



## ARTICLE

# Solitary Confinement as a Criminal Sanction in India: A critical Legal and Human Rights

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**Abstract**

Solitary Confinement, a widely debated practice in the world of incarceration, continues to pose many pique problems in India due to its psychological impact and legal implication. Its impact on mental health such as depression, anxiety, and even the risk of suicide is well known, but much of the discussion stays too broad and misses how this punishment falls hardest on those already vulnerable. Women prisoners, juveniles, LGBTQ+ inmates, and people struggling with mental illness face solitary confinement in ways that deepen their suffering and push them further to the margins. This research aims to bring that neglected reality of solitary confinement into focus by studying how Indian law such as the earlier IPC and its comparison with the new Bharatiya Nyaya Sanhita, the Prisons Act, etc, while also looking at the actual practices inside prisons, including the use of the “Anda cell.” It also draws from international standards like the Mandela Rules, the Bangkok Rules, and the CRPD, as well as NCRB data, psychiatric studies, and human rights reports. By putting law and lived experience together, this paper argues that solitary confinement, as it is practiced in India, violates the constitutional guarantee of dignity under Article 21, and calls for reforms that replace punitive isolation with decarceration, mental health care, and rehabilitative approaches.

**Keywords** - Incarceration, psychological effects, inhumane treatment, and injustice

## I. INTRODUCTION

India’s criminal justice system proudly espouses reformatory theory of punishment, aiming to rehabilitate offenders and reintegrate them into society. The Supreme Court has consistently affirmed this, stating that “imprisonment does not spell farewell to fundamental rights and that the prison system must aim for “the reformation and rehabilitation of offenders as useful member of society,”<sup>237</sup> Solitary Confinement is a form of incarceration in which a prisoner is isolated from human contact, often confined to a small cell for a period of 22 to 24 hours a day, with minimum access to social interaction, physical activity and mental stimulation. Although it often rationalize as a means to maintain order, prevent violence, or manage high-risk inmates, its pervasive use and harmful repercussions have faced increasing scrutiny from legal scholars, human right organizations, and mental health professionals. In India, Solitary confinement is legally sanctioned under Section 73, 74 of Indian Penal Code, 1860 and Section 29, 30 of The Prisons Act, 1894 as well as under Section 11 and 12 of Bharatiya Nyaya Sanhita, 2023, which seek to regulate its duration and procedure safeguard. Section 11 of Bharatiya Nyaya Sanhita 2023<sup>238</sup> state that- The court has power to impose solitary confinement as a part of rigorous confinement but should not exceed 1 month if total sentence is less than 6 month, 2 month if the

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<sup>237</sup> Sunil Batra v. Delhi Administration, (1978) 4 SCC 494, 535.

<sup>238</sup> The Bharatiya Nyaya Sanhita, 2023, § 11, No. 45, Acts of Parliament, 2023 (India).

term of imprisonment is longer than 6 month but not exceed a year and for 3 month if the sentence of imprisonment exceeding a year.

However, these legal frame work, mostly inherited from colonial period penal philosophy, have frequently been enforced in reckless manner which is in contradict with the constitutional value of dignity, due process and humane treatment enshrined under Article 21<sup>239</sup> of Indian Constitution.<sup>240</sup> The Psychological effect of Solitary confinement is serious and well established. Studies from both India and Abroad show that long periods of isolation can cause severe mental health disorder like anxiety, depression, hallucination, psychosis and suicidal ideation<sup>241</sup>. Further, the Bangkok Rules highlight that the disproportionate impact of isolation on women prisoner's particularly pregnant women or those with dependent children<sup>242</sup> and the CRPD prohibits discriminatory measures that aggravate the disabilities of prisoners with mental health. Lack of human contact, sensory deprivation and loss of time and spatial orientation contribute to what researchers have referred to as a form of "Social death".<sup>243</sup> Particularly vulnerable populations such as under trials, juveniles, individuals with pre existing mental illnesses and death row inmates suffer disproportionate harm. In Indian context, reports by National Human Rights Commission (NHRC) and also finding of Commonwealth Human Rights Initiative (CHRI) indicate a systematic lack of psychological support services in prisons, which further exaggerate the already catastrophic and enduring mental health impact of solitary confinement.<sup>244</sup>

## II. SOLITARY CONFINEMENT AS PSYCHOLOGICAL TORTURE

Though Solitary confinement is legal in India according to its penal laws, it is becoming a problematic juncture between punishment and torture. The question of ethics is whether such isolation is simply a legitimate exercise of state authority or especially when cruelly long term or randomly applied, it exceed the domain of the criminal justice process and violates the protections and international human right law. The philosophical argument is based on the principle of human dignity, one of the values of the Constitution under Article 21 of the Indian Constitution. Solitary Confinement, whether contributing to facilitating or being used as a substitute for jail by being described as "no contract" or "restricted movement" intentionally or severely restricts social contract, physical movement and mental activity.

