

RAJIV GANDHI NATIONAL UNIVERSITY OF LAW, PUNJAB

CENTRE FOR ADVANCED STUDIES IN CRIMINAL LAW

RESEARCH REPORT

ACCESS TO JUSTICE DURING COVID-19

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FOREWORD

Access to justice is one of the most crucial fundamental rights guaranteed under the Indian Constitution and is one of the principles of the human rights law. It ensures equality and is based on the principle of rule of law. It guarantees everyone to get equal access to the justice system. On this specific right all our other fundamental rights are very much dependent. Because without getting the access to justice system it is not possible to enforce our other fundamental rights.


The book tries to depict the different crucial issues that cropped up during the COVID-19 Pandemic for which ordinary people suffered tremendously. At this outset, how far the people were able to access the justice system was central point of research. Firstly, the most contemporary problem of cyber-crime has been discussed in general and cyber-stalking and cyber-harassment in particular. Recent studies have suggested an increasing graph of the crime of cyber-stalking and cyber-harassment. The relevant Indian legal framework has been highlighted and analysed as to measure its efficiency in addressing the said issues related to cyber world. Constant cyber harassment and exploitation shall attract punishment. Almost all the provisions after the IT Amendment Act 2008 were made bailable which hampers the process of deterrent punishment. This creates hindrance in sailing the ship of justice. However, the research has highlighted certain robust and effective laws of other countries such as, of the United States, United Kingdom, Philippines and Poland that addresses the menace of cyber-crimes in the respective countries.

Secondly, the matter relating to police brutality has been researched about. It has been showcased through the empirical study that how police brutality is a threat to right to life of a person and how the same has increased during the period of COVID-19. COVID-19 pandemic has given them a leverage and in the pretext of ensuring proper social distancing measures and complying with the guidelines, they are misusing the power they are entrusted with. The study concretizes that the COVID-19 pandemic has transformed the Police Brutality into a more exacerbated and aggravated form which has gradually become intolerable and calls for immediate acknowledgment and remedial measures. The study has suggested several remedial measures like, establishment of Police Review Boards which is in practice in America, establishment of statistical repositories to monitor killings by law enforcement officials, assessment of individual accountability of police officers and so on. The study further referred to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or

Punishment, 1984; UN International Human Rights Standards for Law Enforcement, 1997; UN Human Rights Standards and Practices for the Police, 2004 and recommended for conformity of the national laws with them.

Thirdly, the flawed parts of the Indian Criminal Justice System have been discussed with special reference to the prison administration in India during COVID-19 pandemic. Several lacunae that exist in the prison administration have heavily challenged the lives of the prisoners during the said period. Even the under-trial prisoners were equally faced with severe challenges to their lives. There were no medical personals to treat them if they were COVID positive. Moreover, during the COVID pandemic the justice system was exorbitantly delayed. There were backlogs of the cases which further threaten the lives of the jail inmates. The research also highlighted the problems that created hindrance in accessing the justice system during the COVID-19 pandemic. A comparative analysis has also been drawn between the crimes recorded during COVID-19 in New York and New Delhi. The research concluded with comments that justice delivery system of the India has been affected the most, due to insufficient staff, resources, and constant lockdowns.

Lastly, the difficulties and hostilities faced by the transgender people during the COVID-19 period were emphasised upon and more particularly the focus was on the challenges they met behind the bars that is in the prisons. Even though the Supreme Court judgment of *NALSA v. UOI* [(2014) 5 SCC 438], clearly states that lack of documents of transgender cannot be a reason to deny benefit or employment but this does not seem to be a reality on ground. They always remained an excluded community in the society. Moreover, the pandemic did worsen their situation. The members of the transgender community during the COVID-19 pandemic struggled with loss of income. They faced discrimination and stigma that jeopardised access to relief and healthcare. The study further pin-pointed the faulty Indian discourse on prison reforms which recognize women as vulnerable groups and fails to acknowledge transgenders, thus rendering them invisible. A study referred in the research revealed that, few of the transgender women were lodged in the prison along with 2000 male prisoner and they raped by the latter. The research has reviewed the Transgenders Persons (Protection of Rights) Act, 2019 and Transgender Persons (Protection of Rights) Rules, 2020 among the other relevant laws and practices that shaped the lives of transgender community and deliberated on how laws and policy should be reformed.

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I. CYBER-STALKING

BY - HARSHEETA RAI SHARMA, HRITIK PATHAK, MANASVITA TEJA, MRIDUL THAPLU.

RESEARCH METHODOLOGY

During the course of the research, we have taken help of Research Articles available on JSTOR, Manupatra, Research Gate and various E-Library Resources.

Apart from the same, we have also conducted an Interview using Google Forms wherein Data was collected and analysed for the purpose of formulation of this report.

1. INTRODUCTION AND BACKGROUND

The advancement of information technology has brought with it a slew of new and dangerous risks. When the internet was created, its creators had no idea that it would have such negative consequences. However, the criminal mindset of social psyche began to be misused by utilising the internet as a medium of wrongdoing, giving rise to "Cyber-crime," and the world now faces a significant threat from these cyber criminals. Cybercrime is a big issue these days. Also, with advancement of technology, cyber-crime and female victimisation are on the rise, posing a serious threat to a person's overall security.

Cyber stalking is among the most common forms of cybercrime in today's society. The term "stalking" refers to a stealthy pursuit. The terms "cyber stalking," "online harassment," and "online abuse" are interchangeable. It is stalking or harassing someone through the Internet or other electronic methods. Cyber stalkers do not have to go out from their houses to find or stalk their victims, and that they have no fear of physical harm since they feel they cannot indeed be contacted physically in online world. They stalk people through the Internet, e-mail, and other electronic communication technologies. Simultaneously, the online world produces "remoteness" on the side of the stalker, as well as a false sense of security based on the Internet's apparent anonymity.

In the case of *Burstow*¹, the Crown Court had a case wherein the accused was calling the victim repeatedly with silent phone calls, thereby leading the victim into a state of depression. The accused was held liable.

¹ R v. *Burstow*, (1996) Crim LR 331.

In the case of *R v. Ireland*², the Court of Appeals talked about and elaborated the meaning of Assault wherein they said that, a series of calls which are thereafter, followed by silence would constitute an offence of assault. Despite the fact that India was one of the few countries to pass the Information Technology Act of 2000 aimed to tackle cybercrime, women's issues remain neglected. Under the Act, hacking, posting obscene content on the internet, and tampering with data are all significant offences. The Criminal Law Amendment Ordinance of 2013 includes Section 354D to bridge the gap because this Act does not effectively address the serious threat to women's safety in general.

2. DECONSTRUCTING CYBERSTALKING

2.1 DEFINITIONS UNDER INDIAN LAWS AND FOREIGN LAWS

Cyber stalking has been understood primarily as a behavioural misbehaviour conveyed via digital communication technology in academic circles. Cyber stalking is defined as “*a group of behaviours in which an individual, group of individuals or organization, uses information and communications technology to harass one or more individuals. Such behaviours may include, but are not limited to, the transmission of threats and false accusations, identity theft, data theft, damage to data or equipment, computer monitoring, the solicitation of minors for sexual purposes and confrontation*”³. According to Brenner, “*in a sense, cyber stalking and cyber harassment are lineal descendants of the obscene or annoying telephone call offenses that were created roughly a century ago, to address harms resulting from the misuse of a nineteenth century technology*”⁴. Further, Ellison and Akdeniz had construed the term cyber stalking as “*online harassment, which may include various digitally harassing behaviours, including sending junk mails, computer viruses, impersonating the victim, etc.*”⁵

2.2. DIFFERENT FORMS OF CYBER STALKING

- Simple Obsessional

A pre-existing relationship occurs between the stalker and the victim in ‘simple obsessional’ stalker activity. An acquaintance, colleague, or co-worker might be the

² *R v. Ireland*, (1997) 1 All ER 112.

³ P. Bocij, M.D. Griffiths, L. McFarlane (2002), *Cyber Stalking: A new Challenge for Criminal Law. The Criminal Lawyer* at pp. 3-5.

⁴ S. Brenner, *Cyber Crime Metrics: Old Wine in New Bottles?*, VIRGINIA JOURNAL OF LAW AND TECHNOLOGY, (2004) 13, pp. 1-53.

⁵ L. Ellison, Y. Akdeniz, *Cyber-stalking: the Regulation of Harassment on the Internet*, CRIMINAL LAW REVIEW, (1998) at pp. 29-48.

victim. When a relationship has failed or ended, or when the stalker believes he has been abused, stalking begins. As vengeance, he tries to recreate the same degree of closeness or harasses the victim. This kind of stalking has the potential to be the deadliest.

- Erotomaniac

When an 'erotomaniac' is present, the subject feels that the victim loves him passionately despite the fact that they have never met. Because the stalker is looking out for the victim's best interests, this form of activity does not do any harm.

- Love Obsessional

Individuals may not know the obsessional topic directly, but they generally learn about them from the media, and their objective is to get their targets to respond to their demonstrations of affection.

2.3 DIFFERENCE BETWEEN PHYSICAL STALKING AND CYBER STALKING

The main difference between the two terms being as under:

To begin, the two words can be separated based on the stalker's and victim's geographical closeness. Whereas the stalker and victim are physically close to one another in physical stalking, the stalker and victim may not be inside the same geographical bounds in online stalking.

Secondly, the stalker's relationship with the victim distinguishes the two. In interpersonal interactions, stalking can take the form of physical contact. The stalker is familiar with the victim. A personal link between the stalker and the victim is not required for cyber stalking. A stalker may pick a target at random.

Thirdly, the physical stalking makes it impossible for the stalker to conceal his identify, making it easier for investigators to hunt him down. He follows the victim to work, home, and other places, so his routine is predictable. Cyber stalkers, on the other hand, have a great amount of anonymity. Anyone with a good understanding of technology may conceal their identity in the virtual world. Because the stalker uses a digital network and that there is no physical interaction, it is difficult to foresee. The stalker conceals his or her identity, making it harder for authorities to find the perpetrator.

In the instance of physical stalking, the stalker's lack of anonymity makes it simpler for him to watch his victim's movements in the real world, rendering him subject to criminal action.

Because the stalker's identity is disguised and difficult to track, cyber stalking poses a lower danger of criminal action.

3. CYBER-STALKING IN INDIA: AN ANALYSIS

3.1. INDIA'S FIRST CYBER-STALKING CASE

The first example of cyberstalking in India was recorded in 2001⁶. Ms. Ritu Kohli was employed in New Delhi for a consulate when her seemingly routine life was flipped upside down. She began to get a couple of emails from an anonymous person. Through emails, the person threatened her with either posing naked for him or paying Rs.1 lakh. She first ignored the messages. However, she became concerned when she began getting similar threatening notes in the mail. Manish Kathuria, the accused, warned Kohli in letters and emails that he would post her morphed photographs on sexual sites, along with her phone number and address. He also was accused of posting the same photos around her neighbourhood.

Kohli was so upset that she filed a police report. The police charged the accused with outraging Ritu Kohli's modesty under Section 509 of the Indian Penal Code, 1860. However, online behaviours that offend a woman's modesty were not mentioned in Section 509.

This served as a wake-up call to the Indian government, highlighting the necessity to modify legislation relating to the aforementioned crime and the prevention of crime. As a result, the Information Technology Act of 2000 was revised in 2008, and Section 66A was added, which stated:

Punishment for sending offensive messages through communication service, etc.: "Any person who sends, by means of a computer resource or a communication device, -

(a) any information that is grossly offensive or has menacing character; or

(b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device,

⁶ Kuber Sharma, CYBER-CRIME: PREVENTION BETTER TILL FOOLPROOF FIREWALLS IN PLACE, Hindustan Times (Dec. 22, 2003) <https://www.hindustantimes.com/india/cyber-crime-prevention-better-till-foolproof-firewalls-in-place/story-Q1Y65K560aIKWIMdrCIIrO.html>.

(c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages, shall be punishable with imprisonment for a term which may extend to three years and with fine.”

In a historic decision defending freedom of expression, the Section was eventually knocked down. The abovementioned part, according to the supreme court, falls short of Article 19(2) of the Indian Constitution, which deals with freedom of speech. *Shreya Singhal v. Union of India*⁷ was the case that led to this ground-breaking decision after a series of petitions.

Another part of the Act, Section 67A, which deals with cyber stalking and is a copy of Section 292 of the Indian Penal Code, states:

Punishment for publishing or transmitting of material containing sexually explicit act, etc. in electronic form:

“Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees.”

This section can be linked to online stalking because it deals with publishing obscene content in electronic form. The stalker is guilty of an offence under Section 67A of the IT Act if he publishes any obscene material about the victim in electronic form.

Section 66E of the Act deals with voyeurism and reads as follows:

“Whoever, intentionally or knowingly captures, publishes or transmits the image of a private area of any person without his or her consent, under circumstances violating the privacy of that person, shall be punished with imprisonment which may extend to three years or with fine not exceeding two lakh rupees, or with both.”

⁷ *Shreya Singhal v. Union of India*, (2013) 12 S.C.C. 73.

Section 67B of the IT Act deals with the publishing of obscene material targeting children below 18 years of age, and states that:

Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc. in electronic form:

Whoever, -(a) publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct or

(b) creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner or

(c) cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource or

(d) facilitates abusing children online or

(e) records in any electronic form own abuse or that of others pertaining to sexually explicit act with children, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with a fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees

Apart from the Information Technology Act, 2008, the Indian Penal Code, 1860, also has provisions pertaining to the offence of cyber stalking. The IPC section 354D defines stalking. It goes like this:

(1)any man who-

1. follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or

2. monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking.

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Section 354C of IPC criminalises the offence of Voyeurism. It states that:

“Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.”

The victim might also file a court case against the abuser under Section 499 of the Indian Penal Code. Acts of stalking done with the purpose of preventing and detecting crime by a person charged with such responsibility by the state are exempt from the provision. Furthermore, cases in which pursuing such action was reasonable or in which the individual was authorised under any act cannot be used to infer stalking.

Criminal intimidation is defined under Section 503 as threats made to any person with the intent to harm her reputation, either to cause her panic or to force her to alter her mind about anything she would otherwise do or not do. Violations under Sections 499 and 503 are penalised by a maximum sentence of two years in jail and/or a fine.

Criminal intimidation is defined under Section 503 as threats made to any person with the intent to harm their reputation, either to cause panic or to force her to alter her mind about anything she would otherwise do or not do. The violations made under Sections 499 and 503 are penalised by a maximum sentence of two years in jail and/or a fine.

Whenever an abuser is continually pestering you with disparaging verbal abuse because of your gender, Section 509 of the IPC comes to your rescue. The clause states that anybody who says anything, makes a sound, or makes a gesture with the intent to offend a woman's modesty by

saying something, making a sound, or making a gesture, will be sentenced to one year in jail and/or a fine.

Section 507 of the Indian Penal Code punishes criminal intimidation through anonymous communication with a sentence of up to two years in jail.

Under Section 228a of the IPC, vengeful publication of photos or films of rape victims is punished by up to two years in jail and a fine.

In India, the concept of cyber stalking did not receive any new research papers until 2010, when Halder and Jaishankar provided a useable definition of cyber stalking, which is as follows: *“In one word, when ‘following’ is added by mens rea to commit harm and it is successfully digitally carried out, we can say cyber stalking has happened.”*⁸ Following the horrible Delhi Gang rape, the Justice Verma Committee was formed to address the growing number of crimes against women. S.354D of the Indian Penal Code, which was incorporated through the Criminal Law Amendment Act, 2013, was enacted in response to such a proposal, making stalking a legal offence in India.

3.2. INFORMATION TECHNOLOGY ACT, 2000

Unfortunately, despite the fact that Chapter XI of the IT Act addresses offences such as

- Tampering with computer source documents (s.65),
- Hacking with computer system (s66),
- publishing of information which is obscene in electronic form (s.67)
- Access to protected system(s70),
- Breach of confidentiality and privacy (s. 72),
- Publication for fraudulent purpose (s.74)

The Information Technology Act of 2000 still needs to be amended. It makes no special mention of crimes against women or children. Jurisdiction, evidence loss, a lack of cyber army, and cyber savvy judges are the most basic issues linked with cybercrime. The judiciary has a critical role in determining how laws are enacted in accordance with current events. The P.I.L., which the Kerela high court approved through email, is one such milestone that ought to be recognised.

⁸D. Halder, K. Jaishankar, *Cyber Victimization in India: A Baseline Survey Report*, (2010). www.cybervictims.org/CCVCresearchreport2010.pdf.

