social group or community. Similar to objective SES, subjective SES is commonly assessed in order to relate to the poor social well-being of the UTPs prior to entering the prison and during their stay there.

The SES of the UTPs which is a combined effect of the objective as well as the subjective results in their involvement of crime. The SES plays a major role which instigates the deterrent demeanor of an individual and when it crosses the boundary the individual commits crime and goes into the never-ending process of criminalization and victimization. A study conducted out the Project 39A delineates individuals who are very prone to commit crime and had somewhere down the line faced a horrific childhood and abused social response either in the form of physical or mental. Poor household environment denied parental support or low level of emotional attachment with the society people are few of the major reasons behind individuals who commit crime against the society. These people basically have anger or resentment towards society. Due to such poor social experience in their life these people are mostly on the verge line of committing crime against society. Other important aspect is the low-level literacy rate and the poor level of mental rationality because of which they are unable to form a rational judicial decision while committing crime.

One of the most interconnected issues inside the prison is the overcrowding of the inmates which results in various facets of poor social wellbeing. In this research dissertation three different jurisdiction i.e., the United States of America, the United and Kingdom and India have been extensively covered particularly focusing upon the over-crowding of prison which in a way connects to poor social wellbeing. The issue of jails being too full to properly house their inmates is not a new one, and it is connected to all other forms of incarceration that are practiced around the world. It thwarts any attempt to humanize prison conditions, and the effects are simply too obvious and awful to be ignored. The situation in prisons is currently inhumane. Despite this, the problem has not been resolved and has been ignored for almost a century at this point.

The prison population keeps on changing due to the induction or addition of new undertrials or convicts and the release of old undertrials and convicts. On the other hand, the snapshot of

the jail population that is taken at the end of the year serves as a reasonably accurate predictor of the prison population. The percentage of a jail's maximum capacity that is occupied by inmates can be used to calculate that facility's individual occupancy rate (inmate multiplied by a hundred and divided by total capacity). This rate is utilised in the process of estimating the amount of crowding that exists. The high number of inmates who are awaiting trial is the primary contributor to overcrowding in correctional facilities. Overcrowding in a prison places a strain on the facility's fundamental infrastructure, impedes the delivery of correctional services, facilitates the spread of infectious diseases, and creates a host of challenges for the administration of the facility. These challenges include an increase in instances of misconduct and violence, as well as a diversion of prison staff to perform menial tasks such as food distribution, security, and guarding.

### **1.3. Poor Social Wellbeing in Prison**

The health conditions of the prisoners are much worse. There is nobody to look after or takes their duty. According to the findings of a study that was carried out in the South Indian Jails, 29 prisoners were infected, 15 prisoners were infected with a lower tract infection, 54 prisoners had ascariasis, 26 prisoners had disorders of the musculoskeletal system and connective tissue, and 252 prisoners had anemia (Kumar, 2013). According to the findings of another study that was carried out in the hospital of the Faridkot jail, 15% of the inmates suffered from myalgia, acid peptic disease, and upper respiratory infections, whereas only 5% of the inmates had hypertension. (Bhowmick & Jain, 2017). The research dissertation focusses on the pitiable health conditions of the prisoners in India while also juxtaposing it with other countries.

#### ***Factors behind the poor mental health condition***

There are several factors in the prison which lead to a poor mental health condition of the prisoner. As every individual is physically different similarly the mental condition of every individual is too different. The same situation can be perceived in several ways by different individuals. For example, for an orator public speaking might be something which soothes him, on the other hand for a person who works in a cubicle public speaking might give him goosebumps. Hence the same condition in the prisoner might create different ripples in the brain of every prisoner. There cannot be generality of result which would be applied to every prisoner.

Absence of meaningful activities, constant ruckus, lack of privacy and almost zero opportunity for peace and relaxation aggravates mental stress. Feelings of guilt and shame,

social seclusion and worries about the future already affect the mental health of prisoners. The perennial availability of illicit drugs further worsens emotional and behavioural problems in prison (Mansoor, 2015)

***Prison environment and mental health problems:***

The life of a prisoner in the prison for the first time is quite a hard time and sometimes a bad illusion. However, for some, it can be the worst shock. There is isolation from their family and friends and also away from all those comfort zones.

The All-India Committee on Jail Reforms of 1980-83 stated:

*‘Flush latrines are available in very few prisons. In most of the prisons, open basket-type latrines are still in use. Latrine and urinal facilities in barracks/dormitories for use at night are very inadequate. As a result, they overflow during the night. In most of the prisons, latrines have not been provided in cells; only pots are kept there for answering calls of nature. A perpetual stinking smell pervades’.*

***Prison officials:***

One of the significant loopholes in India at every field is low accountability and poor strategical implementation. The official head of the prison may be corrupt or too harsh on the prisoner sometimes. It makes the situation even worse when the weak prisoners are bullied and are treated like a puppet in the hands of strong prisoners. Cases of sexual harassment, sodomy usually comes out which creates a mental agony and has a deep impact on the mental condition of the prisoner.

***Acceptance of punishment:***

Also, there are confront issues of the balance between personal and emotional aspects. Most people know the punishment of their crimes, but some have the difficulty of balancing their crimes with that of the punishment. From the information, it is reported that the average prisoner needs months to accept the reality while few never accept it. They feel they are being wrongfully confined while the actual offender is roaming out in society.

### ***Family issues:***

Life in the prison where there is completely cut off from your loved ones is the most heart-breaking situation experienced by the Prisoner. Married ones are more depressed because of the memory of their child and family enroll every time in their minds. The feeling of guilt, helplessness, and zero hope are the most common problems faced by the inmates.

### **1.4. Mental health problems**

#### ***Stress and Psychiatric disorders in Prisons across the world***

Anxiety or stress is one of the most important ways of telling the body that something is not right. Our body responds to stress in different ways however, the physiological reaction is similar. The psychosomatic component of stress, on the other hand, fluctuates depending on the appraisal of the situation that the individual is in, as any stressor is dependent on personality perceptions.

The people in prison are highly susceptible to mental problems. According to research undertaken by the National Commission on Correctional Health Care, around 2% to 4% of inmates in state prisons suffer from schizophrenia or a psychotic disease, with an additional 2% to 4% having a manic episode. (Tohen, 2009)

A systematic study in the year 2012 was conducted in 12 countries which included 22790 prisoners. Out of the numbers psychotic disorder in the prison population was found out to be 3.7% in men, 10% suffering from depression, and 65% was going through personality disorder. Comparing these mental problems in the women ratio a had psychotic disorder, 12% major depression and 42% were having a personality disorder (Fazel & Baillargeon, 2010). A study by Mental Health Foundation revealed that the high prevalence of mental health issues among young offenders can be attributed to three main reasons that is (1) the presence of early risk factors, (2) the effect of offence (3) CYPs interactions with the criminal justice procedures (Almond, 2012).

#### ***Communicable diseases***

Since the problem of overcrowding in prison makes the situation worse in case of the transmission of communicable diseases. Thus, the prison becomes highly suspectable for sexually transmitted diseases like HIV, Hepatitis B, and Hepatitis C. According to a study published in 2007, HIV prevalence was greater than 10% of the prison population in more than 20 countries (Singh, Prasad, & Mohanty, 1999). Little research has been done regarding the burden of HIV/STIs on Indian prisons (Sunder, Ravikumar, & Sudarshan, 1995). According to the findings of a study that investigated the prevalence of HIV in Indian

prisons, 1.7 percent of male convicts and 9.5 percent of female detainees tested positive for HIV (Donal & Larney, 2010). These figures are considerably higher than the national averages, which stand at 0.32 percent for males and 0.22 percent for females respectively. (Bhaumik & Matthew, 2021).

The occupancy rate in the prison is 118.50% which is way higher as compared to authorized limit. Other factors that push the communicable diseases in spreading are poor ventilation, poor nutritional diet, bareback sex, using the same needle repeatedly by different people, poor counselling. High rates of TB have been reported by the Human Rights Watch in India has reported high rates of TB in Indian Prisons and a study conducted in 2008 found that 9% of prison deaths were linked to TB.

### ***Suicide***

Guilty, lack of emotional support, no friends, loneliness, and set the same time no counselling support makes the individual feel pitiable to himself. Particularly in these moments, the person thinks it's better to die rather than to suffer. According to a study at an average of 8 to 12 suicides are seen in prisoners annually, majority of the suicide victims are young adults, in the age bracket of 25-32 and almost all of them are married people. Persons in remand and also persons convicted in murder cases were the majority of the suicide victims (Bardale & Dixit, 2015).

### **1.5. Socio-Legal Aid Services**

Too frequently, legal aid is exclusively connected with the pursuit of justice. It is a part of gaining access to justice, specifically to the courts. It has a heavy procedural component, which is the legal profession's realm. The legal profession has a lengthy history, not only because lawyers are required to get a law degree, but also because the relevance of law in the political system has grown. It is a profession with its own ethics and market that regulates access to the profession.? It aims to maintain and possibly grow its monopoly. Because of its monopoly, the legal profession claims to be able to provide legal aid to the less fortunate, initially through a charity system. The insertion of the fundamental right to legal help into the Dutch (Article 18) and Belgian (Article 23) constitutions produced an enforceable legal framework. Alternative organizations such as legal clinics and social advocacy showed in the 1970s that the manner legal assistance was distributed did not meet expectations. Although the social welfare state provided a safety net in the event of material hardships posing a social risk, implementing these rights was far from easy. New areas of law, such as housing law, social law, and immigration law, were seen as having little merit by the old legal profession.

Many plaintiffs were deprived of legal aid in these areas due to the legal profession's lack of knowledge. During the stormy political contestation of students and left-wing groups in the 1960s and early 1970s, the attraction of these alternative movements contributed to a volunteer movement that pioneered in the field of legal assistance and legal aid organizations. The push for social aid did not go ignored. In the Netherlands, legal aid offices were established. The legal shops (wetswinkels<sup>1</sup>) in Belgium debated how to improve access to justice. In addition, several types of legal help were discussed in the literature. Several major authors in the Anglo-American literature have distinguished several methods on how to organize legal assistance. The welfare method, which was pitted against the judicare model, was the most well-known. Models of legal help were not the only topic of debate. Alternative dispute resolution procedures such as mediation and Alternative Dispute Resolution, as well as class actions, were seen as viable options for resolving legal issues.

During this time, many new ideas and experiments were born. Nonetheless, the legal profession maintained its own procedures and legal-normative perspective on conflict resolution notwithstanding these developments. It was claiming the legal market, and other legal service providers were frequently viewed as non-professionals. However, many people were deprived of their rights a gap in legal aid has been observed.

In India, access to justice for everyone is impossible without socio-legal assistance services, i.e., without free legal aid for the poorest segments of society. The 42nd Amendment to the Indian Constitution established Article 39-A, which is the cornerstone of the legal help idea. The state is mandated by the article to give equal opportunity and free legal assistance to all citizens in order to "ensure that no citizen's right to justice is denied due to economic or other disadvantages." "There can be no doubt that speedy trial, and by speedy trial, we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21," the Court was amazed by the fact that undertrials were made to languish in Bihar's prison for years without proper legal representation Hussainara Khatoon. The right to legal aid was held to be implicit in Article 21 of the Indian Constitution by the Supreme Court of India. The court also noted that Article 39-A holds that free legal services which is an inalienable part of a "reasonable, fair, and just" procedure. Under Articles 14, 21 and 39-A of the Constitution, the Court has the authority to appoint counsel to administer complete justice if a prisoner is unable to get free legal assistance and consequently cannot exercise his constitutional and statutory rights. (Madhav Hayawadanrao Hoskot vs State Of Maharashtra, 1978). "The spiritual essence of a legal aid movement

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<sup>1</sup> Name of the legal shop.



consists of investing legislation with a human soul," the court added when outlining the rationale for legal aid. Our constitution guarantees everyone, even the poor and the wealthy, access to legal aid and legal services, as well as the administration of social justice through the judicial system. This movement is built on the political premise that if legality fails, the majority will reject fairness in order to defend the already privileged, and anti-law will become the new normal for the weak, who will prefer to seek justice in the streets rather than in the courts. According to the Mulla committee<sup>2</sup>, the majority of prisoners are from economically disadvantaged backgrounds due to their inability to secure a bail bond. Legal aid providers must assist these individuals in securing bail or personal recognisance. According to a poll conducted by the Commonwealth Human Rights Initiative, 23% of inmates reported to being unaware of any visits from the legal services authority. According to 49 percent of respondents, representatives from the district legal services authority only visited the prison once every three months. On the other hand, according to 28 percent of respondents, the magistrate only visited the prison once every month to three months (Legal Aid services in correctional homes in West Bengal, 2015). Once a month, either the Judicial Magistrate, First Class, or the Chief Judicial Magistrate examines the contents of the complaint boxes. According to the notes left by visitors, it appears that they come primarily in the evenings for extremely short amounts of time and concentrate their attention primarily on juvenile offenders and people who are mentally ill. According to the inmates' reports, they stopped filing requests or complaints because they weren't getting responses to them.

### **1.6. The impact of COVID-19 pandemic to legal aid services**

Equal access to justice that is fair, timely, and effective dispense of due Justice had always been an issue in the criminal justice system. The right to equality before the courts and tribunals, as well as the right to a fair trial, as guaranteed by the International Covenant on Civil and Political Rights, require special attention during the crisis. For example, it is important to make sure that any restrictions or derogations to these rights do not go beyond what would be absolutely required by the imperatives of the situation. In addition, it is important to make sure that any restrictions or derogations to these rights do not go beyond what would be absolutely required by the imperatives of the situation. Even though the nation is under a state of emergency, the state should uphold the legal principles that it and the rule of law have established. These values demand that the fundamental right to a fair trial be preserved. The state should adhere to these standards. The right to equal protection under the

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<sup>2</sup> In 1980, the Government of India set-up a **Committee on Jail Reform**, under the chairmanship of Justice AN. Mulla.

law, the right to a fair and impartial trial, the right to legal assistance, and the ability to quickly appeal verdicts in order to avoid arbitrary imprisonment are all included in this right. These rights protect not only the victim but also the person who committed the crime. In 1980, under the supervision of Justice AN. Mulla, a committee on prison reform was formed. States also have a greater responsibility to reduce overcrowding, ensure proper hygiene and sanitation in prisons and other detention centres, and reduce the number of people held in each facility.

In India, considering the threat posed by Covid 19, the Hon'ble Supreme Court took Suo moto Cognizance of the matter and, via its order dated March 23, 2020, instructed all the states and UTs to decongest the prisons. Finally, it was decided that prisoners who were only convicted for one offence or were imprisoned for less than 7 years would be granted release. The fifty-eight prison in Bihar had an occupancy rate of 93.4% and had 39814 prisoners (Goyal & Vedula, 2021). As per the data by Commonwealth Human Rights Initiative "COVID-19 State-wise response", it was estimated that Bihar Government had '0' release of undertrial prisoners and later the actual release was 413 (Responding to the pandemic: Prisons and Overcrowding, 2020). The government had only transferred undertrials from one jail to another.

The subordinate role of courts is equally responsible. After the HPCs were constituted, around 14,000 bail applications were forwarded to different trial courts. Out of which, many applications were rejected because the case documents weren't available. Considering the case of Beur Central Prison Patna, whose authorized capacity is 2360, but more than 3500 prisoners were imprisoned (Karmaka, 2018). Several undertrial prisoners languished in prison for more than their imprisonment term (Rajagopal, 2021). The improper implementation of the policies and the lack of accountability had made the prisoner no less than a victim of India's complex criminal justice system. During the pandemic or even before, no information was communicated to the accused families; due to this communication gap, several accused had no means to apply for bail. The panel advocates of such institutions like District Legal Services Authority, Bihar State Legal Services Authority, etc., were irresponsible. They showed dreary demeanor towards Pro-bono Cases. They were hardly interested in taking up such cases even if the cases were allotted to them. They did not visit and consult the accused to know their issues and were absent on the respective court dates, despite having provisions like Article 38, 39A 'Right to Free Legal Aid and Right to life in our esteemed Constitution of India. Section 436A of the CrPc advocates that if the accused had remained in jail for more than half of his sentence. Then he has the right to file a bail

application. Pragmatically no such provision was in practice. Due to the lack of this minuscule information accused were living in the dark. They were left stranded, and the condition of the prisoner's remained alike.

As a consequence of it, they languished in jail, which further led to overcrowding. The issue of overcrowding in prison was taken as *sou-motu* by the apex court in the case of *Re-Inhuman (Re-Inhuman Conditions In 1382 v. State Of Assam, 2018)*. However, no finality has yet been attached to the rights of the prisoners.

### **1.7. Interventional Approach for the social wellbeing of UTPs**

Social work interventions are a set of skills used by practitioners, their clients, and other participants with the goal of lowering symptoms, resolving issues, strengthening adaptive capacities, and improving the client's overall psychosocial well-being. Abilities and combinations of skills are used in interventions to assist clients to attain crucial intervention goals. Interventions are at the heart of everyday social interactions, and they "inevitably make up a considerable majority of human behavior and are made by individuals who seek and aim to change some portion of the world and the creatures inside it," according to the authors. Interventions by Social workers are well thought out and purposeful actions grounded on proper knowledge, research and understanding. Correspondingly, interventions are the application of knowledge, skills, understanding and values. Intervention might be targeted toward individuals, families, communities or organizations depending on the objective of intervention and whether its directive or not.

These are identified as a consequence of the social worker's psychological examination. The social worker will gather considerable information from the client at the initial encounter the social worker will gather considerable information from the client during the initial encounter with the aim to gather proper and comprehensive knowledge of the client. The results of the assessment are then utilized to create an action plan which includes interventions, action steps and intended objectives.

In the third objective social work interventional approach has been used in order to bring social well-being of the UTPs. Individual or family casework interventional approach has been exclusively put to use against the marginalized UTPs. Five important case interventions done by the author had been explained which narrows down in creating social wellbeing of the individual or family.

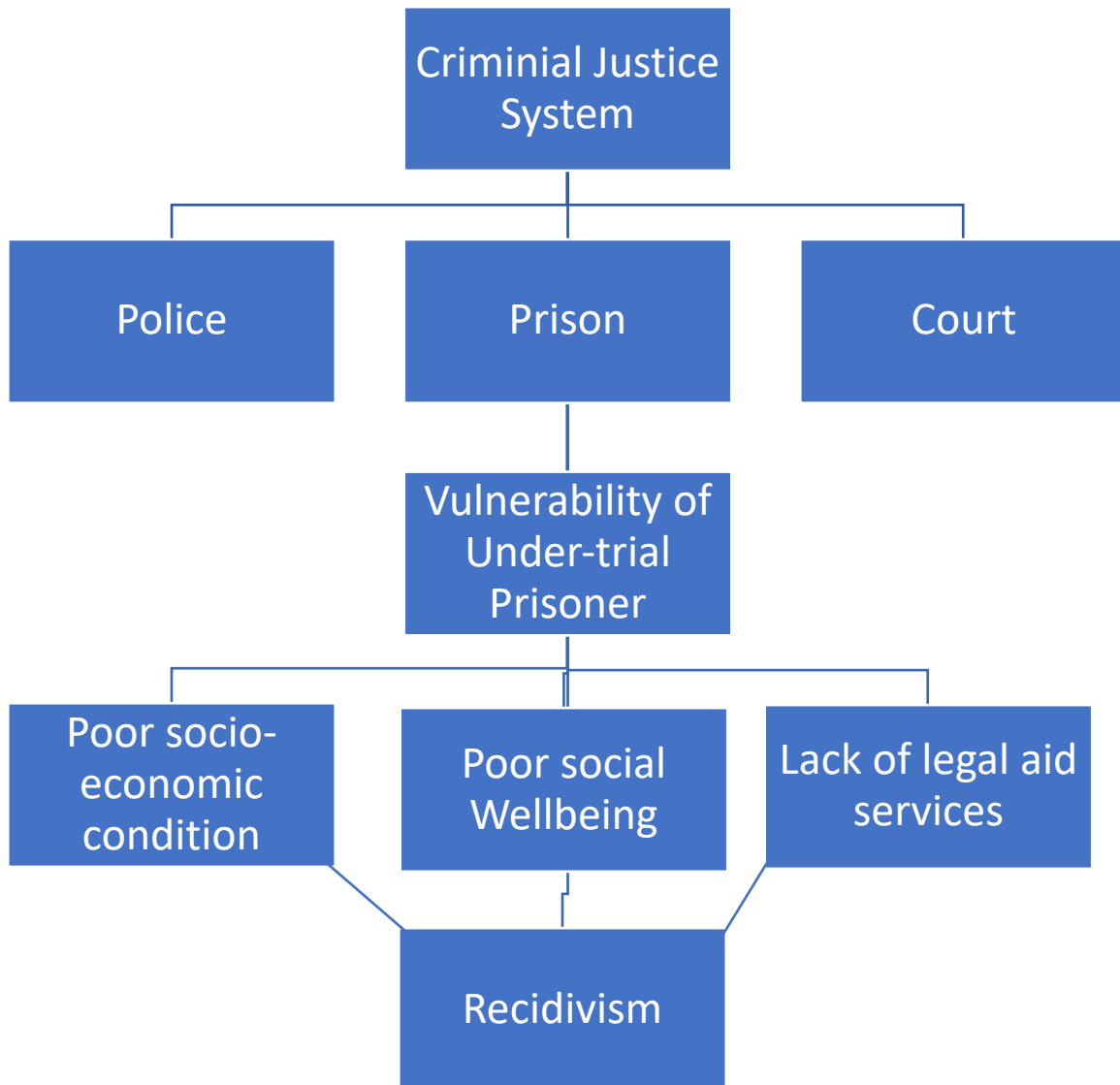
## **1.8 Conceptual Framework**

A jail is traditionally defined as a facility where individuals are held in custody while awaiting a trial or are imprisoned after being convicted.

The word "prison" comes from the Latin word "prehensio," which literally means "to grab." "A suitably efficient and equipped location for the reception of prisoners who are committed to it by the legal process for safe confinement while awaiting trial and punishment," according to the Oxford English Dictionary. For society, a prison is a place where criminals are sent for the purpose of reformation. For criminals, a prison may be a nebulous threat or an unavoidable humiliation. For socially inept individuals, a prison may be a shelter. For prison officers, a prison is a place of work. For psychologists, a career in studying behaviours. For other people, a prison is a place that either brings them together or separates them and alters. A place where marginalised UTPs are harmed owing to many socio-economic factors such as financial constraints, the absence of legal counsel, inadequate social support. Caste hierarchy is, in my view, a prison.