In *Sunil Batra v. Delhi Administration*<sup>245</sup>, Supreme Court held that solitary confinement is neither merely an administrative measure nor simply necessary limitation, but rather an violation of personal liberty and is thus subject to constitutional scrutiny. Even in a prison context, the court held that "a person detained in prison does not lose his fundamental right except those, which the fact if imprisonment necessarily limit." The court also held that in such extreme condition in prison the person if isolated from all contact would break them down, psychologically mutilate them. Similarly, in *Kishore Singh Ravinder Dev v. State of Rajasthan*<sup>246</sup>, the court condemned

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<sup>239</sup> INDIA CONSTI. art. 21.

<sup>240</sup> Id.

<sup>241</sup> Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash. U.J.L. & Pol'y 325 (2006).

<sup>242</sup> Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc. A/68/295 (Aug. 9, 2013) (prepared by Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment).

<sup>243</sup> Lisa Guenther, *Solitary Confinement: Social Death and its Afterlives*, (University of Minnesota Press 2013).

<sup>244</sup> National Crime Records Bureau, *Prison Statistics India (PSI)-2021*.

<sup>245</sup> Id.

<sup>246</sup> *Kishore Singh Ravinder Dev v. State of Rajasthan*, AIR 1981 S.C. 625.

the use of inhuman punishment and holding that they must meet evolving standards of human dignity. Yet the prison authorities continue to rely on administrative circulars and prison manuals to enforce isolation which may often lead beyond the statutory limits prescribed under law.<sup>247</sup>

Beyond the legal text, significant contribution come from the Psychological and Criminological Studies, which argues that the solitary confinement establish deterrent effect on prisons' mental and physical health. The United Nation Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules, 2015) also articulate that solitary confinement longer than 15 consecutive days should be characterized as prolonged, potentially an act of torture as define under Rule 45<sup>248</sup>. It explicitly provided that it opposes indefinite isolation or solitary confine, especially for individual with mental or physical disabilities, children or pregnant women.<sup>249</sup> India is a member of the UN, though a non-signatory party to the UN Convention against torture. India has made several references to the Nelson Mandela Rules on prison reform, for ex. Model Prison Manual, 2016. Yet, Indian Prison Continue to practice forms of isolation beyond the international tolerance, without any documentation. The International Journal of Indian Psychology documented finding from Chanchalguda Central Prison where it noted that 86 percent of inmates exhibited diagnosable mental illness or substance use disorder.<sup>250</sup> These studies contribute to global research by psychiatrists such as Stuart Grassian, who identified a set of symptoms such as hallucinations, hypersensitivity, aggression, suicidal intention which collectively describe as "Isolated Syndrome"<sup>251</sup>. The Prison Statistics India 2022 report documented 9180 inmates with diagnosed mental illness which represent a 22 percent increase from the previous year<sup>252</sup>. While NCRB does not publish a detailed data on solitary confinement per se but it can be concluded that the steady rise in mental ill prisoners is due to the isolation practices which aggravate an already fragile situation.

International literature has begun to highlight the disproportionate harm that solitary confinement causes to vulnerable communities. Research by the American Civil Liberties Union (ACLU) indicates that women are more likely than men to experience trauma and mental illness as a result of solitary confinement. Many women are placed in isolation as a form of punishment for minor disciplinary violations<sup>253</sup>. Juvenile are also at the higher risk which is shown by the US research where they argue that 62% of jailed juvenile suicides take place while they are in solitary confinement<sup>254</sup>. Under the pretense of protective custody, LGBTQ+ inmates are frequently kept in solitary confinement which criminalizes their identities and denies them social interaction that is essential to their psychological health<sup>255</sup>.

### III. INTERNATIONAL STANDARDS AND INDIA'S OBLIGATIONS

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<sup>247</sup> Commonwealth Human Rights Initiative, Prisons in India: CHRI Report on Prison Condition (2021).

<sup>248</sup> U.N. Rules for the treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), G.A. Res. 70/175 (Aug. 5, 2025).

<sup>249</sup> Id.

<sup>250</sup> Suresh Reddy Kancharla et al., A study of criminality and Psychiatric Morbidity Among Prison Inmate, 8 INT. J. Indian Psych. 224 (2020).

<sup>251</sup> Stuart Grassian, Psychiatric Effects of Solitary Confinement, 22 Wash. U.J.L. & Pol'y 325 (2006).

<sup>252</sup> National Crime Record Bureau (Ministry of Home Affairs, GOI), Prison Statistics India (PSI) 2022, available at <https://ncrb.gov.in/> (lat visited Aug. 17, 2025).

