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# Does Punishment Work? Exploring India's Carceral System

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*“An eye for an eye will leave the whole world blind”*

- Mahatma Gandhi

## INTRODUCTION

To err is human, and to forgive is divine. While divinity in itself is not a realistic standard which we can impose on legal systems, the humanity of error is however an undeniable truth. Crime, in this sense, isn't a deviation from society but actually a reflection of its inherent imperfections. A crimeless society, as many scholars and reformers have noted, is a myth.<sup>1</sup> Human beings will falter, and when they do so, it is the State's responsibility to respond - through laws, courts and a justice legal system which evolves over centuries.

The State's approach to punishment has walked through a long road, experimenting with theories ranging from retribution - where punishment is viewed as *just deserts* - to deterrence and now, more progressively towards reform and rehabilitation. Yet even today, the Indian criminal justice system largely clings to retributive models of justice, often prioritizing punishment over healing, meaningful or real change.

This paper essentially seeks to explore an alternative path of restorative justice and its possibility of surviving in the Indian justice system. Rather than focusing only on punishing the offender, this kind of a justice system asks how the harm caused by the crime can be acknowledged, repaired, and ultimately healed. It aims to bring the victim, the offender and sometimes even the larger community into a process which values dialogue, accountability, and rebuilding trust. It encourages and pushes us to think about justice as not only a legal outcome but also as a human process.

Restorative justice isn't a new invention or discovery. It was in fact, found in the roots of similar principles in Indian cultural and

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<sup>1</sup> Akanksha Marwah, “Restorative Justice and Reformation of Offenders” [2020] ILI Law Review.

religious texts. Ancient scriptures like the *Ramayana*, *Mahabharata*, *Vishnu Purana*, and *Durga Saptashati* reflect ideas of atonement, dharma, and restoration. These early reflections on justice were often less restricted to punishments and more focused on balancing relationships and perpetual moral consequences.<sup>2</sup> India's legal framework today - spanning from the Constitution of India, 1950 and the Indian Penal Code, 1860 to recent laws like the Bharatiya Nyaya Sanhita, 2023 - do although provide structure for justice, but still leaves an open question - What kind of justice do we want to build?

This research paper aims to focus on integrating restorative justice within India's legal and cultural context, especially by aligning it with the reformative goals of our system. It aims to foremost unpack what restorative justice truly means and its functioning in theory versus practice. It will then go on to explore how this approach can support rehabilitation of offenders - not simply by reducing their punishment but by truly transforming their understanding of the harm they caused and helping them take responsibility for it in a constructive way.

At its heart, this paper seeks to ask as well as answer a fundamental question: Does punishment, as we currently understand it, truly serve justice? Or is there a more compassionate and an effective path - one that acknowledges harm, empowers victims, and offers offenders a chance to genuinely make amends?

## **IS THE INDIAN LEGAL SYSTEM PERFECT?**

The execution of Nirbhaya's convicts on March 20, 2020 in Delhi's Tihar Jail was a watershed moment which exposed deep divides in public opinion and perception on ideals of justice and punishment in India. While many roared in celebration of the death penalty as a long-awaited act of justice and a solid deterrent for similar future crimes, there were still others who condemned the act by choosing to see it not as justice but as a reflection of a punitive, retributive system - a system which prioritized vengeance over a true idea of justice, one which may easily be swayed by public perception and media pressure rather than being driven by principled and logical legal reasoning. This polarization forces us to ask ourselves a fundamental question - Do harsher and stringent punishments actually deter crime, or they simply perpetuate a cycle of harm?

Recent history coupled with empirical evidence has suggested that

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<sup>2</sup> Manu S R, "Adoption of the Restorative Criminal Justice System in India" [2023] 5(5) IJFMR.

harsher punishments have not necessarily led to a reduction in crime. In spite of the more stringent rape laws being introduced in 2013 after the Nirbhaya incident, barbarous and heinous crimes including sexual violence and resultant murders have continued to occur.<sup>3</sup> This pattern indicates the flaws of a legal justice embodied on principles of retribution and deterrence. Legal experts and criminologists have long argued that the threat of stringiest forms of punishments more often than not, fail to address primary causes of criminal behaviours, neither does it provide any closure, support, acknowledgement or healing for victims.

India's legal justice system, although founded over robust legal principles, does however struggle with chronic implementation gaps - such as overburdened judiciary, resultant delayed trials, inconsistent sentencing, inadequate support mechanisms and so on.<sup>4</sup> The resultant system eventually fails both the victims as well as the criminals, neither being able to truly redress the former nor being able to provide any meaningful opportunity for reform for the latter.

### **TYPES AND THEORIES OF PUNISHMENT**

Punishment is a response to crime which has evolved parallelly to human societies. Theories of punishment are primary to foundations of criminal law and deeply reflect a society's changing attitude towards crime, justice, and the resultant social order. The underlying purpose of punishment is not only punishing and penalizing the wrongdoer but also deterring similar future crimes, protecting society and in some cases, reforming the offender.

In ancient history of India, different kinds of punishments were laid down in ancient texts of Manusmriti under the heading of "Danda" - which meant punishment which was the King's duty to be carried out with the support of legal advisors and ministers. This system was deeply rooted in upholding "dharma" or rule of law, and maintaining social order in society. Punishments were then categorized into four types - Admonition (Vakdanda), Social Censure (Dhikdanda), Financial penalties (Dhanadanda) and Physical punishment (Badhadanda). Each category of punishment was imposed proportionately to the severity of the offense committed, ranging from a simple warning to severe corporal punishment which included flogging, mutilation or sometimes even execution.

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<sup>3</sup> Garima Sachan, "Towards Consistency: Addressing Disparities in Sentencing Practices in India's Criminal Justice System" [2025] NLIU Law Review.

<sup>4</sup> Id.

