

Research Article



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# Are Prisoners Persons? Yes, of Course: Human Rights of Prisoners in India

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Prisoners are humans and are entitled to human rights (HR). However, HR violations in prisons are still a significant concern worldwide. This article describes the rights accorded to Indian prisoners by the Constitution, Indian and international laws, and court and government orders. In addition, it details HR violations that Indian prisoners face by analysing government-published data on prisons. This online desk research garnered data from secondary sources. It used Prison Statistics India (PSI) 2017, 2018, 2019, 2020 and 2021 by National Crime Records Bureau (NCRB) and Human Rights Cases Statistics (HRCS), 2021 by National Human Rights Commission. It further reviewed the Nelson Mandela Rules safeguarding the HR of prisoners, the Indian Constitution, laws, court orders on prisoners' rights, model prison manual, and scholarly articles and e-books discussing the HR of prisoners, violations and strategies to retain them. This study confirmed the persisting overcrowding of Indian jails mainly due to the prolonged detention of undertrials. Furthermore, it exposed the increasing number of unnatural deaths in prisons and the discrepancies between data provided by PSI and HRCS. Finally, this article recommends hiring professionals to educate prisoners about their rights, provide free legal aid, maintain their mental health and prepare them to reintegrate into society.

## INTRODUCTION

Punishment for criminal offences imposes restrictions on liberty. However, prisoners' human rights (HR) remain, freeing them from inhumane treatment. The United Nations (UN) Mandela Rules apply and provide operational guidance to countries on the HRs of prisoners (UN, 2015). While the law provides a general framework for the rights of persons deprived of their liberty, their reality is often harsh (Tiroch, 2016). Incarcerated people endure widespread HR violations worldwide (Rubenstein *et al.*, 2016). These violations include overcrowding, unsanitary living conditions and sexual and other forms of violence (Rubenstein *et al.*, 2016).

The number of people in jails in India has increased exponentially over the last few decades (Saxena, 2020). Moreover, a significant portion of India's prison space is occupied by undertrials (Saxena, 2020), who underutilise the legal aid services they are entitled (Surendranath and Andrew, 2022). This situation contributes to overcrowding in jails. Furthermore, Indian prisons are reportedly hotbeds

of violence, corruption and lawlessness (Bhutta and Siddique, 2012), with routine custodial torture and deaths (Kuchewar *et al.*, 2020).

Against this backdrop, this article analyses the last five years, 2017–2021, data from the Prison Statistics India (PSI) by the National Crime Records Bureau (NCRB) to understand HR violations in Indian jails. It further discusses the existing Indian laws to protect the HRs of prisoners.

## METHOD

This article describes the results of an online desk research using government-published data. The secondary sources used were PSI by NCRB (NCRB, 2017, 2018, 2019, 2020, 2021) and Human Rights Cases Statistics, 2021 by National Human Rights Commission (NHRC), India (NHRC, 2021). It further reviewed the Constitution of India, relevant legislation, court orders and Model Prison Manual, 2016. This research explored the HR prisoners in India are entitled to and their violations. Evidence extracted from existing literature on the HR of Indian prisoners corroborated the reported results of this study.

## RESULTS

### Overcrowding in Indian Jails

Overcrowding in jails is a form of HRs violation of prisoners. An occupancy rate of more than 100% causes prison overcrowding. Figure 1 shows the trend in prison overcrowding over five years, 2017–2021, in India. It is clear from Figure 1 that overcrowding in Indian prisons has doubled in five years, with significant growth in 2020–2021.

The state that reported the highest rate of overcrowding (85%) in 2021 was Uttarakhand. It was followed by Uttar Pradesh (84.8%), Sikkim (66.9%), Madhya Pradesh (64.1%), Meghalaya (60.1%), Maharashtra (48.8%) and Chhattisgarh (48.6%). The Union Territory with the highest rate of overcrowding in jails was Delhi (82.5%). Overcrowding in itself is a form of torture.