The marginalized under-trial prisoners are vulnerable because of their poor socio-economic status, poor social well-being, and lack of legal knowledge. The majority of the marginalized UTPs belong to the historically disadvantaged community.

## SOCIAL WELLBEING OF PRISONERS- A CONCEPTUAL FRAMEWORK



*Source: Prepared by Researcher*

## **Chapter 2: Review of Literature**

The socio-economic condition of prisoners portrays a very important outcome that how the socio-legal aid services are neglected to them. In the present chapter literature review of common law and civil law countries is done to access the poor condition of legal aid services inside the prison.

### **2.1. Socio-Economic status of Prisoners**

It is a noted fact that prisoners report worse healthcare issues than the general population. Research also establishes that the prison is disproportionately populated with more people with a poor socioeconomic status (SES), rendering it difficult to ascertain whether the deficient self-reported health of prisoners is a result of their detention or their lower SES.

#### ***2.0.1. In United Kingdom***

The system is failing in its responsibility to care for those imprisoned in United Kingdom prison. Majority of the prisoners are made to live in perilous, unhealthy and outmoded establishments. High instances of violence and self-harm have been recorded. A quarter of prisoners live in overcrowded cells with a majority of all exceeding the certified normal accommodation level.

This section evaluates the data on the UK prison population- the population size and the resultant change overtime, the demographic profile of prisoners, the condition of prisons during pandemics, safety in prisons. A reduction in the prison population has also been recorded due to the measures taken during the COVID 19 Pandemic.

In United Kingdom, prisoners are divided into four categories of security on the bases of crime committed, the risk of escape, the sentence, and violent tendencies. The categories are single letters in alphabetical order, with the most deadly being 'A' and the least dangerous being 'D.'

The prison population in UK has remained historically high, however it has remained stable since 2010 and is expected to do so until 2022.(Sturge, 2020). By international standards, the prison population is likewise high. England and Wales had the EU's eighth highest jail population per 100,000, surpassing Germany, Norway, the Netherlands, Denmark, and Sweden, all of which are outside the top 20. As a result, limiting the number of persons entering prison is the first step toward creating a safer and healthier prison environment.

Overcrowding, hazardous, and unsanitary conditions within some jails have been a source of ongoing concern for several years. The evidence gathered and presented revealed a system

that is failing to cope with budget cuts, staffing shortages, and antiquated facilities. In some institutions, even the most basic necessities of detainees, such as their meals and housing environment, are still being jeopardised. Several prisons have been found to have poor, if not unsanitary, conditions as a result of examinations during the last year. According to the inspectorate, prisons frequently struggle to deliver sufficient quantity and quality meals for £2 per day per prisoner.

People who come into touch with the criminal justice system, such as those in jail or on probation, are more likely to be in poor health and have a greater need for health and care than the general population. Blood-borne virus outbreaks are particularly common among the prison population (Prison Health, 2018). The number of tuberculosis cases per 100,000 in the jail population is more than five times greater. Hepatitis C is more common in jail, particularly among women than in the general community, with 13 percent of female accused and 7% of male accused having hepatitis C compared to 0.4 percent of the general population. HIV-positive rates are slightly higher among men in prison, but significantly higher among women in prison compared to the general public (Silvestri, 2013)

'The Troubles,' which spanned 30 years from 1969 to the present, had a significant impact on the UK prison system. Recent trends in the United Kingdom have been marked by an increase in the jail population, as well as a decrease in the resources available to deal with it. Those whose requirements differ from those of the general jail population, such as minorities, women, and children, have the lowest chance of having their needs satisfied. BMEs, Muslims, and foreign detainees, in particular, have a negative impression of their circumstances.

### ***2.0.2. In United States of America***

The overcrowding of the United States' jails is one of the most dangerous concerns facing the country's criminal justice system today. The number of adult offenders hauled before their courts has doubled in the last decade. Among their prior studies of prison conditions around the world, analysing the sociolegal aid services for marginalised under trial prisoners during COVID-19 is critical. We attempt to expose issues that affect a major section of the national jail population through a series of investigations.

This chapter looks at the particular combination of changes that many inmates must go through in order to survive their time in jail. Inmates in the United States and around the world have always been subjected to a unique set of conditions and pressures, which demanded that they respond and adjust appropriately in order for them to be able to survive

their time spent in jail (Kennedy, 2015). Although overcrowding in jails is a problem that affects countries all around the world, the United States is particularly guilty of the human rights breaches that are associated with this practise. The United States has a rate of incarceration that is five to ten times higher than that of other Western democracies, despite the fact that its population represents less than 5 percent of the world's total population. This results in one quarter of the world's total population being housed in prisons. The United States of America became the nation with the highest rate of incarceration in the world in 2012, when its prison and jail population reached a total of 2.23 million people, making it the world's most imprisoned country.

The public is reluctant to fund the construction of additional jails, despite the fact that the prison population is growing. This has led to prisons that are dangerously overcrowded. In 1997, there were around 69 convicts who were killed by other inmates, while hundreds of inmates were severely injured and required medical attention as a result of their injuries. The jails in the area were filthy, dangerous, and lacked facilities for convicts to exercise and even get fresh air (Human Rights Watch Report, 2018). Some jail personnel kept convicts in restraint devices far more than was needed for their security.

In several jails, prisons, immigration detention centres, and juvenile detention institutions, physical brutality, severe disciplinary consequences, scarcely acceptable physical conditions, and poor medical and mental health care were frequent. (Prison condition in the United States, 1991). In numerous prisons, guards have been accused of being abusive. At the Oregon State Penitentiary's Disciplinary Segregation Unit, there is also a form of punishment known as "strip status." Inmates are removed of their clothing, bedding, and personal belongings, and are then obliged to earn them back piece by piece by good conduct. (Human Rights Watch Report, 2018). There are a lot of issues that should be of worry, but sexual assault and other types of abuse have continued to be major concerns for women who are housed in county jails, state prisons, and federal prisons. Unfortunately, there are no effective means to combat it, as fifteen states lack criminal legislation forbidding custodial sexual misbehaviour by guards, and most guards are not properly instructed about their responsibility to desist from sexually abusing prisoners. The problem of misuse was exacerbated by the continuous growth in female inmate population. Due to this, women were made to stay in overcrowded prisons which lacked basic amenities like medical care or substance abuse treatment.



Male prisoners were also subjected to prisoner-on-prisoner sexual abuse, which was perpetrated by other convicts. Male prisoners' sexual assaults were frequently tolerated, if not actively encouraged, by prison authorities. Despite the catastrophic psychological effects of such torture, most jurisdictions took few prophylactic steps, and perpetrators were rarely appropriately punished by prison officials.

When compared to the general public, insufficient treatment in prison resulted in a higher risk of suicide, drug addiction, and drug overdose death (Prison condition in the United States, 1991). The state of affairs inside the prisons is a source of particular concern. It is extremely unsettling to think that people can receive relatively lengthy prison sentences in the United States of America. There are several jurisdictions in which the law mandates the service of prison sentences that can last for a number of years. As a consequence of this, inmates who are exposed to such conditions for extended periods of time, such as not being allowed to have contact visits with their families, are placed in the same category as those who are disciplined in the most severe institutions.

When non-violent offenders are locked up with violent criminals, severe safety issues arise, which can lead to tragic consequences such as the suicide death of 18-year-old Jason Iaquina in 1989. Iaquina hanged himself in the Napa County jail in California after being raped, and his death was one of the tragic consequences.

Finally, putting criminals behind bars has become a popular subject in recent American political campaigns. Even though one of the goals is to cut down on crime, we have not yet accomplished this particular objective. There is no evidence that can be considered conclusive to suggest that the recent enormous increase in the incarceration rate has been accompanied by a reduction in the rate of crime. The substantial rise in the prison population, which has a considerable impact on the circumstances of incarceration, has been followed by a hardening of the attitudes of the courts and legislatures regarding the rights of convicts and criminal defendants.

### ***2.0.3. In India***

The status of prisoners in India is appalling. Most of the prison reforms had remained in the research dissertation itself. Apart from that, the other issues like overcrowding, poor legal aid services, health system, and understaffing had worsened the state of prisoners in prison.

**Overcrowding in jails:** The NCRB's report portrays a gloomy picture of India's prisons according to the research, India's jails have a total capacity of four lakhs whereas the overall number of inmates is 4.8 lakhs (Joy, 2015). There has been sharp increase in the number of

prisons from 1339 to 1350 in spam of 1 year 2018 to 2019. The jail occupancy rate was also raised from 117.6 percent in 2018 to 118.5 percent in 2019.

**Understaffing:** is another major factor that contributes to the prisoner's precarious situation. Thirty-three percent of the chairs in the jail authorities' overall capacity are empty. The number of police officers in India, 181/lakh detainees, is much below than the UN's 222/lakh guideline. Only 68.5 percent of positions were filled at the end of 2017, according to the NCRB study. According to state-specific data on understaffing, Jharkhand only filled 33.5 percent of positions, placing it at the bottom of the podium. As a result of this situation, inmates are forced to spend over 23 hours every day in jails, negatively impacting their mental health.

**Lack of Socialization:** Being imprisoned in India is considered a taboo subject. When a person is imprisoned, the rest of society becomes concerned about him or her. However, the correct perspective is that jails are for criminal rehabilitation, not for incarceration. According to NCRB research, inmates who are separated from their families and friends are 50 percent more likely to commit suicide. As a result, the optimal circumstance is for convicts to be reformed without being cut off from society. The concept of open prisons is a positive step in this direction. In India, there are now 86 open jails, however the number of convicts in these institutions is quite small. Even though some states have prisons, there are no inmates in them. The idea behind open prisons is that a person may be rehabilitated without being cut off from society. Prisons that are open to the public are more based on the principle of reformative.

### **International Convention on Prisoners' Rights**

Rights of prisoners have been discussed at the national as well as international conventions, following conventions are discussed which are implemented at the international level.

**Table 1: International Convention on Prisoner's Rights**

<b>Convention</b>	<b>Purpose</b>	<b>Year</b>
International Covenant on Civil and Political Rights.	A multilateral treaty that obliges the state to protect the civil and political rights of an individual.	1996
Agreement against Cruel, Torture, and Other Degrading Treatment or Punishment 1984	Individuals who have been subjected to such cruel and inhumane treatment should be given a fair chance and	1984

	reasonable relief, according to the law.	
The Geneva Conventions and the two Additional Protocols of 1977.	To increase the protection of victims in armed and non-armed conflict.	1977
Law of International Criminal Court.	It established the international criminal court.	1998
Universal Declaration of Human Rights.	It enshrines the rights and freedoms of all human beings.	1948
Standard Minimum Rules for the Treatment of Prisoners.	No discrimination based on race, gender, color, sex, language, etc.	1955
Fundamental Guidelines for the Treatment of Prisoners.	All prisoners must be treated with humane behavior.	1990
Rules and Regulation for the Protection of All Persons under Any Form of Detention or Imprisonment.	No person under any form of detention shall be subjected to torture or to cruel, inhuman or degrading treatment.	1988
Principles of Medical Ethics and the Role of Health Personnel.	All the prisoners and detainees must be provided medical care and proper treatment.	1982
The Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman behavior.	A principle to protect prisoners against torture and cruel activities.	1982
Code of Conduct for Law Enforcement Officials, 1979 Law on the Safeguard of All Persons from Enforced Disappearance.	It relates to the protection of person against inhumane behavior and poor treatment of degrading treatment.	1992
Principles on the effective implementation and investigation of Arbitrary and Summary Executions.	The State shall prohibit by law all the extra judicial and arbitrary execution.	1989
European Convention on Human Rights.	To protect the freedom in arena of human rights and political freedoms.	1950
European Convention to protect and prevent the cases of Torture or Degrading Treatment or	To prevent and prevention of torture and cruel treatment of prisoners.	1987

### ***2.1.1. Right against cruel or inhuman treatment or punishment under international law***

There is right against the instances of inhuman treatment, cruel conduct and degrading treatment or punishment under the international treaty. The terms "cruel" and "inhuman" are equivalent and are used interchangeably in the international convention that precisely defines such poor treatment of prisoners. It is delineated under the international law that the cruel and inhuman treatment must create or cause mental or physical problems leading to serious consequences no matter whether it is intentionally or by mistake and the police officer must be involved in it directly or indirectly. It is not necessary to have a criminal intent to qualify the act against the prisoner as cruel or degrading. It may be a single act creating the inhuman and cruel impact upon the prisoner or it may be a series of actions that altogether creates a problematic situation. The degrading, cruel, or inhuman treatments might also result in the victim's family members experiencing pain and suffering as a direct result of the victim's enforced disappearance. conditions of imprisonment that are not up to standard; the willful application of physical force; the withholding or abuse of medical treatment; etc.

Universal Declaration of Human Rights & International Covenant on Civil and Political Rights

Article 5 of the Universal Declaration of Human Rights enumerates that:-

*“No one shall be treated with torture or cruel, inhuman or degrading behaviour.*

*More so, under Article 7 of the International Covenant on Civil and Political Rights provides that:*

*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment and, in particular “no one shall be subjected without his free consent to medical or scientific experimentation”*

Every single person has the inalienable right to live a life that is appropriate and complete with dignity.

The right to live a life befitting one's dignity is one of the fundamental principles enshrined in the Universal Declaration of Human Rights, which stipulates that no individual should be subjected to any kind of discrimination in any circumstance.

It is required that no type of discrimination be carried out in relation to inmates, as stated in the international covenant of political, social, and economic rights of prisoners.

If we refer to Article 16 (1) of the law against torture, cruel, inhumane, or degrading treatment. It provides that:

*'Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1, when such acts are committed by or at the instigation of or with the consent of a public official or other person acting in an official capacity.'*

*This document states that each member State shall undertake to prevent any acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1.'*

Additionally, if we refer to Article 1 of the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of the European convention: -

The concerned committee is obligated to visit and examine the treatment of people who all are discriminated and deprived of their life in order to strengthen the right to live a dignified life with due protection of such person from cruel, degrading and inhuman treatment.

The European Convention demands the setting up of an international committee who is obligated to conduct visits at the places where individuals are captured, detained, not allowed to move freely by the public authorities. The committee shall comprise of independent connoisseurs in their respective field and may provide their suggestions if necessary or when they observe such kind of illegal activities.

### ***2.1.2. Contacts with the Outside World – Standard Minimum Rules***

It is delineated under Rule 37 of the Standard Minimum Rules which provides that “prisoners shall be allowed under necessary supervision to communicate with their family and friends at regular intervals, by correspondence and by receiving visits.”

Under Rule 92 of the Standard Minimum Rule, undetained prisoners have the right to promptly notify their families of the place of detention and must be given all reasonable care and opportunity to interact with their families' friends. The prisoner is even permitted to visit his or her family members if they fulfil the rules and regulations outlined in the standard

minimum norms. The legal contacts that a lawyer has with his clients are privileged and confidential, and they are subject to the basic minimum norms.

Under the rule of 38(1) and (2) of the above-mentioned acts, “prisoners shall be allowed to have reasonable facilities like communication with their diplomatic officials or might ask for the consular representation from their nationality state. Such a representative must have the duty to check whether the detained person is being provided with all the due services.

Under the Standard Minimum Rules, 93 enumerates several Body of Principles

The same set of principles we can find in the principle 18 of the Body of Principles:

1. When a person is detained, he or she has the right and must be allowed to meet with his or her legal counsel.
2. An imprisoned individual must be provided sufficient time and appropriate facilities to consult with his or her legal counsel.
3. The detainee has the right to a completely private consultation with his or her legal counsel without any delays or disruptions. Except under extraordinary circumstances, it should be restricted or suspended.

Under the Body of Principles provided under principle 15 enumerates as “communication of the detained or imprisoned person with the outside world, and in particular, his family or counsel, shall not be denied for more than a matter of days”.

Further, Principle 16(1) of the Body of Principles stipulates that

*“Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of the choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody”*

According to Principle 16(4) such notification “shall be made or permitted to be made without delay”, although “the competent authority may ... delay a notification for a reasonable period where exceptional needs of the investigation are required”.

### **2.1.3. European Convention on Human Rights**

According to Article 8 (1) of the European Treaty, "Everyone has the right to respect his private and family life, his home and his communications," paragraph (2) regarding the exercise of this right. We accept the following restrictions: "There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

#### **2.1.3.1. Right to work and wages - Standard Minimum Rules**

Rule 89 of the Standard Minimum Rules: -

*'An untried prisoner shall always be offered opportunity to work but shall not be required to work. If he chooses to work, he shall be paid for it'.*

We need to look at rules 71-76 of the Standard Minimum Rules for more information on the work of convicted persons.

However, in general, prison labor must not be afflictive (Rule 71 (1)), and convicts under sentence must work, subject to the medical officer's determination of their physical and mental competence (Rule 71 (2)). Rule 71(3) requires that sufficient productive employment be supplied to keep convicts effectively engaged for a typical working day.

#### **2.1.3.2. Right to work and wages - Universal Declaration of Human Rights**

Article 23 of the Universal Declaration of Human Rights states that:

*"Everyone has the right to work, the free choice of profession, fair and favorable working conditions, and the right to protection from unemployment.*

*Everyone has the right to pay equal pay for equal work without discrimination.*

*Everyone who works has the right to a fair and favorable wage that guarantees a decent existence for himself and his family, complemented by other social security measures as needed.*

Article 24 provides further that:

*'Everyone has the right to work in humane environment and enjoy holidays with pay'.*

### **2.1.3.3. Accommodation**

In the case of the general human rights treaty, there are no specific standards for the housing of detainees and inmates. The Standard Minimum Rules for the Treatment of Prisoners, especially rules 9-14, control sleeping, working, and hygienic conditions.

Standard Minimum Rules

Thus, Rule 9(1) provides that:

*"Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If, for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room"*

Rule 9 (2) and Rule 10 provide that:

*"All accommodation for deprived prisoners in prison, especially bedrooms, takes into account climatic conditions, especially the content of air cubes, minimum floor space, lighting and heating, and all health requirements. Must meet. And ventilation. "*

Rule 11(a) provides that:

*"The windows shall be large enough to enable the prisoners to read or work by natural light, and shall allow the entrance of fresh air whether or not there is artificial ventilation"*

Rule 11(b) provides that

*"Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight"*

Lastly, *"the sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner"* (Rule 12)



#### **2.1.3.4. Personal hygiene, food, health and medical services**

In the Standard Minimum Rules for the Treatment of Prisoners, the major set of principles is detailed on personal hygiene, food, health, and medical services of prisoners deprived of their liberty.

Personal hygiene: In the case of personal cleanliness “prisons must be kept clean and to this end the prisoners must be provided with clean water and must have clean toilets which is mentioned in (Rule 15).

For Clothing: -

*“Rule 17(1): “every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating” Rule 17(2) “All clothing shall be clean and kept in proper condition”. Rule 17(3) “Whenever a prisoner is removed outside the institution for an authorized purpose, he shall be allowed to wear his own clothing or other modest clothes”.*

*Rule 19 “Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness”.*

For Food:

*Rule 20(1) “Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served”; Rule 20(2) “drinking water shall be available to every prisoner whenever he needs it”.*

Health and medical services: Rule 22(1): there shall be “at least one qualified medical officer who should have some knowledge of psychiatry” at every place of detention. And the medical services “should be organized in close relationship to the general health administration of the community or nation” (Rule 22(1); “sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals”, and

where the facilities of the hospital is instituted in the hospital, they shall have the equipment and supplies “proper for the medical care and treatment of sick prisoners and a staff of suitable trained officers” (Rule 22(2)); every prisoner shall also have at his or her disposal “the services of a qualified dental officer” (Rule 22(3)).

#### **2.1.3.5. Women: Special accommodation shall be placed in the institution to take care of the pre-natal and post-natal treatment of the women Rule 23(1).**

Next, “the medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view, particularly to the discovery of physical or mental illness and the taking of all necessary measures” (Rule 24).

- It is also required by the medical officer that he/she should “have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed” (Rule 25(1)).
- It is the duty of the medical officer to further “inspect the prison and regularly inform the director of the prison about the necessary hygiene, clotting, bedding, sanitation and cleanliness of the prison under Rule (26).
- The treatment of inmates in any form of detention or imprisonment on the basis of religion is required under Rule 6(1) of the Standard Minimum Rules for the Treatment of Prisoners, as well as the Basic Principles for the Protection of Prisoners defined in Principles 2 and 5 (1). It is also "good to respect the religious beliefs and cultural precepts of the group to which convicts belong, whenever local situations so warrant," according to Principle 3 of the Basic Principles.
- A more detailed explanation is provided under the Rule 41 and 42 of the minimum rules which contain the following.  
In the first place, “if the institution contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved. If the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis” (Rule 41(1)).
- An approved or qualified representative “shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his religion at proper times” (Rule 41(2)).

- Furthermore, “access to a qualified representative of any religion shall not be refused to any prisoner”, but “if any prisoner objects to a visit of any religious representative, his attitude shall be fully respected” (Rule 41(3)).
- Lastly, “so far as practicable, every prisoner shall be allowed to satisfy the needs of his religious life by attending the services provided in the institution and having in his possession the books of religious observance and instruction of his denomination” (Rule 42).

Rule 8 of the Standard Minimum Rules for the Treatment of Prisoners provides that “the different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment.”

This means, in particular, that “men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate” (Rule 8(a)).

According to article 37(c) of the Convention on the Rights of the Child “every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so”.

#### **2.1.3.6. Right to make grievances**

The existence of effective dissatisfaction mechanisms, including consistent and vigorous investigation and prosecution of deprived persons, detracts from all forms of dignity and provides a strong deterrent to the occurrence of inhumane acts, which in turn: A form of inhumane behavior that is degrading and has a strong deterrent effect on all outbreaks. When a person's basic human right to personal liberty is violated, that person has a right to an appropriate remedy for the damages he or she has incurred as a result of the alleged infringement. Especially in circumstances of degrading and inhumane treatment, as well as any other form of abuse.

Adequate punishment as well as appropriate compensation must be provided in the case of ill-treatment and degrading behavior against the victim.

When a prisoner is ad-missioned inside the prison then at that moment of time the prisoner must be provided information about all the rules and regulation in his/her language that he

understands. If necessary, these rules and regulations must be made understood to the prisoner orally as well.