India's approach to justice and punishment evolved through time. The Constitution of India was adopted in 1950 which marked a turning point for the Indian legal system by introducing the concept of fundamental rights and rule of law. The contemporary Indian penal system shifted from ancient practices of deterrence and retribution to explore methods of reformation and expiatory theories of punishment. Legislations such as IPC and CrPC formalized types and procedures of punishments. Recent reforms in new laws like Bharatiya Nyaya Sanhita 2023 pushed the evolution further by not only updating and expanding categories of offences and resultant punishments but also by going a step ahead and introducing community service as a category of punishment (penalty) for minor crimes. This was done in the faith of shifting from inflicting pain to a more rehabilitative effort for encouraging rehabilitation and restoration of social harmony. Over in all, as a part of theory, punishments can be broadly categorized under five different theories.

### **1) Retributive Theory**

Being followed as one of the oldest theories, this category of punishment is the most instinctive approach to a crime. It comes from the concept of revenge and moral vengeance and embodies the idea of "an eye for an eye". According to this theory, punishment is justified and is understood as a proportionate response to the offence committed. This theory believes that the criminal deserves the suffering for having violated society's moral codes and the punishment awarded restores the balance which was disturbed by causing the offence.

This theory is not concerned with redemption of the offender or the broader impact on society at large or the bigger picture in general. It merely focuses on the act committed and stresses on the fact that justice will be served when the offender is punished for having committed the offence. This form of punishment is often criticized for being too harsh and stringent and in hindsight failing to address underlying causes of criminal antecedents, behaviours, and actions.<sup>5</sup>

### **2) Deterrent Theory**

This theory is driven by the idea that punishment granted to an offender should serve as a warning to other offenders as well as the public at large. The aim of this type of punishment is to discourage the offender - which is also called specific deterrence - while also discourage and desensitize from general

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<sup>5</sup> Divyanshi Gupta, "Theories of Punishment" [2024] Manupatra Articles.

public from engaging in similar conduct. The effectiveness of this method is said to depend upon three main factors -

- **Severity** which refers to how harsh the punishment is. The punishment imposed should be proportionate to the kind of offence committed, otherwise the point of deterrence shall fail to be achieved.<sup>6</sup>
- **Certainty** which refers to the likelihood of punishment being imposed upon a crime being committed. It must be certain in minds of offenders that his criminal acts will not go unpunished.<sup>7</sup>
- **Swiftness** which refers to how quickly and promptly the punishment follows the crime. The quicker the prosecution is implemented, and punishment imposed, the greater impact it is believed to have.<sup>8</sup>

The deterrent theory is the foundation of many legal justice systems throughout the globe, especially during prescribing mandatory sentences for certain offences in codified statutes. Critics and experts have however also concluded that there is no solid correlation which causes increase in severity of punishment to cause decrease in crime rates. While severity as such is not an effective ideal, the certainty and fear of being caught and punished is however a more effective idea of deterrence.

### **3) Preventive Theory**

This theory believes in protecting society from criminals by incapacitating them. The underlying idea is to remove these criminals from society through methods like exile, imprisonment or even death penalties - all to prevent future crimes.<sup>9</sup> This kind of punishment is less concerned with deterrence or retribution of any kind and more concerned with ensuring public safety in general.

Under this theory, other restrictive methods such as parole, probation or community supervision can also be included for the purpose of limiting the offender's ability to relapse while also granting some degree of reintegration into the society. This theory comes in handy when dealing with habitual criminals or those who can be categorized as a continuing threat to society at large. Even though this theory may prove to be useful at times, it still often raises ethical concerns about balancing

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<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Dr. Mukul Mondal, "Preventive or Deterrence Theory: A Doctrine Concerning Punishment" [2021] 7(5) IJHSSS.

individual rights and community safety.

#### **4) *Expiatory Theory***

A comparatively ancient form of punishment rooted in ethical principles, this theory views punishment as a method of moral cleansing of the offender with an aim of genuine repentance through acts of atonement. This theory focuses on inner transformation and runs on the ideas prescribed in ancient texts such as “Manusmriti” such that offenders “pay for their sins” through compensatory measures like spiritual penance or providing reparations to the victims they injured. Measures like these are adopted over imposing harsh punitive suffering.

This kind of justice encourages dialogue between victims and their offenders, with the mere aim of restoring harmony through measure like compensation or community service, whatever seems appropriate on a case-to-case basis. However, such kind of justice and punishment cannot ideally work in the modern legal system which prioritizes deterrence and retribution, viewing moral repentance as proportionately insufficient to address serious crimes. While such methods, including reparation and compensation can be and is used in civil wrongs, such methods are difficult to apply in criminal cases. While this method can be used for trivial and petty offences, it doesn't seem to do much justice in the hard and dangerous criminal world.

#### **5) *Reformative Theory***

This theory reflects a significant shift from punishment imposed as a means of suffering to punishment imposed as an opportunity granted for personal transformation on a moral level. This kind of categorization of punishment aims to recognize the potential for change in every individual, even criminal offenders since it is driven by humanitarian ideals. This theory seeks rehabilitation of offenders over awarding of punishment to them.

The famous words said by Gandhi - “An eye for an eye will leave the whole world blind” is essentially the ideal on which this theory runs.<sup>10</sup> The quote as well as the theory aim to capture the essence of a reformative idea. Under this theory, crime is not seen in isolation but as a result of certain social and psychological factors and circumstances, thus viewing the offender as someone who can be brought back into society through appropriate intervention, and not as someone who is

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<sup>10</sup> Supra at 8.

inherently evil. The aim of this theory is not to exile the offender from the society or impose stringent punishments on him, but on individualized and appropriate treatment for such behaviours, counselling, and education for understanding implications of one's actions, vocational training to have a means of income, and therapeutic measures to understand and change criminally associated tendencies and behaviours.

This theory proves most effective and in fact essential particularly for juveniles and first-time offenders on some level. It aims to strengthen the character and essentially aims to understand and address the underlying root causes of such criminal behaviour. Measures taken under this category of punishment are taken to reform the individual and may be in the form of parole, probation, juvenile homes, and correctional programs which are particularly designed to help the process of facilitating the offender's reintegration into society as a respectable, morally good law-abiding citizen. While this theory is appropriate for juveniles and occasionally first-time offenders, it does however prove difficult to follow through in cases involving hardened and habitual criminals, where possibilities of reform are next to none.