With the expanding arms of cyberspace, territorial borders appear to be vanishing, and the idea of territorial jurisdiction, as envisioned under S.16 of the C.P.C. and S.2. of the I.P.C., will just have to make way to other conflict resolution methods. Again, Obscenity – personal viewing – is not a crime under any provision of the IT Act 2000; in contrary, if it is proven that someone has published, transmitted, or caused to be published in electronic form solely, it can be an offence under Section 67. Lastly common cybercrimes such as cyber stalking, morphing, and email spoofing are not included as offences under the IT Act 2000.

The offence of cyber stalking is not clearly addressed under Indian legislation. The criminal can be punished under the aforementioned rules, however there is no speech statute that specifically addresses this offence. It facilitates the conduct of the crime, while the consequences for the victims' physically and psychologically well-being are severe and long-lasting. The punishment granted under existing regulations should be enhanced, taking into account the victim's impact.

3.3. EMPIRICAL RESEARCH FINDINGS

Last year, a poll of 1,035 individuals conducted by the multinational security firm Norton indicated that social media abuse is on the upswing in India. Eight out of ten persons have experienced some type of online harassment, cyber bullying, or cyber stalking, according to the study's findings. According to a research, social media sites such as Facebook, Twitter, and sometimes even Instagram might be used by cyber-stalkers as a medium for Stalking and Bullying. At these platforms, victims frequently pick up or run into offenders. This might be due to the fact that 39% of youngsters do not enable their social media privacy settings. Nevertheless, 95% of kids who have observed harassment on social networking sites say that someone else has overlooked the behaviour as well.

Furthermore, 25% of kids using social media said that online situations led to face-to-face confrontations. As a result, one has to be cautious as to what they publish on social networking sites and who they contact with. The findings also supported the popular belief that women are more likely than males to be victims of cyber-stalking.⁹

⁹ Available on (<https://www.globalsign.com/en-in/blog/what-is-cyberstalking-and-how-to-prevent-it/>).

4. KEY TAKEAWAYS FROM FOREIGN NATIONS

4.1. THE UNITED STATES

The anti-stalking, slander, and harassment legislation in the United States make the offence of cyber stalking illegal. Because of the federal nature of the United States, state and federal laws exist to address the problem of stalking. In addition, there are three significant federal laws that deal with harassment.

- Interstate Communications Act
- Federal Telephone Harassment Statute
- Federal Interstate Stalking Punishment and Prevention Act

Threats to hurt another person are prohibited under the Interstate Communications Act. The criterion is that the threat must involve injuring or kidnapping someone. The communication should be of such a kind that it would be taken seriously by a reasonable person. However, the law ignores internet stalking, which produces harassment without posing a threat of harm. In *United States v. Alkhabaz*,¹⁰ the defendant used the internet to express violent sexual fantasies against one of his classmate's son. The court determined that he did not break the law because the communication lacked a threat element.

In 2006, the Federal Telephone Harassment Statute, which was enacted in 1934, was updated to address the issue of cyber stalking. Telecommunication devices were redefined to include any device or programme that communicates over the internet. The law stipulates a two-year sentence for using a telecommunication equipment to annoy, abuse, or threaten another person. However, the Act contains a number of severe flaws. One of the most important is the necessity that all communication be done in an anonymous manner. Second, the law only applies to direct communications and ignores the concept of third-party harassment brought up by the Cyber Stalker.

Cyber stalking is expressly addressed in the Federal Interstate Stalking Punishment and Prevention Act of 1996. It bans anybody from using any interactive computer device to harm, murder, harass, or cause serious mental distress with the purpose to do so.

¹⁰ United States v. Alkhabaz, 104 F.3d 1492.

4.2. THE UNITED KINGDOM

In the United Kingdom, there is no specific legislation dealing with internet stalking. Instead, there are three key statutes that are utilised to combat harassment, and they are also employed in stalking cases.

In the United Kingdom, there is no legislative framework dealing with internet stalking. Instead, there are three key statutes that are utilised to combat harassment, and they are also employed in stalking cases. The three principal statutes used to combat stalking and cyber stalking are the Telecommunications Act of 1984, the Malicious Communications Act of 1988, and the Protection from Harassment Act of 1997. Sending an inappropriate, threatening, or indecent message is illegal under the Telecommunications Act of 1984. The 1988 Act, which has a broader scope, punishes people who send letters or deliver materials with the intent to cause fear or distress.

4.3. PHILIPPINES

The Section 282A- 282C of the Penal Code deals the offence of stalking The Cybercrime Prevention Act of 2012, covers crimes committed against and through computer systems. It contains substantive penal regulations, procedural procedures, and international cooperation rules.

The Supreme Court issued a temporary restraining order on October 8, 2012, delaying the law's implementation for 120 days. The administration asked for the TRO to be lifted in early December 2012, but it was denied. On January 15, 2013, petitioners presented the oral arguments, which were followed by a three-hour rebuttal by the government's Office of the Solicitor General on January 29, 2013. The Supreme Court's oral arguments were uploaded online for the first time in Philippine history.

4.4. POLAND

Stalking, including cyberstalking, was made a criminal offence under the Polish Criminal Code on 6 June 2011. Prior to the 6 June 2011 amendment, law enforcement agencies had extremely little capacity to combat stalking with existing legislation because they did not provide proper immunity to victims. The most significant statutory components of the amendment describe stalking as a multifaceted offence in which harassment entails repeated behaviours that distress, torture, bully, or upset the victim.

Currently, the Polish Criminal Code treats stalking as a single crime, with no distinction made between traditional stalking and cyberstalking.

"Anyone who, via repeated harassment of another person or another person's next of kin, produces a legitimate sense of danger or seriously violates the person's privacy, is subject to imprisonment for up to three years," according to Article 190a §1 of the Polish Criminal Code.

According to the 2011 amendment of Article 190a §1, *"anyone who produces a legitimate sensation of threat or seriously infringes on a person's privacy through persistent harassment faces a punishment of deprivation of liberty for up to three years"*.

New restrictions also apply to the exploitation of a detriment's picture or personal data in order to inflict material harm.

5. CONCLUSION

Cyber-stalking is a crime which is still in its nascent stage but has the capacity to develop. Everyone who has accessibility to smartphones, computers and internet can delve into cyber stalking. Illiterate people who are well versed with the internet can also attract cyber stalking. Constant cyber harassment and exploitation will attract punishment. Almost all the provisions after the IT Amendment Act were made bailable which hampers the process of deterrent punishment. Many people who are outside the country who harass women are sometimes not punished as there are no stringent laws in place. In some cases where the laws are robust, the implementation and interpretation of the same is not. This does not help in the smooth sailing of justice. In an era, wherein everything has conformed to a gender-neutral society, one cannot pin-point perpetrators as only and specifically males. Some shortcomings and suggestions of laws related to cyberstalking are as follows:

1. *Firstly*, Section 340 D of the Indian Penal Code is a gender conforming provision which provides that only a male can be a perpetrator and the woman a victim. However, that is not true.
2. *Secondly*, Section 509 of the Indian Penal Code provides for a gender biased approach and also streamlines itself to *"utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen"*. This makes it difficult to charge someone under this section for cyber stalking as the words make it clear that physically stalking will be applicable in the present case.

3. Moreover, there is not set or stringent provision for someone hacking into an account and taking the victim's private pictures through hacking. This also construes as cyber stalking. A provision for the same should be added.

In numerous cases, men are often the victims of online harassment. This calls for sensitization towards gender neutral victims and laws as well. India needs a wakeup call for its citizens to understand that harassment of any kind can leave the victim psychologically, mentally and even physically scarred.

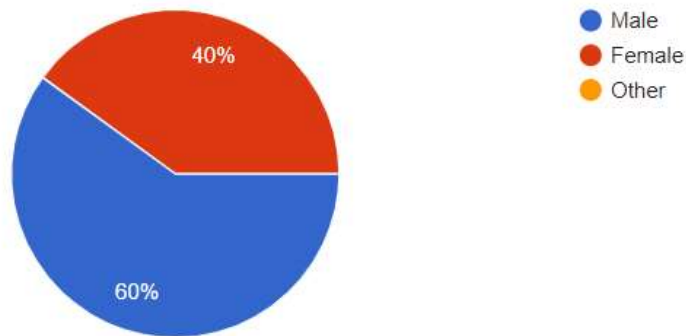
II. POLICE BRUTALITY & PANDEMIC

BY - AGAM BANSAL, MANVEE SHARMA, PRATYUSH PANDEY, SHREYANSH RATHI.

1. UNDERSTANDING POLICE BRUTALITY

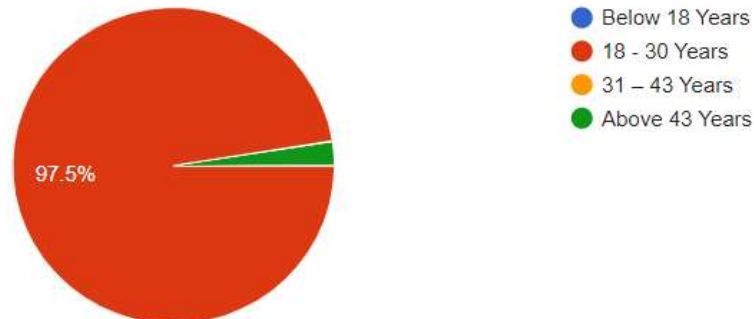
Gender of Respondent

40 responses



Age Group of Respondent

40 responses



“Returning violence for violence multiplies violence, adding deeper darkness to a night already devoid of stars.”

~ Martin Luther King, Jr.¹¹

An effective democratic structure, as can be interpreted from the words of the great Martin Luther King Jr., is one where the rule of law governs the civil society. The well-off or resourceful class must not abridge the civil, political and legal rights of the poorer domain of

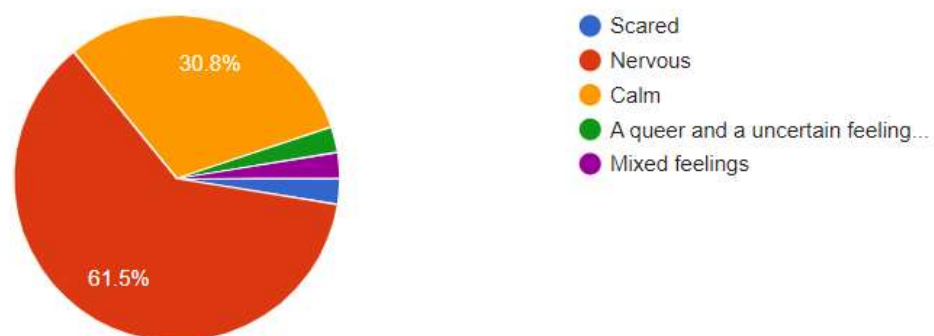
¹¹ John A. Kirk, *State of the Art: Martin Luther King, Jr.*, 38 J. AM. STUD 329, 347 (2004).

the society through sheer dominance of will and by the use of force. For such an effective democratic structure to exist, it is imperative that the agencies tasked with law enforcement fulfill their obligations to the fullest. Such imperativeness might exist in a utopian world and are rarely found in the world we live in.

An efficient, effective and reliable policing machinery is the substratum on which the whole edifice of constitutional will, upholding the rule of law, maintenance of order in the society, discovery of criminal activity, and process of enforcing social policies and legislations rests.¹² However, as perplexing as it may seem, it is globally observed phenomenon that the police force has been chastised and blamed for acting in ways that are in direct opposition to the above-mentioned treasured goal.¹³ The fundamental reason for such a sad state of affairs is that the powers given to the police to conduct their statutory duties are fit for being manhandled by them in order to torture the citizenry, to obliterate lives and property, and abuse and scare the marginalised.¹⁴

How do you feel when you generally interact with a Police Official?

39 responses



1.1 HISTORY AND DEFINITIONS OF POLICE BRUTALITY

The English word 'police' has been extracted from the Middle French word '*police*', which has been derived from the Latin term '*politia*', which itself has its origins in Ancient Greek, and signifies a state or administration.¹⁵ In the contemporary world, Section 2(b) of the Police

¹² Nirman Arora, *Custodial Torture in Police Stations in India: A Radical Assessment*, 41 J IND L INST 513, 513 (1999).

¹³ *Id.* at 513.

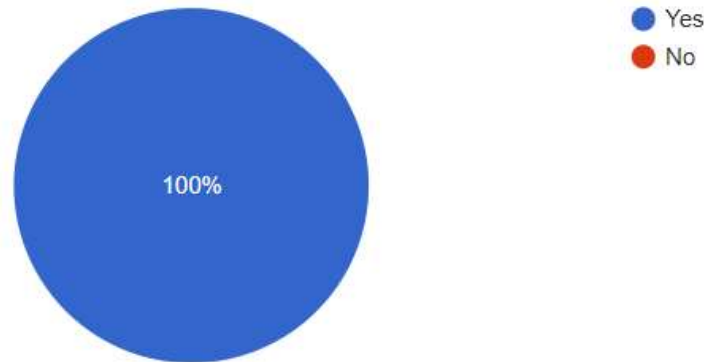
¹⁴ Md. Mohibul Haque, *Police Atrocities in India*, 10 THE THIRD CONCEPT 33, (1996).

¹⁵ Sourav Suman, *The Police Brutality in India: A Critical Analysis*, 6 INT J. LEG. DEV. ALLIED ISSUES 34, 35 (2020).

Forces (Restriction of Rights) Act, 1966, explains the term ‘police-force’ as “*any force charged with the maintenance of public order.*”¹⁶

Do you know about the term “Police Brutality”?

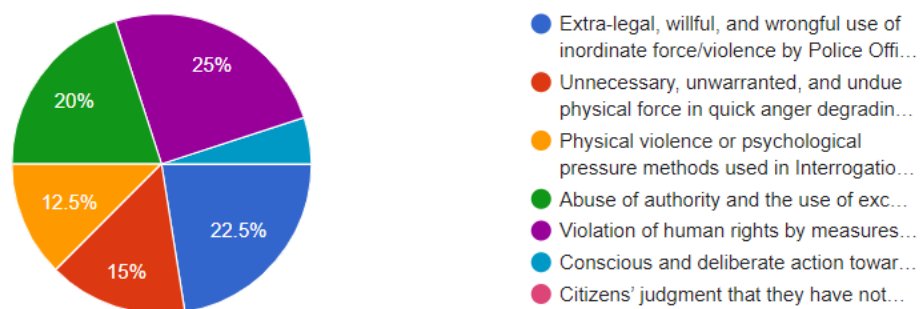
40 responses



Police brutality, on the other hand, can be defined as custodial tortures, killings, verbal abuse or any sort of physical abuse committed on a person. Such form of abuse can be imposed on a person to fulfill various objectives like extorting confessions, fulfilling administrative and political objectives, or sometimes even to discriminate based on social, cultural, racial or religious lines. Brutality committed by police usually includes intense suffering to a particular individual in order to fulfill the aforesaid objectives.

How do you BEST understand the term Police Brutality (also known as Police Use of Excessive Force)?

40 responses



India is a country which has approx. 2.4 million men and women in the police force as per the National Crime Records Bureau data of 2011. The Police as an authority has existed in India

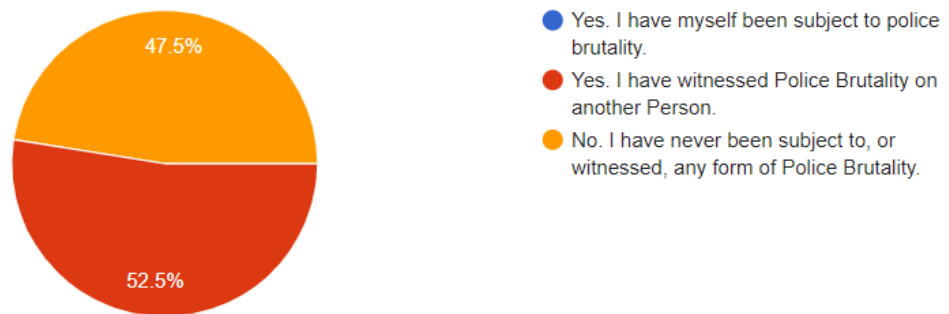
¹⁶ The Police-Forces (Restriction of Rights) Act, 1966, § 2, No. 33, Acts of Parliament, 1966 (India).

since time immemorial in some form or the other in order to maintain public order and enforce the laws and regulations passed by the authorities. While in the colonial era, some police statutes were passed; in the post-independence era, the powers and actions of Police are regulated by the constitution, by various statutes and Supreme and High Court judgements and a number of internal rules and procedures regulating the usage of force and governing the circumstances in which usage of force by police officials is permissible. However, in light of the growing instances of police brutality both in pre and post COVID-19 times, a large majority of the country’s population has a growing consensus that end to police brutality and violence needs to be elevated as a national agenda.

