

**PRISON REFORMATION - A DIFFERENT
APPROACHES LEAD TO DIFFERENT OUTCOMES**

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ABSTRACT

This study focuses on India's urgent need for prison reforms, adding fuel to the already smouldering problem of jail reforms. Overcrowding in prisons as a result of pending lawsuits is a major impediment. The paper demonstrates how the Indian judiciary played a vital role in prison reform through leading judgments. This is a solution-oriented study that presents reader with a selection of prison models from a few Indian states that can be adopted in other states, as well as jail models/practices from across the world. The study proposes an open jail system as a solution to congestion and describes how innovation and technology may be used to improve prisons, similar to the Goa prison model system. Research paper further recommends home arrest be used more frequently, as in the United States, as well as the Norway and Finland models which place a greater emphasis on prison reformative system. This study also emphasizes more on reform and rehabilitation by proposing a model jail manual and more visitation rights. To create the research work, the researcher mostly used secondary sources such as websites and books.

KEYWORDS: Prison, Overcrowding, Administration, Open Prisons, Rehabilitation, Reformation

INTRODUCTION

"Hate the crime, not the criminal"

- Mahatma Gandhi

The plight of detainees has emerged as a key concern in the realm of an open approach during this age of growing human rights awareness. Rise in human population lead to rising distressing prison condition in India further leading to human right violation. Living condition of prisons are the worst. Prison reforms need immediate assessment, creation and application of corrective and constructive measures to ensure better prison systems which will eventually help decrease the rate of crime and unjust taking place in the society.

In India and elsewhere, prison-like institutions have existed since ancient times. It's a type of correctional facility that's used to keep offenders out of the general public. They are imprisoned for certain duration with the goal of incapacitation, reformation and nevertheless, the goal is occasionally overcome due to the prison atmosphere and the management they get. They are beset by a slew of concerns, the most serious of which are overcrowding in jails and the pendency of suits. According to data of National Crime Record Bureau, 2019¹ around 19 Lakh inmates were admitted to the country's various prisons. There were 1350 prisons with a total capacity of 4, 03,739, but occupancy was 4, 78,600, a rise of 18.5%. There were 4.78,600 inmates in jails around the country on December 31, 2019, of which 3.30,487 inmates were awaiting trial, representing 69.05% at the end of 2019. There is a rapid increase in the number of women prisoners, along with increased custodial deaths. Due to this overcrowding, the inmates are detained in unsanitary conditions, with no adequate food or medical facilities. The high proportion of those awaiting trial defies the purpose of prisons, which are supposed to correct convicted criminals. Long years of jail can financially and emotionally exhaust convicts and their families, as well as reduce their prospects of finding work and reintegrating into society, making

¹ National Crime Records Bureau, Prison Statistics India – 2019, National Crime Records Bureau (2019),

<https://ncrb.gov.in/sites/default/files/Executive-Summary-2019.pdf>.

underprivileged populations more vulnerable to profiling and harassment.²

But for decades, the question of overcrowding of prisoners has been around, why do we have to tackle it again? The reason being - while the entire country is dealing with the novel Coronavirus diseases in the outside world, these inmates are fighting with the same ailment within the confinement of their cells. The Supreme Court recently expressed this issue while managing various cases involving the release of prisoners because they were equally susceptible to the novel coronavirus, hence Supreme Court by turning a compassionate eye on the more than four-lakh jail ordered their immediate de-congestion.³ As said by Nelson Mandela “*No one truly knows a nation until one has been inside its jails*” The writers in the paper have focused and tried to incorporate as many as viable and adoptive prison reform measures, rather than focusing much on the decade long problems. Along with mentioning some already existing best administrative models/practices in few states, and the need for it to be implemented in all other states, we have focused to make it a solution-oriented research paper. The way towards reformation is drawn after studying and researching different models, practices, and programmes not only in India but around the world as prisons are a reflection of the society we live in.

I. JUDICIARY’S ROLE

In each country, the judiciary has the duty and role of protecting the human rights of citizens, one thing the society overlooks is Criminals too are citizens, and protecting their rights is part of the Judiciary’s duty. The following are some of the most important Indian judicial decisions that have had a significant impact on jail reform.

² Pranav Jeevan P, [Re-Imagining Justice: From Punitive to Transformative](https://roundtableindia.co.in/index.php?option=com_content&view=article&id=10076:re-imagining-justice-from-punitive-to-transformative&catid=119&Itemid=132), Round Table India (Feb. 22, 2021), https://roundtableindia.co.in/index.php?option=com_content&view=article&id=10076:re-imagining-justice-from-punitive-to-transformative&catid=119&Itemid=132.