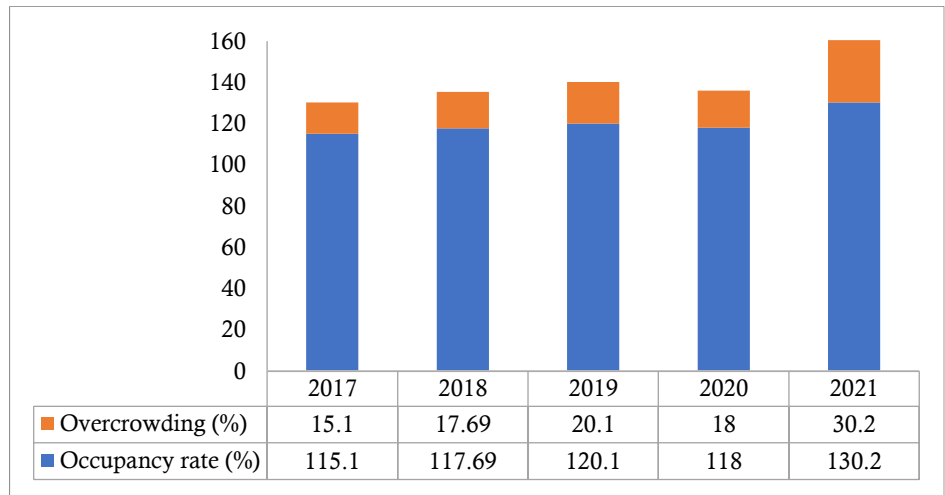
### Prisoners’ Demography

There are four types of prisoners; convicts, undertrials and detenues (Persons detained in jail by order of competent authority under the relevant preventive laws), and others such as children of convicts or undertrials. Among them, detenues and others constituted less than 1% of the total population in prisons. Figure 2 shows the demography of convicts and undertrials for 2017–2021.

Figure 2 shows that two-thirds of the total number of prisoners were undertrial prisoners and that the gap between convicts and undertrial prisoners has widened over the past two years. These data provide evidence of a blatant violation of the fundamental rights of the undertrials.

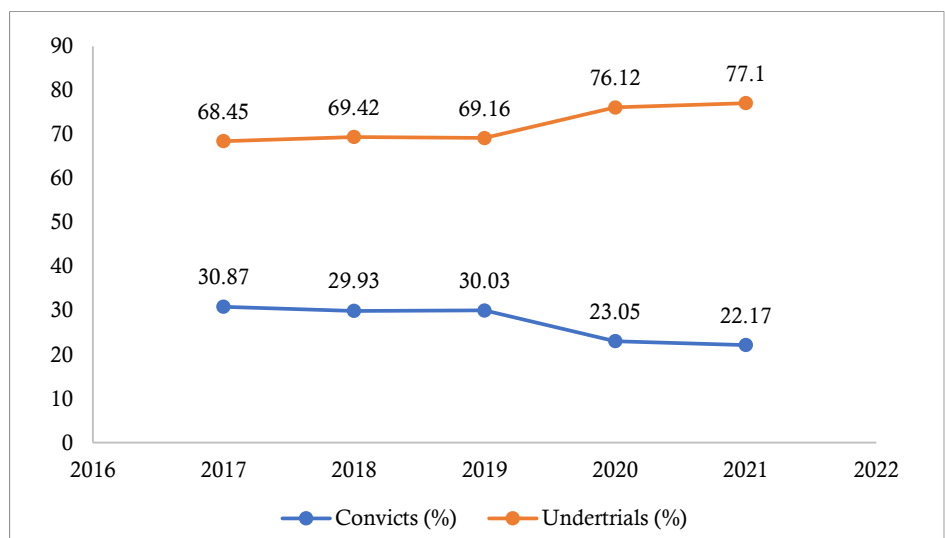
**Figure 1: Occupancy Rate and Overcrowding in Indian Prisons, 2017–2021**

Source: PSI, 2017, 2018, 2019, 2020, 2021



**Figure 2: Demography of Prisoners in India, 2017–2021**

Source: PSI, 2017, 2018, 2019, 2020, 2021



### Unnatural Deaths in Indian Prisons

Figure 3 shows the number of unnatural deaths, including suicide, murder by inmates, execution, deaths due to assault by outside elements, deaths due to firing, deaths due to negligence or excess by jail personnel, and accidental deaths.