2. CAUSES OF POLICE BRUTALITY

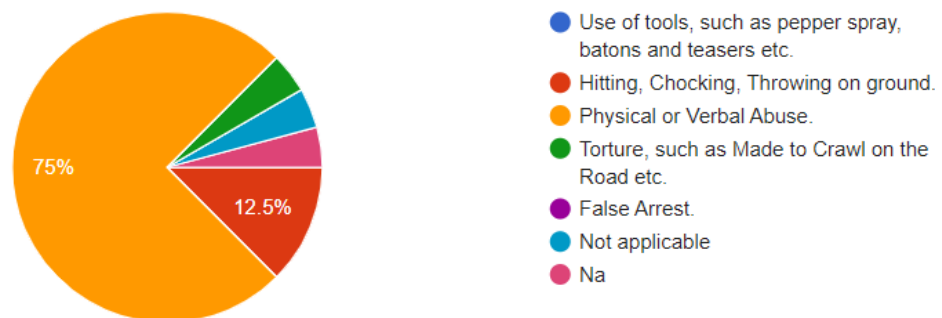
Have you ever been subject to, or have witnessed, any form of Police Brutality?

40 responses



If yes, in what form have you been subject to, or have witnessed, Police Brutality?

24 responses



Police brutality is a serious problem in India which results in a direct violation of human rights. Recently, consortium of NGOs released a report against Custodial Deaths which stated that

daily around 5 people die of custodial deaths and 1731 deaths took place in 2019.¹⁷ In fact, there are a number of deaths which go unreported. Thus, it is high time that some measure is taken to prevent the custodial deaths from becoming a common phenomenon. In order to cater to the problem of police brutality, it is extremely necessary to understand the factors which lead to it. These include:

2.1 IMPROPER AND INADEQUATE TRAINING

Over the years, there has been a constant change in the society and development has taken place. Thus, it is extremely necessary to keep police officials updated by giving them proper training so that they use reasonable force and focus on self-detainment. With ongoing changes and improper training, these law enforcement officers continue to have the same line of thought thus, resulting in countless incidents of police brutalities.¹⁸

2.2 MENTAL HEALTH ISSUES

Mental health of the police officials also plays an important role in cases of Police Brutality. A 2019 study suggests that the officials having greater levels of PTSD, have higher chances of engaging into abusive police practices.¹⁹ It enhances their aggression and there are higher chances that they will end up overreacting and thus, use force even when it is not required.²⁰ This also involves stress of job so, if they are not confident about their roles they may end up being hostile and unsympathetic.

2.3. LACK OF STRINGENT PUNISHMENT

Instead of using reasonable force to punish the offenders, most of the time police officials resort to excessive or unnecessary force. In fact, they may even swing or hit citizens with weapons. As per the data available, reasonable force was used only in less than one percent encounters.

¹⁷ *Five Custodial deaths in India daily, says report* (June 27, 2020), <https://www.thehindu.com/news/national/five-custodial-deaths-in-india-daily-says-report/article31928611.ece>,

¹⁸ Spangenberg, Shibley & Liber LLP, *What are the main causes of Police Brutality?*, Spanglaw (Dec 17, 2020), <https://www.spanglaw.com/blog/2020/december/what-are-the-main-causes-of-police-brutality/>.

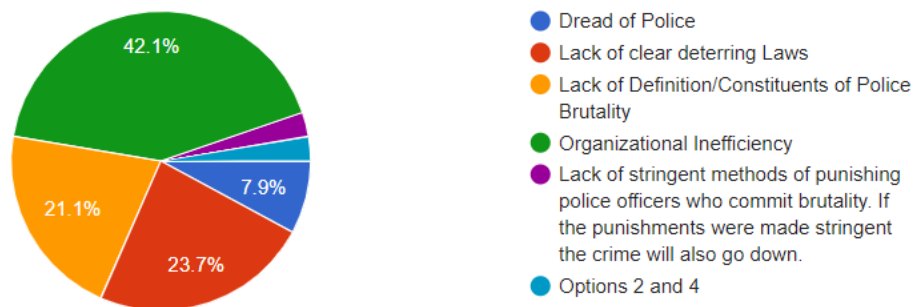
¹⁹ Arlin Cunic, *The Psychology Behind Police Brutality*, VeryWellMind (Jan. 17, 2021), <https://www.verywellmind.com/the-psychology-behind-police-brutality-5077410#citation-14>.

²⁰ DeVlyder J, Lalane M, Fedina L., *The association between abusive policing and PTSD symptoms among U.S. police officers*, 10, *J Soc Work Res*, 261 – 273 (2019)

Further, due to lack of accountability, these officials using excessive or unreasonable force are never punished. In fact, in most of the cases there exists no stringent method to punish them and therefore, they continue to practice the same evil.

What are the main Causes for the presence of Police Brutality in India?

38 responses



3. EFFECTS OF POLICE BRUTALITY

“Public health is about a population being healthy. When people experience police brutality, they become unhealthy,”.²¹

Necessarily, police brutality greatly affects the health and, in some cases, even leads to the death of those who experience it. This is one of the reasons that huge protests have been organized by the people against the accumulation of power in the hands of police officials. In order to truly understand its threat, we need to understand what impact it has on public health.

3.1 LEADS TO INJURY AND DEATH

Police violence kills often leads to death. The major reason why it is not regarded as a public health issue is the fact that the government fails to keep the track of the number of people who are killed through police brutality every year.

It affects public health as it impacts an important indicator of public health, i.e., the *life expectancy*, which means the number of years an individual is expected to live.²² Thus, it lowers down the life expectancy of people by increasing the death rates.

²¹ Carolyn L. Todd, *Why Police Brutality is a Public Health Issue*, Self.com (June 17, 2020), <https://www.self.com/story/police-brutality-public-health-issue>.

²² Esteban Ortiz-Ospina, “*Life Expectancy*” – *What does this actually mean?*, Our World In Data (Aug. 28, 2017), <https://ourworldindata.org/life-expectancy-how-is-it-calculated-and-how-should-it-be-interpreted>.

3.2 DETRIMENTAL TO VICTIM’S MENTAL HEALTH

It leads to injury and death of those who are directly affected by it along with the disruption of mental health and well-being. This also impacts the health of the entire community that is affected by the incident of police violence. As seeing a member of your community, caste, race etc, getting hurt or murdered without any fault of his is indeed, heart-breaking.

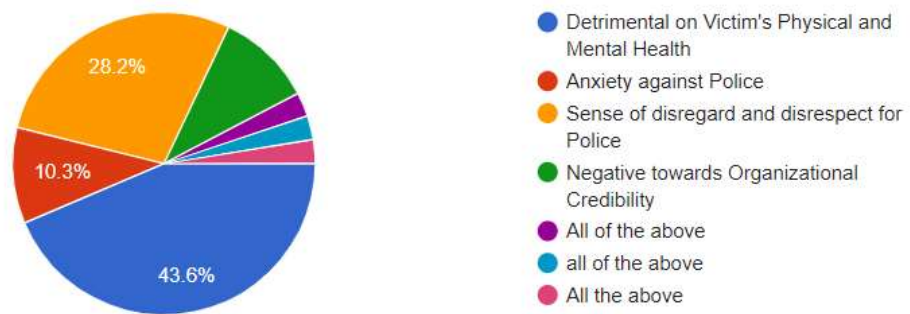
Further, the survey conducted reflected that 43.6% people (out of 39) consider mental and physical impacts to be the major effects of Police Brutality.

3.3 AFFECTS ORGANIZATIONAL CREDIBILITY

Police is considered to be a law enforcement agency. When instead of implementing the law, it takes law in its own hands, it results in breach of law and order. The main aim of police officials is to help people enjoy their rights and duties. In cases, when these officials themselves become the perpetrators of crime, the credibility of the organization is compromised. In fact, the survey suggested that 10.3 % people believe that one major impact of police brutality is the loss of credibility on police officials.

What are the major effects of Police Brutality?

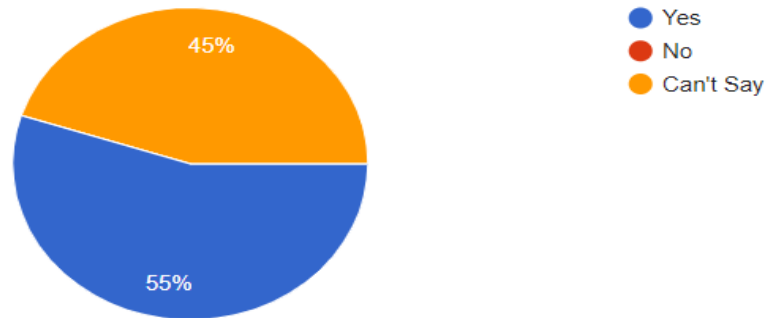
39 responses



4. COVID-19 AND THE AGGRAVATION OF POLICE BRUTALITY

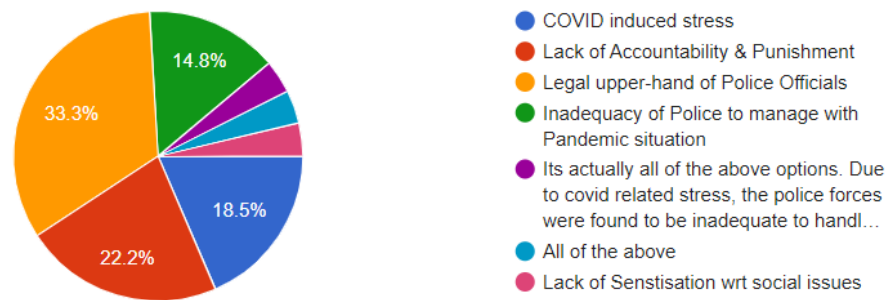
Has the instances of Police Brutality aggravated/intensified during Pandemic?

40 responses



If Yes, Why?

27 responses



The phenomenon of Police Brutality and Police Violence on ordinary citizens has existed ever since the colonial times and continued in the post-independence era. But with the advent and spread of COVID-19 pandemic, there has been a lofty increase in such instances due to the unbridled discretion and powers which have been given to police officers in the name of necessity to make the civilians comply with the social distancing guidelines in order to contain spread of COVID-19 virus.

During the Pandemic, have you been subject to, or witnessed, any form of Police Brutality?

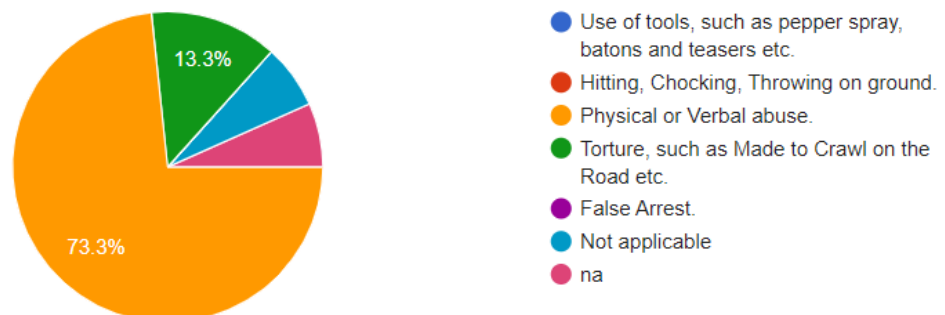
40 responses



With the announcement of 21-day lockdown which started from 25 March 2020, the police officials got an increased level of discretion over making the civilians comply with the social distancing guidelines. The incident of police brutality registered a severe spike within the first week of the lockdown and also during the pandemic period as a whole also. As per a study of various social media videos and news reports, at least 50 instances with 173 persons were tortured or beaten by the police officers and Central Armed forces within the 1st week of lockdown. The unclear and ambiguous guidelines and the unexpected imposition of lockdown resulted in a lot of confusion among the civilians and widened discretion of police officials.²³

If yes, in what form have you been subject to, or have witnessed, Police Brutality?

15 responses



Just after the declaration of the lockdown, people were in haste to buy essential commodities and the migrant labourers in the haste of reaching their hometowns as early as possible rather than getting stuck at other places of work where no work could be found due to the restrictions of lockdown and a consequent loss of livelihood. However, the instances of police violence

²³ Tamanna, *COVID 19 Lockdown: Dreadful Cases of Police Brutality*, Inventiva (11 June, 2020), [COVID-19 Lockdown: Dreadful Cases Of Police Brutality! - Inventiva](#)

and usage of force over civilians started from day-one with little consideration towards the time people needed to adjust to the changed circumstances of lockdown and social distancing restrictions imposed nationwide. People who went out for buying essential commodities were beaten, arrested and threatened which included even essential services providers like doctors, pharmacist, grocery shopkeepers etc.

In addition of beating the civilians, the instances of police brutality during the pandemic included unprovoked firing by police in Bihar, making people hop like frogs and do sit ups and crawl on road in large number of states, writing inscriptions on forehead of migrant for violation of restrictions of lockdown in Madhya Pradesh, making people kneel down on roads in Andhra Pradesh and rub their noses on road and forcefully entering house after chasing individual to thrash him in Punjab and damaging a vegetable cart and other similar small establishments on roadsides and Chaupatis in multiple cities. The similarity in n all these instances, of police brutality, lies in the fact that the people, seriously afflicted by it, were only attempting to meet their daily essential requirements, or moving out of metropolitan cities in order to reach their hometowns to ensure proper means of livelihood. This was triggered due to insecurity of food and housing as long as the restrictions would persist.²⁴

The Supreme Court as well as the High Courts, from time to time took cognizance of such brutalities and usage of force by police officials against civilians was taken and various observations were made. The following are some of the observations made by Supreme Court and High Court from time to time:

- In the case of *Ashish Davessar v. State of Rajasthan*²⁵, the Court recognized that though a lot of exemplary work has been done by the police during the pandemic, there have been many instances of police brutality and thus a notice was issued to the State for replying on the same.²⁶
- The Bombay High Court in a PIL filed by Advocate Firdause Irani highlighting police brutality and violence on the civilians was admitted by the Court although observing that police brutality is only one side of coin and the citizens also need to follow the laws

²⁴ Akshay Mangla, *How Policing Works in India in Covid-19 time*, THE HINDU BUSINESS LINE, (2 June 2020), [How policing works in India in Covid-19 times - The Hindu Business Line](#)

²⁵ *Ashish Davessar v. State of Rajasthan*, 2020 SCC OnLine Raj 411.

²⁶ Devika Sharma, *Notice issues to respond as to what steps have been taken to safeguard citizens*, SCC Online (7 April, 2020), [COVID-19 | Raj HC | Notice issued to respond as to -- what steps have been taken to safeguard | SCC Blog \(sconline.com\)](#)

and guidelines in such difficult times. The Court ordered city's top cops to constitute a SIT and submit its report by September 21, 2020.²⁷

- The Karnataka High Court, in May 2021, while hearing a series of petitions on issues surrounding Police Brutality amid COVID-19 pandemic observed that the police authorities should restrain from resorting to violence and using lathi charge and such brutal methods for enforcing of lockdown regulations and guidelines.²⁸
- A similar observation was also made by Karnataka State Human Rights Commission in which Retired Supreme Court Justice V. Gopal Gowda and Retired Karnataka and Bombay High Court Justice MF Saldanha came down heavily upon the rising cases of police brutality and violence on civilians and termed such action as inhumane and arbitrary and also pointed that the police leadership should also be made accountable and Culpable.
- The Patna High Court Division Bench comprising Chief Justice Sanjay Karol and Justice S Kumar also expressed deep disgrace and displeasure over the large number of complaints filed against the police for the brutalities and misuse of powers in the name of enforcing and implementing COVID-19 guidelines after going through the three-member report of an expert team which visited numerous hospitals and COVID-19 care centres.²⁹
- The Telangana High Court in the case of Sheela Sarah Mathews v. State of Telangana³⁰, the court took note of the number of police brutalities in a variety of ways on the civilians by the police and order the concerned authorities to submit an injury report and further inform the Court about measure taken to reduce such instances and progress being made.³¹

²⁷ Nitish Kashyap, *Advocate files PIL highlighting cases of Police Brutality*, LIVELAW, (1 July 2020), [Advocate Files PIL Highlighting Cases Of Police Brutality In Mumbai During Lockdown; Bombay HC Seeks Reply From State \[Read Order\] \(livelaw.in\)](#)

²⁸ Mustafa Plumber, *Police should avoid excess force against lockdown violators*, LIVELAW (12 May, 2021), [Police Should Avoid Excess Force Against Lockdown Violators : Karnataka High Court \(livelaw.in\)](#)

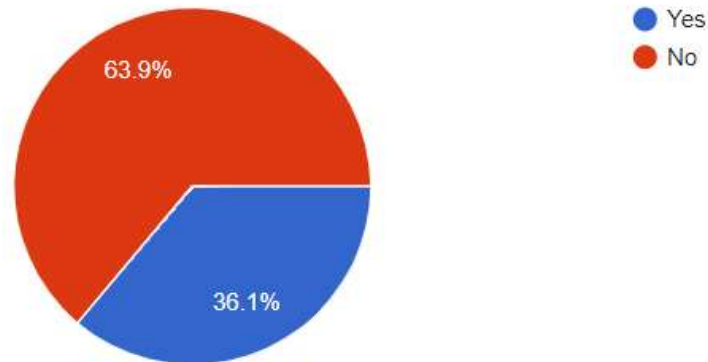
²⁹ Sparsh Upadhyay, *Check Purported Illegality, Brutality Exhibited by Police in Enforcing Lockdown*, LIVELAW (26 May, 2021), [Check Purported Illegality, Brutality Exhibited By The Police In Enforcing Lockdown: Patna High Court To Bihar Govt \(livelaw.in\)](#)

³⁰ Sheela Sarah Mathews v. State of Telangana, 2020 SCC Online TS 595.