³ Krishnadas Rajagopal, Covid – 19 surge SC orders immediate decongestion of prisons, (May 08, 2021, 03:01

A. ARREST

1. *State of Punjab and Others vs. Jogender Singh and others*

⁴ Hon'ble Supreme Court of India held the police are not required to arrest every person who does not have a job or a place to live. Hundreds of thousands of individuals are arrested only on suspicion and arrests should be avoided unless it is a heinous crime.

2. *D. K Basu v. State of West Bengal*⁵

In this case Custodial death and arrest have been fully probed. The Supreme Court looked into a variety of police authority abuses, including arbitrary arrests, illegal imprisonment, and custodial assault and death. The court issued the following recommendations for police officers to follow when making an arrest:

- All police officers must have legible identification and name tags with their designations on them at all times.
- Arrest Memo- When a police officer makes an arrest, they are required to prepare an arrest memo that includes all of the information of the arrest.
- A person who has been arrested has the right to notify a relative or friend who knows him or is concerned about his whereabouts.
- Inspection memo - All major and minor injuries must be mentioned in the inspection memo, which must be signed by all parties.
- Medical Checkup- The arrestee should be subjected to a medical examination every 48 hours.
- For record-keeping purposes, copies of all documents will be given to the magistrate.
- Obtain legal advice- The arrestee may be permitted to seek legal advice

PM), The Hindu <https://www.thehindu.com/news/national/covid-19-surge-supreme-court-orders-immediate-de-congestion-of-prisons/article34513158.ece>.

⁴ *State of Punjab and Others v. Jogender Singh and others*, (1990) 2 SCC 661.

⁵ *D. K Basu v. State of West Bengal*, (1997) AIR SC 610.

B. BAIL AND REMAND1. *Moti Ram and Others v. State of Madhya Pradesh*⁶

When discussing pre-trial confinement, the court stated: "Pre-trial custody has grave effects." Defendants who are considered innocent are exposed to the psychological and physical hardships of incarceration, which are frequently more severe than those inflicted on convicted defendants. Moreover, because the weight of his arrest usually falls on the innocent members of his family, a person must be given bail on default under section 167(2)

2. *Hussainara Khatoon N & Ors V. Home Secretary, State of Bihar*⁷

This case demonstrated and emphasized the importance of every citizen's right to a speedy trial and established the notion of bail instead of Jail. This momentous decision resulted in the release of 40,000 awaiting trial convicts across the country, as well as the establishment of a focus on providing free legal assistance to the needy.

C. WOMEN WITH CHILDREN1. *R D Upadhyay V. State of Andhra Pradesh*⁸

The Hon'ble Supreme Court in this landmark judgment laid down detailed guidelines for the overall development of women with children and pregnant women in prison. It emphasizes the nutritional and health requirements of pregnant women and secures the rights of pregnant women prisoners.

It also secures the rights of women with children; the court observed that "A child shall not be treated as an undertrial/convict while in jail with his/her mother. Such a

child is entitled to food, shelter, medical care, clothing, education, and recreational facilities as a matter of right". Unless otherwise required, women with children should not be sent to prison. Detailed guidelines for securing the rights of women with children in prison and medical care of children were also laid down in this judgment.

D. DEATH SENTENCE1. *Bachan Singh Vs. State of Punjab*⁹

The Hon'ble Supreme Court in this judgment established that a death sentence is an alternative in case of murder, and should be granted in issues about heinous crimes. The apex court laid down the principle of 'rarest of the rare case'. The death penalty should only be sentenced if the evidence provided beyond a reasonable doubt is supportive of the view that the person is incapable to reform. For first-time offenders, it is hard to prove that they are beyond redemption and there is no scope of reformation.

II. ISSUES IN INDIA'S PRISON

Issues in the Indian jail system and problems of the people who have been incarcerated there. We intend to use this article to reveal the truth about how individuals are treated in these institutions (prisons). Despite having a lower number of individuals in prison than many other countries,¹⁰ India is in the same or worse scenario as the others. Here are some of the primary factors that contribute to Prison system failure.

A. OVERCROWDING: -

Congestion in jail, particularly among undertrials, is a major source of worry. Apart from the unjustified incarceration of undertrials, another major reason for congestion in Indian

⁶ Moti Ram and Others v. State of Madhya Pradesh, (1978) 4 SCC 47.

⁷ Hussainara Khatoon N & Ors v. Home Secretary, State of Bihar, 1979 SCR (3) 532.