- Article 7 of the International Covenant on Civil and Political Rights “the right to lodge complaints against maltreatment must be recognized in the domestic law”
- Article 2(3) of the International Covenant on Civil and Political Rights states that “complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective”.

The Committee against Torture advocated towards “an effective and reliable complaint system that will allow the victims of torture and other forms of cruel, inhuman or degrading treatment or punishment to file complaints”.

Article 13 of the Convention talks about right to complain to anyone claiming torture in any area under its jurisdiction. He states that he can always seek a fair reclaim. -His or her assessment when requested by the competent authority. This provision applies to anyone who claims to have been tortured in the area of the fall.

#### ***2.1.4. Detention or Imprisonment:***

1. When a person is detained or imprisoned, his or her lawyer has the right to request or file a complaint about his or her client's demeaning and degrading treatment, particularly in circumstances of harsh and torturing treatment. The complaint must be made to the concerned higher authorities who does not have any vested interest with reviewing or remedial powers.
2. If neither the attorney nor the imprisoned or detained person is entitled to exercise his right under paragraph 1, a member of the imprisoned person's family who is aware of the situation may do so.
3. To give effect to the confidentiality the request or grievance made so will be kept highly confidential.
4. When there is any request or complaint made to the authorized authorities then in such cases it must be dealt effectively without undue delay.

#### ***2.1.5. In addition, rule 36 of the Standard Minimum Rules provides:***

1. Right to make request or complaint is given to the prisoner that he/she shall have the right to make request or complaint on weekdays either to the officer authorized to represent him or to the director of the institution.

2. Even during the inspector's inspection, a complaint or a request might be filed at that time. During inspection, the prisoner has the option to speak with the inspector or any other inspecting authorities, as well as lodge any concerns or grievances without the presence of the director or other members of the staff.
3. The inmate has the right to make a request or file a complaint without being censored. Without the risk of having their requests or complaints censored, every inmate must be able to send them to the central prison administration, the judicial authority, or any other competent authorities through the channels that have been authorized.
4. Every complaint or grievance must be promptly dealt with and replied to unless and until it is frivolous on the very ground itself.

### **2.3. Prison and the Criminal Justice System of India**

The criminal justice system which is based upon the reformatory principal imprisonment is highly practiced in India. Initially, it serves two-fold purpose i.e., firstly it deprives the prisoner for his/her social connection and separates him/her from the society for the security measures and as a security measure, the prisoner is deprived of social life and segregated from society. But, in the meantime, several goals were considered, including deterrence, incapacitation, and reformation. Retribution, deterrence, expiation, reformation or rehabilitation was generally considered to be the purpose of punishment. The Criminal Justice system was taking its shape, the “Old will theory” and “Hedonism” was submerged in the flow and focus was continuously shifting from individual to the society, thereafter society to the individual. A concept of reformation has emerged as a monitor for the jail administration, according to the new human rights. According to the legislation human rights, criminals should not be punished in a way that is humiliating, harsh, or otherwise inhumane.<sup>3</sup> On the other hand, any penalty that leads to harsh, degrading, or inhumane treatment is considered objectionable in and of itself.<sup>4</sup> The transition in the criminal justice system in these years has now been adopted worldwide.

The four walls of the prison constitute an encapsulated world of its own while the criminal justice system is a complex web of legal intricacies. As a predominant function the civil societies punish the offenders and failure to do so will make the whole criminal procedure a mockery.

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<sup>3</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.

<sup>4</sup> Ibid Article 4

It is widely agreed that the criminal justice system's correctional mechanisms should adhere to reformatory strategies.<sup>5</sup> Since prisoners too are human beings they should be treated and provided all the basic human rights. Every individual possesses inherent dignity and value as a human being.<sup>6</sup> It is also suggested that a system of punishment that does not preserve a link with the crime's evilness can never be tolerated by the community.<sup>7</sup> As a result, punishment always maintains a subjective viewpoint. Regardless of this perspective, the rights of the imprisoned person must be read. It is understandable that different punishments might be imposed for the same offence; nonetheless, no one should be treated badly while the court's sentence is being carried out. In this context, the rights granted by the international legal system will be examined, as well as legislative concerns in India. Prison is a well-known notion that has existed throughout history. In ancient times, strict seclusion and correctional measures were thought to be effective in reforming criminals. With the advancement of behavioural sciences, it became clear that confinement alone would not be enough to change offenders.

Prisons are not thought of as a typical place to live or visit. Prisoners who have committed crimes and are being held in jail are frequently deprived of their liberty and intimate contact with their families and friends.

### ***2.3.1. Liberty Based on Property***

The irony is that the court will release an accused on the bond if it believes he does not constitute a threat to justice but will imprison him if he does not comply. The state must ensure that the accused does not influence the proceedings in his favor. As soon as the court is satisfied that there is no other possibility for the property to be misused or wrongfully used, he is given bail, and the subject of property security to secure his appearance at trial arises. Regrettably, the criminal court system is of the opinion that the only way to ensure his availability is through the threat of having his property taken away. As a direct consequence of this, the law accords unequal treatment to individuals who do not possess even the barest minimum of property. These kinds of procedures almost invariably give rise to inquiries concerning the judicial system. It is necessary to do a thorough review of how the bail system works in order to meet the objective of ensuring that all individuals are afforded the same degree of liberty and dignity.

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<sup>5</sup> International Covenant on Civil and Political Rights, 1966, Art. 10 (3) mandates that the essential feature of correctional system should be reformation and rehabilitation of Prison.

<sup>6</sup> Basic Principles for the Treatment of Prisoners, 1990. Principle 1.

<sup>7</sup> Frank Pakenham, Lord Longford, "The Idea of Punishment", 1st Edition, Published by Geoffrey Chapman, London (1961), Pg. 55.

### ***2.3.2. Dysfunctional Legal Aid***

The Hon'ble Supreme Court many a times says that impoverished people's legal help is still a pipe fantasy. Before being assigned a legal assistance attorney, inmates might languish in jail for years. It is a tremendous pity that they do not believe in their own efficacy. Legal assistance counsels and magistrates' ceremonial and infrequent trips to inmates are insufficient to address this major problem.

It is normal practice to appoint legal assistance counsel to pre-trial detainees at the time of their initial appearance before the magistrate. When they go before the magistrate, they are supposed to have the help of the standing legal counsels, who will act as their representatives. In the overwhelming majority of instances, legal assistance counsels do not make contact with the detainees or any members of their families in order to prepare their arguments. Even though the system is overseen by the judiciary itself, the state is responsible for providing a great deal of the regulations and resources that are used. Moreover, the selection of legal aid panels is not done with care and no set of guidelines are followed for the same. The expectations of the inmates and the performance of the legal aid attorneys do not match. However, there are few examples of counsel being removed for non-performance in this area. There has never been an evaluation of the services given.

There is a plethora of judgments where the Supreme Court held that the prisoner is a human being, a natural person, and a legal entity all at the same time. Thus, the basic Human Rights should not remain as a subject matter of favor but a mandatory fundamental part of one's being and must not be disregarded in any manner. There is a need of regulation to the working behavior of the prison authorities to ensure transparency and zero tolerance to corruption activities as well as any negligence on the part of such a serious base of the system.

### **2.4. Legal Aid Service System in India**

In India, the legal assistance service system is in a bad state. Although, under Article 39A of the constitution, free legal aid is provided to all citizens for the purpose of attaining justice and is not to be refused to any citizen due to economic or other disadvantages.

A lot of problems are tarnishing the legal aid service's reputation, one of which is a lack of communication. Undertrial inmates are commonly assigned legal assistance counsel at the time of their initial appearance before the magistrate, but the information does not reach them.

Due to the lack of infrastructure, it leads to lack of communication and interaction between the advisor and its clients or social beneficiaries. In addition, individuals are not allowed to enter the courthouse outside normal business hours. All of this leaves the beneficiaries with the impression that their legal counsel is incompetent. Non-recognition of legal services is also a problem for Legal Aid Counsels. They are stigmatized because judicial authorities and other lawyers frequently abuse them in the guise of normal court hearings. As a result, these circumstances may deter Legal Aid Counsels from investing their hearts and souls in delivering legal services to their particular legal aid recipients.

#### ***2.4.1. Role of Government***

The state has the significant responsibility of limiting down the crime in competitive politics, the primary parameter to assess its performance is based on a number of factors and the capability of the state government to limit down the crime is one of them. In a community divided along many lines, developing democratic methods of crime control is neither simple nor welcome.

Legal aid initiatives have been the recipient of significant financial investment from both the central Government of India (GoI) and India's individual state governments. However, the reality on the ground is considerably different from this, and it has come to light that the Legal Aid System (LAS) in India must still operate under a number of restrictions in order to function well. In addition, they employ legal aid as a very last choice, opting instead to retain the services of private attorneys wherever possible. Various key structural components, such as now proper infrastructure for the justice delivery system, potential beneficiaries, and trust difficulties on the quality of services supplied by Legal Aid Counsels, have all contributed to this apprehension about the Legal Aid Service.

#### ***2.4.2. Legal Services and Authority Act***

The concept of legal aid in India can be nexuses to the reigns of Shah Jahan and Aurangzeb in medieval India. A state barrister/attorney, then known as Vakil-e-Sarkar or Vakil-e-Sharai, was appointed primarily to assist and advise poor proceedings in case of proceedings free of charge (Ministry of Justice, Ministry of Justice), 1973). In addition to this, the code of Hammurabi tries to put a cap on the prices that need to be paid for services rendered to those with low incomes. It also outlines three steps that need to be taken before a society can progress toward social engineering through the provision of free legal aid.

The adversarial system, which emerged after the arrival of the British, replaced the more informal methods of resolving conflicts and eventually took those methods out of use. This



new system required users to have prior knowledge and was more difficult than its predecessor.

M.H. Hoskot v. State of Maharashtra was the case in which the Honorable Supreme Court made the announcement that our legal system, which is based on Anglo-American ideals, requires lawyer collaboration in order to guide the wheels of equal justice. The adversarial model has been defined by its extensive use of legal technology, the requirement of proper court proceedings, and the prevalence of lawyers and the fees associated with them. As a result, it is imperative that Legal Aid be incorporated into the Constitution in order to ensure the proper and fair adjudication of justice. Article 39-A of the Indian Constitution was added as a result of the 42nd Amendment Act. As a result, equal justice and free legal aid have been elevated to the status of a directive principle of state policy. In response to the information presented in this article, the Legal Services Authorities Act of 1987 was passed into law, and on November 9, 1995, it was finally put into effect. It embodies the existing framework for free legal assistance and makes an effort to provide free legal aid to the most vulnerable members of society, such as children, women, and people who have been affected by natural or man-made disasters.

#### ***2.4.3. Criterion for Providing Legal Aid***

Any individual, regardless of their caste, gender, or religious affiliation, is included on the list of eligible persons for providing legal services that is enumerated in Section 12 of the Legal Services Authorities Act, which was passed in 1987. Sections 2 (1) (a) of the law make it clear that a person may be given legal assistance in a "case" involving a claim or court proceedings. Sections 2 (1) (c) of the law provide a clear idea of what "legal services" mean. This includes providing services in the proceedings of proceedings or other legal proceedings in court or other authorities or courts., And advice on all legal matters. Together, these provisions make it abundantly clear.

Following an evaluation of the applicant's eligibility criteria and the existence of a prima facie case in his or her favor, the Legal Services Authorities will provide counsel to the applicant at no cost to the state, pay the required Court Fee in the matter, and bear all incidental expenses in connection with the case. The individual who is receiving legal assistance is not required to spend any money on the case once it has been approved by the Legal Services Authority. This is true even if the assistance is not yet granted.

#### ***2.4.4. Legal Services Authority in India***

On three different levels—the national, the state, and the district—legal services can be obtained. The federal government is responsible for establishing both the National Legal Services Authority (NALSA) and the Supreme Court Legal Services Committee (SCLSC). In addition, the State Government is responsible for establishing both the State Legal Services Authority (SLSA) and the High Court Legal Services Committee (HCLSC). In addition to this, the District Legal Services Authority will now exist (DLSA).

The Taluk Legal Services Committee is discussed under Section 11A and Section 11B of the Act.

All of the authorities perform functions that are almost exactly the same. Pre-litigation services and post-litigation services are the two distinct buckets that these services fall into.

### **2.5. Analysis of the Indian Socio-Legal Aid services**

#### ***2.5.1. Lack of implementation in legal aid services for marginalized communities***

Being marginalised is unfortunate, but being marginalised, defenceless, and unprotected in a democratic society with the world's longest written Constitution is much worse. The Indian Constitution guarantees equality to all citizens. The Preamble to the Indian Constitution calls for justice to be upheld in all three of these spheres: social, economic, and political. Even the most insignificant injustice in any one of these three areas is considered to constitute a barrier to justice. Access to justice has been acknowledged by the Honorable Supreme Court as being an essential component of the Right to life.

Article 14 reads

*‘The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.’ It prohibits discrimination on grounds of religion, race, caste, sex or place of birth.<sup>8</sup>*

"The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities." This provision is found in Article 39A of the constitution and is part of the Directive Principles of State Policy.

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<sup>8</sup> Article 15 of the Constitution of India.

### ***2.5.2. Poor Legal Aid Services***

It is guaranteed in the Constitution of India that free legal help should be provided to the economically disadvantaged and socially excluded members of society. This provision is part of the legal aid services that are specified in the document. However, due to a lack of proper implementation and accountability in the criminal justice system, it had failed to achieve this objective. District and Taluka Legal Services Authorities provide legal aid. Lawyers with at least three years of experience can apply to volunteer for at least two years with the local legal aid body. They are given a minimal honorarium from the national authority's Legal Aid Fund because they are not allowed to charge the clients allocated by legal aid services.

#### ***2.5.2.1 Lack of awareness:***

It is a significant barrier to marginalised populations' access to justice. Many communities, such as Adivasis and ST, are unaware of the constitutional safeguards and other legal measures being taken to empower and address complaints. As a result, they believe that discrimination and abuse are the norms of their society. There are various institutions available specifically for those left behind in society, but because they do not know how to contact them or their rights and remedies in the event of a breach of these rights. Rights are often abused.

Justice P.N. Bhagwati has said that

*“Poor and illiterate should be able to approach the courts and their ignorance and poverty should not impede in the way of obtaining justice from the courts”.*

#### ***2.5.2.2 Poverty and high cost of Litigation:***

This is a key hurdle that prevents oppressed groups from even reporting their complaints, leading them to settle out of court, which is usually in their favor. The lengthy court process adds gasoline to the fire, preventing a poor litigant from approaching the courts because attending court hearings incurs an "Opportunity Cost." As a result, a person's access to justice is hampered by economic inability”.

#### ***2.5.2.3 Lack of Physical Infrastructure:***

Due to the enormous number of cases pending in the courts, India's legal system is under great strain. The lack of infrastructure, especially at the district level, in terms of the number of courts and judges assigned to them, slows down the judicial process and violates the right

to a timely trial. This is particularly problematic at the lower levels of government. When the victim is a member of a marginalised group, such as a woman, a Scheduled Caste, or a Scheduled Tribe, the severity of the situation is amplified. They make an ongoing effort to reach out to settlements that can be reached outside of court rather than going to court and opting for litigation.

#### ***2.5.2.4. Fading role of Legal Services Authority-***

Under the Legal Services Authority (LSA) law, state legal agencies can work closely with civil society representatives, government agencies, and academic institutions to "advance to those in need of legal service objectives." It is obligatory. According to the Legal Services Authority (LSA) Act, state legal services authorities are required to work closely with organizations representing civil society, government agencies, and academic institutions in order to "advance the cause of legal services to the needy." This mandate was established in the act. Because the Judiciary and the Legal Services Authorities have not typically worked closely together with community-based organizations and vice versa, involvement has historically been challenging. In addition, it is recommended in the Evaluation Report of the GoI-UNDP Project on Access to Justice for Marginalized People that the authorities in charge of providing legal services at the taluka, district, and state levels expand their ties with civil society organizations. As a consequence of this, the value of the social capital that already exists will be maximized, as will the value of the investments made via the various project interventions, and the potential of social capital will be realized.

#### ***2.5.2.5. Poor coordination among institutions-***

Legal Services Authorities must actively involve several national and state agencies, such as Disability Commissions, Minority Commissions, and Women's Commissions. Efforts should be directed on selecting, empanelling, and training lawyers from marginalised groups, such as women, Dalits, and people with disabilities, so that they are sensitive to their constituents' difficulties and capable of dealing properly with their problems. Another barrier that restricts access to legal services for society's most marginalised and economically disadvantaged members is the absence of non-state legal aid institutions to supplement formal legal services. These non-state legal aid institutions could include pro-bono attorneys, legal clinics, public interest law organisations, law schools, and retired judges.

### ***2.5.2.6 Increasing Access to Justice for Marginalized People: GoI-UNDP Project***

In 2009, the Ministry of Justice, in collaboration with the United Nations Development Program, launched a project on access to justice for those left behind in society. (UNDP). The goal is to give poor and underprivileged people the opportunity to access and charge legal services. It also aims to strengthen the institutional capacity of major judicial service providers to better serve the poor and underprivileged. The main purpose of this project is to improve access to the judiciary of the poor, especially women, registered castes, tribes and minorities. On the one hand, it seeks to improve the institutional capacity of large providers of judicial services so that they can provide better services to the poor and disadvantaged. The project, on the other hand, aims to directly enable poor and disadvantaged men and women to seek and demand justice.

### ***2.5.3. Prison Population***

The number of individuals locked up in prisons in India is currently over despite half a million dollar the country having a total population of around 1.3 billion people. The number of people held in prisons in India has more than doubled since the year 2000, when it stood at 2,70,000. This growth in the jail population has been steady over the previous 20 years. (Doddahatti, 2020).

#### ***2.5.3.1. Prison population and number of total jails in India according to NCRB***

It has been observed that there has been a significant population increase in recent years, posing a significant challenge for both convicts and prison officials in terms of security, safety, and well-being. Apart from infrastructural and resource restrictions, it is clear that there is a lack of interdepartmental coordination when transferring convicts to courts or medical facilities, when police escorts are required. These discrepancies have a significant detrimental influence on the health of prisoners suffering from various ailments. According to several studies and reports, the majority of offenders who died in jail had low educational attainment and were from economically disadvantaged backgrounds. Every death in custody in India is required by law to be reported to the National Human Rights Commission (NHRC), India (2018), regardless of the cause of death. However, not all fatalities in custody are reported to the National Human Rights Commission. The National Human Rights Commission identified 1,723 custody fatalities in India, according to a judiciary probe performed by the NHRC and the NCAT report 2019. Furthermore, the National Commission Against Torture (NCAT) just released its 2020 report, titled 'India: Annual Report on Torture 2020,' which claims that despite the lockdown, custodial fatalities have increased. The report details:

“Though reported robbery, theft and burglary declined significantly, falling by more than 50 per cent in most countries with the larger decrease in countries with stricter lockdown regimes as per a study conducted by the United Nations Office on Drugs and Crime (UNODC), there has been increased deaths in police custody in India.”

According to the report released in 2019 by the National Campaign Against Torture, on average, five persons succumb to custodial death.

**Table 2: Prison Population and Total Number of Jails**

<b>Year</b>	<b>Number of Convicts</b>	<b>No. of Undertrial Prisoners*</b>	<b>No of Detenues*</b>	<b>No. of Other Inmates*</b>	<b>Total No. of Prisoners*</b>
2017	1,39,149	3,08,718	2,136	693	4,50,696
2018#	1,39,488	3,23,537	2,384	675	4,66,084
2019#	1,44,125	3,30,487	3,223	765	4,78,600

Source- Prison Statistics India–2019 , Executive Summary

As per data provided by States/UTs

# Due to non-receipt of data from West Bengal for the year 2018 & 2019, data furnished for 2017 has been used.

\* Figures are as on 31st December of each year

**Table 3: Prison Types and Occupancy**

<b>Year</b>	<b>No. of Prisons</b>	<b>Actual Capacity of Prisons</b>	<b>No. of Prisoners at the end of the year</b>	<b>Occupancy Rate at the end of the year</b>
2017	1,361	3,91,574	4,50,696	115.1%
2018#	1,339	3,96,223	4,66,084	117.6%
2019#	1,350	4,03,739	4,78,600	118.5%

Source- Prison Statistics India–2019 , Executive Summary

As per data provided by States/UTs.

# Due to non-receipt of data from West Bengal for the year 2018 & 2019, data furnished for 2017 has been used.

Note: Figures as on 31st December of the respective year

The total number of prisons in India grew from 1133 to 1350 between 1998 and 2019. (Table 2). The increase was more pronounced in open and special jails, followed by central and district jails. At the same period, the total number of inmates grew from 2.75 million to 4.78 million (one lac is equal to 100,000). The 118.5 percent occupancy rate (number of convicts per seat) indicated that the jails are severely overcrowded. In this regard, women convicts enjoyed an advantage over their male counterparts, as the occupancy rate in women's jails was the lowest. Of the total 4,78,600 prison inmates in the country, 4,58,687 (95.83%) were men and 19,913 (4.16%) women, the data showed.<sup>9</sup>

According to the data, Dalits make up 21.7 percent of all inmates in Indian jails and 21% of undertrials, while their population proportion is 16.6 percent. STs make up 13.6 percent of convicts and 10.5 percent of undertrials, with an overall population percentage of 8.6 percent. Muslims make up 14.2 percent of the population, but 16.6 percent of all prisoners and, more importantly, 18.7 percent of all undertrials (Tiwari, 2020). According to data from the National Crime Records Bureau (NCRB), the ratio of prisoners from Scheduled Castes, Scheduled Tribes, and Muslims is disproportionately greater than their respective populations (Guru, 2020).

### **2.5.3.2. Prison Reforms**

Prison reforms is something which concern about the improvement of the penal and for the correctional institutions. The prison reforms address the issues of our laws and their enforcement, as well as all penalties and the offender's adjustment, and it extends beyond that, with the ultimate goal of the prison reforms being to prevent crime and stop the production of criminals. The concept of prison reforms is the attempt of both the individual and organization to create a more effective prison system and it mostly focus for improving the condition inside the prison and making sure the inmates are rehabilitated rather than just punished. The history of the prisons has only been used as the primary punishment for the criminal acts in the last few centuries. In the earlier centuries there were concept of corporal

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<sup>9</sup> The prison statistics presented by Minister of State for Home Affairs G Kishan Reddy were based on a compilation of data by the National Crime Records Bureau (NCRB) updated till December 31, 2019.

punishment (which means any physical punishment which is intended to cause any physical pain to a person), public humiliation, penal bondage and as well as capital punishment.