³¹ Devika Sharma, *Telangana High Court Hears Petition Against Police Brutality*, SCC ONLINE, (18 June, 2020), [Telangana HC hears petition against police brutality during lockdown; "surprised" by explanation, seeks full report from police | SCC Blog \(sconline.com\)](#)

Do you feel there is a Religious Angle to Police Brutality, amidst Pandemic?

36 responses



5. REMEDIES

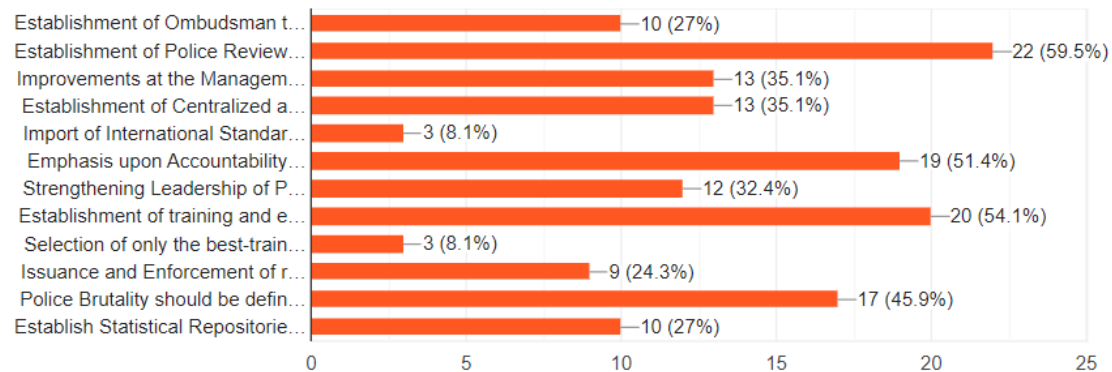
From the submissions made under the previous headings, it is quite evident now that Police Brutality, as a phenomenon, does exist in the Indian sub-continent. The questionnaire not only reifies these observations, but also concretizes that the COVID-19 pandemic has transformed the Police Brutality into a more exacerbated and aggravated form. This, in all good conscience, is intolerable and calls for immediate acknowledgment and remedial measures. However, in contemporary India not many remedies exist, to help alleviate the men of Police Brutality. This is primarily because of the paucity of empirical data,³² and the lack of records of investigation and punishment of Police Brutality as a crime.³³ Therefore, hereunder, we would discuss some of the remedies posited by various Global Jurisdictions, Researches, and Scholars which have proven to be successful in their respective regime, in line with the responses of the questionnaire.

³² Jovana Carapic, Luigi De Martino, Matthias Nowak, and Luigi Pavesi, *Violent Deaths Due to Legal Interventions*, 53 SMALL ARMS SURVEY 1, 3 (2015). <http://www.jstor.org/stable/resrep10687>.

³³ Antony Pate and Lorie Friedel, *POLICE USE OF FORCE: OFFICIAL REPORTS, CITIZEN COMPLAINTS, AND LEGAL CONSEQUENCES* (Washington, DC: Police Foundation, 1993)

What are the major remedies to deter Police Brutality?

37 responses



1. To start with, we may take into consideration the practice of some American jurisdictions which have established Police Review Boards.³⁴ These Boards hear the complaints, and then discipline the offending officer by either suspending or demoting the offending officer, depending upon its authority.³⁵ However, the US’s law enforcement agencies consider these Boards as an encroachment upon the traditional means of internal discipline.³⁶ On similar line with Police Review Boards, various nations have also established Civilian Review Boards.³⁷ These Boards provide an independent check on Law Enforcement Agencies, like the Police, in order to reduce the use of unlawful force.³⁸ Notably, Researchers like Goldstein and West have widely hailed such Review Boards as a preventive measure to excessive use of force and reduction of citizen complaint frequency.³⁹ However, it is considered to be afflicted by imperfect independent investigation abilities,⁴⁰ disregard by police,⁴¹ and politicization

³⁴ James Mullally, *The Problem of Police Brutality*, 10 SANTA CLARA LAWYER 168, 171 (1969).

³⁵ *Id* at 171 .

³⁶ Ed Cray, *THE BIG BLUE LINE: POLICE POWER VS HUMAN RIGHTS* 218 (1967).

³⁷ Jerome Skolnick and James Fyfe, *ABOVE THE LAW: POLICE AND THE EXCESSIVE USE OF FORCE* 223 (The Free Press, 1993).

³⁸ Kevin Jenkins, *Police Use of Deadly Force Against Minorities: Ways to Stop the Killing*, 9 HARV. BLACKLETTER J. 1, 23 (1992).

³⁹ Herman Goldstein, *POLICING A FREE SOCIETY* (Cambridge, 1977); Paul West, *Investigation of Complaints Against Police: Summary Report of a National Survey*, 7 AM. J. POLICE 101-21 (1988).

⁴⁰ Andrew Goldsmith, *External Review and Self-Regulation: Police Accountability and the Dialectic of Complaints Procedures*, in *COMPLAINTS AGAINST THE POLICE: THE TREND TO EXTERNAL REVIEW* 37 (Andrew J. Goldsmith (ed.), 1991).

⁴¹ Kevin, *Supra* note 38.

and manipulation.⁴² Notably, the majority of responses in the Questionnaire, i.e., 59.5%, have conceded that the establishment of such Review Boards would indeed be a proper remedy to prevent, deter and alleviate Police Brutality, in India.

2. Furthermore, we may take into consideration the suggestions provided by the Report of The Independent Commission on the Los Angeles Police Department,⁴³ and accordingly make improvements at the Management of Law Enforcement Organizations.⁴⁴ The Report suggested that through proper training and necessary punishment Police Brutality may be prevented.⁴⁵ Notably, this suggestion of the Report also find mention in writings of Goldstein, Wilson and Alpert who all have stressed upon specific institutional training for preventing improper conduct to reduce police brutality.⁴⁶ In tandem, the Report also suggested the establishment of a National Agency to file a complaint against members of local law enforcement.⁴⁷ Thus, a standardized national system of receiving and recording complaints of Police Brutality may be established as practical and cost-effective program.⁴⁸
3. In line with the aforementioned suggestions, emphasis may be placed for establishing statistical repositories to monitor killings by law enforcement officials, which may hold data regarding the Victims, Police Officials, Manner of Force, Circumstances, etc., in cases of Police Brutality. This would not only help understanding the dynamics of violence during legal interventions, but would also facilitate the development of programs and policies and at improving policing strategies.⁴⁹
4. Furthermore, we may take into consideration international instruments like the UN Convention Against Torture,⁵⁰ UN International Human Rights Standards for Law

⁴² Rob Yale, *Searching for the Consequences of Police Brutality*, 70 S. CAL. L. REV. 1841 (1997).

⁴³ REPORT OF THE INDEPENDENT COMMISSION ON THE LOS ANGELES POLICE DEPARTMENT 32, 172. (1991), http://michellawyers.com/wp-content/uploads/2010/06/Report-of-the-Independent-Commission-on-the-LAPD-re-Rodney-King_Reduced.pdf

⁴⁴ *Id.*, at pgs. 31, 61-62.

⁴⁵ *Id.*, at pg. 34-35.

⁴⁶ James Wilson, *VARIETIES OF POLICE BEHAVIOUR* (Harvard University Press, 1968); Herman, *Supra* note 39; Geoffrey Albert and Lorie Fridell, *POLICE VEHICLES AND FIREARMS: INSTRUMENTS OF DEADLY FORCE* (Waveland Press, 1992).

⁴⁷ *Id.*, at pg. 101.

⁴⁸ *Id.*, at pg. 101

⁴⁹ Jovana, *Supra* note 32.

⁵⁰ UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (10 December 1984, United Nations, Treaty Series, vol. 1465) <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>. (Last Visited 20 November, 2021).

Enforcement,⁵¹ UN Human Rights Standards and Practices for the Police,⁵² and make national laws in conformity with them. For instance, a Police Officer's individual and personal accountability should be made mandatory in cases of brutality or torture under National Legislation.⁵³ In tandem, clear and concrete guidelines should be laid down to deter Police Brutality with regards to Training of Police Officials,⁵⁴ Community Interaction and Assimilation,⁵⁵ Permissible Use of Force or Firearms,⁵⁶ Recording and Reviewing of cases of Police Brutality,⁵⁷ Accountability,⁵⁸ and Punishment.⁵⁹

5. In furtherance of this, an effort should also be made to define Police Brutality.⁶⁰ A clear and cogent definition and restrictive policy would certainly help alleviate the use of unlawful force by Police.⁶¹ Notably, 45.9% of the responses have averred that defining Police Brutality, and accordingly designing the policy measure may help control and prevent Police Brutality.
6. Furthermore, we may give special emphasis upon Accountability and Oversight of Police Officials for any excessive, unlawful exercise of their powers. Moreover, in situations such as the Pandemic, the Law Enforcement Authorities must themselves confirm that they can effectively be held accountable, through effective and accessible supervision, control, oversight and independent complaints mechanisms, in order to prevent any abuse of power.⁶² The Houston Police Department may be taken here as an example, where as a mandate, if any officer sees another officer using force beyond objectively reasonable, he shall intercede and prevent him from using such excessive

⁵¹ United Nation Centre for Human Rights, International Human Rights Standards for Law Enforcement (1997) , <https://www.ohchr.org/documents/publications/training5add1en.pdf>. (Last Visited 20 November, 2021)

⁵² United Nation Centre for Human Rights, Human Rights Standards and Practices for Police (2004), <https://www.ohchr.org/documents/publications/training5add3en.pdf>. (Last Visited 20 November, 2021)

⁵³ UNGA, *Supra* note 50, ART. 2.

⁵⁴ UNCHR, *Supra* note 51 pgs. 7, 17; *Supra* note 52, pgs. 1, 3, 8, 15, 16, 17, 23, 32, 36.

⁵⁵ UNCHR, *Supra* note 51, pgs. 16-18; *Supra* note 52, pgs. 6, 8-9, 12, 58-59.

⁵⁶ UNCHR, *Supra* note 51, pgs. 7-9; *Supra* note 52, pgs. 23-28.

⁵⁷ UNCHR, *Supra* note 51, pgs. 8, 17; *Supra* note 52, pgs. 24, 56, 61.

⁵⁸ UNCHR, *Supra* note 51, pgs. 4, 8, 16, 18; *Supra* note 52, pgs. 4, 24, 28, 55, 59.

⁵⁹ UNCHR, *Supra* note 52, pgs. 9, 21.

⁶⁰ Geoffrey Alpert and William Smith, *How reasonable is the reasonable man?: Police and excessive force*, 85 THE JOURNAL OF CRIMINAL LAW & CRIMINOLOGY 481-501 (1994).

⁶¹ Lawrence Sherman, *Reducing Police Gun Use: Critical events, Administrative Policy and Organizational Change*, in THE MANAGEMENT AND CONTROL OF POLICE ORGANIZATIONS 98-125 (Maurice Punch (ed.), M.I.T. Press, 1983); Marshall Meyer, *Police shootings at minorities: The Case of Los Angeles*, 452 ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCES 98- 110. (1980)

⁶² Amnesty International, *Covid -19 Crackdown – Police Abuse and the Global Pandemic*, 8, <https://www.amnesty.org/en/documents/act30/3443/2020/en/>. (Last Visited 20 November, 2021)

force and report the same to his supervisor.⁶³ Notably, 51.4% of the responses have subscribed to this measure, averring that Accountability and Oversight may indeed be an effective measure to deter Police Brutality.

7. Furthermore, we may also consider strengthening the leadership within a department. Scholars like Jerome Skolnick, William Dudley and James Fyfe,⁶⁴ and studies⁶⁵ have shown that the Head of Police Department may help deter abuse of authority, and, thus, prevent Police Brutality. In line with this, the focus area should be rigorous training and education regime in interpersonal skills and ethical conduct.⁶⁶ In this regard, 54.1% of the responses have posited that robust Education and Training, for Police Officials, would help deter Police Brutality in the contemporaneity.

6. CONCLUSION

Police Brutality is a serious problem in India impacting the basic human rights, as is warranted from the responses. Unfortunately, there are limited officers who are held accountable for it. There have been patent efforts by Judiciary to introduce police reforms, however, these are ‘openly ignored or rejected;’ out of the 28 Indian States, there is not even a single state that has taken the initiative to implement them.⁶⁷

Evidently, the major purpose for which the police system was formed is not being fulfilled. Instead of protecting the rights of general people, the authorities have been grossly violating them. Moreover, the COVID-19 pandemic has given them a leverage and in the pretext of ensuring proper social distancing measures and complying with the guidelines, they are misusing the power they are entrusted with. This contention is evident at the instances of Police

⁶³ HOUSTON POLICE DEPARTMENT, RESPONSE TO RESISTANCE, GENERAL ORDER NUMBER 600-17, pg. 7 (2020) https://www.houstontx.gov/police/general_orders/600/600-17_ResponseToResistance.pdf. (Last Visited 20 November, 2021)

⁶⁴ Jerome, *Supra* note 37, at pg. 136; JEROME SKOLNICK AND DAVID BAYLEY, THE NEW BLUE LINE: POLICE INNOVATION IN SIX AMERICAN CITIES (The Free Press, 1986); WILLIAM DUDLEY (ED.), POLICE BRUTALITY (Greenhaven Press, 1991); Budimir Babovic, *Police Brutality or Police Torture*, 23 POLICING: INT’L J. POLICE STRAT. & MGMT. 374, 378 (2000).

⁶⁵ David Weisburd, Rosann Greenspan, et.al., *Police Attitudes Toward Abuse of Authority: Findings from a National Study*, NATIONAL INSTITUTE OF JUSTICE 6 (2000).

⁶⁶ Douglas Grant and Joan Grant, *Officer Selection and the Prevention of Abuse of Force*, in POLICE VIOLENCE: UNDERSTANDING AND CONTROLLING POLICE ABUSE OF FORCE (William Geller and Hans Toch (eds.), Yale University Press, 1996); Ellen Scrivner, *The Role of Police Psychology in Controlling Excessive Force*, U.S. DEPARTMENT OF JUSTICE, <https://www.ojp.gov/pdffiles1/Digitization/146206NCJRS.pdf>. (Last Visited 20 November, 2021)

⁶⁷ Gaurav Vivek Bhatnagar, *SC Directives on Police Reforms Rejected, Ignored or Diluted by States*, The Wire (Sept. 22, 2017), <https://thewire.in/law/sc-directives-police-reforms-rejected-ignored-diluted-states>.

Brutality which include making people crawl on roads, doing sit ups, rub their nose on the road and unprovoked firing by the police. There are number of reasons why Police officials resort to these uncanny activities which lead to mental and physical injuries and in some cases, even death. These involve inadequate training, stress of job and lack of accountability. One major reason behind the constant increase in the instances of Police Brutality is the lack of stringent measures to punish the offenders in case they use unnecessary force. Hence, it is essential that proper laws are framed and followed.

Besides, a Police Review Board can also be established which hears the complaints against offending officers and takes prompt action such as demotion or suspension of the offending officer. Moreover, there is a requirement of concrete and clear guidelines along with a clear and explicit definition as to what constitutes unlawful force by police. Thus, it can be concluded that there is a need for reform in the entire administrative structure for the Police officials.

7. ANALYSING THE QUESTIONNAIRE

The research for this Project was conducted empirically. Thus, a questionnaire consisting of general questions about Police Brutality was posed to people. About 40 people in the age group 18 years and above responded to the questionnaire. Out of which 40% were female and 60% were male. When asked as to how do they feel when they interact with the Police officials – 61.5 % responded that they feel nervous and 30.8 % said they feel calm and others had mixed opinions.