⁸ R D Upadhyay v. State of Andhra Pradesh, AIR 2006 SC 1946.

⁹ Bachan Singh v. State of Punjab, 1980 2 SCC 604.

¹⁰ [Statista Research Department](https://www.statista.com/statistics/262962/countries-with-the-most-prisoners-per-100-000-inhabitants/), Countries with the largest number of prisoners per 100,000 of the national population, as of May 2021, statista (Jun. 2, 2021), <https://www.statista.com/statistics/262962/countries-with-the-most-prisoners-per-100-000-inhabitants/>.

jails is the large flow of short-term offenders¹¹. Under-trials typically have limited access to legal counsel, many under trials are poor people accused of small offenses who have been imprisoned for extended periods because they are unaware of their rights and are unable to obtain legal assistance. Their capacity to defend themselves is hampered by a lack of financial means and a strong support structure, as well as their limited ability to interact with lawyers from within the jail. In India's justice administration, there is an obvious lack of concepts. While government officials and social workers are not on the same page, there is hardly any attempt to decrease overcrowding¹²

If the jail population must be reduced, the under-trial population must also be decreased, which can be accomplished by expedited trials and the police's prompt production of witnesses. They are not, however, the only option available to us. Another solution could be separate jails for the convicted once and for the under-trials as the influence of the convicted once can change the mindset of the newly under-trial prisoners¹³.

B. FAILURE TO REHABILITATE INMATES-

The goal of incarceration has shifted from punishment to reform and rehabilitation of inmates. However, this is not the case in India, where there are few attempts to rehabilitate inmates. It is evident that the government's mentality is moving toward reformation rather than punishment, as jails are now referred to as "correctional homes/facilities." However, it's worth considering if the administration is truly committed to prisoner reform and rehabilitation, or if it's

¹¹ Human Rights Watch, Prison Conditions in India, Human Rights Watch, <https://www.hrw.org/sites/default/files/reports/INDIA914.pdf>.

¹² National Law University, Delhi, Indian Journal of criminology, ISSN: 0974 – 7249, (2018 – 19), <http://nludelhi.ac.in/download/publication/Indian%20Journal%20of%20Criminology%202018-19.pdf>.

¹³ Sneha Das, Indian Prisons Record Highest Overcrowding in 10 Years In 2019, The Logical Indian (Sept. 7, 2020), <https://thelogicalindian.com/humaninterest/indian-prisons-record-highest-overcrowding-in-10-years-in-2019-23567>.

merely a change of terminology. The proposals must be implemented and meaningful structural adjustments must be made. There is no post-release treatment or follow-up for freed inmates, and there is no policy for the reintegration of inmates¹⁴.

C. JAIL VISITS-

Time and again the court has mentioned the importance of jail visits of family members being a key factor in the reintegration of prisoners back into society and decreases the rate of recidivism.¹⁵ Imprisonment causes a strain on personal relations, jail visits are somewhat influenced by the prison officials as they hold power over it and cause trouble to the prisoners in case of some disciplinary offense they can even cancel the visit, they are also often present in the room during visitation. Family members of convicted prisoners can visit once a week, undertrials prisoner family members can visit twice a week.¹⁶ There are no specific laws for conjugal visits. Prisoners have a right to maintain family contact; they should be allowed to connect to the outside world without any restriction, which is also mentioned in the Nelson Mandela Rules.

D. INHUMANE CONDITIONS: -

Inhumane circumstances in jails are caused by congestion, which includes a lack of sanitation and inadequate services. Prisoners are frequently left in filth and deprived of necessities. The massive flow of prisoners sentenced in cases involving terrorism, drugs, and fraud has exacerbated prison

¹⁴ National Law University, Delhi, Indian Journal of criminology, ISSN: 0974 – 7249, (2018 – 19), <http://nludelhi.ac.in/download/publication/Indian%20Journal%20of%20Criminology%202018-19.pdf>.

¹⁵ Duwe, G. and Clark, V. (2013), 'Blessed be the Social Tie that Binds: The Effects of Prison Visitation on Offender Recidivism', *Criminal Justice Policy Review*, 24: 271–96

¹⁶ CASIHR Journal on Human Right Practice <https://www.rgnu.ac.in/PDF/9b99535b-578e-40cd-adb2-6361dc8a4612.pdf>

overcrowding. Overcrowding has been on the government's radar for some time, but efforts have been disjointed and unsuccessful¹⁷. Only a complete plan that addresses all aspects of jail, including sentencing rules, infrastructure, food quality, and so on, would work. There have been a slew of schemes put out throughout the years, but none have gotten much traction since they aren't concrete enough. To enhance jail circumstances, it is not necessary to make it softer; rather, it is necessary to make it more humane and sensible.