Unnatural deaths were steadily increasing in Indian jails during 2017–2021. The major type of unnatural death was suicide. In 2021, 81.08% of the total 185 unnatural deaths were suicide, while inmates murdered 5.94%. The reasons for 7.02% of the unnatural deaths are not known or disclosed by the authorities.

However, the monthly statistics of cases registered by the NHRC, India, in 2021 revealed a shocking picture of custody deaths. Figure 4 shows the statistics. These data revealed 2,761 custody deaths in 2021, much higher than the total deaths in prison (1,879 natural deaths and 185 unnatural deaths) reported in PSI, 2021. These inconsistencies are also evidence of HR violations against prisoners in India.

### Indian Laws on Prisoners' Rights

India is a signatory to the Nelson Mandela Rules, which specified, 'All prisoners shall be treated with respect due to their inherent dignity and value as human beings' (UN, 2015, p. 2). Moreover, there are a few legislative provisions for securing a prisoner's HR. The Constitution of India ensures Protection against arrest and detention in certain cases (Art. XXII) as a fundamental right under the right to freedom (Government of India [GoI], 2022).

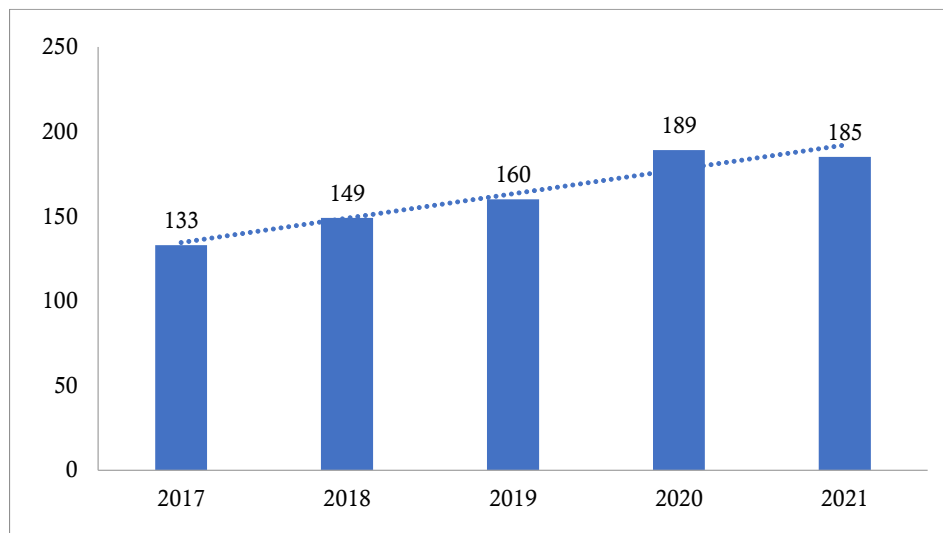
Section 1 states, 'No person who is arrested shall be detained in custody without being informed... nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice' (GoI, 2022, p. 11). Further, Section 2 clarifies that 'Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest ... and no such person shall be detained in custody beyond the said period without the authority of a magistrate' (GoI, 2022, p. 12).