As the concept of the prison in our society is coming from the ancient era (Ahmed, 2012). The greatest English political thinker of the 17th century, John Locke, stated that while persons were inherently virtuous, rules were nevertheless required to hold down "the few desperate men in society." The most important goal of society, as represented in the criminal law, is to protect its own existence, to preserve peace and order, and to enable all citizens to have a happy life free from harassment by others. This goal is reflected in the fact that the criminal law is the most important goal of society. (Ahmed, 2012). Since a large number of people, like as the British Judge Sir William Blackstone, were opposed to the use of executions and other forms of harsh punishment in the 1700s, the government started to employ incarceration as a form of punishment instead. Statistics regarding incarceration were provided by the Minister of State for Home Affairs, G Kishan Reddy, based on information compiled by (NCRB) and current as of December 31, 2019. Prisons in the early days were dark, filthy, and overcrowded; they are still dark, filthy, and overcrowded today, but in the early days, all types of convicts, including men, women, children, violent criminals, debtors, and the insane, were locked up together in the same jail. John Howard, a British reformer who visited Europe to investigate jail conditions and wrote a book on it, "The state of the Prisons in England and wales" which influenced the law and led to the construction of the first British prisons. These prisons were only partially designed for reform and sought to make their inmates feel sorry for what they had done wrong and the offence which the prisoners had committed. These prisons became known as "Penitentiaries," which means a prison for people who have been convicted of serious crimes.

When it comes to the modernization of India's penal system, the legacy of British colonial rule can be seen in the country's jail administration. A very important thing that Lord Macaulay suggested was that a committee be appointed to suggest measures to improve prison discipline, and this committee was established by Lord William Bentinck. On December 21, 1835, while delivering a memorandum to the legislative council in India, Lord Macaulay for the first time pointed out the dreadful barbaric conditions prevailing in Indian prisons, calling them "appalling to humanity." Lord Macaulay called these conditions "appalling to humanity." It led to the formation of the prison discipline committee in 1836, which submitted its report to Governor-General Lord Auckland in 1838, with the following consequences. Which amounted the panel recommended that the increased rigorousness of treatment that means something that is harsh and strict, and the panel recommended to reject



all humanitarian needs and reforms for prisons. In 1864 it issued similar recommendations alike 1836 committee. In the year 1888, the fourth jail commission was established, and the prison statute was created in accordance with the recommendations that they provided. The Prison Act of 1894, which created the charge and advanced toward becoming legislation with the agreement of the Governor General of India, is the only comprehensive framework for jail management and administration that applies throughout India. The bill was distributed by the Indian government's Home Secretary to all local governments. The process of reviewing national prison issues, which continued after the enactment of the Prison Act of 1894 and the appointment of the All-India Prison Commission (1919-1920), is a turning point in the history of prison reform in India and is a national turning point. Well described as the "cornerstone" of modern prison reform.

"Hate the crime, not the criminal," Mahatma Gandhi is credited with saying in one of his quotes. All human beings are created equal, and their creator bestows upon them and upon all human beings certain fundamental rights. These rights primarily include the right to life and liberty; however, this fundamental right is not without its limitations, and a person who does not comply with the moral standards of society can be denied these rights through the application of appropriate punishment. (Ahmed, 2012) The Committee, led by Sir Alexander Cardew, visited prisons in Burma, Japan, the Philippines, Hong Kong, and the United Kingdom, in addition to Indian jails, and came to the opinion that prisons should have both a deterrent and a reforming effect on convicts. The committee criticised the practise of using physical punishment in correctional facilities and emphasised the significance of taking a reformative approach towards criminals. In addition to that, it suggested putting prisoners to work on useful projects in order to facilitate their rehabilitation and positive behavioural changes. The recommendations of the Ministry of Home Affairs arranged the Central Bureau of Correctional in 1961 and the Bureau observed as 1971 as Probation Year, further in 1973, Bureau released National Policies on Prison and the recommendations of the Committee of 1919-20 was only appointed to suggest various recommendation for improving the various conditions of India. When it comes to the Indian Jail Reform Committee, which was established by the government of India in 1980 and made several recommendations that concern the government of India, the majority of which relate to the legal framework and coordination between the states and union territories. It was also examined by the Ministry of Home Affairs, and the current status of implementation of these recommendations has been indicated. Important recommendations of the Mulla jail committee there are some of the important commend of the Mulla committee are, the conditions of prison should be enhanced

by giving and government should make every effort to provide enough resources and funding for jail reforms, including food, clothes, sanitation, and ventilation.

(Ahmed, 2012) Committee for post-independence reform. Following independence, different committees were formed to improve the conditions of India's jails. In 1949, a group, the Pakwasa committee, accepted the system of using inmates as roadwork labor without any intensive oversight.

Krishna Iyer Committee on Jail Reform. The Indian government established the Justice Krishna Iyer Committee in 1987. This committee was tasked with researching the circumstances of women incarcerated in India. Based on their findings, the committee recommended increasing the number of female officers in the Indian police force. These officers would play an important part in prosecuting female and juvenile offenders. The years 1937 to 1947 were a pivotal time in the history of Indian jails because to the several State Jail Reform Committees that were established during this time. These committees were responsible for increasing public knowledge and general awe. Some of the committees were appointed during the period, the very first is the (Ahmed, Jail Reforms in India, 2016) Mysore Committee on Prison Reforms (1940-41), the second is U.P. Jail Reforms Committee (1946) and the third The Bombay Jail Reform Committee (1946-48). The government of Uttar Pradesh established a "Jail Enquiry Committee" in the late 1930s, and in 1940, the "First Jail Teaching School" in India was established in Lucknow, in accordance with the legislation of recommendation, with the intention of training jail authorities and warders. Both of these institutions were established for the purpose of education and training. The worst prison situation was still fresh in the thoughts of political leaders when India achieved its independence in 1947, and they immediately set out to rehabilitate prisons as rapidly as they could.

The Constitution of India, which went into effect on January 26, 1950, did not make any changes to the Government of India Act, which was passed in 1935. This Act ensured that the issue of "prisons" remained a state subject by including it in List II of the State List located in the Seventh Schedule. The state government has established a number of Jail Reforms Committees with the single objective of reaching a certain level of humanization of jail circumstances and putting the treatment of criminals on a more scientific foundation. The most important committees (Ahmed, 2016) that made notable recommendations along these lines were:

1. The East Punjab Jail Reforms Committee,1948-49
2. The Madras Jail Reform Committee,1950-51
3. The Jail Reform Committee of Orissa, 1952-55
4. The Jail Reform Committee of Travancore and Cochin, 1953-55
5. The U.P Jail Industries Inquiry Committee,1955-56 and
6. The Maharashtra Jail Industries Reorganization Committee,1958-59

### ***2.5.3.3. Rights of Prisoners in the Indian Context***

In the 2015 report Prisons of Bihar, published by the Bihar State Legal Service Authority, the position of under-trial criminal inmates in India remained unchanged. The Ara district prison was used as a horse stable during British rule, and the Gaya Central Prison was built in 1854, but it is unfit for human habitation, and the walls and floors are moist from water seepage. In the Aurangabad District Prison, the condition is worse, there is the absence of exhaust and sunlight and the unpleasant odour coming from garbage which is full of rotten items kept near to the ward leads to breathing problems in inmates and the problem of overcrowding is constant. In Jamui District Prison, where 450 inmates are housed in a prison designed for 188, there is an overcrowding problem, while in Madhepura District Prison, toilets were overflowing, and there was no toilet available for prison employees. The Mulla Committee Report of 1983 recommended that all convicts have access to safe drinking water. The undertrials and convicts were compelled to work in the kitchens for no pay.

Some convicted people claimed that when they were taken out of prison, they were put in jail all day and not taken to court. These allegations have been made by numerous convicted individuals. The provision of the jail manual are not implemented properly.

#### **2.5.3.3.1. Arrest**

When it comes to the problem of arrests, the Indian criminal justice system is confronted with one of the most serious problems in the world today. What Are the Requirements for Making an Arrest? Dinesh Kumar against the State of Haryana: The highest court in India determined, after reading Section 46 of the Indian Penal Code (IPC), that in order to make an arrest, the officer or other person making the arrest must physically touch or restrict the person whose body is being detained. In addition, the court elaborated on the significant difference that may be drawn between the phrases "arrest" and "custody." In the case of The Supreme Court of India, Joginder Kumar v. Uttar Pradesh, ruled that arrests would not be held until the credibility of the complaint, reasonable beliefs in personal cooperation, and the

need for arrest were investigated. Did. With this ruling, the Supreme Court absolutely made it clear that arrests were not a rule, but rather an exception (Suma Sebastian et.al, 2017).

#### **2.5.3.3.2. Safeguard of Women Arrest**

In one of Sheila Bath v. Maharashtra cases proper management for the arrest of women, including the Supreme Court's proposed instructions to provide separate cordon lines and areas for male and female prisoners. It is argued that it is necessary.

#### **2.5.3.3.3. Bail and remand**

There are a few things to think about while deciding whether or not to grant bail. In one of the cases, the Supreme Court emphasised the criteria that a court ought to consider while determining whether or not to grant bail. It was also stated in the case of (Suman Sebastian A. M., 2017) Gurcharan Singh & Others v. State (Delhi Administration) that the reasons in granting bail are the same under both Section 437(1) and Section 439(1) CrPC. There is also a term of Bail in Special Criminal Statutes, with special criminal legislations such as the NDPS Act, TADA, MCOCA, and others modifying the normal law relating to bail in various ways. In the context of these statutes, a number of cases have emerged.

#### **Legal Aid**

In the case of M.H. Hoskot v. State of Maharashtra, the Supreme Court acknowledged the most crucial right, which is the right to legal help. In the Supreme Court acknowledged a destitute prisoner's right to free legal representation. It made the state obligated to provide the offenders with such free legal help, declaring that failure to do so would be a violation of Article 21 of the Indian Constitution. Taking action to explain how the right extends to filing appeals against convictions in the context of a case before the Supreme Court and offering free copies of Legal Aid judgements at the Pre-Trial Stage are both steps that need to be taken. The Supreme Court emphasised the need of granting access to counsel during an interview in Nandini Satpathy v. P.L. Dani. It made the police responsible for informing the arrestee of his or her legal rights. The presence of a lawyer during interrogation was seen to be a deterrent to police abuses, such as torture.

#### ***Torture***

According to Article 21 of the Constitution, torturing someone is a violation of their right to live a decent life, and any legal proceeding that involves torturing someone cannot ever be just, fair, or reasonable. According to a decision made by the Supreme Court in the case Selvi

v. State of Karnataka, the act of torturing someone does not solely consist of causing them bodily harm; it can also involve the coercive alteration of their mental state, which can have devastating and long-lasting effects. As a result, it was determined that involuntary administration of the Narcoanalysis was required. Article 21 defines 'cruel, inhuman, or humiliating treatment' as polygraph testing and the Brain Electrical Activation Profile (BEAP).

### **Preventive detention**

*Article 22 of the Indian Constitution, as well as a slew of central and state statutes, provide for preventative detention. The National Security Act's preventative detention provisions are being challenged in court on the basis of their vagueness. Pre-Conditions for Preventive Detention While preventive detention is constitutional, it can only be used when usual criminal laws and procedures are ineffective in dealing with the problem.*

### ***Habeas corpus.***

Articles 32 and 226 of the Indian Constitution preserve the writ of habeas corpus. The writ of habeas corpus has been utilised in cases where a convict's or under-trial prisoner's fundamental rights have been violated. Habeas corpus petitions can be filed when a person is held by the government or by a private party. On numerous times, habeas corpus petitions have been utilised to limit the freedom of movement that women are allowed to have. Under Article 32 the case of Gian Devi v. The Superintendent, Nari Niketan, Delhi & Others, was filed for habeas corpus petition under, the Supreme Court ruled that a transgender cannot be detained in women's shelters. In addition, the Supreme Court ruled that the major cannot be detained in women's shelters. (Yadav, 2018) "A convict is entitled to the precious right guaranteed by Article 21." The most fundamental issue in India with regard to prison administration is that it is resulting in a variety of human rights issues and obstacles, such as rights to health care, cleanliness, food, custodial abuse, and mortality. Therefore, the reformation of the criminal justice system becomes imperative because it's the bare minimum that a country should do for reformation and rehabilitation. Hence the provisions related to arrest, bail, adjournment of the cases and all other related matters should be revised keeping in perspective the issue of Human Rights of the prisoners. Laws pertaining to the protection of an accused's rights should be more constructive in order to ensure that he receives a just, fair, and unbiased trial. These rights are promised to every accused person, although they are only in theory. Prisoners from marginalised groups are either uninformed of their rights or are exploited to the point that they are unable to exercise them.

## **2.6. Case-Interventional Strategy**

The two types of interventions are direct interventions, which often involve a confrontational meeting with the individual in question, and indirect interventions, which involve working with a co-dependent family to assist them in being more effective in supporting the individual. Direct interventions often involve a confrontational meeting with the individual in question. Indirect interventions involve working with a family to help them be more effective in supporting the individual. This study endeavour makes use of the direct intervention method, and rather than the person who is abusing drugs or alcohol, concerned members of the addict's family and friends, along with a professional counsellor, are the ones who organise the intervention (s). Whether it is an invitation model or a direct model, the person who is abusing the victim is not included in the process of making decisions regarding the arrangement of the intervention. Together with the assistance of an intervention counsellor, coordinator, or educator, the family or friends of the person who has been identified as an abuser will prepare a direct intervention that will be carried out in the correct manner. It is essential to carry out the intervention in a well-lit, spacious area, as this will convince the offender that they will not be cornered or hemmed in at any point during the process. A sufficient amount of time was devoted to the individual examples that were discussed in the subsequent chapters.

## **2.7 Theoretical Framework**

The underlying theory delineates the relationship between socio-economic condition of the prisoner and their involvement in the criminal activities. Consequently, being imprisoned and inadequacy of medical facilities leads to poor social wellbeing. The following theory had been chosen which particularly emulates with the objectives of the research dissertation.

### **Deprivation model**

The deprivation model is based on a body of sociological research from the mid-nineteenth century. This model provides a framework for analyzing how the atmosphere of prisons and jails might influence the behavior of inmates and lead to institutional wrongdoings such as violence. The depravity that the convicts are subjected to drives them to commit acts of violence. They are denied of their freedom, autonomy, privacy, and security, aggravating their mental health problems.

## **Social Disorganization Theory**

Physical and social circumstances are the primary factors of a person's behavioural choices, according to the social disorganization theory. The primary tenet of the social disorganization theory is that location is crucial for predicting criminal behavior. It is asserted that delinquency is not the result of a person's actions, but rather a normal response of average people to abnormal circumstances (Bond, 2015). and a lot of family disturbance, crime is assumed to be more likely (high rates of divorce, single-parent families).

## **Labelling theory**

In labelling theory, a sociological approach to crime and deviance, the role of social labelling in the development of criminality and deviance is highlighted. While a variety of conditions may contribute to deviant behavior, once a person has been classified or labelled as a deviant, they frequently face new difficulties as a result of their own and others' reactions to the negative preconceptions (stigma) associated with the deviant label. According to Lemert, deviant behavior may become a "method of protection, assault, or adaptation" to deviant classification's barriers (1967). As a result, criminal labeling or classification may initiate other processes that promote or stabilize participation in crime and deviation, regardless of underlying behavioral patterns or social and psychological reasons. .. Such indications place a constant psychological burden on prisoners and worsen the social health of prisons.

## **Mental Health Theory**

The bad atmosphere in prisons, as well as the resulting conditions, have an impact on a prisoner's mental health. Overcrowding, various forms of violence, forced loneliness or vice versa, lack of privacy, lack of meaningful activity, isolation from social networks, uncertainty about future prospects (professions, relationships, etc.), and uncertainty. All adequate medical care affects the prisoner's overall social welfare-being.

## **Looking self-Glass theory**

This theory plays a significant role in understanding the rise of criminal behaviour among the young offenders. Society acts as a mirror it reflects our actions and categorize them as acceptable or deviant. We develop the concept of self or one's sense of identity. It's a direct contemplation of oneself, or the personal qualities. Young offenders in the society are treated in such a manner or portrayed in such a way that they tend to become even bigger criminal.

One of the common factors behind all the theories is the poor response of the society which in a way causes social deviance. Extreme poverty, in combination with other causes such as

parental ignorance, a lack of sufficient education, a terrible neighbourhood, peer pressure, migration, cultural conflict, excessive internet use, frustration due to a lack of viable opportunities, and so on (Ferdousi, 2011).

### **The interconnectedness between the theories and research**

In this research dissertation Social disorganization, labelling, and looking self-glass theory is used to discuss the relationship between poor socio-economic status and the social wellbeing of inmates in the prisons of Bihar. The social disorganisation hypothesis clearly relates crime rates to neighbourhood ecological factors; one of the theory's central principles is that "location matters." In other words, a person's home is a crucial factor in establishing their criminal propensity. The hypothesis indicates that a person's residential location is more influential in the conduct of crime than his or her particular attributes (such as age, gender, or race). For instance, if we consider the atmosphere of prisons which is already high in delinquency, the young offenders kept inside with the adult ones might start emulating their actions. Thus, it is one of the most important theory of our research dissertation.

The second theory asserts that due to labelling, the prisoner faces continuous mental harassment. Further, no proper recourses are available to the prisoner to treat their mental health issues. The third theory that delineates the criminality demeanour among the prisoner is the looking self-glass theory. According to Cooley, the self is not primarily a person and then a social creature; rather, we construct or mood our self unconsciously as a result of our interactions with society: "there are no isolated selves. There is no 'I' without a corresponding sense of you, or he, or they... a reflection of the thoughts about himself that he attributes to other minds. (1998). The individual unknowingly accepts/ adopts or forms a self-image based on society's opinion or acceptability. (Yeung & Martin, 2003). When first-time offenders are kept in prison the surrounding atmosphere acts as a glass which speaks out. The hardened criminals who had already lived their life in criminal world reflects more deviant behaviour and has an aura of criminality. On the other hand, the first-time offenders are at a very fragile point of life where they start embracing those ideas and lifestyles which ultimately make them akin to hardened criminals.



## **Chapter 3: Research Methodology**

### **3.1 Background:**

In this chapter, the researcher outlined the methods and tools along with the issues related to the study of the wellbeing of undertrial prisoners. The very problem with this subject relies on the definition of wellbeing. It can be either measured as objective wellbeing i.e., wellbeing is unequally distributed based on the different identities or as subjective wellbeing i.e., subjective perception of their own lives (Western and Tomaszewski, 2016). Moreover, various research on wellbeing in earlier times focused on the dimension of wellbeing which is complex in measurement and unable to achieve universal application (Dodge et. al, 2012). Furthermore, there are not enough work on the wellbeing of the undertrial prisoners. The vital reason is that this issue of marginalization is imperceptible in the public discourse and agenda due to their relation to the crime which is still in the process of justice.

The state of the India's undertrial prisoners are in the situation of crisis due to various factors such as illiteracy, poverty, dysfunctional prison, delayed investigation, deficient prosecution system and insufficient judicial system (Sahoo & Jain 2015). Hence, these undertrial prisoners are themselves not assertive which make them vulnerable, and they cannot raise their voice for their wellbeing. Again, the undertrial prisoners are not on the list of political agenda and discourse. They are prejudiced as the hinderance of social and economic progress instead of providing the correctional measures. Even, state put lesser effort on the undertrial prisoners for the correctional services.

### **3.2 Objectives:**

1. To study the socio-economic background of the under-trial prisoners and its correlation to committing offences.
2. To examine the Bihar State prison legislation regarding social wellbeing.
3. To develop the interventional approach for the well-being of Under-trial Prisoners.
4. To analysis the socio-legal aid services for the undertrials prisoners during COVID-19.

### **3.3 Rationale of the study population**

The poor socio-economic condition is the cause behind the escalation of criminal activities among marginalized prisoners' communities. Socioeconomic factors are vital determinants of

human behaviour and their involvement in the activities prohibited by law. The socio-economic status includes poor income households, education level, and social backgrounds. The research dissertation tries to understand the relation between socio-economic conditions and crime. The country's socio-economic improvement does not guarantee a reduction in crime rates. The motivation for crime is not always limited to poor socioeconomic circumstances; nonetheless, educational attainment and crime have an inverse relationship, and it reduces the propensity to commit crimes; in some cases, well-educated people are also involved in crime. However, many wealthy people have been involved in criminal activity in order to take advantage of their loopholes. India has a high rate of inequality and crime, resulting in a lack of social safety.

In recent decades, as crime has become more organized, the Indian government has taken a number of initiatives to combat it and reduce crime. Unfortunately, all of the anti-crime measures fall short due to weak policy implementation planning, significant corruption, and the lack of proper initiatives to improve the socio-economic situation. The crime report shows that India's crime rate is very dynamic. In comparison to the rest of the globe, India has a substantially higher crime rate. The police fail to register a large number of crimes because their major purpose is to display a low crime rate and a high clearance rate, which is the main reason for the failure of adequate crime accountability. As a result, numerous crimes go unreported or unaccountable, and they aren't taken into consideration when calculating the crime rate.

During the pandemic COVID-19 a 'High power Committee' had been constituted in every State and had been obligated with the responsibility to effectively tackle the spread of contagion in prison. The Patna committee had ordered the release of under-trial prisoners booked under petty offences, but the prison administration had transferred the inmates to other central prisons and sub-jails of Bihar rather than release them. Such gross violation of the rights of prisoners during COVID-19 had also impacted the socio wellbeing of the prisoners. Above all poor knowledge of free socio-legal aid services among the inmates had also been equally given importance to relate to the victimization of the inmates of the marginalized community.

### **3.4 Rationale of the geographical study area**

Considering the crime rate and its nexus with poor socio-economic conditions Patna district has been chosen for the study because of its high crime rate (Patna tops the crime chart in Bihar, 2021). There are eight central prisons in the State of Bihar out of which the Model

Central prison, Beur is the central prison in Bihar where the research dissertation has particularly focused and the relevant case studies had been carried out. The prison has a sanctioned capacity of 2310 but regularly the number of inmates is more than 5500. The facilities in the prison be it is either medical or physical are limited and above that such mass incarceration creates a poor impact on the overall social well-being of the prisoner.