E. FACILITIES FOR SANITIZATION: -

Sanitation and toilet facilities are a big concern in Indian jails as a result of the congestion. Compared to male prisoners, female prisoners always need more basic health care needs. In many countries, prison medical care for women around the world includes large numbers of children living with their mothers, as well as medical care for pregnant and nursing mothers, and most prison services are not equipped to cope¹⁸

F. PRISON BRUTALITY: -

Viciousness is additionally a significant issue in Indian jails, with detainees exposed to manhandle and savagery from superintendents, different detainees, or both. Debasement and coercion are the worst things about India's jail framework, where the degree of defilement is important to such an extent that it has come to be acknowledged as a piece of regular daily existence. The issue isn't simply restricted to detainees; it exists in different structures too, for example, cops and watchman defilement who blackmail cash from individuals at their homes or government authorities who request pay-offs for different reasons. The watchmen are irritated to do these demonstrations as a result of the low compensations, and incredible detainees in certain offices

¹⁷ Human Rights Law Network, Report on the National Consultation on Prison Reform, Human Rights Law Network (Apr. 4, 2010), <https://hrln.org/uploads/2017/09/Report-on-the-National-Consulataion-on-Prison-reform.pdf>.

appreciate mobile phones, rich eating routine and agreeable facilities.

III. BEST PRACTICES IN PRISON ADMINISTRATION IN INDIA

According to the United Nations, practices to be followed must be economical. Best sustainable practices should be carried on forever; it should not end with the transfer of the person who started it. Great results have always been achieved with cooperation and coordination of community and management. Referring to Bangkok Rules, the rules need to be amended, particularly on safeguards ensuring women detainees, The prison system is not very susceptible or open to change. Indian prisons are inadequately lacking, it is the reason for the greater part of prisons have critical numbers of undertrial offenders with insufficient legal aid service. Even though the number of detainment facilities has increased over the past years, some old facilities with the best prison administrative practices have closed down. These include prison management, security, staff development, use of technology, vocational training, grievance, redressal, education, etc.

The writers attempt to provide readers with a variety of prison models from a few states in India that can be implemented in other states, as well as various jail models from across the world.

A. OPEN PRISON - THE GAME CHANGER (RAJASTHAN OPEN PRISON MODEL)

Open prisons aka prisons without bars were enforced to essentially reform inmates by providing them with work, allowing them to live with their families, and keeping them engaged. The goal of open prisons is to teach them how to be a responsible human being and lead a life with dignity. You can enter prison while under trial, be acquitted, or be

¹⁸ United Nations Office on Drugs and Crime, Handbook on Women and Imprisonment, United Nations Office on Drugs and Crime (2014), https://www.unodc.org/documents/justice-and-prison-reform/women_and_imprisonment_-_2nd_edition.pdf.

convicted by the court, but for society, you bear the stigma of a criminal. The entire system is based on that premise, and the individual is cast out of society. Perhaps the person charged will be acquitted, but society will continue to view him as a prisoner, which may have an impact on your job, your lifestyle, or your family. According to the reformatory approach, we must remove a criminal's harmful degeneracy and provide them a chance to exercise their fundamental rights, including their most vital and valued right to live with human dignity.

The open jail system strikes a balance between the societal goal of punitive sentencing and human rights concerns, dark and dingy cells, lack of food and necessities, physical and emotional torture, inhumane behavior, an atmosphere of hardened criminals, corruption, narcotics, and isolation all make it difficult for them to reintegrate into society after their release.

In various judgments of the Supreme Court of India, it has been correctly stated that when dealing with the jail administration, the rights and entitlements of the convicts must be considered. The following is a vehement summary of the same¹⁹:

- People in prison will not become inhuman, and this is a fact that we must overlook.
- Regardless of the punitive basis for punishments, prisoners are always to all human rights
- There is no reason to exaggerate the suffering of those who have already been imprisoned

Between April and November 2017, authorities commissioned independent researcher *Smita Chakraburty*²⁰ to conduct interviews with convicts in open prisons. According to her research,

It was found open prison system has numerous benefits for both the convicts and the states. Most crucially, open prisons

were found to be 78 times less expensive in comparison to closed jails. The cost per prisoner in the closed prison is 7,094 rupees per month, while the cost per prisoner in the open prison is only 500 rupees, which is a big difference. The study also discovered that open jail prisons can help to decrease prison overcrowding, with most jails having on average 70% under trial detainees and 30% convicted prisoners, which are the main causes of overcrowding. The study also showed that even if the criminals were kept in an open prison with no safe roadblocks, they did not escape. This is an outstanding outcome that clearly distinguishes this open system as a game-changer, and it deserves to be recognized in every way. Open prisons also lessen the likelihood of habitual relapse into the criminal justice system, which is typical in closed jails.