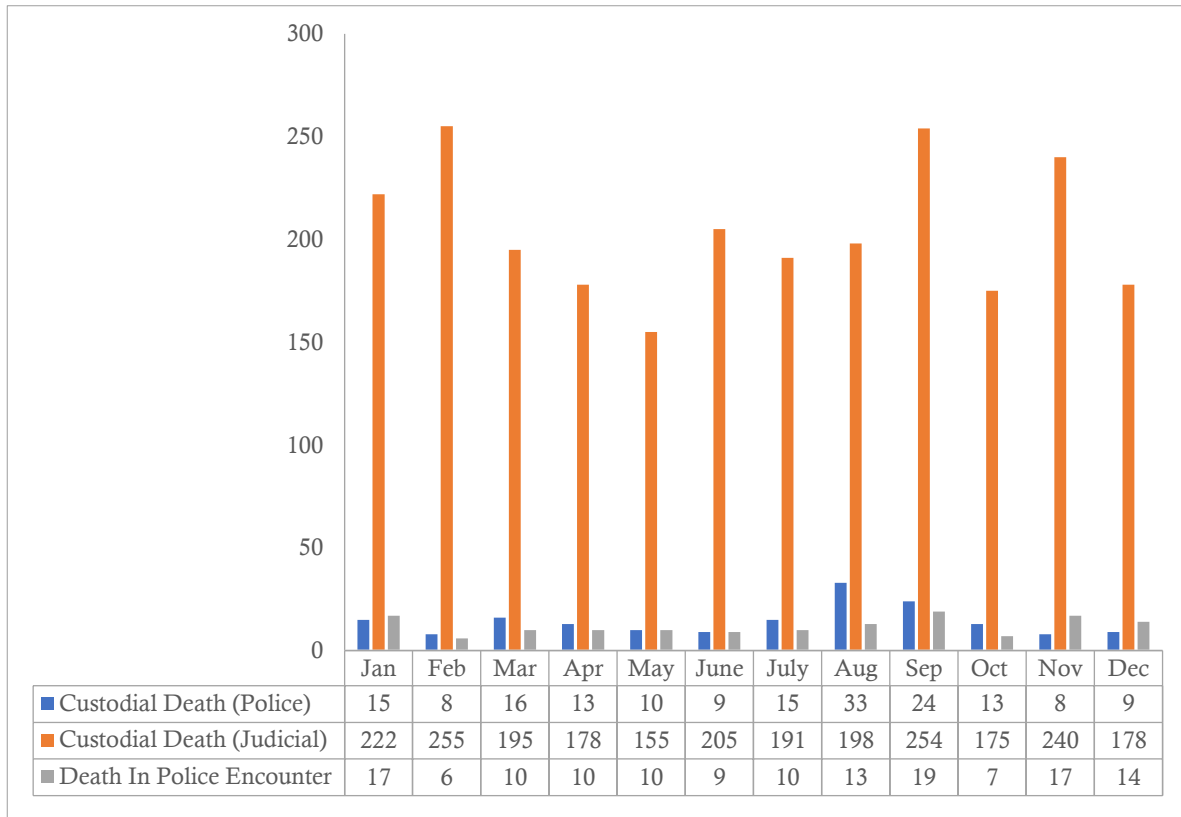
Further, Section 55A of the Code of Criminal Procedure 1973, which is inserted by Act 5 of 2009, states that 'It shall be the duty of the person having the custody of an accused to take reasonable care of the health and safety of the accused' (Ministry of Law and Justice, 2009, p. 4). Moreover, in the context of the century-old Prisons Act in India, the judiciary has made commendable interventions. The judgement by Justice V.R. Krishna Iyer in *Sunil Batra v/s Delhi Administration and Others* (1978) is a landmark judgement in relation to prisoners' rights in India. The court affirmed: 'Are prisoners persons? Yes, of course. ... fundamental rights do not flee the person as he enters the prison, although they may suffer shrinkage necessitated by incarceration. Our constitutional culture has now crystalised in favour of prison justice and judicial jurisdiction' (*Sunil Batra v/s Delhi Administration*, 1979, p. 17).

The Supreme Court of India laid down three principles of prison administration. '(i) A person in prison does not become a non-person, (ii) A person in prison is

**Figure 3: Unnatural Deaths in Indian Prisons, 2017–2021**

Source: PSI, 2017, 2018, 2019, 2020, 2021





**Figure 4: Custody Deaths in India, 2021**

*Source:* Human Rights Cases Statistics, 2021

entitled to all human rights within the limitations of imprisonment, (iii) There is no justification in aggravating the suffering already inherent in the process of incarceration' (Ministry of Home Affairs [MHA], 2016, p. 7). Besides, the All India Committee on Jail Reforms (Mulla Committee), 1980–1983, identified seven prisoners' rights. They are (a) Right to human dignity, (b) Right to basic minimum needs, (c) Right to communication, (d) Right to access to law, (e) Right against arbitrary prison punishment, (f) Right to meaningful and gainful employment and (g) Right to be released on the due date (MHA, 2016).