## **INDIA'S CARCERAL SYSTEM**

India's prison system is governed by various laws such as Prisons Act of 1894, Prisoners Act of 1900, and Transfer of Prisoners Act of 1950. These laws distribute and allot prison management responsibilities to State where each State is expected to oversee its own jurisdiction of facilities.<sup>11</sup> The Inspector General of Prisons of each jurisdiction in every State is appointed with the task of ensuring smooth operation of the prisons in line with prescribed rules and regulations. Across India, there are eight kinds of prisons, each of them designed for a specific purpose with a specific role within the broader framework of correction and rehabilitation.

- 1) The most recognized and prevalent ones in our country ought to be Central Prisons. They are usually meant for prisoners serving longer sentences, usually those more than two to three years and are hence typically larger in size than other kinds of prisons and facilities. They are ideally supposed to be better equipped, inclusive of more comprehensive facilities and services such as education, healthcare, vocational programs etc. Several big states with considerable crime rates have within them several central

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<sup>11</sup> Maya Devi, "A Study of Prison System, Punishment and Types of Prisons in India", [2023] 8(1) IJNRD.

prisons. Delhi holds nine central prisons within the Tihar complex, six central prisons within the Mandoli complex and one central prison within Rohini complex.<sup>12</sup> Other states like Uttar Pradesh Tamil Nadu, Bihar, Karnataka, Rajasthan, and Maharashtra also facilitate several central prisons.

- 2) District Prisons are the answers in states and union territories which lack the existence of central prisons. These are typically meant for housing under-trial prisoners and those serving comparatively shorter sentences. Uttar Pradesh alone runs 61 district prisons.<sup>13</sup> Bihar runs 31 district jails.
- 3) Running down to an even smaller scale, we come to Sub Prisons which run on a sub-divisional level. The main purpose of such kind of prisons to make sure the inmates serving short sentences and on undertrial remain close to their home jurisdictions. The purpose is to provide and support a much more accessible and localized approach to prison management which is served by the proximity. Andhra Pradesh alone runs 99 sub-jails.<sup>14</sup> Other States like Maharashtra, Tamil Nadu, Bihar also have increased numbers of sub prisons, reflecting an effort towards decentralized administration.
- 4) Women's Prisons are special facilities provided for exclusively female prisoners. The primary aim is to address specific needs of women. While women prisons can be housed in ordinary prisons, this is an effort towards understanding varying and specific needs of women specifically in times of menstruation, menopause, pregnancy and so on. This is done through dedicated gender-sensitive programs, support, and resources. Women prisons are not widely prevalent in India as of now, as only a dozen states and union territories currently run them. Rajasthan, Tamil Nadu and Kerela have led the way to the rest of the country, currently running 6, 5 and 3 women prisons each.<sup>15</sup>
- 5) Open Prisons shift towards a more progressive approach. This system provides for a minimum-security institution

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<sup>12</sup> "Eight largest jails in India", [2024] Times of India. < <https://timesofindia.indiatimes.com/india/eight-largest-jails-in-india/photostory/108952498.cms>.> Accessed 10 May, 2025.

<sup>13</sup> 'Prisons Administration and Reform Services', <<https://www.upprison.gov.in/Citizen-Charter.aspx>> Accessed 10 May, 2025.

<sup>14</sup> 'State/UT Wise and Jail Type Wise Number of Jails, their location and video conference facilities.' Ministry of Home Affairs. <<https://www.mha.gov.in/MHA1/PrisonReforms/NewPDF/NoOfPrioners13122013.pdf>> Accessed 10 May.

<sup>15</sup> Id.

which is exclusively reserved for prisoners with a record of good behaviour during their sentences. We shall explore more on this kind of a system later in the paper.

- 6) Special Prisons is a special-category of prisons designed for high-security purposes to house prisoners convicted for unnaturally violent and grave crimes, terrorism and repeat offenders. The aim is to provide a secure establishment to shield the community from those who pose a greater risk to society and those who have violated prison rules in their past conduct. State of Kerela holds the record of having the greatest number of special prisons. Running a total of 16 special jails, the highest number can be accorded to Kerela's result of historical evolution, decentralized administrative strategy, and most importantly, a correctional philosophy of jail systems which prioritizes prisoner classification.<sup>16</sup>
- 7) Borstal School are kinds of detention centers established exclusively for juvenile offenders. The primary aim is to build a system which encourages redemption and reformation of such juvenile offenders. An effort is sought to provide for a child-friendly environment to avoid exposure of harsh reality of prisons. Educational and vocational training is provided for along with moral guidance which acts as most important for reformation and prevention of any possible future criminal antecedents.<sup>17</sup>

## **PRISON CONDITIONS IN INDIA**

India's carceral system stands at critical crossroads, reflecting foundational historical legacies on one side while posing contemporary challenges on the other. The intention behind prison systems was rehabilitation, justice, and social order but the ideals have fallen short in contemporary prison system in India. Rather, the Indian prison system reveals a harsh reality marked by intense overcrowding, systemic violence, prolonged detention, inadequate health care, caste-based discrimination, inadequate infrastructure and so on. These conditions seriously undermine respect, dignity, and rights of prisoners. Despite constitutional guarantees and human rights obligations, these harsh realities plague over basic dignity of the inmates.

### **1) Overcrowding**

One of the most severe and consistent problem faced by Indian carceral system has been overcrowding. This challenge has been rooted deep both in historical legacy as well as

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<sup>16</sup> Id.

<sup>17</sup> Samiksha Jain, 'Indian Prison System' [2024] 3(4) International Journal of Human Rights Law Review.

contemporary systemic failures.