Further, 52.5% responded in affirmative when they were asked if they have witnessed any kind of Police Brutality. And 75% of those who had witnessed Police Brutality were subjected to Physical or Verbal Abuse. Specifically, with regards to the pandemic, 27.5 % witnessed Police Brutality, out of which 73.3 % had experienced it in the form of Physical or Verbal Abuse. 55% of the people were of the view that police brutality has been aggravated during the pandemic and 33.3 % consider Legal Upper hand of Police Officials to be the major reason for that.

Furthermore, 42.1% consider Organizational Inefficiency to the major cause of Police Brutality in India followed by anxiety, sense of disregard and disrespect for police, threat to victim's physical and mental health to be the major effects of it. When asked as to what can be done to deal with this evil, 55% answered that a Police Review or Civilian Review Board should be formed to deter Police Brutality.

III. PRISON & COVID-19

BY - RAGHAV ARORA, SUKHMANN SANDHU, VASU PANDITA.

1. INTRODUCTION

1.1. INTRODUCTION TO THE RESEARCH

During the COVID-19 time, many prisons in India were over-occupied with prisoners. Due to this deadly virus, many prisoners were at risk for their lives, if they were to be put in jail. Virus could be spread in the jail, since there are no proper restrictions to be placed in the jail. There were many delays during the covid-19 time, many bail and other applications were postponed. The existing criminal justice system failed to meet the challenges posed by the ongoing pandemic. For families of most of the victims, there was a year of delay for the proper hearing and investigation. For the accused, there was a threat to his life. It was a state of anarchy, a state of emergency and lockdown.

1.2. OBJECTIVE OF THE RESEARCH

The main objective of this report is to search for the flaws and problems which are present in the Indian criminal justice system. This report shall analyze the ground level situation of Indian sessions/district courts and jails, what problems have emerged during the covid-19 pandemic and the lockdown, how justice is being carried on amidst the COVID pandemic.

1.3. RELEVANCE OF THE RESEARCH

India's criminal justice system is already riddled with many flaws. There are corrupt police officials on the ground level which makes it very difficult for the victims to avail justice.⁶⁸ Moreover, the acts governing criminal law in the country, namely the Indian Penal Code, 1860 and The Code of Criminal Procedure, 1973 CrPC are becoming outdated day by day.⁶⁹ Then, there is an ongoing issue of cybercrimes, which includes drug trafficking, sharing of explicit videos, etc.

⁶⁸ Sebin James, *90% police officers corrupt, incapable; Rest Can't do all the investigation, time to sensitize the force: Madras High court*, Live Law (Feb. 13, 2022), <https://www.livelaw.in/news-updates/madras-high-court-police-department-90-per-cent-corrupt-incapable-officers-191711>.

⁶⁹ Rahul Tripathi, *IPC, CRPC in for change as Union Home Ministry tries to speed up justice*, The Economic Times (Feb. 13, 2022), <https://economictimes.indiatimes.com/news/politics-and-nation/ipc-crpc-in-for-change-as-mha-tries-to-speed-up-justice/articleshow/73063397.cms>.

Along with this, COVID-19 has destroyed the judicial system of the country. Severe backlogs in the case hearings, threat to the life of the jail inmates, threat to the dear-ones of the criminals and most importantly, no proper COVID-19 restrictions in the district courts and in jails. There was a severe lack of on-ground medical facilities for treatment of COVID-19 positive inmates or criminals on trial. Criminals could die at the hand of this deadly virus, but they could not avail medical facilities because of the lack of medical personals in our country.⁷⁰

The relevance of our issue is of utmost importance in the field of criminal justice. Justice delayed is justice denied, and COVID-19 has denied justice to millions of innocent people, who were made to wait for their hearing.

1.4. RESEARCH METHODOLOGY

The research methodology used in this research project mainly comprises heavy reliance on secondary sources which include research articles and papers, reports, and web articles while duly citing them in this project.

Researchers have also filed an RTI under the Right to Information Act, 2005 at the Model Jail, Chandigarh for the collection of data which would be Chandigarh prison data centric.

The researchers have tried to present a report which uses both empirical data through the RTI filed in Model Jail and with the secondary sources of data. The report is India-centric while the RTI is Chandigarh centric.

2. BAIL AND PENDENCY DURING COVID-19 IN INDIA

The impact of the pandemic has been very destructive. There are over 42 million COVID-19 confirmed cases reported in India.⁷¹ The Apex Court, High Courts and lower courts have primarily dealt with urgent matters during the time of the Pandemic, involving matters related to any substantial question of law, in order to constrain the spread of the virus.

⁷⁰ Sushmi Dey, *Pandemic study reveals lack of trained health personnel*, The Times of India (Feb. 13, 2022), <https://timesofindia.indiatimes.com/india/pandemic-study-reveals-lack-of-trained-health-personnel/articleshow/86380761.cms>.

⁷¹ India: Who coronavirus disease (covid-19) dashboard with vaccination data World Health Organization, <https://covid19.who.int/region/searo/country/in>. (last visited Feb 13, 2022)

COVID-19 has had a very severe adverse impact on people, especially the prisoners. The legal system of India has been facing numerous challenges during the COVID-19 time. It also faced several difficulties in disposing of the bail applications during the pandemic.⁷²

2.1. RIGHT TO BAIL V. PRISONERS' RIGHT TO HEALTH

Right to health is a basic and fundamental right under Article 21 of the Constitution.⁷³ But the tragedy is that justice has been denied. Right to health is the basic right of prisoners and bail is a kind of security that is demanded from the accused person to grant release from the jail. The Supreme Court of India has recognized the importance of bail.⁷⁴ Under the Code of Criminal Procedure, 1973, the courts should respect the personal liberty of the individuals unless imprisonment becomes necessary for the criminals.⁷⁵

Michelle Bachelet, the United Nations' high commissioner for human rights, encouraged governments to free political prisoners first in the midst of the worldwide epidemic in March 2020.⁷⁶

However, India has freed just 42,000 convicts so far in order to decongest its jails. Additionally, by refusing to release political detainees, it joined Nicaragua, Turkey, Algeria, Spain, and Myanmar in repressing regime opponents.

The Supreme Court-appointed panels tasked with determining the discharge of inmates on parole or temporary bail suggested that people convicted or awaiting trial for offenses carrying a maximum sentence of years of imprisonment be freed.⁷⁷

Moreover, the political prisoners detained during this period were excluded from this policy of bail on parole. For example, if there were 80 detainees in a prison out of which 20 were political prisoners and 80 were released on parole keeping in mind the COVID circumstances, this does

⁷² Sakshat Bansal, Shruti Sahni, *Bail, prisons and COVID-19: An Indian perspective*, ALTERNATIVE LAW JOURNAL, <https://doi.org/10.1177/1037969x211038636>.

⁷³ Parmanand Katara v. Union of India, AIR 1989 SC 2039.

⁷⁴ State of Rajasthan v. Balchand, 1977 SCC (4) 308.

⁷⁵ Dataram Singh v. State of Uttar Pradesh (2018) 3 SCC 22 See also, Jeetendra v. State of Madhya Pradesh (2020) 12 SCC 536; Sanjay Chandra v. Central Bureau of Investigation (2012) 1 SCC 40.

⁷⁶ Neha Dixit, *India's long lockdown led to breakdown of Criminal Justice System*, Al Jazeera (Feb.14, 2022) <https://www.aljazeera.com/features/2020/6/2/indias-long-lockdown-led-to-breakdown-of-criminal-justice-system>.

⁷⁷ *Id.*

not change the fact that the 20 prisoners already detained inside are equally vulnerable to the pandemic as those 80 are.

The supreme court-appointed panels tasked with determining the discharge of inmates on parole or temporary bail suggested that people convicted or awaiting trial for offenses carrying a maximum sentence of years of imprisonment be freed.⁷⁸

2.2. OVERCROWDING IN INDIAN JAILS

According to a well-known aphorism, the jail serves as a mirror for society. To push this parallel further, the circumstances inside jails reflect the democratic nature of any country. India, by that standard, needs introspection. Not only has our crumbling criminal justice system rendered reasonable trial times meaningless, but sluggish and sometimes distorted (if not outright prejudiced) investigations and prosecutions have assured that undertrials languish in prison for decades. Courts seldom intervene to guarantee comprehensive investigations and vigorous prosecutions, or to ensure that trials are completed on schedule.⁷⁹

The statistics are straightforward to see: congested prisons, deplorable sanitation facilities, and little or no legislative oversight of the state of affairs. The indifference of India's enormous middle class toward the problem has strengthened colonial and post-colonial prisoner conceptions.⁸⁰

India's jails are very overcrowded. So, it is very difficult to maintain the social-distancing norms in jails. The condition of rooms in prisons is extremely pathetic. They lack cleanliness. According to India's prison statistics, 478,600 prisoners can be accommodated in 1350 prisons whereas the average occupancy rate is 118.5 percent. The prisons in some states are overcrowded. For example, Delhi has reported the highest occupancy rate of (174.9 percent), Uttar Pradesh (167.9 percent) and Uttarakhand (159 percent).⁸¹

Along with the overcrowded jails, there has been a shortage of doctors and other medical personnel in the country. According to the data that was told to the Division Bench comprising Chief Justice D. Datta and Justice G.S. Kulkarni, there are merely 32 doctors in 47 jails

⁷⁸*Id.*

⁷⁹ Teesta Setalvad, *The pandemic has put the spotlight on inhumane conditions in Indian prisons*, The Indian Express (Feb. 13, 2022) <https://indianexpress.com/article/opinion/columns/the-pandemic-has-put-the-spotlight-on-inhumane-conditions-in-indian-prisons-7330342/>.

⁸⁰ *Id.*

⁸¹ Sakshat, *Supra* note 72.

throughout Maharashtra, two out of which had an MBBS degree, and that 112 of the 175 medical branch seats had been hired, leaving 63 unfilled.⁸²

Justice Kulkarni made the statement, “*In these difficult times, one-third of the posts are vacant? What about Class 1 medical officers? These are MBBS doctors. And Nagpur, Yerawada, Kolhapur, Amravati, Thane jails have no doctors. There is one vacancy in Taloja Central Jail. What is the total number of inmates in Yerawada jail?*”⁸³, the court questioned.

The Bench thereafter inquired about the jail's population, which was reported to be 5,907 prisoners. The Bench expressed amazement that there has not been even one doctor available for the large number of prisoners.⁸⁴

If the attention is not drawn to improve the health of the prisoners, then the pandemic situation will increase to an even greater extent. So, certain steps must be taken by states to protect the health of the prisoners.

Due to jail being overcrowded, there is greater risk of the disease of COVID-19 because hygiene cannot be maintained. So, it is extremely necessary to grant bail to prisoners and release them on bail to save the lives of the prisoners.⁸⁵

To help curb and prevent the rate of infection, many countries in the world started releasing thousands of prisoners from jails. Iran released more than 85,000 prisoners.⁸⁶ Indonesia released 30,000 prisoners.⁸⁷

Despite the risk to the health problems, some prisoners were not released from jails because they did not satisfy the requirements of High-Powered Committees (HPC) guidelines. Instead of approaching the question of release liberally, the HPCs adopted a conservative approach

⁸² *Bombay HC questions Maharashtra's lack of prison doctors Return to frontpage*, The Hindu (Feb. 13, 2022), <https://www.thehindu.com/news/cities/mumbai/bombay-hc-questions-maharashtras-lack-of-prison-doctors/article34542366.ece>.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Sakshat, *Supra* note 72.

⁸⁶ *Hard-hit Iran frees more prisoners amid coronavirus outbreak*, Aljazeera, <https://www.aljazeera.com/news/2020/3/17/hard-hit-iran-frees-more-prisoners-amid-coronavirus-outbreak>.

⁸⁷ Nur Yasmin, *Indonesia Releases 30,000 Prisoners as Covid-19 Cases Double in a Week*, Jakarta Globe <https://jakartaglobe.id/news/indonesia-releases-30000-prisoners-as-covid19-cases-double-in-a-week>.

rather than a health-centred approach and ignored their obligation to Right to health of prisoners.

2.3. CATEGORIES OF PRISONERS EXCLUDED FROM CONSIDERATION BY THE HIGH-POWERED COMMITTEES (HPCs)

Certain prisoners were denied release from prisons due to charges of serious offenses. As a result, their bail application was rejected. The prisoners who were accused of waging war against the government⁸⁸. and serious offences like sexual offences⁸⁹, dealing with drugs⁹⁰, money laundering⁹¹, etc. were excluded from the benefit of bail. The jurisprudence behind denying their release is because such crimes are heinous crimes and they cannot be given bail as liberally as other petty offenses.⁹² So, they were denied bail in accordance with Articles 14 and 21 of the Constitution of India. The court observed that in a situation as grim as that of the pandemic, the interim bail is not a statutory right but a human right to safeguard the prisoner's health. However, the primary focus of decongestion of prisoners and the right to health of prisoners was neglected.⁹³

2.4. THE PROBLEM OF ACCESSIBILITY TO JUSTICE DURING THE PANDEMIC

Despite the efforts of various courts across the country, many bail applications were not heard properly due to lack of verification of papers.⁹⁴ Even though many urgent matters were heard via video link, it was quite surprising to observe that bail applications were not treated as “*urgent judicial matters*”.

Higher judiciary was dealing with bail applications through the method of e-filing and video conferencing, however there was a problem with lower courts. Most lower courts face difficulties due to lack of clear parameters regarding urgent matters. In India, district courts are dependent on higher courts because these courts do not have infrastructure and resources like

⁸⁸ Indian Penal Code, 1860, § 121, Acts of Parliament, 1860 (India).

⁸⁹ Indian Penal Code, 1860, § 375-377, Acts of Parliament, 1860 (India).

⁹⁰ The Narcotic Drugs and Psychotropic Substances Act, 1985, Acts of Parliament, 1985 (India).

⁹¹ The Prevention of Money-Laundering Act, 2002, Acts of Parliament, 2002 (India).

⁹² Commonwealth Human Rights Initiative, responding to the Pandemic: Prisons and Overcrowding (2020) Vol II State Information Reports <https://justicehub.in/dataset/89ff14fa-6718-4551-8eba-59767317fe47/resource/2c62d845-57c2-4267-b2db-d7223d2badc7/download/part-2.pdf>.

⁹³ Sakshat, *Supra* note 72.

⁹⁴ State v. Suresh (Tis Hazari Court, Bail Application No. 422/2020, 10 June 2020).

those available at the Supreme Court and the various High Courts level. District Courts lack adequate infrastructure facilities and other important provisions.⁹⁵

3. INCREASE IN CRIMES DURING THE COVID-19

Due to the current pandemic, governments all over the world have issued orders such as stay-at-home orders, and recommended citizens to take safeguards such as social isolation in order to curb the spread of the virus. These measures had a considerable impact on our social, economic, and political environments, which in turn has an effect on the volume and distribution of crime globally. In order to evaluate the influence of social distancing policies on crime, the comparison between crime statistics for the two major cities of New Delhi, India, and New York, USA, during the pandemic year (2020) with those for the preceding year (2019) is made. The researchers have examined the patterns in several types of crime and conclude that, while residential burglaries have decreased, domestic violence has dramatically increased. Commercial burglaries increased in New York, but they decreased in New Delhi, owing to the presence of police on the roads. Additionally, both cities saw a drop in crimes such as robbery, burglary, and theft, but a dramatic spike in domestic violence incidents.⁹⁶

Domestic abuse complaints in India have climbed 2.5 times since the country's countrywide lockdown started, according to official statistics from the National Commission for Women (NCW). According to some analysts, this is India's next pandemic or shadow pandemic. Between March and May of 2019, the commission received 607 cases, whereas in 2020, they received 1,477.⁹⁷

According to statistics given by an NGO called Swayam (located in Kolkata), there were 22 complaints per month on average prior to the lockdown, which increased to 57 complaints per month on average. These complaints were lodged via emails and helplines during the lockdown. Apart from socioeconomic factors: While pandemics such as Covid-19 impact all segments of the population, they disproportionately affect women in developing economies such as India. That is due to their limited education, mobility, access to outside work

⁹⁵ Sakshat, *Supra* note 72.

⁹⁶ P.M. Arora R. Rao, S. Agrawal, *Crimes in the Time of COVID-19. Vantage: Journal of Thematic Analysis*, 1(2): 101-112. <https://doi.org/10.52253/vjta.2020.v01i02.07>.