### **3.5 Research Design**

Research design can be defined as the framework of methods and techniques in research. It is an overall strategy in which a researcher integrates all components in a logical and systematic way to address the research problems (Creswell, 2014). An exploratory research design was selected to meet the various objective of the research. It helped the researcher to address the research problems through the discovery of ideas and insights. Exploratory research in an analysis should be flexible and ready to consider the different aspects of the study as the research problem of this study had been broadly defined in the initial phase due to limited study on the undertrial prisoners and wellbeing.

The case study approach is adopted to understand, explore and analyze the social life of the prisoners which frame his/her total personality (Whitney, 1965). This approach helped the researcher to understand the ‘how’ rather than the ‘why’ of a process (Aberdeen, 2013 & Yin, 2009). It allows researcher for in-depth and multifaceted understanding of the complex life of prisoners. The case study is interpretivist in approach where it is possible to understand the individual perception with the social meaning of crime, prison and correctional services in that society. Moreover, Miles and Huberman (2002) advocates case study approach to analyse such phenomenon of some soft occurring in a bounded context. The life of the prisoners can also be taken as the phenomenon in the bounded context of imprisonment and exclusion from social life.

### **3.5 Research Methods and Process**

The research instrument in this research was developed after a thorough review of pieces of literature. The methods and process selected in this study was based on the needs for the achievement of the objectives. This research has followed the framework based on three phases i.e., Conception, Investigation and Development. In the first phase, the researcher conceptualized the research gap through literatures, secondary data and various reports. The second phase had started with an investigation using home visits, unstructured interviews with prisoners, families of prisoners, social workers and officials such as jail superintendents,

lawyers and judges. Unstructured interviews helped the researcher to get the information which is not intended to collect. This allowed the researcher to not rely on the basic set of questions but to develop the concepts during the interview based on the responses of interviewees. As interviews were very sensitive in nature, it was not recorded in any nature. Field notes are prepared by the researcher during and after every interviews. Home visit helped the researcher to grasp the researcher to understand the life events and analyse the social meaning of prisoners which is associated with the prison, crime and correctional services. The third phase of this research started with development of different approaches of the correctional services which can be applied to the undertrial prisoners.

**Table 4: Data Collection Plan**

Objectives	Tools & Techniques	Data Source
1. Socio economics background and its correlations of pathways toward committing offences.	<ul style="list-style-type: none"> <li>• Unstructured interview with prisoners and their Family</li> <li>• Home visits of the prisoners</li> <li>• Analysis of the Secondary Data</li> </ul>	Unstructured Interview, Observation, NCRB Data, Prison Statistics Report 2020.
2. Socio legal aid services for the undertrials prisoners during COVID-19	<ul style="list-style-type: none"> <li>• Unstructured interview with prisoners</li> <li>• Unstructured interaction with officials and staff members.</li> </ul>	Prison Record, History sheet, and reference to government notification, and NGO reports.
3. To analysis the Bihar State prison legislation regarding social wellbeing.	<ul style="list-style-type: none"> <li>• Analysis of the Secondary Data</li> </ul>	Bihar Prison Legislations, Manuals, Model Framework
4. The interventional approach for the well-being of Under-trial Prisoners	<ul style="list-style-type: none"> <li>• Home visit, Case Follow-up.</li> <li>• Unstructured interview with social worker, judges, and lawyers.</li> </ul>	Interaction with prisoner's family and relatives.css Telephonic unstructured

		interview
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*Source: Prepared by Researcher*

### 3.6 Selection of Cases

A total of five case study was included in this study. The selection of cases was purposive in nature to get in-depth analysis of the phenomenon. Researcher focused on the cases which fits to the research context and address the research problems. These cases cover all three scenarios i.e., pretty offences, heinous offences, and serious offences. The first case of a juvenile boy who was convicted for theft. Second case is of a male undertrial prisoners who was also convicted for theft. These two cases come under pretty offences. Third case is of man who was convicted under the excise act which has been recently formulated in 2016 by Government of Bihar. This comes under heinous offence. Fourth case is of men who was convicted for kidnapping. Fifth case is of women who was convicted for murder and kidnapping. These two cases come under the serious offence.

**Table 5: Categorization Of Case Studies**

Cases	Gender	Age	Offence	Types of Offence
Person 1	Male	40 year	Theft	Petty
Person 2	Male	17 year	Theft	Petty
Person 3	Male	28 year	Kidnapping	Serious
Person 4	Female	33 year	Kidnapping and Murder	Heinous
Person 5	Male	35 year	Drunk Alcohol and creating nuisance	Serious

*Source- Prepared by Researcher*

### 3.8 Data Analysis and Interpretation

After collecting the primary data in the form of field notes, observation, formal and informal conversations, the next step was to analyse the data and engage in its interpretation. For this purpose, researcher had adopted interpretivist approach with thematic analysis. Firstly, codes were generated which took the researcher to the development of categories and finally to the themes of the research. To avoid the biasness in the selection of codes, researcher went through the rigorous review of established research which ensure the predictive validity.

Researcher tried to avoid the personal biasness throughout the research process to ensure reliability and validity of the result.

### **Defining the Keywords:**

**Social Wellbeing:** The ability to interact, form meaningful relationships with people, and maintain a support network that assists you in overcoming loneliness. <sup>10</sup>.

**Crime:** An activity which is punishable under law.

**Undertrial Prison:** An accused who is either under the police or Judicial custody when his/her trial is on-going.

**Justice:** in context to prisoners the word 'Justice' means the right to live freely with dignity.

**Socio-legal aid services:** Free of cost socio-legal services to the weaker sections of the society.

**Correctional Services:** Correctional services refers to the services maintained by the state government to ensure the appropriate management, administration, and operation of prisons, as well as the rehabilitation of criminals into law-abiding citizens.

### **3.9 Ethical Considerations:**

Researcher has tried to maintain all the ethical considerations during his research work. Research participants had been given priority at the most and has been informed earlier through the phone call while visit. For the prisoners, they were fully informed about the objective of the study and asked for the voluntary participation. Oral consents have been taken prior to every interview with prisoners, family members, social worker, and officials. To ensure the dignity and confidentiality of the participants, anonymity of the participants has been maintained. Moreover, researcher tried to avoid any type of deception and exaggeration during the analysis of the data.

The researcher has also tried that prisoner must not be presented in the humiliating manner during the whole process of research. The life of undertrial prisoners is subjected to social taboo and they are not considered as the part of social life. Hence, it is very necessary to present them as human being rather than a criminal.

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<sup>10</sup> <https://www.psychologytoday.com/us/blog/click-here-happiness/201901/what-is-well-being-definition-types-and-well-being-skills>

For the funding of this research work, researcher was dependent on the University Grant Commission Junior Research Fellowship (UGC-JRF) which researcher was awarded for M.Phil. programme.

### **3.10 Limitations:**

This research work has three limitations. Firstly, it was very difficult to reach to prisoners and get adequate time for the interview with them due to rules and regulation of jails. Researcher got only one to two hours with each participant in jail which seem to be insufficient to understand the life history of the prisoners. Second, jail prohibited entry of any electronic device which restricted the researcher to take the electronic recorder with him to record interviews if consented by the participant. In addition, it was necessary to maintain security as well as the anonymity of the prisoners (study participants) as that could contain very sensitive information. Hence, despite the provision of safeguarding the identity of the study participant, it was deemed better to not record the interviews, given the stringent rules of the prison. Hence, researcher had to rely on his memory for the data thus collected manually. In the process of memorization, mental notes, it may happen that some of the important information was lost due to memory lapse. Third, home visit was a tedious task. All prisoners were from different locations and multiple visits were needed to understand the whole scenario. Additionally due to COVID, there were restriction which hindered the transportation, thus movement and meeting people too. During the visits in such restricted environment, the researcher found out that some of the family members were not present in the home during the home visit. This also affected the additional data which could have further informed about the study participants. The cases have been identified by pseudonyms.

However, despite these constraints, efforts were made to the fullest to vest and re-vest the study participants and their family in the sites possible, overcoming and adhering to the COVID-19 safety protocol.

## Chapter 4: Case Study

### **4.1 Poor accessibility of socio-legal assistance programs inside the prison.**

The provisions of legal aid services are highly inaccessible inside the prison during the intervention in the following case studies marginalized sections of the society were not able to access free legal aid. The process of applying for legal aid is too complex and opaque and due to the low literacy level among the marginalized communities they remain languished in prison for years. In the following case studies socio-economic background, legal intervention and social wellbeing perspectives had been discussed to corroborate the objectives of the research dissertation.

#### *A) Ravi vs State of Bihar*

##### ***Introduction***

The word 'caste' holds a peculiar position in our society. People respond differently to each other depending upon which caste one belongs to. Those who belong to the privileged cast try to dominate their social status in the society and enjoy all the entitled rights without any restrictions. Their autonomy is not restricted, and they have the benefit to decide their future. Everything is quite easily accessible for these sections of the society, but when it comes to those who belong to the lower rungs, their lives are filled with roadblocks and obstructions. Belonging to a marginalized society itself is a hindrance for these people which is further aggravated by insufficient finances and poverty.

The symbol of Justice is a blindfolded lady standing with the beam balance depicting impartiality and neutrality towards people. However, the truth is far from the ideals that this symbol epitomizes. Our belief no longer has the factual backing and is limited to a myth. If we look into the legal system of India, we can see in bold letters that everyone is equal in the eye of law and any kind of discriminatory practice is enjoined.

In the majority of cases, the prisoners who come from these disadvantaged backgrounds have to go through numerous difficulties including discrimination, forced restrictions and inadequate assistance. They are forced to survive in these situations without anyone to care for them. Though we are technologically advanced but the stereotypes that we had are still subsisting. Their rights are not valued in the society, and they are left to do their own advocacy with no help whatsoever.



## ***Background***

I met a man named Ravi Yadav<sup>11</sup> in Beur Central Prison, Patna. He was about 40 years old and only had a mother as his family. He took care of her and came to Patna and work on daily wages work to support his livelihood. He was surviving on bare minimum. When I saw him for the first time, I could sense the desolation he felt. I noticed that he was reaching out for help but was slowly giving up because no one came to his rescue. It seemed like he was breathing manually and was just existing without any reason to do so. His condition was the most detestable and yet he continued hoping that someday he might be saved out of his misery. I wanted to know everything about him- from his incarceration to the reason for the same. He barely spoke but his eyes made things quite evident.

He was languishing in the prisoner for the past two years. He was wearing a disheveled vest which looked like as if it had been dipped in coal while his lower body was covered with towel. Due to his pathetic physical appearance, I was compelled from internally to question his incident and realized the relevance of the statement “Kanon andha hota hai”. Being in Jail it does strip the person of his/her basic dignity. It does make someone a ‘lesser’ human. Agreed that criminals should be punished for the crimes they commit but shouldn’t a more humane framework be there to reform them or to rehabilitate them. After some time, sensing his comfort I continued my enquiry, and the answers shook me to my core. He was detained under section 379 of the IPC for stealing a 40-mm cast iron rod. As a defendant, he was imprisoned for a longer amount of time than was required by law, and he had no clue when he would be released.

## ***Presentation of Findings***

Ravi comes from a disadvantaged segment of society where people understand that the law is biased in its application and that justice is determined by one's status and muscular might. He was discriminated against because he is from a community which has faced the brunt of inequity since centuries and continues to suffer from the same with little or no progress.

## **Socio-economic status and social wellbeing**

Ravi had a poor background with no source of income and an ailing mother to take care of. He was imprisoned for stealing a 40 mm cast iron rod and was booked under section 379 of IPC. In prison, he continued to suffer from the same segregation that he had felt outside. A prison which is supposed to be a reformation site based on the ideals of equity didn’t alter the crass treatment he was subjected to beyond the confines of prison. The disappointing

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<sup>11</sup> Name of the individual in the case study has been changed following right to privacy.

condition of the prison further made the life inside these confines unbearable. He was forced to sleep in the same room where the open toilet had been constructed. Consequently, these areas became the breeding ground for a lot of diseases. These conditions are aggravated by feelings of loneliness and helplessness. He was forced to do menial jobs and was coerced to serve the so-called 'upper caste' inmates. He was bullied severely.

Prison is also a social structure that imbibes the atmosphere that exists beyond its confines. Akin to the issue of Caste-based segregation, Prisons are divided into sections with the traditionally privileged ones occupying better positions and better resources. Ravi was treated like a slave by these self-claimed upper-caste lords. His social well-being was gravely impacted.

### **Socio-legal aid services**

When I questioned Ravi about free legal assistance, he said he didn't know about it and didn't have enough money to employ a private counsel. He informed me that no information about his condition is communicated to his family, and that free legal help is only available to those who have money; without money, no free service is available to anyone. By listening to his words, it looks like he doesn't have any believe in our justice system which is also true somehow.

I inquired about Ravi's family, and he stated that he resided in a little town outside of jail, and that his family consisted solely of his elderly mother. She, too, was illiterate and completely reliant on him for survival. She was not aware about where his son is, and he also did not have any idea about his mother because after coming to prison he was not able to inform his mother. He was unmarried so after him his mother would have been totally alone in the village, how she will manage living alone he had no idea, and he was quite upset about this as well. If proper information is provided to his dear one's about his condition than most probably, he will not be in prison so long, he will get bail after 3 months but due to the lack of proper implementation of free legal aid services he had suffered in prison for so long and was still suffering during these two years of his imprisonment. Due to the lack of his awareness about free legal aid services he had been left to languish in jail also improper accountability of legal aid services inside the prison was equally responsible for his condition.

When I asked Ravi about his bail, he had no idea. He was not even aware of the free legal services that he is guaranteed by the constitution. Hiring a private lawyer is often a luxury for these people who often fail to afford two square meals a day. He didn't believe in free legal

services and to him, it all depended on the amount of money you have. Further, no information regarding his whereabouts was provided to his mother. If proper information had been provided to his mother, he might have come out on Bail within three months however due to a lack of representation he was languishing in jail for the past two years with no release in sight. The improper and inadequate legal aid services provided to them are responsible for his condition.

### ***Case intervention Strategy***

As the maximum imprisonment u/s 379 of IPC is 3 years and being accused to stealing an iron rod he was still inside prison which is more than enough. He was not able to grant bail because police didn't inform his relatives. In the place of him if there had been another person arrested would not have suffered this much only because he is poor, uneducated, unaware about his rights and legal facilities. In this scenario, it is the police's responsibility to furnish his family with all available information about him, as well as information regarding bail and free legal aid services. The D.K. Basu case guidelines spell out the particular standards and processes that police and other authorities must follow when arresting, detaining, or questioning somebody. The police clearly undermined these guidelines and failed on their part to make the accused aware of his rights.

As part of the intervention approach, I presented the concerned court with a bail strategy under CrPC 436A, which allows a person who has served half of his maximum sentence to be freed on bail with or without personal sureties. Hence, after his case was heard he was released on Personal recognizance bail bond. However, due to our financial limitation, we were unable to provide him with any rehabilitation services.

### ***B) Anil vs State of Bihar***

#### ***Introduction***

A child's eyes are full of innocence when they are born. Every child's existence revolves around nurturing them. If we provide proper care and attention to the kid in the right direction, the child's growth will be constructive. In India, around 41% of the population is under the age of 18 years. The Juvenile Justice (Care and Protection of Children) Act, 2015, passed by the Indian Government which takes a universal approach to defending children's rights by providing sufficient care, protection, treatment, and development to children in tough situations. The Section 2 (13) of the Juvenile Justice (Care & Protection of Children)

Act, 2015 defines a juvenile in conflict with law as a child who is charged with or determined to have attempted an offence and is below eighteen ages at the offence time was committed. Observation by The National Crime Record Bureau, there was 31,396 cases of "Children Conflict of Law" (CICL) documented in 2015, with a 2.1 percent crime rate. The majority of instances, however, are minor infractions that may be avoided by giving sufficient information and assistance to children and their families.

According to the findings, children imbue societal standards through close ties with their parents and others, which safeguard them from criminal urges. Nelson Mandela put it precisely "when a man is denied the right to live the life he believes in, he has no choice but to become an outlaw". No one is born with a strong inclination towards crime. It is a circumstantially induced phenomenon.

Around 41% of the population in India is below 18 years of age. The Indian government established the Justice of Juvenile (Care and Protection of Children) Act, 2015, which takes a universal approach to defending the rights of "Children in Conflict with the Law" by providing sufficient care, protection, treatment, and chances for growth Section 2 (13) of the Juvenile Justice (Care & Protection of Children) Act, 2015 defines a juvenile in conflict with the law as a child who is charged with or determined to have attempted an offence and is under eighteen age at the time the offence was committed. According to the National Crime Record Bureau, there were 31,396 cases of "Children Conflict of Law" (CICL) documented in 2015, with a 2.1 percent crime rate. However, most cases pertain to petty offences and can easily be avoided through proper guidance and help. Study also shows that children try to emulate the actions of the community they inhabit. Hence improving the overall social and economic conditions of the less developed societies can reduce the delinquency rates.

### ***Case Background***

Anil<sup>12</sup> was a 17-year-old boy, he belongs to very poor family. He lived in a nuclear family with his father, mother and elder brother. His family's financial condition was not so good. They work a lot for their living, his father used to drive J.C.B excavator machine while his mother was a security guard at some mall. He was like other normal boys he used to go to school daily and was studying in class 11. His social background and his friends were not so good because of his friends he involved in the theft activities.

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<sup>12</sup> Name of the individual in the case study has been changed following right to privacy.

When he was detained by the police administration, he was 17 years 11 months and 19 days. He was charged under Theft is punishable according to Section 379 of the penal code of India 1860, which states that "whoever commits theft shall be punished with imprisonment of any sort for a time which may extend to three years, or with fine, or with both."

On 13<sup>th</sup> December 2020 Police detained him while he was standing with his friends at the city chowk. He was quite shocked at that time because he didn't understand what had happened with him. Two policemen came to him and started searching him and then they found a mobile phone which was identified as a stolen property. Thus, he was detained and charged according to Section 379 of Penal Code of India, 1860. At the time of detention, he claimed himself to be 17 years of age. However, Police administration had severally physically tortured him and portrayed him as an adult above 18 years in a FIR copy. He was taken through the judicial custody process under an impression that he claimed himself to be of above 18 years of age. No enquiry was done of him in the police station or at the time of the judicial custody and was finally sent to Phulwarisharif Sub- jail which was a quarantine center at the time of COVID 19. After which he was sent to Tarun Ward of Beur Model Central Prison, Patna (Bihar).

Anil, a 17-year-old boy, comes from a poor family. He lived with his father (who drove a J.C.B excavator machine), his mother (who is a security guard at some mall) and an elder brother. He was studying in the 11<sup>th</sup> Class. Because of his friend's circle, he got involved in theft-related activities.

On the date of his arrest, he was 17 years 11months and 19 days old, a juvenile. He was charged according to Section 379 of Penal Code of India, 1860 which defines the punishment for theft is either imprisonment of any sort for duration of up to three years, or a fine, or both.

On 13<sup>th</sup> December 2020, he was detained by the police while he was standing with his friends at the city chowk. Two policemen came and started searching for him. He was quite shocked by the sudden developments. The policemen found a mobile phone on him which was identified as stolen property. Thus, he was detained and charged under section 379. At the time of arrest, he clearly mentioned his age to be 17 years. However, his age was mentioned 18 years in the FIR. The police administration severally tortured him. He was shifted to judicial custody under the impression of him being an adult. No enquiry was done whatsoever in the Judicial custody to ascertain his age or the crime. He was finally sent to Phulwarisharif Sub-Jail which was a quarantine center at the time. He was later shifted to Tarun Ward of Beur Model Central Prison, Patna.

### ***Presentation of Findings***

Just like Ravi, Anil also comes from a poor socio-economic background. Even though the police are mandated to follow the issued guidelines to deal with Juveniles, they clearly surpassed their authority. The actions of the police show the apparent impunity enjoyed by them and the resultant misuse of power. It can directly be attributed to Anil's standing in the social hierarchy. The lack of proper foresight from the Judiciary can also be blamed for his condition.

### **Poor Socio-economic status leads to poor social wellbeing**

Families with minimal socioeconomic means are more likely to grow up in poverty and instability. According to social disorganisation theory, the lack of social capital and collective monitoring in these neighbourhoods facilitates crime. Delinquency is more widespread in neighbourhoods with low levels of affluence and little home stability, according to study. The relationship between SES and delinquency is not solely mediated by neighbourhood quality. According to the family stress model, parenting can also buffer this relationship. A positive parent-child relationship, according to control theory, can form a social tie that prevents delinquent conduct. A low SES, on the other hand, may cause stress in parents, resulting in less good parent-child connections. Youths mostly offend their parents because they According to several studies, family stress and parenting actions moderate the relationship between SES and youths' externalising behaviour and criminality.

### **No Legal aid services facilitation provided or had awareness**

His family hired a private legal representative that I come to know while I did home visit during my data collection and learned while discussing the incident with all the family members as well as the private advocate that the family had no such awareness about free legal aid services additionally the advocate had no idea of transferring the case to the board of Juvenile Justice. It is also enumerated under the JJ Act, 2015 where the child protection officer needs to inform the child about the juvenile justice board and had to properly prepare a social background report which he needs to submit to the board. Above all no information was submitted to his family members his family came to know about him the next day when someone from their locality had informed him that he saw Anil at the police station. Gross miscarriage of human rights could be inferred from this case.

Anil was not made aware of his legal rights and no legal aid service was provided to him despite his poor economic status. His family hired a private legal representative because they too had no idea about the availability of Legal Aid. When I later conversed with the advocate, I realized that he did not know the procedure in place for transferring the case to the Juvenile Justice Board. The JJ Act, 2015 makes it mandatory for the child protection officer to inform the child about the juvenile justice board and ensure that a report on the social background of the child is submitted to the board. The family was not made aware of his arrest which they subsequently found out through a neighbour. Gross miscarriage of human rights could be inferred from this case.

### ***Case intervention strategy***

While going through the whole scenario of the case the problem which had been observed is that the juvenile was not sent to JJB (Juvenile Justice Board) from the Beur Jail. Because it was easy for police administration, and it will reduce their workload. Also, many responses had been recorded that due to the lengthy process in the Juvenile Justice Board. In most of the cases Juvenile itself don't wish to transfer their case to JJB. Which in a way discourages the other people too who are below the age of 18 years of age to go through the Juvenile administration.

Considering the age at the time of offence I agreed to handle this present case through a proper channel. At the first stage we submitted a petition to adjudicate him as a Juvenile then submitting the order sheet to the concerned prison authority to transfer him to home observation. After that a bail petition should be filled at the Juvenile Justice Board or Children's Court.