The Indian carceral system was designed keeping the retributive approach in mind rather than rehabilitation. Most of the prisons in use today have been constructed in 19<sup>th</sup> and early 20<sup>th</sup> centuries based on the population and conditions then, not keeping in mind contemporary consideration and standards of prison conditions, accommodation, and human rights. The architecture was suited to the earlier centuries and do not sit well with the exponential growth in prisoner population. National Crime Records Bureau Data has revealed that Indian prisons operate far beyond their intended and sanctioned population capacities. The Human Rights Watch report of 1991 revealed that occupancy rates exceeded 150% in many states across the country including some prisons housing more than double their sanctioned population.<sup>18</sup>

The situation has not bettered, but only worsened over the decades. The average occupancy remains alarmingly high, with most jails running at 200% or more of their intended capacity.<sup>19</sup> The Tihar Jail for example, the biggest jail in India currently houses around 20,500 prisoners, while the approved capacity is only 10,500.<sup>20</sup> For a cell designed for roughly 3 people, 8 people are cramped into it. 75.8% of the country's prison population comprises of undertrial prisoners.<sup>21</sup> Arnesh Kumar vs State of Bihar was the outcome of overcrowding, where the Apex Court asked the police not to cause unnecessary arrests, especially in cases involving sentences lesser than seven years.<sup>22</sup>

Overcrowding results in dire consequences which further degrade the lifestyle of prisoners. Lack of basic amenities results in insufficient bedding, ventilation, shortage of food, water, toilets, bathing amenities and so on. This often results in prisoners sometimes having to sleep in shifts, or on bare floors.<sup>23</sup> Access to clean water also grows fairly limited. The increased proximity of prisoners due to overcrowding results in unsanitary conditions which further leads to rapid spread

<sup>18</sup> Mahuya Bandhopadhyay, 'Carceral Cultures in Contemporary India', [2023] *Decolonizing the Criminal Question*.

<sup>19</sup> Supra at 17.

<sup>20</sup> 'Tihar Jail Prison Population 20500 Against a Sanctioned 10500 Inmates, Delhi HC Refers Matter to Delhi Government' [2025] ETV Bharat. <<https://www.etvbharat.com/en/bharat/tihar-jail-prison-population-20500-against-a-sanctioned-10500-inmates-delhi-hc-refers-matter-to-delhi-govt-enn25051404984>> Accessed 14 May, 2025.

<sup>21</sup> Supra at 17.

<sup>22</sup> (2014) 8 SCC 273.

<sup>23</sup> 'Prison Conditions in India', [1991] Human Rights Watch.

<<https://www.hrw.org/reports/INDIA914.pdf>> Accessed 11 May 2025.

of communicable diseases. These kinds of risks are exacerbated during outbreaks such as COVID-19, where mandates like social distancing and quarantine are rendered impossible. This resulted in the extreme step taken by the Supreme Court to direct temporary release of prisoners to control the spread of the pandemic.<sup>24</sup> Excessive population also makes effective management extremely difficult. The staff grows extremely overwhelmed unable to perform their functions and duties effectively which ultimately leads to increased violence and unrest within the prison, increased opportunities for corruption and abuse by staff and influential prisoners and increased challenges in conducting rehabilitation, educational and vocational programs. Indian prisons are running on decades of neglect. Decayed infrastructure, crumbling walls, leaking roofs, broken toilets, non-functional sanitary systems are very common in all prisons today. Maintenance budgets are largely insufficient since they do not account for the increased population over the sanctioned numbers. All repairs are either delayed or superficial. Overcrowding is not merely a logistical problem but a deep-rooted fundamental issue in the foundation of Indian prison system and a grave violation of prison rights and human dignity violation.

## **2) Undertrial Prisoners and Prolonged Detention**

A defining feature of Indian prison system is the overwhelming unnatural proportion of undertrial prisoners. Undertrial prisoners are those who have not legally been convicted and are awaiting the completion of their judicial trials. As per the Prison Statistics India 2022, the National Crime Records Bureau revealed that undertrials constitute over 75.8% of India's prisoner population.<sup>25</sup>

A major contributing factor to this issue is the persistent issue of judicial backlog. A mitigating factor also includes socio-economic conditions since most of the undertrials hail from poor and marginalized backgrounds who cannot afford bail and legal representation as a result of which they languish in jail for years for mostly minor and non-violent crimes, sometimes for periods longer than the maximum sentence for the alleged crime they committed. Inefficient police and administrative procedures are also contributing factors to this problem since delays in due procedure, investigation, filing of

<sup>24</sup> 'Covid 19: Overcrowded Jails to Release Prisoners on Parole, but this may just kick the can' [2019] Commonwealth Human Rights Initiative.

<sup>25</sup> 'Undertrial Prisoners' [2024] Ministry of Home Affairs.

<<https://www.pib.gov.in/PressReleaselframePage.aspx?PRID=2003162>>  
Accessed on May 11, 2025.

charge-sheet, production of witnesses further prolong detention.

Prolonged detention without even being convicted of a crime amounts to a gross violation of the right to speedy trial which is guaranteed under Article 21 of the Constitution of India. This flaw effectively results in punishment before even found guilty, undermining and violating the legal principle of innocent until proven guilty.

Undertrial prisoners are often kept within the same facilities as convicted prisoners despite the Model Prison Manual which mandates their segregation. This essentially exposes the undertrials who have to be presumed innocent - to the same violence, risks, and deprivation as convicted prisoners.

The quality of life of the undertrial prisoners is marked by lack of legal aid, poor rehabilitation and financial support for those who get released after their trials, significant exposure to police torture and inhumane and degrading treatment, especially for the disadvantaged, poor and marginalized prisoners. One of the saddest realities also remains the highly disproportionate representation of Dalits, Muslims and Tribunals which reflects the inherent systemic bias and deep-rooted social exclusion and discrimination.