In line with Article 36A of the Constitution, which calls for free legal aid for those in need, the Indian parliament enacted the Legal Services Authorities Act of 1987 (National Legal Services Authority, 2019). It established the National Legal Services Authority and State Legal Services Authorities. Therefore, persons in custody are entitled to free legal services (MHA, 2016). The 2016 Model Prison Manual (MPM) provides the privilege of release on parole and furlough to prisoners selected based

on well-defined eligibility and suitability criteria. However, release on parole is not an absolute right but a concession (MHA, 2020). In addition, MPM, 2016, sets additional provisions for women prisoners and their children. Further, it includes provisions for installing CCTV cameras in prisons to prevent HRs violations of prisoners (MHA, 2016).

## DISCUSSION

Overcrowded prisons around the world pose complex and pervasive challenges in maintaining the health of inmates and providing a safe environment (MacDonald, 2018). In India, prison overcrowding is a perennial problem leading to HR violations. In 1994–1995, the 2,500-capacity Tihar Jail was overcrowded with 8,500 inmates, where women convict, prostitutes, undertrials and hardened criminals were housed together, wrote Kiran Bedi (2009), who set a blueprint for prison reforms in India. This review confirmed that overcrowding persists in Indian jails. As per the latest data by NCRB, 77.1% of the jail population is undertrials. So, a practical solution to prison

overcrowding is to restrict the prolonged detention of undertrials. To that end, courts must first refrain from adjourning the trial unnecessarily.

In 2013, MHA directed the state governments and Union Territories to use Section 436 A of the Criminal Procedure Code (Cr.P.C) to reduce prison overcrowding (MHA, 2013). Section 436 A specifies the maximum period of detention of undertrials; ‘... a person has, during the period of investigation... undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond...’ (MHA, 2013, p. 1). However, the undertrials, unaware of their rights and provisions for legal aid, continue in undue detention. Information professionals can intervene to convince underprivileged prisoners of their rights.

United Nations Office on Drugs and Crime (UNODC) developed strategies for reducing prison overcrowding worldwide since overcrowded prisons can lead to unsanitary and violent conditions that are detrimental to inmates’ physical and mental well-being (UNODC, 2013). UNODC’s handbook presents an action plan to curb overcrowding caused mainly by socio-economic factors, denied or delayed access to legal support, excessive pre-trial detention, inappropriate imprisonment and inadequate alternatives to imprisonment. The action plan includes short-term, medium-term and long-term strategies to mitigate jail overcrowding. The significant measures are to simplify and speed up Criminal Justice Process, enhance prisoners’ access to legal aid, reduce the duration of undertrial detention, introduce alternatives to imprisonment and promote post-release care or social integration of released prisoners to reduce recidivism (UNODC, 2013).

Prison overcrowding cannot be solved merely by building new prisons or changing prisons since a correlation exists between income inequality and prison overcrowding (Carranza, 2010). Social welfare measures to end social inequalities can effectively contribute to reducing crime rates and incarceration. Moreover, inequalities are the underlying cause of HR violations. Any poor and uneducated person unfortunate enough to be arrested faces inhumane prison conditions, torture and HR violation (Saxena, 2020).

An alarming number of custody deaths revealed in the Human Rights Cases Statistics 2021 by NHRC demands

a bar on remanding detainees to police custody. Severe HR violations leading to custody death must end by reforming police detentions and prosecuting officials who abuse detainees (Saxena, 2020). Furthermore, the number of suicides reported in annual prison statistics calls for urgent action per Rule 78 of the Nelson Mandela Rules to protect the mental health of prisoners and build hope and skills to reintegrate into society after release. Rule 78 specifies that ‘...prison staff shall include a sufficient number of specialists such as psychiatrists, psychologists, social workers, teachers and trade instructors...shall be secured on a permanent basis...excluding part-time or voluntary workers’ (UN, 2015, p. 24).

Prisons should not be universities of crime or ‘social dustbins’ (Corner *et al.*, 2007; Saxena, 2020) for keeping people with multiple needs. As Mahatma Gandhi said, ‘Crime is the outcome of a diseased mind, and jail must have an environment hospital for treatment and care’ (MHA, 2016, p. 6). Unfortunately, despite all the legal provisions, poor and illiterate people from the neglected and disadvantaged sections of society who are unaware of judicial remedies remain in detention. The discrimination and HR violations they face undermine their rehabilitation and lead to recidivism. Helping professionals must stand alongside these disadvantaged prisoners and provide them with information and instrumental support to protect their HR.

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