The recent update as per according to our data collection team is that a petition has been filed to adjudicate him as a Juvenile had been submitted. The concerned magistrate at the time of trial took a jibe that he is just 10- 15 days less than being tried as adult. The legal representative replied obviously he must get the benefit of the Juvenile Justice Act. Even if he falls short of one day, it's his right which was universal for all the Juvenile by the Court of Law. Nonetheless an order was passed adjudicating him as juvenile in the second week of January 2021. The concerned order sheet had been transferred to the concerned jail authority. He had been transferred observation home till the time his case is under-trial. In the month of March 2021, he was released on bail. We were able to release him on bail, but the trial will continue for a longer period of time. We were unable to make him aware about the juvenile justice system and the respective child rights.

While going through the case I realized that the Juvenile was not sent to JJB(Juvenile Justice Board) from the Beur Jail. It can be attributed to the apparent indifference on the part of the police administration. Also, the transferring of cases is a lengthy process. In most cases, the Juveniles themselves don't wish to transfer their cases to the JJB which can be blamed on the excessive research dissertation work involved.

Considering the whole complexity of the case, I agreed to handle it through a proper channel. Firstly, a petition should be submitted to adjudicate the juvenile then an order sheet should be submitted to the concerned prison authority to transfer him to home observation. After that, a bail petition is to be filed at the Juvenile Justice Board or children's court.

Following the set procedure, we filed to adjudicate him. The concerned magistrate remarked that Anil was just 10-15 days less than 18 which however is not a valid argument. According to the JJ Act even if the child falls short of one day, it is his right to be treated as a juvenile. An order was passed adjudicating him as a juvenile in the second week of January. The order sheet was sent to the prison authority and he was transferred to home observation. In March 2021, he was released on Bail but the trial will take time. We tried our best to make him aware of his legal rights.

## **1.2. Poor Social Wellbeing inside the Prison**

When an individual had to deal with the criminal justice institutions which includes police, prison, and court the overall social wellbeing is affected. The person physical as well as mental health gets hugely impacted. In the cases dealt below it had been observed that the health conditions of the prisoners were poor, and it got worse when he/she was placed in the prison.

### ***C) Krishna vs State of Bihar***

#### ***Introduction***

As citizens of India, the mentally ill are authorized to all of the Human and Fundamental Rights secured by The Constitution of India to each and every citizen, to the extent that their disability does not prevent them from exercising those rights or their employment is expressly or implicitly barred by any other statute. Serious mental illness is a unique category of people with impairments. The issue with this group is twofold: it is not only about providing them with the advantages of living in society alongside other citizens, but also about assuring their right to be protected against exploitation.

Every patient in a mental health facility has the right to full respect for (a) recognition as a person before the law in all places; (b) privacy; and (c) freedom of communication, which



includes the ability to communicate with other people in the facility as well as the ability to send and receive messages.

According to Indian Penal Code, 1860 it states that “Nothing is an offence, which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.”

Victims of violent crimes are more likely to suffer from mental health problems than criminals. This prejudice spreads as people with mental illness are treated as criminals in the criminal justice system, where they are arrested, prosecuted and imprisoned longer than the general public. Mental illnesses suffering by people are disproportionately imprisoned and sent to prison, generally owing to misunderstanding and resources in dealing with these persons for minor offences.

The underlying concept behind the introduction of fundamental rights in The Constitution of India was to confirm that every person of this country has equal rights unless they are exercised in accordance with legal procedures. Further, the fundamental rights which are mentioned in the constitution are the basic human rights required for peaceful survival. The concern with the mentally ill, on the other hand, is twofold: not only providing the essential facilities for them to function in society, but also assuring their right to protection from exploitation.

Every mental health patient's rights should be respected, including: a. in all jurisdictions, the right to be recognised as a person under the law, b. right to privacy, c. right to freely communicate, which includes the ability to talk with other people in the facility, as well as the ability to send and receive.....;

Indian Penal Code 1860 states that “Nothing is an offence, which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.”

People having mental problems are more vulnerable to be victims of violent crimes. They are disproportionately put to prison for minor offences, sometimes due to a lack of expertise and resources.

### **Difference between ‘Abduction’ and ‘Kidnapping’ under the legal statute**

Kidnapping and abduction are prohibited under The Penal Code of India 1860. It mentions the act of removing a person or a child from wardenship without their permission. The Indian Penal Code, 1860, includes both offences under Chapter 26. In many respects, they are

radically opposite, despite their similarities in certain areas. Kidnapping is only committed in the event of a juvenile, such as a 16-year-old boy or an 18-year-old female, or a person of unsound mind. Abduction is a crime that can be perpetrated against anyone of any age. There are no restrictions on who can participate based on their age.

### ***Case Background***

In this case, Krishna<sup>13</sup>, was mentally ill lived in Orissa with his family members. His family was very poor and had come from Orissa to Patna barefoot in sleeper train on the day of Krishna's release. His family professed fishing as their livelihood. His father was a fisherman. But he also sold coconut water in the market. His mother was a housewife. His age was in between 25- 30 years, and he was charged under the offence of Abduction for kidnapping of a minor child. As evident, Krishna was from Orissa, and he came to Patna by mistake. He was sent to Beur jail Patna. When I visited Patna Beur jail for the preparatory work for this research, I saw a man who was sitting in the corner of the wall and murmuring something. I wanted to know what happen with him and why was he there. A Police officer who was there, informed about him that he was there in the jail for about last 6 months for the offence of abduction. According to police he was a destitute and nobody is there in his family. After my visit to the Jail and the information received about the person, I figured out that he was not destitute. Instead, he has a family, but police did not try to contact them.

He was charged for the offence of abduction. According to IPC Abduction and Kidnapping both are different from each other. Abduction has no age limit but in kidnapping there is a specific age limit which comes under law. If any offence is done to a minor.

### ***Presentation of Findings***

Socio-economic status and poor social wellbeing

Individuals without mental health illnesses treatment may be more prone to fail therapy in the rehabilitation of correction and come back to jail following their release. Furthermore, regardless of diagnosis, rate of recidivism for persons who have previously been jailed are 50 to 230 percent higher for those with mental health issues than for those who do not have any mental health diseases (M & Connell, 2014).

Because of the limited treatment options in the Beur prison, no counsellor or psychiatrist used to visit the prison. Those with mental health illnesses had a greater rate of disciplinary concerns, rule breaches, and physical assaults, which was frequently worsened by solitary

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<sup>13</sup> Name of the individual in the case study has been changed following right to privacy.

confinement as a punishment for these behaviours. Despite the fact that all prisons are required to be provided with some level of health care, the prison administration should focus on providing mental health treatment to inmates on a case-by-case basis, even if they have chronic medical conditions (such as diabetes or hypertension).

Mental health illnesses, in contrast to physical health needs among inmates, show a different level of need. Tuberculosis transmission, for example, poses a physical health risk to all inmates and workers. As a result, jail officials ensure that everyone suspected of having TB is thoroughly tested and treated. However, many mental health problems' symptoms may be less evident to prison staff, especially if they are not examined by qualified mental health professionals. He was left in the prison alone, with no one to look after him or give him with sufficient medication.

### **Lack of awareness of free legal aid services**

His family living in Orissa had no information about him they had considered him already lost. At the time of arrest the police administration did not try to find any relative of family member and was sent to judicial custody. The empaneled district court advocates had also not taken into consideration such case as a result of which no proper legal aid was provided to him.

### ***Case intervention strategy***

After knowing that he was mentally ill I somehow managed to find a mobile number of his family member, when we called his family member his uncle picks our call, he speaks in 'Oriya', so it was very difficult for us to understand their language as well as for him, we had a communication gap, so it was difficult for us to inform his family about his situation in the prison. I knew a friend who knows Oriya and then he conveyed our thoughts to his family and understands what they are trying to say to us. So that solution works out for us. After that his uncle and father told us about how Krishna came to Bihar what happens with him. Being a mentally ill person, he was not able to understand where he was going than he went to a railway station and randomly goes and seat in one of train that train goes to Patna. He seats in the train on the ground and carries a child thereby a passenger of the train started shouting at him and started alleging that he was a kidnapper and tried to kidnap that child at that moment railway police force came and arrest him. Since he was mentally ill, and his family members had bought a certificate proving such fact he was released on a personal recognizance bail bond without any sureties.

## ***D) Prity & Pushpa vs State of Bihar***

### ***Introduction***

The term "society," means "friendly relationship with people". A sense of fraternity is developed. We were all born in a country where the term "sex" is deemed dirty, vulgar, disparaging, and blatant. In actual context and real-world situation, it is occupied with narrow minded perspective and bigot people. Then just imagine the perspective of common masses towards those sexual workers.

It's critical to comprehend why people choose to work in the sex industry. This is not to argue that these decisions are without difficulty for the person due to broader social taboos or stigma associated with sex and sex workers. The case of Prity and Pushpa deals with sex worker. Many of us might have already formed a notion regarding them as a shameless and characterless woman but they had no alternative to keep their body and soul together rather than prostitution. Nobody ever wants to engage in such type of work. We our society didn't consider them as a member of society they are discriminated by the society only because they are doing their work as sex worker.

### ***About the Case***

Prity and Pushpa were from Dharhara village in Munger district of Bihar. Their family was very poor and had no substantial source of livelihood. They came to Patna with a person who assured him good job and handsome salary. Since they were ignorant about sexual crime and had no knowledge about sex trafficking. Their family had also thought that they will get some money after both get a job in Patna. However, they were deceived by that person and was introduced in the field of sexual worker at the Patna Junction to a person named Ravi who was their Pimp. One day he Kidnapped a child and brought him to these girls for cradle. Later in the evening when the child family was unable to provide ransom, he took the child from them and assassinated him. After that he was arrested by the Police. In the police interrogation he told the complete story including the name of both Prity and Pushpa that they are also equally responsible for that crime that happened. As a result, all three of them ended up in a Beur Jail. However, Ravi got Bail on March 2017 from Patna High Court. While Prity and Pushpa were still locked up in a jail because no one was there to make them contact to their family and had no relatives to file an application for bail. Neither had sufficient resources to initial bail proceedings.

## ***Background***

Both Prity and Pushpa were sex worker and don't have any relatives or family members in Patna. Being a sex worker, it was very difficult for them to proof their side of facts because nobody going to believe and also nobody wants to know their side of story because they were sex worker, and it is considered that they will do anything for their survival. They started doing sex work due to the lack of any means of income while the pimp sold them to another head of sex worker and that's how both started working. Both were poor and have to do something for their survival, so they have to choose this profession because other profession won't choose them.

### ***E) Shyam<sup>14</sup> vs State of Bihar***

#### ***Introduction***

The Bihar alcohol prohibition law, which went into effect on April 1, 2016, aimed to minimize alcohol-related crimes and response to community protests. The sale and consumption of alcohol were outlawed across the state, and anyone caught with alcohol was fined. This sounded excellent for a study paper. In practice, however, neither fiscally nor socially, this law has accomplished much.

The alcohol ban, rather than being a deterrent to crime, actually boosted it, which is quite counter-intuitive. According to Bihar police crime data, cognizable crime increased by 13% in six months, from 14,279 instances in April 2016 to 16,153 cases in October 2016.

After realizing the unforeseen implications, the Bihar government revised the law and loosened the previously strict regulations. A first-time offence has now been ruledailable, and the maximum sentence for first-time offenders has been decreased to three months in prison. This period lasts two to five years for repeat and subsequent offenders.

#### ***Case Background***

Shyam, a 35-year-old day labourer in the marginalized community, moved to Patna in search of work, leaving his 70-year-old mother in his hometown of Samastipuru. He worked as a day laborer and earned 6,000 to 8,000 rupees a month. On November 19, 2016, he was detained for consuming alcohol and disturbing traffic under S.37B of the Bihar Prohibition and Excise Act. He has been held in judicial custody since his arrest, and his trial has yet to begin. His elderly mother was taken aback because she had no idea where her son had gone and was forced to rely on neighbors to survive.

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<sup>14</sup> Name of the individual in the case study has been changed following right to privacy.

## ***Presentation of Findings***

### Socio-economic status and poor social wellbeing

While providing free socio-legal aid services inside the prison I came across majority of the under-trial prisoners who were booked under liquor act belonged to the marginalized community (scheduled caste, Scheduled tribe and NT-DNTs). One of the primary reasons behind such victimization is the low socio-economic status and brewing alcohol is their lineage heritage occupation through which they support their livelihood. Since after the Bihar liquor Act, the government had not taken into consideration any alternative through which these communities can work to earn a living. Thus, despite the prohibition they indulge in such practices and are consequently booked under Sec 37A, B and C of the Bihar Prohibition and Excise (Amendment) Act, 2018. In the prison their social wellbeing is deteriorated because as such no facilities is provided inside the jail through which they can be properly counselled about how to limit down alcoholic problems. Due to their continuous urge of drinking in the prison compulsorily pushes them towards other forms of addiction such as taking drugs, smelling thinner, whitener or even smelling Vick's ointment or drinking cough syrup.

### Due to no knowledge of aid services offering by law

- The Authorities of Legal Service have been unable to provide genuine legal assistance:
- Lack of awareness and the availability of legal aid.
- Quality service and free service are incompatible.
- The legal services authorities do not provide enough lawyers.

Competent lawyers who can provide legal aid despite a lack of funds. Furthermore, far too many attorneys chosen to give legal assistance and reimbursed with funds of the public fail to honestly act for their clients, casting serious doubt on the legal aid scheme's integrity. Some attorneys employed by legal aid committees hold their clients' cases for ransom by adopting delay tactics. Despite the fact that they are meant to be compensated by the legal aid committee, these attorneys insist on charging their client's additional fees, many of whom are innocent. One issue that may be contributing to this is that the legal aid committee's remuneration for lawyers is extremely low, barely covering the lawyer's incidental expenses

### ***Case Intervention Strategy***

Almost 21 months after his arrest, on August 15, 2018, I along with an advocate associate visited PhulwariSharif Sub-Jail to get information about individuals arrested under the liquor prohibition law. Here they met the accused who despite of having not so serious charges against him, remained in prison for 21 months. The absence of legal counsel and the incompetence of a visiting DLSA jail panel lawyer who did not take adequate notice of the situation added to his suffering. Merely 9 days after the visit, the accused was released on PR Bond of Rs. 1000/-, based on presenting the situation of the under-trial prisoner before the special judge. Further, the ADJ 2 cum Special Judge Excise, in whose court the matter was listed, assured that the case against Shivendra would soon be disposed of as soon as hearings begin.

For the rehabilitation I had made him admitted to State 'Nasha Mukta Kendra' for his better improvement however could not provide any kind of livelihood for his family.

## **Chapter 5: Prisons and the COVID-19 in India vis-à-vis health services**

### **5.1. Introduction**

On March 11, 2020, the World Health Organization proclaimed COVID-19 a pandemic. The Supreme Court (SC) recognized the epidemic, saying that our jails were overcrowded at a rate of 117.6% in Uttar Pradesh and as high as 176.5 percent in other states. Detainees on trial account for about 70% of all inmates, according to the Indian Justice Report 2020 (IJR), which was issued last month.

According to the Supreme Court's High-Powered Committees, which were appointed in March 2020 to discover which classes of prisoners can be liberated on pardon or interim bail for whatever span is deemed appropriate, the number of prisoners (convicted and under trial) facing a maximum sentence of seven years or less who could be considered for release was over 50% in 35 states and UTs. Similarly, the Under Trial Review Committees (UTRCs) were told to convene once a week to make the required conclusions in observation with the of Supreme Court. According to the Commonwealth Human Rights Initiative's (CHRI) Online Tracker of Pretrial Detention Centers With over twenty-four million confirmed cases of COVID-19 identified in the country, the epidemic has been disruptive to economic activity and human life, providing huge issues for India's overcrowded jails, which already have poor cleanliness, absence of sanitization and medical aid services.

The pandemic has had an unpredictably negative impact on India's criminal justice system. The Supreme Court of India, High Court, and other Lower Courts worked to keep the virus from spreading by reducing caseloads and only hearing cases that were really urgent as well as hearing and deciding on bail applications during the pandemic.

The first is that the pandemic provided an opportunity to consider the right to bail as part of an under trial, the right to life, and the right to health under Article 21 of the Indian Constitution, which guarantees the right to health care to everyone, whether an innocent person, an under trial, or a convicted prisoner facing legal consequences. According to (Prison Statistics of India, 2016), 1350 jails house 478,600 inmates, with an average occupancy rate of 118.5 percent across the country. A deeper look at the jails, however, indicates that some states are more congested than others. For example, the highest occupancy rate was 174.9 percent in Delhi, with 167.9 percent in Uttar Pradesh and 159.0 percent in Uttarakhand following closely after. With this constitutional right, the Prisoners Act of 1894 and the Model Prison Manual of 2016 also dictate because when



pandemics break out and the number of prisoners exceeds the regular occupancy limit, actions should be made to provide shelter and safe custody for the inmates. In the middle of a terrifying epidemic, the right to bail may be seen as part of an accused person's right to life and health under Article 21 of India's constitution. Because the Supreme Court of India does not want to put inmates' lives and health at risk as a result of overcrowding, it has asked each state and union territory to organize a high-powered committee that would issue guidelines on how to decongest jails. (Commonwealth Human Rights Initiative, 2020).

## **5.2 High- Powered Committee (HPC) in the State of Bihar: COVID-19**

In each of the 28 states, a three-member HPC was formed, consisting of the chairwoman of the State Legal Service Authority, the Home Secretary, and the Director-General of Prisons in that state.

Because of the restricted jail environment and proximity in the common living space, convicts detained in prison/correctional houses are at the greatest risk. The harsh reality is that our jails are overcrowded, making it difficult for inmates to maintain social distance. COVID-19 vulnerability is higher in congested areas, mass meetings, and other situations. (Commonwealth Human Rights Initiative, 2020) According to studies, infectious viruses like COVID-19 thrive in enclosed spaces like jails. The most crucial is prisoner awareness; it is critical to make prisoners aware of COVID-19, its influence, ramifications, and precautions, among other things. According to the (Raghavan V., 2021)

Prison employees and authorities have been deemed a priority in numerous places in the majority of countries. Prisoners continue to be ignored. In India, for example, prison guards were named among the "frontline employees," one of three priority groups for vaccination, but in the applicable Ministry of Health and Family Welfare recommendations, inmates were removed off the list.

According to PSI statistics from 2016, 33.6 percent of undertrials in Bihar's Prison, with the majority of them being illiterate and only 41% having completed matriculation, making it difficult for them to seek legal assistance. (2020, Praveen Kumar)

*Prison Statistics India Report 2019*, there were 4.78 lakh inmates in around 1,300 prisons in the country. The majority of these prisoners come from low-income families, with more than 85% belonging to Scheduled Castes, Scheduled Tribes, and other lower classes, and the Islamic community.

Prison employees and authorities have been deemed a priority in numerous places in the majority of countries. Prisoners continue to be ignored. In India, for example, prison guards were named among the "frontline employees," one of three priority groups for vaccination, but in the applicable Ministry of Health and Family Welfare recommendations, inmates were removed off the list.

According to PSI data of 2016, 33.6% are in under-trial prisoners in Bihar, in that most of them are illiterate and about 41% studied up to matric level, how they can demand for the legal aid. (Praveen Kumar, 2020) Due to the Liquor ban in Bihar as per the report total 1.5 lakh people were arrested due to prohibition of the new law in 2016. Other backward classes (OBC) make up 34.4 percent of all arrests and account for 25% of Bihar's population. Despite their populations accounting for 16 percent and 1.3 percent of Bihar's population, respectively, SCs account for 27.1 percent of all arrests, while STs account for 6.8 percent, according to the statistics. Because most of them came from a marginal background and finding a lawyer to obtain bail was impossible, the impoverished were forced to liquidate their assets.

There is case of (Hussainara Khatoon & Ors. V Home Secretary , 1979) it's a landmark case where it provided a wider interpretation for Article 21 and held the speedy trial is the fundamental right to every citizen and it discusses the Human Rights of Prisoners in India also there are multiple case where speedy trial aren't done case of Shivendra Sah 35 year old belongs to OBC community came to Patna in search of work, he was arrested on 19 November 2016 under section 37B of the Bihar Prohibition and Excise Act for consuming of alcohol. He was kept in judicial custody and trial had not started since the day he was arrested, where speedy trial was a fundamental right of every citizen, and it was decided in a case by Supreme Court. Where in the large no of the cases most of the under trials were arrested in theft, excise act and the maximum prescribed punishment is less than 3 years but most of the prisoners are in the jail one to two years without filing for bail and without a trial. This is how our legal system works for delivering justice. In India more than 0.2 million under trial prisoners being neglected in jail for many years.

### **5.3. Poor health conditions**

Due to the nationwide Lockdown, it impacted human lives due to the COVID-19 Virus. The already existing issues of unemployment, poverty, poor healthcare etc. (India News, 2020). About 215 Prisoners were tested positive for COVID-19 in Bihar's Araria jail in 2020 and all the prisoners have been isolated in the jail with the proper cares so that they could not spread

the infection among others, (COVID-19 Pandemic, 2020) where altogether 600 out of total 706 inmates of the Araria jail were tested and those of 600,215 have been diagnosed positive with the infection of COVID-19 and it is impossible to maintain social distancing among the prisoners inside the prison, which poses a serious health risk among them. The nationwide Lockdown has affected a lot and it is affecting now too due to this limited functioning of the courts due to the COVID-19 pandemic over last year and had a bad impact on prison with most of them getting overcrowded as bail hearing have been affected and by the less functioning of the court due to the pandemic it affected the no of the bails and the under trial where were about to get bail , which the court used to grant normally because of this also overcrowding increased because the under trials prisons were not getting bail.

Major steps taken for Under trail Prisoners During COVID-19 in Bihar. The Prisons department was in the dilemma how to release under trial jail inmates on parole amid complete lockdown that means parole is an early release which is given to incentive for a good behavior, and this happens after conviction. The Supreme court had issued orders that the state governments should consider releasing under trial whose offences attracts seven years of imprisonment or less imprisonment and this order was issued to decongest the jails in the wake of COVID-19 by the report itself prisons are full of overcrowding. (Criminal Justice Responses to the Coronavirus Pandemic, 2021). Around 9,000 under trials in the state jails were coming under the category to get relief in the form of parole in the present situation but no decision was taken immediately due to several practical problems were there.