It also highlights the failure of the legal system to implement S436A of the CrPC which provides for release of undertrials who have spent half of the maximum possible sentence in detention for the crime they are allegedly detained for. Even though the legal system has put in efforts towards fast-track courts and digitization of court proceedings and records, the undertrial prisoner population has however not reduced significantly. The core issue however still remains the excessively delayed trials which ultimately leads to undertrials languishing in jail for longer sentences than they would have if they would have been convicted

### **3) Violence, Abuse and Torture**

One of the harshest realities of Indian prison system is violence - both between prisoners themselves and between the staff and prisoners. Abuse of such kind takes all forms including physical, mental, emotional, psychological, extortion and sexual violence. Overcrowding, inadequate supervision and prisoners coming together from different backgrounds and walks of life creates a hostile and volatile environment. Moreover, first time-offenders and repeat offenders and hardened criminals coming together also creates a hostile and

unsafe environment. Powerful and influential prisoners and gangs exert dominance and control over weaker and marginalized prisoners. The Human Rights Watch reports have shown various instances of violence which have resulted in deaths in custody, which are swept under the carpet by attributing them to either "natural causes" or "suicide" without even being accorded proper investigation.<sup>26</sup> These reports have also revealed unchecked power of prison staff over the prisoners which have resulted in routine use of physical punishments, solitary confinement being used as a regular disciplinary measure, and denying basic necessities like food, medical care or visitation rights as a measure of punishment.<sup>27</sup> Torture being used for extracting confessions and maintaining discipline is the new "normal".

Sexual abuse is also a prevalent form of violence, usually subjected on vulnerable groups such as juveniles, women, and members of LGBTQ community within the prison. Take the story of X, a 13-year-old girl child who was raped by police officers and the bus driver during a transfer from jail to court.<sup>28</sup> In prisons in Bengal, female prisoners were consistently getting pregnant while in custody even though there were no conjugal visitation rights being accorded to them by law.<sup>29</sup> Since the state only has one dedicated women's prison, majority of the women prisoners of the state are kept in separate sections but within the men's quarters. Tapas Kumar Bhanja, a lawyer who spent years advocating for female prisoners revealed heartbreakingly harrowing stories of women in the prison.<sup>30</sup> While the women themselves confided in him narrating how they were sexually assaulted by male prisoners and resultantly got impregnated, the authorities still claimed that those women were already pregnant upon arrival to the prison. The Government representatives outrightly dismiss any reports of assault as exaggerated or slanderous. The horrid truth behind Bengal jails is that female prisoners are "supplied" to male prisons within the jails.<sup>31</sup> What strikes the chord the most is the invisibility of these victims, most of them being undertrials. They do not speak up with the fear of stigma, further violence

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<sup>26</sup> Mahuya Bandhopadhyay, 'Carceral Cultures in Contemporary India', [2023] *Decolonizing the Criminal Question*.

<sup>27</sup> Id.

<sup>28</sup> Sarah Aziz, 'The staff gets hush money': the hidden scandal of rape in

Indian prisons' [2024] The Guardian. <

<https://www.theguardian.com/global-development/2024/feb/23/rape-sexual-abuse-women-babies-indian-prisons-west-bengal> Accessed 12 May, 2025.

<sup>29</sup> Id.

<sup>30</sup> Id.

<sup>31</sup> Id.

or retaliation and their voices remain silenced forever.

Similarly, transgenders and other members of the community too endure a daily reality of violence and degradation in the Indian prisons. Kiran Gawli, one of only 5 trans women among 2000 other male prisoners in Nagpur Central Prison revealed the constant threat of sexual assault hanging over their heads, from both inmates as well as staff.<sup>32</sup> Complaint mechanisms don't work since despite repeated complaints about molestation, assault and rapes, the lived experiences have suggested that neither did the prison authorities intervene, nor did the judiciary, leaving such prisoners all alone in their survival. Repeated requests for transfer to women's prisons were blatantly denied, citing the absence of any law or prison rules for such possibility.

What then ends up happening is isolation since it is a common practice to then isolate them under the guise of providing "special attention", confining them to tiny cells and going to the extent of denying them basic rights such as being able to wear civil clothes and participation in jail programs and activities.<sup>33</sup> They are even stripped of their personal dignity by being made to bathe and wash themselves in common areas, leaving them even more susceptible to harassment. Medical care is often denied and there are reportedly practices of burning complaint letters detailing abuse, at the hands of prison authorities to prevent word from getting out.<sup>34</sup>

While prisoners of the LGBTQ+ community have to endure harassment and violence in the prisons, discrimination in the prison system is not limited to sexuality alone. Another deep-rooted form of prejudice in Indian culture is caste-based discrimination, which sadly continues to shape the realities of prisoners. After decades of waiting for the legislation and judiciary to address this deep-rooted problem of violence and discrimination in Indian prison system, the landmark case of *Sukanya Shantha vs Union of India* paved the way for the same.<sup>35</sup> Shantha, a senior journalist began this journey by filing a PIL in the Supreme Court of India seeking the repeal of discriminatory and violative directions and provisions in State Prison Manuals. She claimed that these provisions grossly violated Articles 14,15,17,21 and 23 of the Indian Constitution. The Supreme Court scrutinized three main forms

<sup>32</sup> Sukanya Shantha, 'Misgendering, Sexual Violence, Harassment: What it is to be a Transgender Person in an Indian Prison' [2021] The Wire, Pulitzer Center.

<sup>33</sup> Id.

<sup>34</sup> Id.