Open jails can be a game-changer for society during the pandemic that we all are witnessing. As previously stated, Indian prisons are overcrowded and understaffed. "The assumption that there is no risk of a viral breakout inside a prison because they are segregated environments is erroneous," Ms. Chakraburty says. Hundreds of inmates and prison employees transit in and out of jails every day, increasing the possibility of impacting the wider public.

According to the National Crime Records Bureau, there are 1,350 prisons in the country, but only 89 are open jails, demonstrating that our country desperately needs additional open jails. It is also important to mention that open prisons are an important alternative for reducing jail congestion and saving money, as well as promoting self-development and socialization.

Only 17 states have provided information on how open jails operate within their borders. Rajasthan has the most open jails, with 39, followed by Maharashtra, which has 19, and Madhya Pradesh, which has six.

¹⁹ [Parikshit Goyal, Kamesh Vedula](https://www.epw.in/engage/article/understanding-open-prisons-india), Understanding Open Prisons in India, Engage (Jan. 22, 2021), <https://www.epw.in/engage/article/understanding-open-prisons-india>.

²⁰ In a research carried out by Smita Chakraburty, founder of PAAR - Prison Aid + Action Research

The following are some of the well-known advantages of open prison:²¹

- It reduces the negative impact of crime on the criminal and society as a whole.
- It helps to reduce prison congestion while also maintaining humane jail conditions.
- It is less expensive and more reasonable than keeping the inmates in state prisons.
- This aids in the restoration of an individual's dignity and provides a sense of self-confidence

This notion needs further development and promotion. Such jails are excellent for attaining the purpose, given the modern punitive philosophy of reform and rehabilitation. Open prisons for women should likewise be advocated. Prisoners in open jails can participate actively in Prime Minister Narendra Modi's new initiative namely "Make in India"

B. PRISMS- PRISON MANAGEMENT SYSTEM, GOA

Prison Management System, Goa introduced a system database called PRISM This system is an example of how innovation is utilized to help the prison detainees and the jail staff and how it aims to be used to make the personal satisfaction of the detainees better. The Thought isn't to control the existence of detainees, yet to enable them. The framework has a unified information base, a 3-level online framework with 18 useful modules also, 2 Mbps availability throughout all correctional facilities. It contains all procedures associated with the detainees to be carried out across all correctional facilities and at every degree of jail organization.

The elements of the accompanying significant modules are mentioned below:

²¹ NIDHI MEENA, CORRECTIONAL METHODS FOR REHABILITATION OF OFFENDERS IN INDIA, National Law University Delhi, India (2019),

1. PROBABLE DATA OF RELEASE (PDR)

Probable Data of Release (PDR) incorporates data such as detainee's enlistment number, identity, age, photos, rundown of visitors, and so on. Along with it, it also keeps track of hearings and produces court journal, automatic computation of the sentence time frame, wrongdoing, charge sheet, etc.; it also computes reduction based on conservancy work. In light of the data, the system displays a caution/alarm showing the list of under-preliminary detainees kept in jail for more than the period permitted and produces a report of cases qualified for the appeal of bail under Section 436A. Having a framework set up like this lessens the issues with unlawful detainment and premature release. One way it also lessens the nervousness that detainees feel as when they will be let out of prison, the vulnerability of the release date is an area of immense concern. This system creates a feeling of assurance, giving them a reason to look forward and thus creating their trust in the system.

2. WORK AND MEDICAL

The framework additionally offers a classification of wages and labor. It does an auto Contribution of wages by the rules – 50% victim compensation fund, 15% joint savings account, 15% legal aid, and 20% personal expense. – Detainees were neither educated nor told anything concerning how much their wages were till PRISMS happened. Presently detainees know exactly the amount they are procuring, and where different deductions are being made, and how much money is going to different schemes and policies. The victim compensation existed, yet altogether overlooked. However, presently the victims can be reimbursed, particularly those that are seriously damaged and in urgent need of compensation. The system also keeps a record of detainee illnesses. It keeps a record of prescribed medicines to be given to detainees according to the prescription. It also produces the total clinical record of the detainee. This system overall helps in better management and work allocation across prison.