⁹⁷ Rishika Tomar Pratap C Mohanty, *Tackling the shadow pandemic of rising domestic violence*, The New Indian Express (Feb. 13, 2022) <https://www.newindianexpress.com/opinions/2020/oct/19/tackling-the-shadow-pandemic-of-rising-domestic-violence-2212123.html>.

opportunities, and ownership, as well as their marginal control over assets such as land and financial services.⁹⁸

Domestic abuse has increased as a result of the pandemic, since economic constraints force victims to remain with their abuser. Certain victims who are isolated from their abusers and without access to resources are particularly vulnerable to prisoner partner violence, child abuse, sexual assault, and rape. It is a pattern that is reproduced globally, with 90 percent of the causes of violence being COVID-19 related.⁹⁹ Additionally, women resisted reporting sexual harassment before COVID-19 for a variety of reasons, including family honour and shame, but the pandemic has worsened their position.¹⁰⁰

In Delhi, the presence of police (guardians) resulted in a decrease in burglaries, whereas in New York, the absence of owners resulted in an increase. Similarly, when domestic violence cases are examined, a pattern emerges in which the perpetrator and target are in close contact without the presence of the guardian.

By prohibiting big gatherings in public locations, potential victims have less possibilities to come into contact with the possible offender. As a result of reduced human interaction in the urban environment, it was anticipated that there would be a decrease in the frequency of assaults with dangerous weapons, killings, robberies, home burglaries, shoplifting, and thefts.

Domestic violence cases have increased as victims become locked indoors with their abusers and find it difficult to move out. Commercial burglary and motor vehicle theft cases are increasing as firms are left vacant due to stay-in orders.

Economic activity is being lost as a result of the protracted lockdown, resulting in unemployment and poverty. Massive layoffs have occurred at major corporations, while small firms and industries have been shuttered, displacing workers. Increased financial disparity,

⁹⁸ *Id.*

⁹⁹ K. Connolly, S. Jones, T. Phillips, L. Kuo & A. Kelly, *Lockdowns around the world bring rise in domestic violence*, The Guardian. <https://www.theguardian.com/society/2020/mar/28/lockdowns-world-rise-domestic-violence>.

¹⁰⁰ M. Sonkar, I. Soorma & S. Akanksha, *Can Social Media Mobilise Collective Action for Sexual Violence Against Women?: A Case Study of the '#MeToo' Movement in the Context of India*. *Vantage: Journal of Thematic Analysis*, 1(1), 66-74.

poverty, and job dislocation all serve as motivations for criminals to commit crimes in order to survive.¹⁰¹

3.1. COMPARATIVE STUDY OF THE DATA RELATED TO CRIMES BETWEEN NEW YORK AND NEW DELHI

There are two pages of New York crime statistics: domestic violence and other crimes including murder, larceny, burglary. New York collected monthly statistics for March, April, May, and the first week of June 2020, and for the same months in 2019.

New Delhi's crime statistics are classified as follows: i. crime against women; and ii. Other categories. The crime data for New Delhi is for the first six months of the year (January to June) for both 2019 and 2020.¹⁰²

We examine crime data from two of the world's largest cities, New Delhi and New York. These cities were chosen because they were both substantially impacted by the COVID-19 outbreak and rendered available to the general public police-recorded crime statistics. Additionally, the two cities are diametrically opposed in terms of administration and cultural norms, adding another layer to the investigation. A single element or event can have a varying effect on various types of crime. For example, social separation has resulted in an increase in crimes such as domestic violence, marital rapes, and shop burglaries, but a decrease in residential burglaries and robberies.¹⁰³

Following that, we analyze the pandemic's impact on the global economy and forecast an increase in unemployment, which is likely to result in an increase in petty property crimes as a means of survival for people without income.

3.1.1. NEW YORK

As one of the United States of America's major cities, New York was severely impacted by the COVID-19 pandemic, as were other parts of the world. By the end of March 2020, the city had been placed on lockdown, with practically all operations suspended. A change in the environment resulted in a substantial shift in the city's crime volume and rate.¹⁰⁴

¹⁰¹ P.M., *Supra* note 96.

¹⁰² P.M., *Supra* note 96.

¹⁰³ P.M., *Supra* note 96.

¹⁰⁴ P.M., *Supra* note 96.

Table 1: Monthly (March-June) Crime statistics of New York for the year 2020.

	March	April	May	June (First Week)
Murder	22	31	34	13
Rape	99	65	108	67
Robbery	935	679	776	202
Assault	1546	1130	1582	971
Burglary	942	1090	1154	909

Source: New York Police Department, <https://www.nyc.gov>.

Table 2: Monthly (March-June) Crime statistics of New York for the year 2019.

	March	April	May	June (First week)
Murder	21	23	19	5
Rape	158	145	163	95
Robbery	888	913	1088	255
Assault	1664	1652	1939	1392
Burglary	746	828	861	181

Source: New York Police Department, <https://www.nyc.gov>.

Overall crime decreased by 16.5 percent in 2020 (from March through to the first week of June) as compared to the same time in 2019. The most critical period of analysis was April and May,

as this was the period during which lockdown began. In April and May, overall crime decreased by 28.682 and 21.13 percent, respectively. Simultaneously, murder cases (including domestic violence) climbed 54.761 percent in April and May compared to the same period last year. The majority of the increase was ascribed to murder committed as a result of domestic violence, which increased by 75 percent in contrast to the general decline in reported occurrences of domestic violence. According to the New York Police Department (NYPD), the decline was most likely caused by victims underreporting abuse due to a lack of access due to the abuser spending all of their time with them, preventing them from calling for help. Additionally, burglary increased considerably from 1870 incidents in April to the first week of June in 2019 to 3153 cases in 2020 (+68.60 percent), since roads were deserted and businesses were closed, making it easier for burglars to break into businesses.¹⁰⁵

3.1.2. NEW DELHI

India conducted one of the harshest and largest lockdowns in history. New Delhi, the capital city, was heavily impacted due to the pandemic and became a hotspot. Between January and June, a total of 85,161 confirmed cases were reported, with 56,235 recovered. The lockdown had a similar effect on Delhi's total crime rate as it did in New York. By 2020, a total of 105,676 The Indian Penal Code offenses were registered through May 31st, which was 14.61 percent less than the total number of crimes registered during the same period in 2019.¹⁰⁶

Crime	2019	2020
Murder	211	203
Rape	891	520
Robbery	972	598
Burglary	1380	755

Source: New Delhi police website, <https://www.delhipolice.nic.in>.

Additionally, there was a drop in robbery and burglary. According to the Delhi Commission for Women, the number of reported instances via its helpline number 181 has decreased. In 2019, a total of 8,188 complaints were filed, compared to 6,909 in 2020. Domestic abuse

¹⁰⁵ P.M., *Supra* note 96.

¹⁰⁶ P.M., *Supra* note 96.

reporting decreased dramatically during the initial days of the lockdown but progressively increased as the lockdown was gradually lifted. This pattern indicates that it was the reporting of the crime that decreased, not the crime itself.¹⁰⁷

3.1.3. COMPARITIVE ANALYSIS OF THE DATA

- In both these cities, a decrease in the overall crime was observed in the year 2020.
- There was a rise in the cases of burglary in New York while in Delhi there was a fall in cases of burglary. The situations in both these cities were different. For example, there was heavy police on the roads in New Delhi to make sure that people were abiding by the rules of lockdown measures.
- The cases of domestic violence were the same in both these cities. However, the victims did not get the opportunity to make complaints.
- There was a sharp rise in cases of murder in New York whereas data on murders for Delhi do not involve the cases of death due to domestic violence. There was 75% rise in murder cases in New York.

It is necessary to know the after effects of COVID-19. COVID-19 has negatively impacted the economy of the country. The lockdown forced the businesses and factories to remain closed. People lost their source of income due to loss of jobs. On the demand side, consumer's confidence has sharply declined because of unemployment. On the supply side, the closure of shops and factories has threatened the livelihood of the people.¹⁰⁸ Therefore, leading people to resort to illegal activities to fulfil their basic needs. Moreover, by comparing these two countries, it can be viewed that the Pandemic has affected the livelihood of people in both developed as well as the developing countries.

4. BEHAVIORAL PATTERN AMONG INMATES DURING COVID-19 (PHYSICAL AND MENTAL)

Incarcerated individuals are more vulnerable to stress, anxiety and depression during the pandemic because of various reasons, one of the major reasons being the deprivation of family

¹⁰⁷ P.M., *Supra* note 96.

¹⁰⁸ P.M., *Supra* note 96.

support and concern about well-being of the family members.¹⁰⁹ The Ministry of Home Affairs (MHA) took cognizance of the matter and immediately consulted the Department of Psychiatry, National Institute of Mental Health and Neurosciences (NIMHANS) Bangalore and requested them to draft guidelines addressing the mental and physical needs of prisoners and the prison staff with the view of empowering them in managing their lives. NIMHANS as of now has come up with two handbooks named '*Dealing with mental health issues in Prisoners during COVID-19*'¹¹⁰ and '*Dealing with mental health issues in Prison Staff during COVID-19*'¹¹¹. The handbooks were then circulated to all the states' and Union Territories' prison authorities and on top of that plans were made to translate them into the vernacular languages of respective states and prison authorities for a better reach and understanding of one and all. The sole motive behind this initiative is to promote good mental well-being among prisoners and staff during these challenging times.

According to a Bengaluru prison mental health study, the prevalence of mental illness and substance abuse disorder is nearly 80% among the inmates. On excluding drug abuse, 27.6% of prisoners still suffer a diagnosable mental disorder.¹¹² Claustal and clumsy nature of the prisons make it difficult to ensure social distancing which is an important practice to curb the spread of this infection. Moreover, medical aid and awareness among prison authorities is often inadequate. Based on our analysis and literature review we have come up with the possible problems faced by inmates during these extraordinary situations.

¹⁰⁹ Chui, Wing Hong. *Incarceration and Family Stress as Understood through the Family Process Theory: Evidence from Hong Kong*. Frontiers, Frontiers, 01 Jan. 0001. Web. 14 Feb. 2022.

¹¹⁰ "Dealing with - Nimhans.co.in." Web. 14 Feb. 2022.

¹¹¹ M, Pavithra K, and Pavithra K M. *Data: Prisons in India Continue to Be Overcrowded despite COVID-19. FACTLY*. 10 Jan. 2022. Web. 14 Feb. 2022.

¹¹² Søvold, Lene E, John A Naslund, Antonis A Kousoulis, Shekhar Saxena, M Walid Qoronfleh, Christoffel Grobler, and Lars Münter. *Prioritizing the Mental Health and Well-being of Healthcare Workers: An Urgent Global Public Health Priority*. Frontiers in Public Health. Frontiers Media S.A., 7 May 2021. Web. 14 Feb. 2022.

Prior to Imprisonment	Post Imprisonment	Post Release
<ul style="list-style-type: none"> ➤ Homeless mental illness ➤ Psychosis ➤ Personality disorder ➤ Mood disorder ➤ Attention Deficit Hyperactivity Disorder ➤ Drug abuse ➤ Pre-existing vulnerabilities 	<ul style="list-style-type: none"> ➤ Drug withdrawal related complications ➤ Self-harm attempts ➤ Somatoform disorders ➤ Non-organic sleep disorders ➤ Development of substance abuse ➤ Adjustment and stress related disorders ➤ Exacerbation of symptoms 	<ul style="list-style-type: none"> ➤ Adjustment and stress related disorders ➤ Anxiety ➤ Substance withdrawal complications ➤ Somatoform disorders ➤ The above problems can worsen or precipitate mental health problems and lead to relapse.

The COVID-19 pandemic has mentally and emotionally affected people across every section of the society and prisoners are not an exception to this. Constant lockdowns have restricted the access of family members of the prisoners to prisons. On top of that, many prisoners have lost their loved ones and were not able to bid a final goodbye to them. Due to the prevailing circumstances, the trial courts were not functioning with full intensity which created an impediment for prisoners to be tried and seek bail.¹¹³

The work environment for the staff working in the prisons is certainly very difficult and mentally exhausting. The organizational set-up within the prisons is very challenging to comprehend. It is found out that the staff working in the prisons go through equal levels of trauma as the prisoners, if not less. Most of them have to stay and deal with the dreaded prisoners which greatly impacts their mental balance. Most of the worries of prison staff during

¹¹³A. Ayirolimeethal. ET. AL, *Psychiatric morbidity among prisoners*, Indian Journal of Psychiatry, 56(2), 150-153. <https://doi.org/10.4103/0019-5545.130495>.

COVID-19 were largely getting infected, and taking infections to the families, inadequacy of protective gear, unavailability of proper medical facilities for self and family in case needed and separation from families. The staff is also uncertain regarding the extent of support from the administration and authorities in case something untoward happens. In addition to all this, the mental well-being of the staff taking care of the prison also becomes a point of concern because they also have to stay in that bio secure bubble with the inmates restricting their access with their near and dears.¹¹⁴ Hence, the additional pressure of these insecurities restricts their mental well-being in numerous ways.

5. INSIGHT OF THE EXPENDITURE SPENT OVER BASIC AMENITIES

The United Nations Office on Drugs and Crimes (UNODC), WHO, UNAIDS and United Nations Office of the High Commissioner for Human Rights (OHCHR) on 13th May 2020 released a joint press release on COVID-19 in prisons and other closed settings. This joint statement grabbed the attention of the world leaders since it highlighted the fact that prisoners are more vulnerable to COVID-19.

The United States of America was categorically blamed by the UN for its failure in combating and curbing the spread of the infection in the prisons. The UN strongly held that it amounted to violation of Article 6 (Right to Life) and Article 9 (Right to Liberty) of International Covenant on Civil and Political Rights, 1966 (ICCPR).

Now since India is a signatory to ICCPR, the Indian Government had to take all the necessary steps to curb the spread of infection in the prisons, otherwise it would be considered as a violation of the aforementioned obligation related to Right to Life and Right to Liberty. As far as the law of the land is concerned, then Section 13 of Prisoners Act, 1894 explicitly clarifies the duties of medical staff in the prisons that they have to look after sanitization and hygiene. The same point was raised by the All-India Jail Committee on Jail reforms in 1980-83 as well. Despite this, Indian prisons continue to remain unhygienic and medically unsafe.

If we take the recent example of Karnataka's biggest prison, the Parapan Aghrahara jail, last year a medical practitioner named Dr. Kafeel Khan had stayed in Mathura Jail as he was facing charges under the National Security Act, 1980 (NSA). He describes Indian jails as a "living

¹¹⁴ N. Kapilan, . (2020). *Suicides cases among nurses in India due to COVID-19 and possible prevention strategies*, Asian journal of psychiatry,

hell". He also exposed that the jails were even lacking in the most basic standards of living. In an interview he said that there was a common toilet for about 120 inmates. If we go by the records of the National Crime Records Bureau (NCRB), Prison Statistics India 2019, there are around 1,350 major and minor prisons in India. The prisons were found to have an accommodation capacity of 4,03,739 but the prisoners found at the end of the year were 4,78,600. The reason we face this over-crowdedness was due to the fact that two-third of inmates were still undertrial.¹¹⁵

On 5th October 2020, the National Human Rights Commission (NHRC) came up with an advisory explaining the rights of prisoners during the pandemic.¹¹⁶ It directed the prison administration to ensure sufficient healthcare facilities in each prison as per Chapter VII of Model Prisons Manual, 2016. The jailors of respective cells were asked to set up a collaboration with nearby specialist hospitals so that the inmates and the staff can access appropriate treatment and testing. The administration was ordered to fix the vacancies of medical officers within six months on a war-footing. In case the visiting doctors are unavailable, tie-up with the private practitioners to cope up with the same. Give a visual presentation to the prisoners and the staff on the symptoms of the infection. Expanding the categories of release of prisoners should be taken into consideration by the Chief-Secretaries of various states and UTs as they form a part of High-Powered Committees (HPC).

Medicines like paracetamol, vitamin-E and Zinc to be kept in surplus in the prisons and additional budget to be allocated to the authorities to ensure the same. All the inmates as well as the staff to be provided with personal sanitization kit which includes soaps, sanitizers and masks and the usage to be tracked. For the detection of the infection among the inmates, the prisons were asked to ensure the availability of thermal scanners and non-contact thermometers so that the authorities could segregate the infected ones and non-infected ones for better management of workload. Mobile toilets and increase in bathing space to be created for the inmates. The inmates are allowed to have access to medical records and their families to be updated regularly regarding their health. The diet to be regulated as per the health and age of the prisoners according to the Model Prison Manual, 2016. For example, new adaptations to be

¹¹⁵ "Right to Healthcare for Prisoners During Covid-19 Pandemic." *Academike*. 26 May 2021. Web. 26 Sept. 2021.