<sup>35</sup> 2024 INSC 753.

of caste-based discrimination being

- Segregation of Barracks: Prisoners were separated into different barracks on the basis of their caste. Surprisingly, this was sanctioned by the State Prison manuals themselves. The justification given for such a practice was to prevent inter-caste violence since several fights used to break out between the alleged upper-caste and lower-caste prisoners which the authorities found very difficult to control and handle. This justification was however rejected.<sup>36</sup>
- Division of Manual Labour: Labour within the prisons is divided according to caste which means that menial tasks like sanitation and washroom-cleaning was routinely assigned to prisoners who were Dalits or members of Denotified Tribes (DNTs). Such practices, although allegedly abolished in our country a long time ago, still exist in prison functioning and reinforce caste hierarchies, subjecting prisoners from marginalized and lower caste backgrounds to degrading and undignified tasks.
- Provisions against 'Habitual Offenders' and 'DNTs': Various State Prison Manuals continued to use colonial terms such as 'habitual offenders' which disproportionately targeted DNTs and perpetuated further, stigma and degraded treatment against such groups of prisoners.<sup>37</sup>

The Supreme Court led a visionary judgement by holding all such provisions as unconstitutional. Any and all provisions furthering practices of caste-based segregations, discriminatory labour divisions, unfair use of stigmatizing labels in all these Prison Manuals were held to be grave violations of constitutional principles, and hence invalid.<sup>38</sup> All States and Union territories were asked to revise their prison manuals within 3 months and bring it into compatibility with the Model Prison Manual. The caste column and any such references in respect to a prisoner's caste in the prison registers were to be deleted promptly. References to the term 'habitual offenders' must be made strictly in line with nothing but its statutory definitions and should in no way be used as

<sup>36</sup> Mrinalini Ravindranath, 'The Contours of Caste in the Criminal Legal System' [2025] 60(2) EPW.

<<https://www.epw.in/journal/2025/2/commentary/contours-caste-criminal-legal-system.html>> accessed 12 May 2025.

<sup>37</sup> Id.

<sup>38</sup> Sukanya Shantha vs Union of India 2024 INSC 753.

a tool for caste-based discrimination. This case turned out to be a watershed moment in the field of prison reform and social justice,

#### **4) Health, Hygiene and Medical Care**

Overcrowding which is already a prevalent problem gives birth to another major disadvantage. The health and hygiene conditions worsen, and inadequacy of medical staff and facility grows. Prisoners are often exposed to extreme temperatures, with no ventilation in times of heat and no bedding in times of cold.

Mental health is a farce in prisons. Various studies have reported current prevalence of wide-ranging mental illnesses ranging from 21% to 33% among Indian prisoners.<sup>39</sup> No efforts for implementation of any rules to better the situation are made. The Hindu reported that not a single State or Union Territory met the benchmark of one psychiatrist or psychologist per 500 prisoners, as set by the Union.<sup>40</sup> There were about 70 sanctioned posts for such psychiatrists and psychologists, out of which not even half were filled. This highlights the government's systemic failure of implementation.

Due to lack of basic hygiene and sanitary conditions, prisons also become breeding grounds for infectious diseases. Outbreaks of easily communicable diseases such as tuberculosis, hepatitis, HIV/AIDS, skin diseases are very common in prisons, which are exacerbated by poor hygiene and overcrowding. Even preventive measures such as health education and awareness, vaccinations are rarely implemented. Reports have revealed that the prevalence of HIV/AIDS within Indian prisons is several times more than what is prevalent in the outside among general public.<sup>41</sup> The Director of Indian Central Secretariat Service noted that this happens due to low awareness, overcrowding, close physical proximity of prisoner, loneliness, lack of access to contraceptives, lack of social control and entertainment, long periods of being away from family and loved ones, and a lot of

<sup>39</sup> Harpreet Singh Dhillon, 'Prison Mental Health - An Indian Perspective' [2024] AIP.

<sup>40</sup> Bindu Shajan Perapaddan, 'Indian jails plagued by overcrowding, lack of medical, mental health professions: Report' [2025] <<https://www.thehindu.com/news/national/indian-jails-plagued-by-overcrowding-lack-of-medical-mental-health-professionals-report/article69460831.ece>> accessed May 13 2025.

<sup>41</sup> Rita Acharya, 'Sensitization to Prison Inmates on HIV/AIDS' Ministry of External Affairs.

these factors leading to homosexuality.<sup>42</sup>

## PRISON SYSTEMS IN OTHER JURISDICTIONS

A comparative analysis of prison models worldwide reveals diversity in approaches, ideologies, philosophies, and outcomes, where some countries excel in progressive and humane approaches while some portray stringent punitive approaches. While nations like Pakistan, Greece, Mauritius and so on have displayed worse prison conditions than our country, it is surprising to note that even superpowers like the United States and Russia have not displayed any ideal prison conditions for the rest of the world to follow as an example. All these countries grapple with problems such as overcrowding, stringent and harsh conditions, high recidivism rates and so on.

Since we are looking for ways to better our own prison conditions, we shall attempt to look at nations who have hacked model prison conditions which should serve as inspiring and influencing to all other nations struggling with their prison conditions.

Among the most notable are the Nordic countries which have set the best examples for the rest of the world. Norway, Sweden, and Finland are among the best nations to follow, since prison systems here are motivated by commitment towards normalization, humane spirit, and reintegration. Finland in particular is famous for its open prison model, an example which India has already begun to follow. Similarly, Germany and Austria too have established prison systems which prioritize rehabilitation over retribution and resultant reintegration. Let us look at these countries one by one.

### 1) Norway

Norway's carceral system is internationally appreciated for its humane, progressive, and rehabilitative approach. The Norwegian philosophy is grounded in the belief that loss of liberty is the biggest punishment in itself, subjecting a person to further suffering or degradation is neither justified nor necessary. This principle is evident in the way the prisons of the country run.

Norwegian prison system operates on the "import model" which basically means that apart from the general restriction of movement, the prisoners retain access to the exact same public services as the rest of the general population does, which includes education, health care and social welfare.<sup>43</sup> This helps

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<sup>42</sup> Id,

<sup>43</sup> Hedda Giertsen and others, 'Norway: Prisons in 2019' [2019]

in reducing stigma and isolation as well as providing of continuous care and support.

Most prisoners have private rooms with attached toilets, and they share kitchens and common living spaces in small “pod” type communities.<sup>44</sup> Most prisons in the country have brightly painted wooden houses, each house accommodating up to six prisoners who have access to individual rooms and shared facilities. Prisoners prepare their own meals, by shopping for supplies at the mini supermarket with the food allowance provided to them and maintain their own living spaces. One communal meal is served every day, while the rest has to be taken care of by the prisoners themselves.<sup>45</sup> This reinforces the expectation of self-sufficiency. All prisoners engage in meaningful daily tasks, rehabilitation programs and education. Their jobs range from animal care, to bicycle repair and all such participation is remunerated.