<http://14.139.58.147:8080/jspui/bitstream/123456789/319/1/53LLM18.pdf>.

3. PAROLE AND FURLOUGH MANAGEMENT

This system helps in parole and furlough management by keeping a track record of all the applications approved or rejected, orders passed, surety involved along with details of money and people, the status of surety, etc. All furlough and parole applications should be dealt with within six to eight weeks maximum.

4. TOUCH SCREEN KIOSK APPLICATION

There is various touch screen Kiosk all over the prison to be used by the detainees. The prisoners here can get information related to their PDR, parole application status; total money earned, transfer status, etc. Prisoners who are not that efficient in English can also learn to read and write with the help of these touch screen Kiosk,

This system also gives relevant information related to Prisoner's Property and Cash (PPC) which is all the personal details about the prisoners like their cash, clothes, expense limit, etc. It also maintains relevant information related to Victim Information Management, Visitor Info Management, Prison Transfer Management, Commissary (Canteen) Management, and many others like these.

ADVANTAGES OF PRISMS - Discussing the advantages of PRISMS, this technological system gives exceptional data about every prisoner and relevant court data. This keeps detainees from losing all sense of direction in the perplexity of regulatory blunder of bureaucratic mismanagement. Prisoners can walk up to the kiosk and get every possible detail about their case. It additionally makes the data more programmed and precise.

This system has made a major effect on the functioning and quality of life of the jail, improving the pertaining inhuman condition and working conditions both for the detainees and prison staff. As the program extended, it started to include more data, and its usage and understanding was improved. PRISMS are a thorough framework and the first of its kind to exist in the entire country. It gives a convenient way to the jail authority and has ended up being helpful to everybody. It is moreover a powerful framework that takes into account a more prominent and more valuable association between management and prisoners. This prison management system also won the e-governance award.

The same prison management system -PRISMS should be adopted by all the states in the country to improve the working and management conditions. The system will make not only the handling of cases and detainees easy but also reduce the burden on prison staff. It will also help make prisoners more aware of their case-related information, which is very important and also decreases the chance of various delays and human error by prison management staff.

IV. THE WAY FORWARD

A. HOUSE ARREST

House Arrest could be one of the elucidations to the problem of overcrowding in India, Many circumstances in the United States favor house arrest after the accused has been convicted, and in the case of juveniles even during the pendency of suit they resort to House Arrest.

In the article "House Arrest", a critical analysis of an intermediate level penal sanction by Jeffrey N. Hurwitz, "House arrest is a type of intensive law enforcement monitoring in which the offender is confined to his or her home with permission to leave only for specific, preauthorized reasons. In most cases, it is used as a punitive measure instead of incapacitating someone.

In India house arrest is only recognized in cases of preventive detention, Section 5 of the National Security Act,

1980 provides for the concept of house arrest, what is nonetheless pertinent is that preventive detention is also a form of forced detention. House arrest is also custody and forced detention.

Recently, In the case of *Gautam Navlakha v. National Investigation Agency*,²² the Supreme Court observed that courts might grant home arrest in appropriate instances under section 167 CrPC. The question, in this case, was whether the concept of "home arrest" fell under the definition of "custody." The court noted that if the accused meets specific criteria, such as age, health condition, and antecedents of the accused, the need for the other forms of custody and ability to enforce the terms of house arrest. The court also noted that house arrest can save a significant amount of money because the jail budget is so huge (about 6818.1 crores). As a result, house arrest can give favorable options in terms of overcrowding and cost savings.

It is imperative to notice that in a study conducted by Rajasthan State Legal Authority on open prison (Bhatnagar 2017) it was suggested that under trial prisoners along with convicted prisoners should be send to open prison due to numerous benefits mentioned in the report. It also suggested opening at least two open prisons in each district. Non violent prisoners, under trial prisoners and prisoners who have surrendered can be sending to such open prisons which can help in solving the problem of overcrowding in prison.²³

B. MODEL JAIL MANUAL

Every prison in the country should have copies of the Jail Manual. These manuals should be made easily available to all detainees. - Good administrative practices followed by

²² *Gautam Navlakha v. National Investigation Agency*, 2020 SCC Online SC 382.