(Prisons Of Bihar, Status report -2015) Problems which are faced by the prisoners, the very first that are witnessed by the prison, and it was the most basic problem which came out during the inspection. During the summer season in Bihar, the prison is felt like fuming furnaces with the uneasiness of humidity and the walls are turned sticky due to water seepage from incessant rains and this is forbidden from the Right to liberty, which is an essential right of every living human being. Due to the lengthy trial, inadequate or no legal representation, prison punishment they are suffering itself and this a huge punishment for them. The living condition of prisoner where in the report of 2016 says that Condition Requiring Immediate attention for the drinking water, fans, toilets.

(The Hindu, 2021) Where the Hon'ble Supreme court is dealing with the health crises and lack of medical infrastructure in prison and in the remand homes to control the spread of COVID-19 in prisons so that all the prisoners can lead to a healthy and a dignified life which is mentioned in the article 21 of the constitution of India. In the prison most of the prisoners

are found in the prison who are belonging to the marginal background of the society where diseases are found like malnutrition and a lack in the medical facility, when these people live in overcrowded prisons there is a chance of infection and there is an easily spread of communicable diseases.

(Praveen K., 2021) Legal Aid, the figures are more distressing for providing legal aid for the under trials and the people who are living in prisons for a long time. It is being said that Justice delayed is Justice denied. According to the report of 2017, the National Legal Service Authority (NALSA) took up the responsibility to provide legal aid to the poorest of the poor who can't afford an advocate for bail and have been spending years behind the bars. A lack of gap and due to awareness on the ground level prisoners don't demand for free legal aid and by the law also it is said every prisoner is entitled to free legal aid.

In Article 39 of the Indian Constitution there is a provision of free legal aid, which is under this article, and it is mainly inserted to provide free legal aid in access to get due justice and this article is also known as an umbrella provision and to access justice it led to the development of Legal Service Authority Act 1987. This development is only created to insure the free legal aid service to the poor and weaker sections of society based on equal opportunity. The most important thing that applies to the law is that to ensure that the judiciary receives free legal assistance, the individual must fall under Section 12 of the law (Legal Services Authority 1987), which law states: You need to provide legal documents such as service complete Aadhar card, Pan card, but because the system ignores the nomadic tribal community and afflicts them because of poverty and does not have legal documents for these reasons. The nomadic tribal community created this policy by the government, while the nomadic community wants to gain justice and is afraid that others will seek justice and help because the program is unknown. Will be ignored by.

From the day first tribal community is suffering for the interest of nation, it's not about the nomadic tribal community is only suffering for the legal rights but they are also suffering for the basic needs drinking water, shelter, lands instead of getting basic needs they are scarifying their land, livelihood, families, relatives etc.

#### **5.4. Status of UTPs in Bihar**

State of Bihar is having (Prisons of Bihar, 2015)58 prisons where the state also has 31 district jails, 17 sub-jail, a women's jail, an open jail and a special jail. Three levels of Prison which are established in India, the taluka level, district level, and central level sometimes it's called Zonal Or range level. These levels of jails are called Sub jail, District jail, and Central jail and

the infrastructure that provide security and prisoners facilities such as medical, educational and rehabilitation.

The other type of jail is (Legal Service India, 2020) Women jail, open prison and special jails. In Bihar there are eight Central jails, (Prison Of Bihar, 2015) 32 district jail and 18 sub-jails in Bihar. According to the survey, inspection, and analysis of all 58 prisons in Bihar, the total no of inmates on the date of inspection was 30070 in that total no of male inmates on the date of inspection was 28987 where female inmates on the date of inspection was 1083. In total 58 prisons in Bihar there are five prisons which are having highest (Prisons Of Bihar, 2015) no of male/female inmates on the date of inspection I.e., Beur Central Prison and correctional Home, Motihari Prison, Gaya Central Prison, Muzaffarpur Prison, Purnea Central Prison.

Under trial Prisoners are those who is in a judicial custody or in remand during an investigation and denotes an unconvict prisoner. In Bihar the person who are in prisons as a under trail prisons are deemed to be innocent in the eye of law but there in the (Criminal manual, 1973) code of criminal procedure 1973 (Cr.P.C) there is a concept ofailable or non-ailable offences. In every field there is discrimination against the poor here also there is discrimination with the bail provision and the implementation provision just because they can't furnish the bail amount on account of their poverty in comparison to the wealthy people and the discrimination arises even if the judicial magistrate fixes low amount of the bail just because of this they suffer from pre-trial detention.

In most of most of the prisoners are in the under-trial because they come from poor background. This is itself a big punishment for them they aren't aware of their basic rights and how they will be aware of the basic rights they aren't educated enough to demand for the free legal aid service. Who is poor narrating a story in itself they are completely voiceless? Legal Service of Authorities act 1987 of Section 12 sub-clause(g) says prisoners as they were not only entitled to legal service in terms of provision which is contained in the Legal Service Authorities but also access to justice under the act required of the authority to at-least hear their voice. Status of under trail prisoners in India where more than 65% of the prison population in India are under trail out of these under trials, more than 2,000 have been in jail for over five years. Those prisoners who are in jail for more than five years they have left the hope of coming out from the prisons, they even don't know the scenario of the outside world, in that most of the women prisoner's family has forgotten them or aged prisoners. According to the report of the Prison Statistics India,2015 which is given by the (Praveen, 2020)

National Crime Records Bureau (NCRB), where more than two-third of the inmates are under trials. In Bihar ,82% of the Prisoners were under trials, which is the highest among the state.

The report of 2015 which is based on Survey, inspection and analysis, the loop that our system is having is huge where prisoners narrate that for the (Prisons Of Bihar, 2015) 1<sup>st</sup> production majority of the prisoners claimed they were kept in the court lock-up and weren't taken in-front of the magistrate. The prisoners came to court from the police station to appear in court. The prisoners were in court airlock until they were taken to jail at the end of the day. Prisoners They were taken to court by the police station and taken to court, but they stood behind the court and did not interact with the judge. After that, they were detained for hours in the court prison "Hajat" and put in jail. And the majority of the courts in the prison stayed at the place of harassment and were taken to the court but were detained in a containment room and then sent to prison. By the report on Mulakati, the practice prevailing in Bihar prisons is usually a space or area in the administrative building of the prison where the inmates stand by (Report). (Prisons Of Bihar, 2015) 2-3 windows and the visitors stand outside the behind the mulakati wall and in most the prison there is no separate space of mulakati. In the present scenario of mulakati the visitors stand outside the wall which is, and it is situated around 6-7 feet. Almost 25-30 visitors stand behind the outside wall and start taking at the same time due to this they end up fighting with each other. The issues related to the other production were all about lengthy trials and prison overstay. Reporting lengthy trials above 3,1/2 years where the highest lengthy trial is of Beur Central Prison and Correctional Home i.e.,135 in these 10 prisons don't know the stage of the case. In total there are 58 jails in Bihar, reporting lengthy trials above 3,1/2 years in total is 875, cases not charged 33, IO has not come 55, witness not passed 336 and do not know of the stage of the case is 36. The reason for the lengthy trial, no reason stated is 425, Mercy petition remission to be followed up is 56, Do not know of the charge is 36, witness not passed is 326, IO has not come is 55, case not charged is 33. This is all according to the report of 2015 based on Survey, Inspection and Analysis.

Most pretrial detention centers do not know what is happening in court, do not know if there is no lawyer, no information about the stage of the case, and if there is a lawyer and that number has not been added. The need for a lawyer in the legal aid segment as prisoners claimed that some of the external prisons were handling the case and therefore could not request a lawyer. There are two reasons for the specific issues commonly identified in the report. If the solicitor is delaying prosecution in court, perhaps a pending bail application in the High Court, and the bail is granted by the High Court and the High Court awaiting a

previous decision on the pending bail application. The solicitor may tamper with the indictment and demand a long-term court hearing, resulting in many pending lawsuits in court.

Status of the UTPs, the principle of 1<sup>st</sup> production and Right to Legal Aid the data of 2015 shows the segregated data on the status of prisoner's Access to justice per prison, where in need of Legal Aid in total is 2799 the highest prison's inmates are of Beur Central Prison and Correctional Home who need legal aid is 216 and second-highest prison inmates is of Motihari District Prison i.e., 220. In need of Legal Aid for HC/SC Appeal in total is 179 highest is the Beur Central Prison and Correctional Home and second is Gaya Central Prison is 23. Proactive Reporting on No Physical Production in total is 2218 and the highest is Motihari District Prison i.e., 213 and the second is the Katihar District Prison i.e., 164.

### **5.5. Bihar Liquor Prohibition Act and its effect on Caste**

The act which had been passed in April 2016 liquor ban in Bihar has miserably failed in the endeavor and more than 1.3 lakh people have been arrested till date for breaking the law (Kumar & Raghavan, 2020). Already it has been highlighted, that the marginalized sections, of the society are marginalized as well as victimized especially the one who are involved in toddy preparation.

The intervention strategy included working with DLSA and a pro-bono lawyer to provide legal assistance and guidance to the pretrial detention center. Due to advances in interventions and research and successful functioning, the majority of pretrial detainees were poor and had no means of arranging legal assistance and bail ranging from Rs 10,000 to Rs .20,000 (Kumar & Raghavan, 2020). In most cases, the family of the arrested person needs to sell cows and live food and take out a loan at a very high-interest rate to collect money, and some police officers have money in exchange for not prosecuting. Some people requested. The main focus of the intervention is under the law to help them with personally recognized (PR) bonds under Sections 436 and 436A of the Cr.p.c Criminal Bail Provisions on Bail if anyone falls under this section.

(Kumar & Raghavan, 2020) The Bihar Excise Act was not the first such ban to be enacted in History and has witnessed multiple attempts by governments around the world to impose a total ban on jurisdictions, especially to mitigate the negative effects of alcoholism. Countries such as the United States, Norway, Russia and Iceland could not impose bans on crime and health hazard situations, but in India, including the late implementation and corruption of

three Gujarat residents in Gujarat. Proven to be widely satisfied for many reasons, he filed a complaint with the Gujarat High Court against the ban on drinking alcohol in the four walls of his home and challenged the infringement of his right to privacy.



## **Chapter 6: Examine and Analysis of Various Prison Legislation in Bihar**

The system of prison administration has prevailed since ages. During the eras when kings ruled their kingdom, even at that time there were prisons for people who did something wrong. If one looks back, one cannot but be impressed with the vast change made during this period. The prison administration has changed with the passage of time as it is the most debatable topic in the current scenario. The Supreme Court of India has also stressed much upon the conditions concerning the prisoners in prison. There are States where prisons are overcrowded with people and the condition of prisoners are dreadful. Lack of cleanliness, sanitation, food and water, medication and basic human amenities are the common problems that exist in prison administration. The human rights activists have also advocated in respect of the conditions in which prisoners are kept.

Prison is a place where a number of people are put behind the bars for breaking the law of the country. But this does not mean that they can be put in inhumane conditions and made to suffer. Prisoners are also human and possess certain basic human as well as fundamental rights. Even the law of our country recognizes them and preserve their rights. Due to all this reasons the prison reforms are being addressed on a priority basis. The Government has also been spending all kinds of assistance whether be it financial, technical, man-power or any kind if required to change the structure of the prison.

The Apex Court in *Ramamurthy v. State of Karnataka* (1996) pointed out an urgent need for uniform laws regulating prison. The Central and State government formulated a Modern Prison Manual and distributed it among all the States and UTs to get their perspective and their views. The final draft was prepared with the suggestions of everyone. Model Prison Manual is a prison legislation that must be obeyed by all. Every State and UTs have to formulate the provisions mentioned in it for the proper functioning of all the prisons at large.

Besides this every State can implement their own regulation for the prison.

### **6.1 Social Dimension of Health in Prison**

#### ***Model Prison Manual 2003***

Basic amenities that a person needs in life are clean environment, healthy food, clean water, and a healthy living. Right to shelter, food and clothes are the most important and basic need of a person. These basic rights cannot be denied even to a prisoner. Prisons are a part of our

society. Be it a prisoner or a common man everyone has the right of a healthy living and he or she cannot be denied such right. The first step for a healthy living starts with the diet we consume, the environment we live, the medical attention that we get. Lack of nutritious food and clean surrounding has always led to fatal results on a person.

A proper diet is a need of every person and chapter VII of the Model Prison Manual published by Bureau of Police Research and Development Ministry of Home Affairs Government of India New Delhi 2003 lays emphasis on this aspect of prisoner right. Under this chapter all the medical concerns of a prisoner are addressed.

Under this 2003 Manual there is a heading *Diet of Prisoners* that concerns with all the healthy food requirements of prisoners in prison and hospital. If a prisoner is in the hospital due to any health-related issue, then the Chief Medical Officer can put the person on ordinary or hospital diet as per the requirement. If the prisoner is in the hospital and is kept on hospital diet, then it is the duty of the Medical Officer to ensure that such diet is prepared in the hospital kitchen and has been well cooked. Special care has to be taken for products that can be adulterated or stolen such as milk. The prisoner should be provided with fresh milk, if the specific gravity of milk is below 1025 it cannot be accepted and supplied to prisoners.

There are also provisions of special diet for prisoners. The Chief Medical Officer and in his absence the medical subordinate can prescribe a special diet for prisoners after recording the reason for such diet in the register. This special diet is provided in lieu of his regular diet and cannot be continued for more than a fortnight.

To ensure that the supply of ration and other necessary items is done properly an indent is maintained and every day before 9 A.M. it is sent to the officer in charge of ration. The indent shows the number of hospital diets and extra requirements of the prisoners. But if there is an emergency indent than it can be send at any time of the day.

Without noting down the name of the prisoner he/she can be kept in hospital for up to 24hrs. After the expiry of these 24 hours if the disease is not diagnosed then also his name must be registered in the proper register. A hospital record book will be maintained in which the number of prisoners detained in the hospital will be properly maintained and the treatment provided to them shall also be recorded in the prescription book. Prisoners suffering from any communicable disease he/ name must be entered in the outpatient register. Maintenance of case book is also must.

## **Hygiene of Prisoners:**

- The prisoners who are not too sick have to bathe daily in the prescribed time.
- In the prisons a proper place of washing and boiling dirty clothes and linens shall also be provided.
- Disinfectants should be used when a patient is found suffering from a communicable disease.
- The hospital must be clean and tidy while walls must be washed once in every six months.

***Supply of Medicines When Under Treatment at Hospitals outside the Prison:*** If the prisoner is receiving special treatment at a hospital outside the prison and essential medicines prescribed by a medical officer at that hospital and if not available at that hospital, they will be obtained by the local hospital authorities and the cost must be bearable.

## ***Duties of Medical Staff***

- The Chief Medical Officer have to make sure that the prisoner are in prison hospital.
- The Chief Medical Officer will be assisted by the Assistant Civil Surgeons. The examination and treatment of out-patients may be conducted by Assistant Civil Surgeons.
- The treatment of sick prisoners in the prison hospital shall be under over all supervision of the Medical Officer. In absence of medical officer if the Assistant Surgeon provides any treatment, then he will record that in the register and inform the CMO on his return.
- The Chief Medical Officer shall visit all prisoners every day and shall who needs to be discharged.

## ***Other Amenities***

- A case sheet and temperature chart must be made at each and every bed to keep it as a record.

- The initial weight and final weight of the prisoner must be recorded in the convict register while the immediate and fortnightly weight must be recorded in the prisoner's history ticket and weight chart.
- All prisoners who have lost more than 1.5 kg from the last 14 days of weighing or more than 3.0 kg from admission to the detention facility are required to present a weight chart for next day supervision and inspection by the Chief Medical Officer. there is. The day when the weighing is done.
- Particular attention should be paid to the hospitalization of poorly physique prisoners. For this prisoner, even a small amount of weight loss can cause serious problems.
- The Chief Medical Officer should check the weights of 12 or more randomly selected prisoners as soon as possible after two weeks of weighing to ensure accuracy and write in his diary what he thinks is necessary.

When we read such provisions about the medical care and attention mentioned in the Prison Manual 2003, then we will highly be impressed with it. But the concern that arises here is that in spite of government prescribing such aids to the prisoner is it really being reached to them. If we visit a prison, we can see the plight of prisoners in real. There is no proper medical aid or food for them. The clothes and places are dirty. There are prisoners who are not provided with the proper medical care they need. The standard of food and water as prescribed is not even reached in reality to the prison. Making law or legislation will not serve the purpose rather working at the grass root level on the implementation of such rules and regulation are the actual need of the hour.

### ***Bihar Prison Manual 2012***

The Bihar Jail Manual was created in response to the call for prison reform. The government and the judiciary both slammed the states, urging them to examine their prison administration in light of their human and basic rights.

The human rights activist was instrumental in the passage of state legislation governing the treatment of inmates and the medical care that they must get. In place of such demands, the Bihar Prison Manual lists the following medical concerns:

### ***General Duties and Responsibilities of Chief Medical Officer***

- The Chief Medical Officer is under the authority to visit the prison hospital once a month.
- The Chief Medical Officer shall keep a journal in which details must be mentioned. While doing so, he/she should keep the following in mind:
  - a) Defects such as food and clothing must be put in jail.
  - b) Quality of cooked food
  - c) All important events related to the management of prison hospitals
  - d) Significant increase in the number of patients indoors or outdoors, and their obvious causes
- The Chief Medical Officer is responsible for arranging regular visits to prison hospitals by medical/surgical specialists and district hospital doctors.
- Your doctor will determine the amount of food for the sick prisoner
- Annual purchases of medicines for prison hospitals from state / local governments are made with his / her consent.

### ***Compounder***

- Compounders will be appointed by the State Government's Executive Orders. Compounder's general responsibilities and duties are as follows:
- The Compounder shall perform such responsibilities as the Medical Officer may lawfully assign to him from time to time. He/she must submit all directives given to him/her by the Superintendent or Deputy Superintendents to the Medical Officer in his/her report book.
- In correctional facilities with more than one formulator, you will take turns working as directed by your health care professional. However, unless one or both must be present all day and one is ill and unable to work, the prison officer cannot leave the prison until the other is rescued. If only one formulator is assigned to the prison, he or she must answer the phone after the time of admission. He/she must be with the institution's medical officer during nursing and at other times he/she considers necessary.

### **6.3 Welfare of Prisoners**

All disputes about a prisoner's right have as their ultimate purpose the wellbeing of the prisoner. Even the convicts' families want their loved ones to be secure, which is why the Welfare Clause of the Prison Manual 2003 is discussed in Chapter XV of the Prison Manual 2003.

#### ***Basic points of Welfare Programmes***

- Ensure inmates' safety and well-being.
- Maintain strict and constructive discipline.
- Attend to inmates' immediate and urgent demands and difficulties.
- Providing for the long-term requirements of inmates
- Assist inmates in keeping in touch with their relatives and communities on the outside.
- Create a relaxed, cheerful, and productive environment in the institution.
- Ensure a positive relationship between personnel and inmates based on mutual trust and confidence.
- Encourage group activities, group mentoring, and group projects.
- Prepare children for a regular social life by instilling good habits, attitudes, and methods.
- Provide supporting therapy, such as psychotherapy and counselling.

#### ***Counselling facilities should be extended to the prisoners as follows:***

- Before a prisoner's classification at the time of admission, his mental state should be investigated.
- If a prisoner is depressed, the prison staff/Welfare Officer/Psychiatrist, or N.G.Os, or some other authorised person should provide therapy.
- A sad prisoner should be closely monitored by prison authorities.
- If therapy is having little effect on a prisoner's psyche, a Psychiatrist should be consulted.

#### ***Psychotherapy***

Psychotherapy should be employed in prisons because it has been proven to be an effective treatment for inmates who suffer from mental disorders and faults. Guidance Pamphlets describing a prisoner's rights, duties, entitlements, discipline, and daily routine should be printed and disseminated so that a prisoner can adhere to the "dos" and "don'ts" and preserve

discipline while incarcerated. The above materials should be stored in the prison library and distributed to inmates who are able to read. Illiterate inmates should be taught to grasp the contents of the literature by prison staff or with the assistance of other literate inmates who are enrolled in educational programmes.

### ***Recreation, Sports, Cultural Activities, Films, Library***

Recreational activities must be organized in order to make the prisoners more active in their life.

- Baseball and basketball are examples of outdoor games.
- Gymnastics.
- Chess, Ludo, and Carrom are examples of indoor games.
- Historical, patriotic, biographical, scientific, and educational films, as well as travelogues, documentaries, newsreels, and films dealing with social issues, should all be presented. Films showing crime, sex, violence, suspense, and other things that may have a negative impact on inmates' brains should not be screened.
- Music: In the limited environment of a jail, music has a specific meaning. It has the potential to provide comfort to lonely, disturbed, and unhappy inmates. It has the potential to alleviate monotony and increase enthusiasm in institutional programmes. Radio music, recorded music, group singing, folk music, instrumental music, and orchestra could all be used in music programmes.
- Dances of the community and folklore: Dances of the community and folklore can be performed during festivals and social gatherings.
- Pottery, basket making, wood carving, carpentry, marquetry and veneers, wood turning, fret-work, leatherwork, home decoration, lamp-shade making, metal-craft, plastics, toy-making, artificial flower-making, horn-craft, clay-modelling, lacquer-work, drawing, painting, stencilling, research dissertation-craft, papier-Mache, rug-making, felt-work, knitting, embroidery, needle-work, crochet, and other crafts can be provided
- Reading can be fostered among inmates through books, news research dissertations, and periodicals. They can also benefit from group and guided reading.
- Television is the most popular form of entertainment among inmates. The Superintendent of Prison should carefully select the channels to be shown, as well as their hours.

- An annual sports/cultural meet should be held in prisons. Inmate sports competitions between institutions and states should also be organised. Outside sports teams could be welcomed into the prison to play various games with the inmates.
- The selection of welfare agencies/non-governmental organisations (NGO) to carry out welfare programmes should be done with caution. Only those non-governmental organizations/welfare agencies with a track record of dedication and unselfish service should be considered for inclusion in jail programmes.
- If a member of a welfare agency or a non-governmental organisation has a criminal record, they are not allowed to be linked with a jail. An undertaking from the Agency/N.G.O. is required for this purpose.
- The good job that charity organisations and non-governmental organisations accomplish in prisons should be recognised.