One of the most crucial highlights of this model is the relationship between the authorities and prisoners. The correctional officers in these prisons undergo mandatory extensive training of three years as opposed to a few weeks in other jurisdictions.<sup>46</sup> They are taught to prioritize understanding and dialogue over power and control. The staff themselves view their role as someone helping the prisoners to change, and not someone meant to punish them. This positive approach helps fosters a mutual sense of respect and safety. Life in these prisons is meant to resemble the life outside as much as possible such that the release does not end up the prisoner in a traumatic transition. A distinctive feature is also their “Daddy in Prison” Scheme to which a prisoner can apply to, once every three months under which a prisoner is allowed to spend couple of nights with their partner and children in cozy chalets within the prison grounds.<sup>47</sup> This shows Norway’s commitment in maintaining and strengthening familial bonds, acknowledging the crucial role a family has to play in rehabilitation, reintegration and reducing recidivism.

The results of such kind of a prison system are remarkable.

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<<https://www.prison-insider.com/countryprofile/prisons-norway2019>> accessed 13 May 2025.

<sup>44</sup> Erwin James, ‘The Norwegian prison where inmates are treated like people’ [2013] The Guardian

<<https://www.theguardian.com/society/2013/feb/25/norwegian-prison-inmates-treated-like-people>> accessed 13 May 2025.

<sup>45</sup> Id.

<sup>46</sup> Id.

<sup>47</sup> ‘How Norway turns criminals into good neighbors’ [2019] BBC <<https://www.bbc.com/news/stories-48885846>> accessed 14 May 2025.

Norway leads the way in having its recidivism rate the lowest in the world - about 20% overall.<sup>48</sup> Prisoners have often described their time and experience in the prisons as transformative.

## **2) Finland**

Finland's prison approach stands out in the world for its innovative approach and use of

"open prison" model. This model makes up about one third of the nation's prisons.<sup>49</sup> This approach runs on the fundamental belief that rehabilitation and not retributive is the central and primary goal of incarceration. Under this prison model, the environment is designed to resemble real outside life as much as possible. There are no bars, no chains, and no locks. Inmates wear their own clothes, cook their own meals, wash their own laundry, carry their own cell phones, manage their own bank accounts, and even order takeout pizza!<sup>50</sup> The lifestyle closely resembles that of a hostel dormitory rather than a traditional prison.

Prisoners in these facilities are permitted to leave the premises for study or work. They can attend university and go on their daily jobs. Every Friday, they are taken to grocery stores where they pick up their own food. Work is an integral part of their daily lives since they support themselves financially. Activities like these foster independence, trust, responsibility and encourage a smooth transition back into society upon release.

The prison policies are shaped by experts and not politics, with the primary goal of reducing recidivism. The system does not discriminate between violent and non-violent criminals when considering their eligibility for open prisons. Even those offenders serving sentences for serious crimes such as murders are also transferred to open prisons if showcasing rehabilitation progress and good behaviour.<sup>51</sup>

All prisons are required to have visiting rooms for children for prisoners who are children. Parents are also permitted to apply for special family visits for several days where they are

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<sup>48</sup> 'What we can learn from Norway Prison System: Rehabilitation and Recidivism' [2024] First Step Alliance. <<https://www.firststepalliance.org/post/norway-prison-system-lessons>> accessed 14 May 2025.

<sup>49</sup> Natalia Moore, 'No Bars, No Chains, No Locks: How Finland is Reimagining Incarceration' [2021] <<https://pulitzercenter.org/stories/no-bars-no-chains-no-locks-how-finland-reimagining-incarceration>> accessed 14 May 2025.

<sup>50</sup> Id.

<sup>51</sup> Id.

transferred to rooms similar to real living rooms with tables, couches, and toys. Pregnant women and mothers with young children can live in spaces specially dedicated as mother's dormitory wings and children are allowed to stay with their mothers in the prison until they attain the age of three.

This model has led to a significant decrease in crime and recidivism rates. Finland is among the countries with the lowest incarceration rates in the world, of around 3000 for a population of over 55 Lakhs.<sup>52</sup>

### **3) Sweden**

A powerful foundation on which Swedish prison system stands on is that prison should be about transformation of the individual into a successful return into society and not suffering and punishment. Similar to Norway prisons, prisoners here too are given private cells which are equipped with basic amenities and common spaces are also provided.<sup>53</sup>

One inspiring factor is that the system realizes and acknowledges the fact that most of the prisoners come from backgrounds blotted with trauma, mental illness, and addictions. It is because of this that rehabilitation programs are tailored according to the very need of the prisoner. Staff members are provided with sensitivity training on how to build constructive relationships with prisoners and act not as guards and enforcers but as mentors or facilitators of change.

Practices like strict discipline and solitary confinement were very prevalent in Sweden in the nineteenth century. But the nation has consciously shifted towards a more welfare-oriented model where the sole purpose is now rehabilitation. The result of this shift has become evident with reports of considerable decline in incarceration and recidivism rates to an extent that a few prisons recently had to be closed down due to lack of inmates.<sup>54</sup>

### **4) Germany**

Similar to all other prison systems we have seen up until now, this country also focuses on principles of proportionality,

<sup>52</sup> Id.

<sup>53</sup> Erwin James, 'Prison is not for punishment in Sweden. We get people into better shape' [2014] The Guardian <<https://www.theguardian.com/society/2014/nov/26/prison-sweden-not-punishment-nils-oberg>> accessed 15 May 2025.