²³ Bhatnagar, Gaurav Vivek (2017): "Should Rajasthan's Open Prisons be Replicated all Across the Country?" The Wire, 27 November, <https://thewire.in/law/rajasthan-open-prison>.

other states like environmental initiates, placement officers, mobile units under CSR, which are also helpful in spreading good message in the society, as well as help remove stereotypical thinking towards prisoners that are often adopted by others. The Model Jail Manual has been amended lately, it says that prisons are a state subject; different areas have different laws, with no uniform approach. The Model Jail Manual provides the much-needed consistency, essential structure and sets fundamental procedures. The new Manual covers a few issues that have not been tended to before, especially considering the recent ruling and judgment of the court. Before moving forward we need to specifically understand that²⁴ -

- The new Manual protects data being put under the Prison Management System (PMS) system, and how it ought to be entered. After the incorporation of the Act of 2013, all the information related to prisoners' cases, mental health, legal aid, etc has been stored and protected.
- Secondly, for women detainees, the issues of sexual harassment and abuse have been dealt with. According to Rule 8 of UN Bangkok Rules, which deals with clinical privacy and medical confidentiality, has been included, along with that reproductive health screening, which is not mandatory anymore and completely depends on the wish of the women woman.
- Thirdly, the undertrial prisoners must receive information related to their case such as date of release, date of admission, an entry in the prison, basic information from the prison board.

C. NORWAY AND FINLAND MODEL

The path to prisoner retribution followed by countries like Norway and Finland has opened the eyes to a multitude of possibilities to all the countries across the globe. Their

²⁴

3RD NATIONAL CONSULTATION ON PRISONERS' RIGHTS, LEGAL AID, AND PRISON REFORM <https://www.prisonforum.in/files/3rd%20National%20Consultation%20on%20Prisoners%20Rights.%20Legal%20Aid%20and%20Prison%20Reform.pdf>

system works on the Principle of Normality. They have designed their prisons with the approach that since most prisoners are going to enter the society at some point, they aimed to provide a much alike world inside the prison. Inmates would perform all the activities which they would have carried out in their normal life. They cook, buy groceries, wash clothes, pray, and do every other activity in a very well-maintained and constructed prison. They don't have bars on the doors, their prison cells are more like a college dorm room with a washroom. Each unit has its kitchen and a living room. The role of the prison guard is of the utmost importance in any prison, but in the nordic prison system, these guards are more like social workers and are called contact officers. Each contact officer is assigned 2-3 inmates and they are responsible for their well-being throughout their time spent in prison. They are personally responsible for them; this helps them create a personal bond with the prisons which also helps them to prevent violence or any such activity in the prison through COMMUNICATION. The nordic system of prison believes there is nothing good communication or talk can solve, they perceive prisoners like humans. Halden Maximum Security has been functioning since 2013 and to date, they have never used a restrain bed because of communication. Their correctional philosophy is specifically focused on rehabilitation.

India as a developing nation and supposedly progressing can adopt this module. Our theory is more focused on punishment rather than rehabilitation. Inmates are sent to a specific prison based on how much it is expected they would misbehave and not on the kind of rehabilitative treatment they require. If you get into difficulty because of addiction, for example, simply pray that your prison offers addiction counseling.

We can develop a two-track correctional system in which we separate punishment and rehabilitation. In the present scenario, the foundation of prison experience is punishment

and rehabilitation is an afterthought, rehabilitation is like a cherry on the system whose whole motive is punishment. Rehabilitation can never be successful if the core of the system was and still is punishment and it was never looked at separately from punishment, thus it was never really attempted separately in our society.

Half of the offenders are considered nonviolent, we must consider time served as punishment, it is the root. The focus should not be on the time served or is left to be served but whether the appropriate treatment has been delivered as most of them will re-enter society at some point in time. Out of 95% prisoners released from prison there is likely change of 67% offenders again ending up in jail for a new crime within 3 years of release, this is known as recidivism.²⁵

This track should consist of treatment-based facilities, with highly skilled and specialized professionals, aiming to treat through deep therapeutic approaches. India can achieve all this overnight, but this approach is a step in the right direction. Ultimately, this change will be difficult but not impossible.

The Yellow Ribbon project in Singapore began in 2004, it was inspired by the song "*Tie a Yellow Ribbon Round the Ole Oak Tree*" by Dawn featuring Tony Orlando which is based on a real-life event of an ex-offender and his journey towards forgiveness and second chance, this project is considered as an accomplishment in the recovery of ex-wrongdoers. The objective of this program was to create awareness towards prisoners' reintegration and giving them a second chance.²⁶ Generate acknowledgment towards guilty parties and their families in their community. Inspire community group activity to help in rehabilitation, re-integration, and reconciliation of ex-wrongdoer parties. This program has won awards for creating a revolutionary as far as raising public mindfulness and altering society's mentality is allowing previous offenders a subsequent opportunity. State and local area organizations work with the reintegration.