### ***Prisoners' Panchayat***

- A panchayat for convicts should be present in every jail and comparable facility. These panchayats should be comprised of inmates whose exemplary conduct has been thoroughly examined and who have the capacity and aptitude to organise events and activities. These panchayats should allow convicts to arrange and participate in daily recreational activities. This will provide offenders a sense of participation in prison management, an essential element of any approach to welfare and rehabilitation.
- The jail administration should keep a careful eye on how these panchayats work. As much as feasible, the Superintendent or Deputy Superintendent of Prisons should attend panchayat meetings in person.
- At least once every three months, a 'Mahapanchyat' of all the panchayats should meet in the presence of the Superintendent to discuss the concerns of the convicts and implement their suggestions. Moreover, the Inspector General of Institutions should attend Mahapanchayat sessions in many prisons.

### ***Celebration of Festivals***

Cultural events might be planned, and special meals could be served to the inmates on such occasions. All religions' main holidays should be respected. Participation should be encouraged for all inmates.



### ***Spiritual Development***

Well-known people from all religions should be invited to give lectures to convicts in order to improve their morale. Non-governmental organisations and welfare groups may be able to help in this situation. It should be ensured ahead of time that the substance and tone of such lectures would not incite hostility among individuals of different faiths. There should be no undue interference with prisoners' religious or caste biases. Every prisoner should be allowed to carry out his or her religious responsibilities in a peaceful and orderly manner.

Welfare programmes are intended to keep a prisoner's mental health in check. Prison is a facility where persons who have disobeyed the country's laws are housed. There are convicts of various ages, castes, and perspectives. If a person's mental health is neglected, whether he or she is a normal person or a prisoner, he or she will become a threat not just to others but also to himself. A person's mental health is just as vital as their physical health. However, the irony is that it is not even mentioned. The importance of a healthy mind is not recognised by society or the jail administration. Only a fraction of the tasks listed in the Prison Manual are followed to the letter. There are no structured activities or counselling provided to convicts.

### **6.2 Socio-legal aid Services in Prison**

Under the Legal Aid Committee, which was established in 1971, The Legal Aid Scheme was established by Justice P.N. Bhagwati, who was the first to do so. According to him, legal aid entails "making arrangements in society so that the missionary of administration of justice becomes easily accessible and is not out of reach of those who must resort to it for enforcement of rights granted to them by law." Poverty and illiteracy should not hinder the poor and illiterate from contacting the courts and seeking justice. Legal aid, as defined, is offered to the poor, ignorant, and those without access to the courts. Anyone who is not a litigant has access to legal counsel. Anyone travelling can receive legal assistance.

Access to justice for all is unattainable if the poorest people of society do not have free legal representation. The 42nd Amendment to the Indian Constitution introduced Article 39-A, the foundation of the legal assistance concept. Under the article, the state is required to promote justice on an equal basis and provide free legal aid to "guarantee that no citizen's right to justice is denied due to economic or other obstacles. Supreme Court of India read the right to legal assistance as implicit in AS 21 of the Indian Constitution in *Hussainara Khatoon v.*

State of Bihar. "There can be no doubt that speedy trial, and by speedy trial, we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21," the Court was astonished to learn that pre-trial detainees had languished in Bihar's prisons for years without legal counsel. The court reasoned that because Article 39-A stipulated that free legal services are an inherent component of a "reasonable, fair, and just" system, the right to free legal services was implied in Article 21's promise. In the article, legal aid was referred to as "the social justice delivery system."

In the second phase, the Union Government appointed a committee chaired by Justice Krishna Iyer to devise a legal assistance system for states. The Committee created a decentralized strategy by forming legal aid committees in each district, state, and administrative center. To implement the legal assistance plan, a committee on jurisprudence led by Justice P N Bhagwat was established. This Committee advocated setting up legal help camps and nyayaalayas in rural areas, as well as inserting a free legal aid clause into the Constitution. 1980 saw the appointment of Justice Bhagwati to head the Committee on National Implementation of Legal Aid. As a result, the Legal Services Authorities Act of 1987 was enacted.

#### Legal services authority in India

Legal services are available on three levels in India: national, state, and district. The National Legal Services Authority (NALSA) and the Supreme Court Legal Services Committee were established by the federal government (SCLSC).

All of these organizations are required to additionally provide post-trial services, which must include free court counsel and assistance with costs associated with the court system.

#### ***Criterion for Providing Legal Aid***

The qualifications for providing legal assistance to qualified customers are outlined in Section 12 of the Legal Services Authorities Act of 1987. Registered caste or tribal persons are entitled to legal services under this law. Victims of trafficking or begging within the meaning of Article 23 of the Constitution. A woman or a child. Have a mental or other disability; or have an unreasonable need of victims of a catastrophe or ethnic violence.

These are the government's initiatives in terms of research dissertation. Although the law treats everyone equally, the reality is that every prison has hundreds of destitute criminals who are without legal representation. They are uninformed of their legal rights to representation or help, and they do not know how their cases are proceeding, therefore they

have no idea how their cases are going. They appear perplexed when informed that they are eligible to get free legal representation at the expense of the state. There is no evidence that any attempt was made to provide people who had been convicted with legal assistance that was informed and involved in the process. There are no legal officers working at the prison, the management of the jail does not provide any paperwork for applying for legal assistance, and no records of applicants or court responses are maintained.

According to staff at the correctional facility, inmates have a low level of faith in the efficiency of the legal assistance system. In a survey that was carried out by the Commonwealth Human Rights Initiative, it was found that 23% of inmates claimed they were unaware of any visits from the legal services authority, 49% claimed that the DLSA only came once in 3 months, and 28% claimed that the magistrate only once in every 1 month.

## **Chapter 7: Under trial Prisoners; Marginalization, Legal Support and Consequences**

### **7.1 Introduction**

The Indian Criminal Justice System is a multi-decade-old system whose primary goal is to safeguard people's lives and property while also prosecuting lawbreakers. In other words, the foundations of the Criminal Justice System are the prevention and control of crime, the preservation of public order and peace, the protection of the rights of victims and people who are in conflict with the law, the punishment and rehabilitation of criminals, and the overall protection against crime and deviance.

As a result of the high expenses of getting entry and the mystique of legal culture, the poor never make it to the temple of justice. Due to the nature of the court system, which involves appeals upon appeals, those who are financially disadvantaged are unable to access legal justice. Increasing the cost of the legal process is a backdoor way to deny justice to the people, and it has a disproportionately negative impact on the most economically disadvantaged elements of society. Increasing the cost of the legal process is an indirect denial of justice to the people, and it disproportionately affects the weakest segments of society.

Our system lacks the ability to employ the appropriate step, powers, and bravery at the appropriate time. The system takes years to deliver punishment and has lost its effectiveness in deterring criminals. Between the courts, the prosecutors, and the police, there is a lack of collaboration. A large proportion of those who are responsible go penalised in many cases. On the contrary, many innocent persons are still being held as pre-trial detainees. According to statistics, undertrial inmates account for 67.2 percent of our entire jail population. (Prison Statistics of India, 2020).

### **7.2. Poor Socio-economic status and Crime**

In the criminal justice system, officers have the most difficult job. The police are not just a point of entrance into the criminal justice system, but they are also at the cutting edge of it. The police serve as a vital and visible interface between citizens and government. Without a doubt, the police, prosecutors, and courts are all interconnected subsystems of the Criminal Justice System, and what happens in one has a direct influence on the other. The police force is a vital part of the overall system.

The police play a vital role in fairly investigating crimes and bringing them to the criminal justice system. The Indian Police Act of 1861, which established the principles of

organization for police forces in India and is now in effect with some minor revisions, is the law that governs the duties of the police. The act has been in effect since 1861. Criminal investigations are governed by the Criminal Procedure Code of 1973, in its most recent amended form, despite the fact that differences exist between state police forces in terms of the equipment and resources at their disposal. Similarly, organizational and operational patterns among these forces are comparable. It is the police's obligation to respond quickly when they get information of a crime, to aid the victim, and to conduct a full and unbiased investigation into the occurrence. In a state case, equitable and adequate justice for the victim is founded on a comprehensive investigation and the gathering of actual evidence, and the burden of proof is on the authorities, who must prove their case against the criminal defendant beyond a reasonable doubt.

Although the police department makes a significant contribution to India's criminal justice system has been labelled as corrupt and has misused its power in a number of scenarios as a result of its activities. The police department has been named the most corrupt department in the Indian government on several occasions. This is because practically every police officer that was questioned by Human Rights Watch was aware of the boundaries of the law; nonetheless, many of them maintained that illegal tactics, such as illegal incarceration and torture, were necessary for criminal investigations and law enforcement.

(India: Overhaul Abusive, failing police system, 2009) In India, the police frequently fail to investigate crimes committed against traditionally marginalised groups such as the poor, women, Dalits (also known as "untouchables"), religious and sexual minorities because of discrimination, the inability of the victims to pay bribes, or their lack of social status or political connections. Examples of these types of crimes include sexual assault, child abuse, and murder. Members of these groups are also more vulnerable to arbitrary arrest and torture, particularly when authorities use it as a form of retaliation for supposed offences.

Because of the social disorganisation theory, the Patna district in Bihar has the highest rate of crime. Overcrowding, a lack of job prospects, and family concerns all contribute to social disorder in urban areas. As metropolitan regions undergo uncontrolled expansion, this idea not only attracts individual responsibility, but also that of society, neighbourhood, and environment for the necessity of housing, educational facilities, work opportunities, and other communal enterprises (Hagan, 2017). As a result, the Model Central Prison in Beur is overcrowded by more than 140 percent, but the central and sub-jails in other districts are not quite as packed.

Because Patna is a large city, there are many physical environments that encourage people to engage in criminal behaviour. Poor socioeconomic status, as a result of a lack of developed facilities and services such as employment, job stability, and an expensive lifestyle, all contribute to a person's decision to commit crime.

Despite the fact that the police are supposed to safeguard society, the public fears them and harbours resentment toward them. In truth, the public's opinion of the police is founded on the organization's day-to-day abuses and excesses. In some ways, this is the result of the police force's politicisation and lack of professionalism.

According to the 2019 Indian Corruption Survey, conducted by Local Circles in collaboration with Transparency International India, incidences of police corruption in Delhi, India's capital, have risen substantially from 13% to 33% in the survey year. There have been allegations about police arresting innocent people in fake cases indiscriminately. Victims are frequently kept in police custody and subjected to third-degree processes in order to elicit confessions under section 167 of the same statute. In this case, the Supreme Court of India issued guidelines for the police to follow when using their powers (*Arnesh Kumar v. State of Bihar & Anr*, 2014). The Supreme Court believes that these standards will limit the police's excessive power, as arrests must be made after meeting certain criteria outlined in section 41 of the Criminal Procedure Code.

Many instances, the police unjustly implicate the innocent individual, which is another source of burden for the already overworked justice. It's also important to remember that the police play an important role, and that they must exercise their authority with caution and not arbitrarily. "If a police officer receives cognizable offence, he or she should register FIR as per section 154(1) Cr.PC," it was held in *Kalpana kutty vs. State of Maharashtra*. In the end, police safeguard a person's rights and maintain peace and order in the state.

(Singh & Mishra, 2019) A rapid resolution of a criminal case is essential for a fair trial; otherwise, the dream of justice would be severely harmed. The investigation of a criminal case is very important and forms the cornerstone of the case; the entire trial is based on the investigation, thus it must be done properly, effectively, and quickly. Despite the fact that the criminal procedure code directs law enforcement agencies to conduct investigations as quickly as possible, the truth is that they are unable to do it in a reasonable amount of time. The reasons are numerous, including a delay in filing the First Information Report, police officers' unwillingness to investigate the case, officer overburdening, and, most importantly, police officers' lack of proper training in modern technological tools of investigation, i.e.,

they lack expertise and skill in using forensic science in investigation. This circumstance is exacerbating the criminal justice system's problems.

### **7.3. Poor Social wellbeing and Socio-legal aid services**

#### ***Prison***

In the majority of states in India prison are overcrowded due to which it creates a catastrophic aftermaths upon the prisoners as well as on under-trial prisoners. Despite several prison committees had recommended that the prisoners and under-trial prisoners must be segregated so that the first time offenders does not become a hardened criminal. Due to the problem of overcrowding the first-time offenders are placed with the habitual offenders it creates a bad impact upon the first time offenders.

The looking self-glass theory plays a vital role in delineating the reason behind poor social wellbeing of the inmates inside the prison. Due to lack of proper medical and counselling facilities despite counsellors are officially appointed they do not visit the prison and meet inmates directly even if they visit prison they only make their attendance in the office. Consequently, the no proper guidance is given to the first-time offenders from the authorized practitioners as a result their continuous stay with the hardened criminals also motivates them to undertake the same path. Inside the prison as such there is no separation between the pre-trial detainees and the convicted prisoners. As such there is no separation between under trials prisoners from the convicts and the separation of juveniles and young offenders from the normal criminal justice process. When one refers to the minimum rules for the treatment of prisoners it elaborates that separation must be there between different categories of offenders and different gender of the accused but in reality it is not done so. According to the report of the Prison Statistics 2019, more than 70 percent of the inmates are under-trial however, since the concept of separation is not followed strictly these prisoners regularly come into contact with the hardened criminals. As these trial awaits and takes long duration of time the under-trial inmates come into contact the hardened criminals and enter the world of crime.

There is a huge dearth of medical care given to prisoner's because of which the health of prisoners are very poor. One should analyse the effectivity of an institution not by watching how it treats the highest citizens but how it treats the lowest poor socio-economic ground. Hence particularly visiting inside the during the covid-19 strict protocols where extra preventive measures needs to be taken to curb the contagion of the virus but hardly any such steps were taken inside the prison intense overcrowding was there because of which the basic

guideline of physical distancing was not fully taken into consideration. The Bihar government has not released a single inmate on bail or furlough rather as a prophylactic measure the inmates were transferred to other central and sub-jails of Bihar where the prisons were not crowded.

### ***Court***

The court system labels the individual as under-trial or convicted as a result the person faces and bear a separate kind of treatment from the society. In a longer run it affects his social wellbeing and the person starts inheriting the characteristics of such labelling. The effects of labelling can be illustrated more clearly through a study conducted by Youngs in 1971 of hippy marijuana users in Notting Hill. Consumption of drug was originally was considered as a trivial parts of the groups life. Initially, drug use was considered a minor aspect of the group's life (primary deviance), but as a result of increased persecution and labelling by social control agents, hippies began to regard themselves as outcasts, generating a deviant society in which drug use became a fundamental aspect of their life, drawing more police attention and creating a self-fulfilling prophesy. The same case is observed in Bihar after the prohibition of liquor Act has been implemented due to such enjoin more and more people are found committing the crime because drinking alcohol was a part of a life but due to such legislation and being labelled as illegal more and more people are prone to commit such offences.

Consequently the National Crime Records Bureau (NCRB) recently disclosed statistics on ongoing investigations and trials, which demonstrates that India's criminal justice system is suffering from a tremendous backlog. The backlog, also known as the "pendency rate," with India's courts and police hit its greatest level since the turn of the twenty-first century in 2016, according to the most recent data available. The court pendency cases appear to be far higher than the police backlog, this should not lead us to conclude that our officers are more efficient than our judges.

Another factor for the reduced pendency rate is because police officers frequently submit cases to trial without conducting thorough investigations. This decreases the police department's incarceration rate while increasing the incarceration rate in the courts.

The judges must take a more aggressive role in the administration of justice. Many judges are disqualified from furthering criminal justice because they have an old-fashioned justice mindset and believe in justice according to the rigorous interpretation of the law. As a result,



justice is found in the heart, not merely in the mind of the judge. Criminal justice reforms are a critical problem that necessitates the effective enforcement of the judge's activeness.

Another major problem is low Judge to population ratio that is the present judge to population ratio in India is at an abysmal 17 Judges/million. Also, The amount of hearings and the time it takes to resolve cases across the system show that India's process law system has a major case management problem.

The majority of convicts in Indian jails are undertrials, who are confined to the facilities until their cases are resolved. In the vast majority of cases, individuals wind up serving more time in prison than the actual sentence that would have been imposed if the case had been determined on time and in their favour. Furthermore, the costs, grief, and anguish of defending yourself in court are far greater than completing the sentence. Undertrials are presumed innocent until proven guilty. Rich and powerful individuals, on the other hand, can enlist the help of the police, who can then harass or quiet troublesome and impoverished people during lengthy court proceedings.

There are several reasons for delays, including the unavailability of witnesses, unwarranted adjournments, and the delay in serving summons.

People turn to the court as the final line of defence against the executive and legislative branches' wrongdoings. The judiciary has served as a forerunner to a large extent. The criminal justice delivery system, however, is where it has failed the most. Everyone must be aware of human rights; we sometimes forget that even those accused of heinous crimes have rights that must be respected. Regardless of the situation, proper procedure must always be followed. Unfortunately, in many situations, the judiciary does not follow due process.

## **Chapter 8: Summary and Conclusions - The Way forward**

The prison healthcare system must increase access to healthcare, particularly for people with acute physical ailments or co-occurring diseases. Encouragement of healthcare utilization for short-term health problems and those with co-occurring health illnesses may help enhance general prison health while also reducing jailed prisoners' misconduct. Access to health care that is preventative, curative, reproductive, palliative, and supporting, in addition to access to the underlying determinants of health, is part of what is meant by the phrase "the right to health." Just a few examples include having access to clean drinking water and adequate sanitation; having access to safe food; having adequate nutrition and shelter; having access to safe health and dental services; having healthy working and environmental situations; and having gender equality.

Overcrowding and mass incarceration are important challenges in almost every jail system across the world, as well as harsh criminal laws and a lack of community-based social safety net programmed, are contributing to the rapid increase in the number of people incarcerated in several countries. Overcrowding in jails, as previously noted, is the root of numerous human rights violations. While Individuals, families, communities, and states are all harmed by disproportionate pretrial confinement, which is perfectly preventable. For those who can least afford it, the impact is the most dramatic and damaging. It squanders human potential, destroys lives, and skews government policy:

- Every year, it entraps millions of people and impacts hundreds of millions more; it spreads illness, encourages corruption, and weakens the rule of law.
- Affects the poor and disenfranchised in a disproportionate way.
- Impoverishes communities, misdirects state investment, and restricts policy alternatives for prisoners.
- Pushes detainees' families into poverty.
- Harms detainees' children's education and earning prospects.

Every person's entitlement to legal assistance is a basic fundamental right. It is also the state's obligation to assure this. However, in India, it has yet to be implemented. The primary flaw in the free legal aid movement is this. This flaw can only be corrected if all citizens of our

country are informed of their basic legal rights. As a result, impoverished illiterate people must be taught legal principles, and this should be done at the grassroots level in both rural and urban places.

Most significantly, the government should engage directly in the jail to raise legal awareness and ensure that inmates are given legal education on a monthly or weekly basis.

National legislation, rules, and procedures must be governed by international principles created to safeguard inmates' human rights in order for a prison system to operate in a fair and humane manner. Inmates are required to be monitored and treated according to the rule of law, with proper regard for their human rights, and the time that they spend in jail is supposed to be utilized to prepare them for life after they are released. On the other hand, the national regulations and standards that regulate the administration of correctional facilities are usually out of date and in need of revision. In a number of different nations. The management of the prison system is handled by either the military or the police, and the administrators and staff members have limited professional training in the field of prison administration. The morale of the staff is often low, and there is not enough strong leadership to strive for jail reform. It is impossible to design appropriate policies and programmes that are based on reliable data since many jail systems throughout the world lack good data collection and administration systems, or they simply do not exist.

### **8.1 Suggestion**

The following suggestions pertain to improving accessibility of socio-legal aid services: -

- a) Legal advice services can be initiated at the grassroots level by the Legal Aid Panel particularly for the layman and impoverished.
- b) Since we all know time duration plays an important role in the process of due justice hence judicial processes need to take time into due consideration.
- c) Legal awareness programmes must reach far-flung isolated villages for traditional media, roadshows, loudspeakers, banners, and leaflet distribution to be effective.
- d) Web-based or print-based educational initiatives and sessions need a well-thought-out strategy, such as defining a target audience prior to launching such activities, since this will assist in driving large traffic.
- e) There needs to be more of a focus on providing legal services for free within the legal community. Students need to be informed about the benefits of working as a paralegal or legal assistant because employment of these positions is expected to increase by 12

percent from 2018 to 2028, which is far faster than the average growth rate for all occupations.

- f) There must be active working for the public authority to participate in discussion and must work towards awareness drive.
- g) The law college students must provide free of cost services in the isolated towns where basic services are not provided as well as not accessible.
- h) The paralegal groups must be supervised, and proper submission of the reports must be done to the District Legal Services authority.
- i) The lack of awareness in the society and the ambiguous nature of law must be done to take into consideration problem of inaccessibility.
- j) Lok Adalat's must be done to take into consideration the small financial matters facilitating legal counsel and advocates.
- k) To take into consideration the youth activities various work of art like animated videos, poster making, and various other survey related work must be taken into consideration so as to make aware the marginalized sections of the society.
- l) Encouragement in form of recommendation, letter of appreciation, remuneration and must be provided on a timely basis to incentivize the legal counsels and advocates working on a pro-bono basis.

## **Chapter 9: Recommendation**

The recommendations to improve the socio-economic condition and social well-being are as follows: -

- (i) To achieve overall social wellbeing the facilities of education, health, and basic human rights must be provided to decrease the chronic poverty, violence and crime.
- (ii) The policies, rules and regulation must be formulated to strengthen the marginalized sections of the society so that they are not victimized with the existing laws and regulations.
- (iii) The triangle of growth, inequality, and poverty must be aimed can break the poverty cycle; however, other societal problems such as unemployment, violence, and crime must be addressed urgently, which are all linked to rising poverty and unequal income distribution around the world. Policies should be devised to track positive changes in crime rates as a result of reforms in a group of nations.
- (iv) The Kuznets's work should be extended to unexplored areas where the crime rate is too high.
- (v) There is a strong need of equal distribution of resources because equity creates equality. In majority of the cases marginalized sections of the society does commit crime because of lack of resources.
- (vi) The findings did not support the "parabola" link between income and crime rates, but they did confirm the U-shaped relationship between poverty and income. The economic conclusion is that affluence isn't the only factor driving up crime rates; poverty, on the other hand, exacerbates violent crime in many nations. Designing a mechanism to reduce poverty rates, which would eventually lead to reduced crime rates, is crucial. Improved labor market structure, sensible income distribution, and the establishment of social safety nets are all desirable choices for reducing crime and poverty rates in various countries. The findings revealed a parabolic link between economic growth and inequality, indicating a strong need to improve income distribution channels in order to reduce worldwide poverty and crime rates.

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