¹¹⁶ *The Right to Health Care in Prison during the Covid-19 Pandemic*. Open Society Justice Initiative. Web. 26 Sept. 2021.

made in the diet of elderly, pregnant women and prisoners with medical history in order to build resistance power in their body for combating the infection.

6. PRIMARY DATA COLLECTED FROM THE MODEL JAIL, CHANDIGARH

- The number of convicts released on special parole during the second wave of COVID-19 was 168 and the number of under-trials released on special interim bail is 65. The application was filed on 1.10.2021 and the time frame was from January 2020 to December 2020.
- Moreover, the information regarding hearing of cases was asked to be collected from the concerned court.
- The occupancy rate of the jail as on 10.11.2021 according to the official data disclosed in the RTI was 78.66%.
- The total medical expenditure incurred during the COVID-19 pandemic was Rs. 5,27,453, and no extra doctor was employed during the above-said period according to the information disclosed.
- The number of medical volunteers during the above-said period were NIL.
- The inmates were affiliated with local hospital GMCH Sector 32, and GMSH Sector 16, Chandigarh.
- Furthermore, the number of ambulances available in the jail for shifting the inmates to the hospital is one.

Therefore, while interpreting the data mentioned above, it can be construed that the medical facilities provided to the prison inmates has been inadequate. Moreover, by evaluating the seriousness of the Pandemic and the need to rush patients to the hospital especially during the second wave, it can be concluded that the prison did not employ enough emergency vehicles for the said purpose.

The above data is obtained via an RTI application.

7. CONCLUSION

All the data gathered during this research points towards one single direction that surge in the coronavirus cases was directly proportional to surge in crime rate, and eventually, which was directly proportional to jails getting packed with more and more prisoners. However, statistical figures show that several releases were also made during this period in order to meet the demand of prisons to have enough space, specially to combat a situation such as COVID-19.

This concludes that the guidelines of NHRC, pertaining to facilitating the prisoners with liveable conditions to cope up with this COVID-19 stress, were adhered to in most cases, however, negligence was seen in some parts as well. While most of the instances got reported at the earliest, any major prison breakout of the virus was avoided.

As far as bail and pendency is concerned, the Supreme Court of India directed each State and Union Territory to form High Powered Committees (HPCs). The states like Delhi, Punjab and Mizoram started releasing more and more prisoners. The High-Powered Committee of Punjab started the criteria to release only pregnant women from jails. The HPCs failed to understand that the elderly persons are at higher risk of COVID-19 infection because of their weak immunity. Four states (Mizoram, Punjab, West Bengal and Delhi) decided to release senior citizens from jails.

According to the Prison Statistics India 2020, by the end of 2020, the occupancy rate of Indian prisons was 118%. When compared with UP and Delhi which had the occupancy rate of 177% and 159.5% respectively, the occupancy of prisons in Punjab was significantly minimal. So, this shows occupancy was well managed.¹¹⁷

8. COMMENTS

- Since the outbreak of the COVID-19 Pandemic, the prisoners and the overall justice delivery system of the country has been affected the most, due to insufficient staff, resources, and constant lockdowns.

¹¹⁷ M, Pavithra K, and Pavithra K M. "Data: Prisons in India Continue to Be Overcrowded despite COVID-19." FACTLY.

- The prisons were already suffering from the problem of overcrowding, which was enhanced during the pandemic as the introduction and feasibility of infection prevention controls met with inherent shortfalls due to the lack of prison space and resources.
- Prisons in India struggle to cater to the basic health needs of the inmates, there is lack of proper nutrition, proper sanitation and provisions for safe drinking water, and the access to medical facilities is inadequate due to the dearth of trained medical practitioners and lack of medical resources.
- Furthermore, despite the advisories issued by the NHRC, no provisions were made to increase the accessibility to medical resources. For example, from the RTI filed at the Chandigarh Model Prison, it was found that despite the outbreak of the pandemic there was only one ambulance available to tend to the serious prison inmates.
- Moreover, the report has compared the crimes in two cities namely New Delhi and New York and it was highlighted that all countries have been impacted by the Pandemic whether they are developed or developing nations.

IV. TRANSGENDERS AND PANDEMIC: CONDITION OF TRANSGENDER PEOPLE IN PRISONS DURING COVID-19

BY - AAYUSHI GUPTA, RUSHIL KUMAR, SANSKRITI DIXIT, VAISHNAVI CHAUDHRY.

1. INTRODUCTION

In the past few years, the jurisprudence on the rights of transgender people has grown immensely. Courts across the world have rendered judgments upholding their rights. In the Indian context, the first major landmark judgment with respect to the rights of the transgender community was rendered by the Apex Court in 2014 in *National Legal Services Authority of India v. Union of India* ('NALSA').¹¹⁸ This judgment has proved to be particularly important for the recognition of their rights. In its judgment, the highest court of the country has drawn parallels between the transgender community and untouchables- by highlighting the social exclusion and discrimination of the both.¹¹⁹ Herein, the court recognized the right to self-identify gender as part of fundamental right to dignity under Article 21 of the Indian Constitution and granted legal recognition to transgender people as 'third gender'.

The court has also given some important directions with the objective of improving the lives of transgender people. These include- separate toilet facilities, HIV sero-surveillance centres, their recognition as socially and educationally backward, medical care facilities, spreading awareness about transgender persons. In addition, the court has also suggested the framing of welfare schemes. While these directions have been given with the intent of improving the lives of transgender people, they also have drawbacks. This is because these directions are very vague and difficult to implement, resulting in non-compliance. As a result, there has not been much compliance with these directions.

There is no denying the fact that the *NALSA* judgment is monumental for the Indian transgender community as it has placed great emphasis on upholding their rights and dignity. The court has delved into their history of oppression and accordingly recognized their right to self-determination by placing reliance on several international instruments such as the Yogyakarta Principles.¹²⁰ The Supreme Court recognized that gender identity forms the core of one's personal self and is based on self-determination, not on surgical or medical procedure.

¹¹⁸ *NALSA v. Union of India*, (2014) 5 SCC 438.

¹¹⁹ *Id.* at 57.

¹²⁰ YOGYAKARTA PRINCIPLES (2007), <https://yogyakartaprinciples.org/> (last visited on November 22, 2021).

However, the reality is that despite the Court's recognition of the plight of transgender community and enactment of Transgender Persons (Protection of Right) Act, 2019 and Transgender Persons (Protection of Rights) Rules 2020, transgender persons still encounter social, legal and political hostilities on the basis of their gender identity.¹²¹ In light of the same, it is imperative to initiate dialogues on the problems faced by members of the trans-community. Not only did the members struggle with loss of income, they also faced discrimination and stigma that jeopardised access to relief and healthcare. A report 'Asserting dignity in Times of COVID', found that one of the main hurdles was insistence of ID proof, both by government and private relief workers, which most transgender did not have.¹²² Even when they took up relief initiatives, they were harassed and their movement was severely restricted by the police during lockdown. The community was also baselessly targeted for "spreading the virus". Post unlocks, the systematic discrimination has only increased.¹²³

Despite recent judicial and legal developments like reading down of Section 377, enactment of Transgender Protection Act and Rules that have purported to correct the historical wrongs committed against them, their relationship with the penal state still remains fraught, evidenced by laws and practices neglecting them or placing them under distinct categories. One such site of legal and policy exclusion is the space that is itself relegated to the peripheries of public thought- the prison.¹²⁴ Like, the Indian discourse on prison reforms recognize women as vulnerable groups and fails to acknowledge transgenders, rendering them invisible. This report, thereby, reviews laws and practices that shape the lives of transgender community and deliberates on how we might approach legal and policy reform.

¹²¹ Jayna Kothari, *Trans Equality in India: Affirmation of the Right to Self-Determination of Gender*, 13 NUJS L. Rev. 3 (2020), <https://articles.manupatra.com/article-details/Trans-Equality-in-India-Affirmation-of-the-Right-to-Self-Determination-of-Gender>.

¹²² Rumi Harish and Sunil Mohan, *Asserting Dignity in Times of COVID- Transgender Community's Experience of Battling Covid in Bengaluru*, Alternative Law Forum (Oct., 2020), <http://altlawforum.org/wp-content/uploads/2021/06/Asserting-Dignity.pdf>.

¹²³ Nivedita, *Report documents pandemic woes of transgender persons*, THE HINDU (June 26, 2021), <https://www.thehindu.com/news/cities/bangalore/report-documents-pandemic-woes-of-transgender-persons/article34981740.ece>.

¹²⁴ Deekshitha Ganesan and Saumya Dadoo, *Confinement At The Margins: Preliminary Notes On Transgender Prisoners In India*, 13 NUJS L. Rev. 3 (2020), <http://nujlawreview.org/wp-content/uploads/2020/09/13-3-Ganesan-Dadoo-Confinement-at-the-Margins.pdf>.

1.1. SCOPE OF THE RESEARCH

The purpose of this research report is to delve into different aspects of life of transgender people in our country. The first chapter of the report will provide a historical account of the transgender community as well as discuss the findings of the landmark *NALSA* judgment. The second chapter of the report will focus on social exclusion & discrimination of the transgender community by evaluating the Transgender Persons (Protection of Rights) Act, 2020. The third chapter of the report will focus on the loss of livelihood of the transgender community during the COVID-19 pandemic. Finally, the fourth chapter of the report will delve into the status of transgender persons in Indian prisons during the COVID-19 pandemic. Towards the end, we will discuss & analyse our findings and conclude the report by putting forth some recommendations.

1.2. RESEARCH METHODOLOGY

We have relied on primary and secondary sources such as National Crime Records Bureau ('NCRB') reports and reports prepared by organizations like the Commonwealth Human Rights Initiative ('CHRI') and Centre for Law and Policy Research, newspaper articles, research papers, relevant case laws and policies. In order to make this report extensive, we also prepared a questionnaire and conducted an interview with Sri Mala, a member of the transgender community, to whom we are extremely indebted for her assistance

2. SOCIAL DISCRIMINATION & EXCLUSION OF TRANSGENDERS FROM PUBLIC LIFE

Over the course of years, several international and regional mechanisms have been adopted across the world with the objective of safeguarding the rights of transgender people. However, more often than not, there also exists punitive domestic legislations, practices, and policies that tend to target transgender people. For example, in the Indian context, transgender people have to go through a cumbersome procedure for changing their identification documents. Such legislations / procedures often result in the social exclusion of transgender people from the society at large. As a result, they become more vulnerable to social discrimination, mental health problems, and unemployment. In other words, their social and economic growth is hampered.

In order to improve the lives of transgender people in our country, the Ministry of Social Justice & Empowerment had enacted the Transgender Persons (Protection of Rights) Act, 2019. However, the Act has failed to address the grievances of transgender people in an effective manner. Even though the draft bill was subjected to severe criticism by the transgender community, the government went ahead and passed the legislation. The transgender community felt that the term 'transgender' was restrictive and failed to take into account the realities of people who do not conform to gender binary, male/female. In addition, the definition of 'transgender' failed to make a distinction between intersex persons and transgender persons. It is pertinent to mention here that transgender and intersex persons are often clubbed together in one category. However, the two are different as transgender persons are those who have a different gender identity than what was assigned to them at birth whereas intersex persons have diversity of gender that is determined through biological characteristics. In light of the same, several petitions challenging the constitutional validity of the Act have been filed.

As a result, the Ministry has notified the Transgender Persons (Protection of Rights) Rules 2020. These rules have been notified with the objective of bringing the Act in conformity with the landmark *NALSA* judgment. The rules are certainly progressive in the sense that they have done away with some of the stringent requirements under the act such as the requirement of sex reassignment surgery for seeking a certificate of change of identity. A major focus of the rules is improving the quality of lives of transgender persons especially in the public sphere. However, even the Rules have failed to address the gaps of the Act and have certain shortcomings. The first draft of the Rules had failed to incorporate any definition of the term 'discrimination'. Subsequently, a definition of 'discrimination' was included in the second draft but was excluded from the final rules. It is perplexing that the notified Rules have failed to define a term that is intrinsic to the very objective that it seeks to achieve.

However, this error of omission is not the most problematic aspect of the Act & Rules. What makes the Act truly problematic is the fact that instead of upholding the rights of the transgender people, it has instead aggravated the problems of the transgender people. This is because it contains several provisions that directly infringe on their fundamental rights.

As mentioned above, its constitutional validity has been challenged through writ petitions before the Supreme Court. The case of *Grace Banu Ganeshan & Ors. v. Union of India &*

*Ors.*¹²⁵ assumes much significance in the context of discussion about the constitutional validity of the Act. In this case, a writ petition had been filed by Centre for Law & Policy Research- an organization working for the betterment of the transgender community. The petition was filed on behalf of transgender rights activists and sought the declaration of certain provisions of the Act as unconstitutional. These include Sections 4,5,6,7,12(3), 18(a) & 18(d) of the Act. As per the petition, these sections are in contravention of the fundamental rights that have been guaranteed under Articles 14, 15, 19 & 21 of the Indian Constitution. Moreover, the petitioners have also put forth the argument that the above-mentioned provisions undermine landmark judgments of the Apex Court in *NALSA, Navtej Singh Johar & Ors. v. UOI*¹²⁶ and *K.S Puttuswamy and Anr. v. Union of India*.¹²⁷

2.1. HOW DOES THE ACT VIOLATE FUNDAMENTAL RIGHTS?

Section 4 of the Act undermines the right of self-determination of a transgender persona as a male or female. Furthermore, Sections 5 & 6 of the Act imposes documentary restraints on the transgender people. Section 7 of the Act makes it mandatory for a transgender person to undergo medical surgery in order to identify with their chosen gender. This violates their right to bodily integrity, privacy and personal autonomy that has been recognized by the apex court in the *NALSA* judgment.

Similarly, Section 12(3) lays down that a transgender person can either continue to live with their birth family even if they are subjected to violence at home. Alternatively, they can be placed in a rehabilitation centre in accordance with the orders of a competent court. This section violates the right to life of transgender persons. It also fails to differentiate between adult transgender persons and minors. Section 18(a) of the Act seeks to prevent bonded / forced labour against members of the transgender community. However, it has failed to define bonded/ forced labour. In addition, this particular section can be detrimental to the interest of the transgender community. This is because under the garb of stopping forced/bonded labour, it can be instead used to target the alternative family structures that have been developed by them. In many cases, members of transgender community tend to live together in common premises and share their duties in terms of household work as well as their means of earning livelihood. This particular section can be misconstrued to target such transgender persons who have

¹²⁵ *Grace Banu Ganeshan & Ors. v. Union of India & Ors.*, W.P. (Civil) No. 406/2020.

¹²⁶ *Navtej Johar v. Union of India*, (2018) 10 SCC 1.

¹²⁷ *Justice K.S. Puttuswamy (Retd.) and Anr. v. Union of India*, (2017) 10 SCC 1.

happily divided the roles and responsibilities amongst themselves and are working in accordance with same. Therefore, this section violates the right to equality that is provided under Article 14 of the Constitution.

In order to promote the social inclusion of transgender persons and end discrimination against them, it is imperative that the Transgender Persons (Protection of Rights) Act, 2019 and Transgender Persons (Protection of Rights) Rules, 2020 are brought in conformity with the *NALSA* Judgement. While the Rules are an improvement from the Act, there is still a lot of room for improvement. Firstly, one of the major shortcomings of the Rules is that it fails to provide a definition of the term 'discrimination'. Even though a definition of discrimination was added in the second draft of the Rules, it was ultimately not incorporated in the published rules. Secondly, it seeks to address the discrimination faced by transgender people through establishment of a welfare board (Rule 10), establishment of a transgender protection cell for ensuring that transgender persons are not subjected to discrimination in public life (Rule 11) and envisions the drafting of an equal opportunity policy (Rule 12). However, these Rules will remain ineffective as it fails to make any mention of affirmative action in the form of reservations or concessions. Thirdly and most importantly, the rules focus majorly on interactions of transgender persons with district magistrate who haven't been provided any sensitization with respect to these issues. In many cases, they are not even aware about the responsibilities under the Rules. Moreover, the problematic provisions of the Act that have been discussed above should be amended. The members of the transgender community won't be truly assimilated into the public life until and unless they have an equal access to education, medical facilities, legal aid etc.

They can have an equal access to this only when they are not being discriminated against. In order for that to happen, there needs to be an act that prohibits discrimination against them. The Centre for Law & Policy Research has put forth a draft Equality (Prohibition of Discrimination) Bill 2021 that seeks to send discriminated on several grounds of caste, race, ethnicity, descent, colour, sex, sexual orientation, gender identity, gender expression, tribe, nationality, disability, marital status, pregnancy, health (including HIV / AIDS status), occupation, political opinion and belief, linguistic identity, place of birth, age, migration, religion, refugee status, socio-economic disadvantage, food preference or any combination of

these characteristics and to provide for matters connected therewith.¹²⁸ The government can explore the possibility of enacting a legislation along the similar lines seeking to end discrimination against members of the transgender community.