<https://www.tribuneindia.com/news/punjab/putting-ex-prisoners-on-road-to-reintegration-167207>

²⁵ Damonte Ranch High School student paper.

²⁶ Putting ex-prisoner on road to reintegration

D. PRISONER'S RIGHT TO VISITATION²⁷

In India, we need to prioritize areas of prison reforms. time and again prison staff, as well as the Prisoners, expressed their worries related to conjugal visits in the prison facility. By humanizing the contact of offenders with their family, it can help in preventing the discouragement many prisoners feel due to the lack of family contact. There is an urgent need for Better mulaqaat facilities, as visits of children and women in prison make them feel uncomfortable and embarrassing, decent waiting areas where they could physically connect and pre-booking for visitation to avoid the rush are not too difficult to implement. By having a more liberal and better system of supervision, when prisoners go for parole which allows them to meet and spend time with their family, the better and liberal way of supervision can ensure that no mishappening takes place. This Can be achieved at no extra cost to the state and will be beneficial to the detainee as well. Open prison system should be encouraged for life convicts. The Sanganer open prison is again a commendable example for this as it allows detainees to stay with their families and take responsibility, it is a more sustainable and viable model. Maintaining family ties and contact with family is a way forward towards the reintegration of the prisoner back into the society and efforts should be made to humanize and facilitate family visits more, rather than viewing it more as a privilege to the prisoner which in the first place is their right.

Prisons in Australia have a specially created playroom for prisoners' children to come and visit them during their time of sentence, the playroom has toys, games, and other recreational activities where they can physically touch and meet their children. It allows them to connect and spend quality time, providing the children with a better environment than the prison to meet their parents. Women

prisoners are can keep their children with them if they are newborn to five years of age, prisons have rooms set aside for them, some rooms are purpose-built and single story with space for at least ten pairs of mother and children.²⁸

V. CONCLUSION

In conclusion prison reform in India is still in early stages, every person in India including prisoners have a right to personal liberality and right to live with dignity, no personal shall be denied of such basic fundamental right. Supreme Court in various judgments has considered overcrowding clearly as violation of human rights and Article 21 of the Indian constitution.

By resorting to open prison model not only it will help in decongesting the prisons but also reform less harmful/non-violent or first-time offenders or under trial prisoners in a better way before re-entering the society. Rajasthan prison model is exemplary as the prison officers have to evict the prisoners as inmates have asked for sentence extension because of better medical facility or their children's exam was approaching. Every state/district should have at least 2 open prisons, in the current scenario open prisons are very less in number compared to the required number. Touch screen kiosk application should be installed at all facilities, it will reduce the work load on management, will make the working easier and will come as a relief to the prisoners as well. There should be a uniform framework for governing the jails in India. Model Jail Manual should be made available, at least 10 copies at each prison, it will provide much needed consistency, structure and set fundamentals.

It is extremely important to have more meaningful rehabilitative justice approach towards prisoners and measures for the same should be adopted. Following the Norway Finland model, India too can follow the principle of

²⁷CASIHR Journal on Human Right Practice
<https://www.rgnul.ac.in/PDF/9b99535b-578e-40cd-adb2-6361dc8a4612.pdf>

²⁸The Conversation-

<https://theconversation.com/babies-and-toddlers-are-living-with-their-mums-in-prison-we-need-to-look-after-them-better-117170>

normality and consider prisoners as human, believing in giving them a second change through reformation as at some point of time most of the offenders are going to re-enter the society. Focus should be drawn towards developing a more holistic, recreational, educational, therapeutic approach. Yoga, meditation, sannyasa, art of living method should also be incorporated more frequently. There should be more focus on conjugal visitation rights as no specific law exist, visitation rights of prisoners are of utmost importance as it is their only reason to survive and live many a times in the pathetic and torturous prison condition. Properly constructed and better utilization of system is the need of the hour as it will also reduce the number of custodial deaths. Separate prisons should be set up for women prisoners and women prisoner with children, crèche and balwadi should be set up everywhere, separate recreation room, more vocational training, protection from sexual harassment and abuse should also be provided.

Initial classification between male female inmates, first time offenders and multiple time offenders, under trial prisoner and convicted felons will also help in better discipline and administration. Prison and prison reform are very important branch to the study of crime and criminology, there is an immediate need for new measures, rules, regulation for adopting a more reformatory theory of justice than focusing on punitive approach because the motive of sentence is reformation of the offender and reduce the occurrence of crime in future. Other obstacles to overcome in prison reform are internal control, resource allocation, deterrent functions of punishment, etc. Victor Hugo rightly said 'to open a school is to close a prison'.