<sup>54</sup> Roddy Nilsson, 'The Swedish Prison System in Historical Perspective: A Story of Successful Failure?' [2003] JSSCCP <<https://www.scup.com/doi/10.1080/14043850310010776>>.

resocialization, and normalization. A distinctive feature here is the introduction of a social worker's role. Here, social workers play central roles in policy planning, sentencing policies, parole decisions and provide support services as well.<sup>55</sup>

All states in Germany have separate legislations for their prisons, a practice similar to that of India. Several states within Germany have abolished practices of solitary confinement as a disciplinary measure. Germany has also introduced independent and neutral oversight mechanisms, such as National Agency for Prevention of Torture to monitor the ethical considerations of prison systems in the country. The result of these efforts has led Germany to rank amongst one of the nations with the lowest rates of incarceration and recidivism.<sup>56</sup>

## OPEN PRISONS IN INDIA

Open prisons are a concept of transformative approach towards crime. Such prisons which are also known as open correctional institutions and are categorized by characteristics such as absence of chains, locks, high walls, barbed wires, and minimal security measures.<sup>57</sup> Prisoners are allowed to move around freely, highlighting the importance of discipline, trust, and responsibility among prisoners. Unlike traditional prisons, prisoners here are allowed to move out of the premises for work and earn for themselves and are also let to maintain familial contact and participate in community life, although under supervision.

India's first open prison was established in the city of Lucknow in the year 1949, followed by cities in Rajasthan.<sup>58</sup> They were initially designed for non-violent offenders or those demonstrating good behaviour in their sentences in prisons. The legal framework for open prisons can be found in the Prisons Act of 1894 and has subsequently evolved through various judicial decisions.<sup>59</sup> The Supreme Court has time yet and again endorsed the concept of open prison in the country.

A significant feature of this model is the maintenance of family ties which allows prisoners regular contact with their families. Several research studies have revealed that maintaining family

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<sup>55</sup> Alexandra Weingart and Others, 'Germany: Prisons in 2019' Prison Insider <<https://www.prison-insider.com/countryprofile/prisonsgermany-en>>.

<sup>56</sup> *Id.*

<sup>57</sup> Moiz Rafique, 'Beyond Bars: Understanding the potential of open prisons for the Indian subcontinent' [2024] Bar and Bench <<https://www.barandbench.com/law-firms/view-point/beyond-bars-understanding-potential-of-open-prisons-india>>.

<sup>58</sup> Aman Pathak, 'Open Prisons in India: A Correctional Approach to Imprisonment" [2024] IJCRT.

<sup>59</sup> *Id.*

ties is crucial for aiding rehabilitation and reducing recidivism.<sup>60</sup> Such kind of prisons are not only more humane but also comparatively much more cost effective and less-resource intensive. This also effectively solves the problem of overcrowding in prisons and improving living conditions for both convicts and undertrials. Research has revealed that open prison system in Rajasthan is among the best practices in the country, with decreased recidivism rates and 78 times more cost effective than regular prisons.<sup>61</sup>

However, concerns about security still remain a challenge. There may be inconsistencies in eligibility criteria to implementation across states. In the past five years, reports have revealed that 28 inmates escaped from open prisons in Maharashtra, which highlights consistent efforts needed to better the system and make use of the system to its fullest effect.

### **KEY TAKEAWAYS FOR INDIAN PRISON SYSTEM**

Upon a close examination of carceral systems as seen in Norway, Sweden, Finland and Germany, we can discover principles and practices which stand in stark contrast to punitive models, including those which are often seen in India. The commonality found in all these jurisdictions is the deep commitment towards rehabilitation and reintegration. Another striking point to notice is that all these jurisdictions earlier too were on the lines of Indian principles with regards to punitive measures.

Since Indian Constitution is also the result of our country taking away the best principles from all nations, we can adopt to a similar measure by adopting the best practices followed across the globe with regards to carcerality.

India can adopt the “import mode” followed in Norway ensuring that prisoners can retain access to public services of education, social welfare, and medical services. Schemes like “Daddy in Prison” can also be adopted since maintaining familial ties is known to reduce recidivism and foster rehabilitation and transformation. Sweden’s practice of individual cells and common places can be taken away from, effectively also solving the problem of spreading of communicable diseases caused by living in close quarters. Finland’s practice of open prison models has already inspired India to begin a similar practice in the country as well. However, the model is still fairly new and can be bettered by using

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<sup>60</sup> Supra at 58.

<sup>61</sup> Anmol Paniya, ‘A Study of Open Prison System in India with Special Reference to State of Rajasthan’ [2024] Shodhgagotri <<https://shodhgangotri.inflibnet.ac.in/bitstream/20.500.14146/16485/1/synopsis-9020192007%20-anmol%20synopsis.pdf>> accessed 15 May 2025.

implementation techniques from Finland as well, considering its success rates.

These jurisdictions collectively demonstrate that prisons needn't be places of punishment and suffering, but can be environments of transformation. Their models highlight the importance of trust and responsibility, the crucial aspect of maintaining family and community ties and the need for comprehensive support services along with a constructive relationship between prisoners and staff. The successful results of these models challenge the assumption that harsher punishment yield better outcomes and reduction in crime and instead point towards a future where humanity and justice go hand in hand.

## **CONCLUSION**

The exploration of carceral systems of India and across the globe has revealed one thing for sure - that the effectiveness and success of a prison system is not measured by its severity, but by its capability to foster real change, restore dignity of the prisoners and protect the society in the long term and not temporarily.

India's current reliance on a retributive and punitive model has done nothing but contribute to persistent overcrowding, prolonged undertrial detention and a cycle of harm which does good to neither victims nor the offenders. In contrast, nations like Norway, Finland, Sweden, and Germany have portrayed how humane and rehabilitative approaches have yielded lower incarceration and recidivism rates, safer and trusting communities, and more meaningful justice.

The key lesson to take away from is that deprivation of liberty and imposing additional suffering is neither justified nor necessary. But normalizing prison life, keeping the prisoners as close to reality as possible is what helps being about a real change. The success is rooted not in stringent punishments, but in trust and support, regardless of their past actions.

India can embrace the best global practices and move towards a carceral system which does not only punish, but heal, which does not only deter, but redeems. Such a notable shift will honor the country's constitutional values and its ancient traditions of spiritual atonement and restoration, forging a justice system which truly serves society as a whole, in its truest and fullest sense. After all, - "We repeat what we don't repair". - Carl Wilkens