3. LOSS OF LIVELIHOOD DURING COVID-19

The COVID-19 pandemic's unprecedented lockdown has impacted many people, but one of the most vulnerable groups, the transgender population, has received little or no attention at all. The lockdown has left most of the transgender people working in the formal sector jobless. Transgender people involved in the informal sector, be it sex work or begging, faced the wrath of COVID-19 on a higher scale as social distancing became a norm. The loss of livelihood left the trans community were left completely vulnerable.

A news outlet, back in 2019, reported that there was a new plant setup by the Lakshmi Narayan, a transgender activist.¹²⁹ It was one of the first plants to be conceptualized and operated by a transgender. This feat was achieved after years of begging and by numerous efforts to uplift this community. The COVID-19 pandemic occurred just as their business was picking up, turning their lives upside down. They were forced to close the plant¹³⁰ due to a lack of incoming orders, leaving them jobless and forcing some of them to return to begging. This is just one of the thousands of cases which happened during this pandemic. As a result, the most neglected community is suffering once again due to the pandemic.

After going through almost all of the literature and news articles available on the said topic, it is important to note that no government has done anything to protect and provide jobs/ job security to this community in this challenging time, therefore, most of the people employed in the formal and informal sector were left unemployed with no savings. As a result, a group of 2,182 transgender activist appealed to various ministries of the government for help. It was

¹²⁸ Equality (Prohibition of Discrimination) Bill 2021 (last visited January 8, 2021) <https://clpr.org.in/wp-content/uploads/2020/01/Equality-Bill-2021-8th-January-2021.pdf>.

¹²⁹ Anurag Bende, *In a first for state, new plant run by, for transgenders*, PUNE MIRROR, (Nov. 16, 2021, 9:28 PM), <https://punemirror.indiatimes.com/pune/cover-story/in-a-first-for-state-new-plant-run-by-for-transgenders/articleshow/71174158.cms>.

¹³⁰ Anurag Bende, *Back to begging, as transgenders lose livelihood in COVID lockdown*, PUNE MIRROR (Nov. 16, 2021, 9:26 PM), <https://punemirror.indiatimes.com/pune/civic/back-to-begging-as-transgenders-lose-livelihood-in-covid-lockdown/articleshow/78737307.cms>.

also pointed out that less than 1 percent of all the eligible trans genders were able to receive the 1500-rupee aid by NISD (National Institute of Social Defence).¹³¹

Trans people have lost their primary sources of income, which have been begging, sex work, and informal labour, as physical distancing has become the norm. Many are displaced from their homes at a young age and live in filthy, unsanitary conditions that expose them to a variety of health concerns. Furthermore, activists claim that a significant number of trans persons lack either identity cards or bank accounts, preventing them from receiving government assistance. Even though the Supreme Court judgment of *NALSA v. UOI*¹³² clearly states that lack of documents of transgender cannot be a reason to deny benefit or employment but this does not seem to be a reality on ground.

In an interview with Sri Mala, In a casual conversation with Sri Mala,¹³³ a transgender whose main source of income now after pandemic was begging, stated that “After almost 4 years of begging and working as a sex worker, she acquired the skill of stitching and was working in a garment factory. She thought that she wouldn’t ever go back to her horrible past life again. However, pandemic struck resulting in complete lockdown which caused the factory to shut down and, thereby, leaving her out of a job. She blew all her savings in the lockdown and here she was again begging because she couldn’t find a suitable job”.

In conclusion, the trans community was affected by the pandemic in the worst manner possible. The lockdown, which was a consequence of the pandemic, came in as a hurdle for the trans community which sadly only a few could overcome. The lockdown reset the development/ upliftment clock for the trans community and took them back to the beginning. As this community was one of the weakest and with all the social taboo, people from the trans community were the first ones to be fired without cause. Therefore, pandemic coupled with lockdown directly took livelihood away from the trans community.

¹³¹ Zarafshan Shiraz, *Transgender Community Worst Hit by COVID-19 Lockdown, Appeal For Essential Help as Less Than 1% Received NISD Grant*, PUNE MIRROR, (Nov. 16, 2021, 8:45 PM), <https://www.india.com/viral/transgender-community-worst-hit-by-covid-19-lockdown-activists-appeal-for-essential-help-as-less-than-1-received-nisd-grant-4016828/>.

¹³² *Supra* note 118.

¹³³ The interview was conducted on 16th November 2021.

4. GROUND REALITIES OF TRANSGENDER PEOPLE CONFINED IN INDIAN PRISONS DURING COVID-19

The National Crime Records Bureau's annual Prison Statistics reports the latest data on prison and prisoners in India. Transgender prisoners found no mention in these reports until 2020¹³⁴, when the Government of India told the Delhi High Court that it would include 'transgender' as a separate category to classify prisoners for the Prison Statistics report on this year's data.¹³⁵ Unfortunately, the digitized editions of reports are available only from 1995 to 2019 on the portal and not of 2020 or 2021.¹³⁶ Also, the National Prisoner Information Portal¹³⁷ reports data on the number of prisoners by state and categorize them into 'male', 'female' and 'others' category. A total count of the numbers in the 'others' category adds up to 70, which is a gross underestimation as a report by Commonwealth Human Rights Initiative estimates the preliminary number to be as high as 214, based on responses received under Right to Information Act, 2005.¹³⁸

In response to a query posed by BJD leader Amar Patnaik, the central government replied that they are considering a Rajya Sabha Member's suggestion on providing separate facility to transgenders in prisons. Additionally, the Minister of State for Social Justice and Empowerment replied that "as of now, no such step has been taken in this direction."¹³⁹ The lack of initiative towards inclusion of transgenders in criminal system is evident by the fact that state jail manuals, which are the primary source of information on prison management, do

¹³⁴ Shemin Joy, *NCRB doesn't have transgender prisoners' data, RTIs count 214 such prisoners*, DECCAN HERLAD (Nov. 22, 2021), <https://www.deccanherald.com/national/ncrb-doesn-t-have-transgender-prisoners-data-rtis-count-214-such-prisoners-923188.html>.

¹³⁵ Chintan Girish Modi, *Data on transgender people in prisons: Tool or weapon*, DECCAN HERLAD (Nov. 22, 2021), <https://www.deccanherald.com/opinion/data-on-transgender-people-in-prisons-tool-or-weapon-925008.html>.

¹³⁶ NATIONAL CRIME RECORDS BUREAU, PRISON STATISTICS OF INDIA, (2019), <https://ncrb.gov.in/en/prison-statistics-india-2019> (last visited on Nov. 22, 2021).

¹³⁷ NATIONAL PRISONS INFORMATION PORTAL, <https://eprisons.nic.in/public/DashBoard.aspx> (last visited Nov. 21, 2021)

¹³⁸ COMMONWEALTH HUMAN RIGHTS INITIATIVE, *Lost Identity: Transgender Persons Inside Indian Prisons*, <https://www.humanrightsinitiative.org/publication/lost-identity-transgender-persons-in-indian-prisons> (last visited August, 2020).

¹³⁹ *Govt to consider suggestion on giving separate facility to transgenders in prisons*, THE NEW INDIAN EXPRESS (Nov. 22, 2021), <https://www.newindianexpress.com/nation/2021/mar/17/govt-to-consider-suggestion-on-giving-separate-facility-to-transgenders-in-prisons-2277851.html> (Last visited on November 22, 2021).

not make any provisions for transgender prisoners, except for Delhi Prison Rules, but they are in no way comprehensive.¹⁴⁰

4.1. SELF-NARRATIVES

Narratives of transgender prisoners are not only vital to understanding their daily needs and struggles, but also offer an essential perspective on the criminal justice system and institution of prison as a whole. The series, *Barred- A Prison Project*, provide accounts of transgender prisoners and the torture they face on a daily routine. For example, the report describes the case of Kiran Gawli, who spent 17 months in Nagpur Central Prison.¹⁴¹ As one of the five transgender women lodged among 2000 male prisoners, Kiran accused several convicts, undertrial prisoners and jail staff- all cisgender men- of molesting and raping her and other transwomen arrested along with her. She reported that neither the prison authority nor the judiciary came to her rescue, despite dropping 5-6 letters in the grievance box. She also hesitantly shared that “protesting would mean only one thing- getting raped”, thus, she managed to conceal a part of the horror stories among the descriptions of daily mundane affairs of the prison.

Kiran, along with her guru Uttam, was arrested in 2019 following a gruesome murder in the region. In 2020, the court started granting them bail but, as a prime accused, Uttam’s bail plea was rejected multiple times, even though they maintain that they were being framed. Like Kiran’s case, a transgender has named a constable and guard of allegedly raping and sodomizing her in the barrack.¹⁴² The transgender reported that she repeatedly requested the authorities to shift her to the women’s barrack but no one heard her grievances.

It has been very evident that transgender people face a number of issues, making them a category of unique prisoners that require reformative policies to deal with the problems like inaccessibility to healthcare, physical and mental assault, humiliating body searches and ignorance of their basic needs. Their problems and struggles have often been overlooked by authorities. In the recent decades, we have witnessed a considerable influx of policy measures and legislations aimed towards addressing the handling of transgender prisons but the

¹⁴⁰ Delhi Prison Rules, 2018, Rule 2(41).

¹⁴¹ Sukanya Shantha, *Misgendering, Sexual Violence, Harassment: What it Is to Be a Transgender Person in an Indian Prison*, THE WIRE (Nov. 22, 2021), <https://thewire.in/lgbtqia/transgender-prisoners-india>.

¹⁴² Soumitra Bose, *Transgender alleges rape in jail moves HC*, THE TIMES OF INDIA (Nov. 22, 2021), <https://timesofindia.indiatimes.com/toireporter/author-Soumitra-Bose-479245021.cms>.

credibility of these policies and their effectiveness on the ground level are still in question. A data titled, ‘Lost Identity: Transgender persons inside Indian prisons’¹⁴³ published by Common Human Rights Initiative (CHRI) reveals that prisons all across the nation do not have sufficient awareness about the needs of transgender prisoners which often result in the denial of their basic rights.

Indian constitution per se provide for free legal aid to poor and weaker section of the society and equality before law under Article 39 A and 14 respectively but none of the states or Union territory, barring Delhi has successfully recognized the community’s need for the legal aid. As per the data, published on official website of National Legal Services Authority, Delhi¹⁴⁴ has included transgender community among one of the three separate categories for legal aid.¹⁴⁵

Transgender are placed in the prisons on the basis of their genitals and not on their self-expressed gender identity.¹⁴⁶ Transgender in prisons is often denied transpacific healthcare infrastructure and the related support. While their admission to prisons, trans- prisoners are subjected to the most humiliating and invasive body searches. Prison authorities follow a procedure laid down under the Prisons Act, 1894 which is strictly gender binary. For instance, a male prisoner is to be searched by male officers while female prisoners are to be searched by female staff member. In case of trans-prisoners, the search of a trans-woman may be done by a female staff based on its apparent feminine characteristics irrespective of their preference.

5. CONCLUSION AND RECOMMENDATIONS

With India being a nation that takes pride in diversity, it is distressing to see that certain factions of our society remain unheard. The purpose of this research report is to provide a detailed account on the problems faced by the members of the transgender community. Through the medium of this research report, we have attempted to highlight issues that assume much

¹⁴³ Gursimran K. Bakshi, *Identities denied: The double marginality of trans-persons in Indian prisons*, THE WIRE (Nov. 22, 2021), <https://thewire.in/lgbtqia/identities-denied-the-double-marginality-of-trans-persons-in-indian-prisons>.

¹⁴⁴ NATIONAL LEGAL SERVICES AUTHORITY, <https://nalsa.gov.in/services/legal-aid/eligibility> (last visited on November 22, 2021).

¹⁴⁵ Sukanya Shantha, *Transgender and Pandemic*, THE WIRE (Nov. 22, 2021), <https://thewire.in/lgbtqia/transgender-prisoners-india>.

¹⁴⁶ Sarah Lamble, *Rethinking gender prison policies: Impacts on transgenders prisons*, Birkbeck Institutional Research Online (2012), https://www.researchgate.net/publication/294582704_Rethinking_gendered_prison_policies_impacts_on_transgender_prisoners.

significance in the context of discussion pertaining to their lives. These include their social exclusion and discrimination, loss of livelihood during the pandemic and the gendered violence that they are subjected to in prisons.

All these issues are interconnected and, therefore, should not be studied in isolation. In other words, the social exclusion and discrimination combined with the loss of livelihood often force transgender people to resort to illegal means, thus, making them end up in prisons. Moreover, their social exclusion and loss of livelihood has been exacerbated during the Covid-19 pandemic. From lack of access to vaccines to unemployment, the transgender community has faced a range of problems. Against this background, the government needs to adopt remedial measures focused on bettering their lives. Like the allocation of funds to set up shelter homes as part of Garima Greh project, formulation of a support scheme called Support for Marginalized Individuals for Livelihood and Employment (SMILE), conducting seminars and online training session on sensitization are indeed some of the progressive steps for a gender-inclusive future.

5.1. RECOMMENDATIONS

First and foremost, the problematic provisions of the Transgender Protection Act & Rules should be amended, in compliance with *NALSA* judgment, so as to ensure that no fundamental rights of the transgender community are infringed. For instance, the law requires that a “transgender certificate” holder can apply for a “change in gender certificate”, provided they present a proof of surgery, issued by a hospital official on “satisfaction with its correctness”, to the District Magistrate for second evaluation. It might coerce people into medical procedures that they might not want, thereby violating their right to self-determination—a violation that Indian and international jurisprudence condemns.

Secondly, the government & other organisations can try to bring about change at the grassroots levels to address the social discrimination and exclusion of the transgender community., starting with publishing academic literature, which incorporates their perspectives & experiences. This step might truly help in addressing the problems and mitigating specific harms faced by the community

There needs to be a greater emphasis on promoting organisations that are working for the upliftment of the transgender community in the country. There is also a need to include information about them in the school curriculums. The social exclusion and discrimination they

face is a result of lack of knowledge about their lives as well as societal norms & prejudices. In light of the same, it is imperative that accurate knowledge is shared with the objective of minimizing any prejudice towards them. Most recently, the Madras High Court directed the Tamil Nadu government to consolidate a glossary with suggestions of 24 words and expressions for a dignified identity while referring to the LGBTQIA+ community.¹⁴⁷

The aforementioned issues which transgender inmates might face while incarcerated must be treated as an indicative list and not an exhaustive one. Due to their membership to the marginalized social group and their status as ‘prisoners’, they face double marginality in prisons. Nevertheless, the same can be rectified by acknowledging their right to self-identify, revolving around gender awareness and sensitization.

Post NALSA Judgment, the states must be prescribed to maintain separate records for them, which otherwise halts the overall discourse on their proper treatment. Just like the Prison Rape Elimination Act¹⁴⁸ (‘PREA’) introduced in United States in 2003, India should also enact the same so as to deter the sexual assault of transgender prisoners or prisoners in general. Under Section 115 of Prison and Jail Standards of PREA, the agency shall ensure that each facility will be equipped with video monitoring systems and adequate levels of staffing, to protect inmates against sexual abuse. The Act also imposes limits to cross- gender viewing and searches.

In one of its kind initiatives in the country, Kerala has planned to reserve separate barracks for transgender inmates in its jails, instead of placing them in binary prisons.¹⁴⁹ Setting them aside could offer them some protection, but segregating them as an entire group- without their consent- might stigmatize them and even encourage violence by staff. Therefore, involuntary segregation should be banned unless it is in connection with decree of consent. It is also important to document experiences of transgender people who have confined within prisons.

The most important issue that needs to be addressed as soon as possible is that the trans community receive the necessary aid. The states should take inspiration from the Odisha government who took steps to include the trans community in the already established welfare

¹⁴⁷ S. Sushma & Anr. v. Commissioner of Police and Ors., W.P. No. 7284 of 2021.

¹⁴⁸ Prison Rape Elimination Act of 2003, 45 U.S.C.§15601 (USA).

¹⁴⁹ Ramesh Babu, *Transgender inmates in Kerala jails to get their own blocks*, HINDUSTAN TIMES (Nov. 22, 2021), <https://www.hindustantimes.com/india/transgender-inmates-in-kerala-jails-to-get-their-own-blocks/story-rCmoZYpWTEjvvpUbKuUJK.html>.

schemes. Apart from that, the states need to start vocational training targeted towards the trans community which would help them survive if this situation arises again.