<sup>253</sup> American Civil Liberties Union, Still Worse Than Second-Class: Solitary Confinement of Women in the United States (2019).

<sup>254</sup> Madison Poly, Solitary Confinement of Adolescents: A Mental Health Crisis, Univ. of Mich. School of Public Health, 2019.

<sup>255</sup> Jaimie Veale et al., Exploring Healthcare Experience for Incarcerated Individuals who identify as Transgender, 25 BMC Health Serv. Res. 453 (2018).

### *A. The Mandela Rules: Rejecting prolonged isolation*

The United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules) was adopted in the year 2015, which represent the global consensus on minimum prison standards<sup>256</sup>. Rules 44 and 45 of the rules explicitly prohibit both prolonged solitary confinement as well as effect of solitary confinement on prisoners with mental or physical disabilities. The Mandela Rules prescribe that solitary confinement is more than 22 hours a day without meaningful human contact and restrict its use to more than fifteen days<sup>257</sup>. The rules characterize prolonged isolation of solitary confinement as a form of cruel, inhuman or degrading treatment. There is a sharp contrast as Bharatiya Nyaya Sanhita (BNS) and Prisons Act continue to authorize solitary confinement for up to three months with intervals, which normalize practices far beyond the limits set by international law.<sup>258</sup> Despite some of the cases, the Court never held that solitary confinement is not entirely unconstitutional<sup>259</sup>. The fact that India hasn't changes it law even in the new BNS related to solitary confinement, which reflect for the authority the Mandela Rules are optional guidelines rather than mandatory rules. This is in contrast with the India's commitment to the International Covenant on Civil and Political Rights (ICCPR) which states that all people deprived of their liberty must be treated with humanity<sup>260</sup>.

### *B. The Bangkok Rules: Gender-Sensitive prison reforms ignored in India*

The United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women offenders (Bangkok Rules, 2010) was design or came into effect to supplement the Mandela Rules specifically for the needs of women in detention.<sup>261</sup> Rule 22 of Bangkok rules specifically deals with the prohibition of solitary confinement for women that compromise women's contact with their families, particularly Children<sup>262</sup>. Mainly, the Rules recommend having gender-sensitive prison management and encourage adopting non-custodial measures.

Even though Justice Krishna Iyer Committee on Women Prisoners in 1987 calls for changes but it didn't challenge solitary confinement on the first place.<sup>263</sup> India's neglect or failure to enforce the Bangkok rules highlights a big problem of addressing intersectional vulnerabilities in prison administration.

### *C. The CRPD: Solitary Confinement as discrimination against persons with disabilities.*

India has ratified the Convention on the Rights of Persons with Disabilities (CRPD) in 2007, which obligates states to provide reasonable accommodation for person with disability to ensure her equal enjoyment of fundamental rights.<sup>264</sup> They explicitly prohibit the imposition of

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<sup>256</sup> G.A. Res. 70/175, United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), U.N. Doc. A/RES/70/175 (Dec. 17, 2015).

<sup>257</sup> Id. at Rules 44 & 45.

<sup>258</sup> The Bharatiya Nyaya Sanhita, 2023, § 11 & 12, No. 45, Acts of Parliament, 2023 (India).

<sup>259</sup> Supra note 1.

<sup>260</sup> International Covenant on Civil and Political Rights, Art. 10, Dec. 16, 1966, S. Exec. Doc. E, 95-2 (1978), 999 U.N.T.S. 171 (1976).

<sup>261</sup> G.A. Res. 65/229, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), U.N. Doc. A/RES/65/229 (Mar. 16, 2011).

<sup>262</sup> Nupur Choudhary & Surabhi Agrawal, The Indian Prisons and The Search for Equality: The Problems Faced by Transgender Inmates, 58 Econ. & Pol. Wkly. 1 (2023).

<sup>263</sup> Government of India, Report of the Justice Krishna Iyer Committee on Women Prisoners (1987).

<sup>264</sup> Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, U.N. Doc. A/RES/61/106 (Dec. 13, 2006).

punishment by way of solitary confinement on prisoners with mental or physical disabilities, where this will only exacerbate their conditions<sup>265</sup>. Further, under the CRPD Rules, State Parties have the duty to provide reasonable accommodation for persons with disabilities who are detained, which implicitly prohibits punitive forms of isolation that exacerbate mental illness<sup>266</sup>. The Indian Constitution provides a robust legal framework to protect people with disabilities from state overreach. Article 14<sup>267</sup> ensures equality before law; thereby preventing disability from being a justification for deprivation a person of liberty and in Article 21<sup>268</sup> which prohibits torture, cruel, inhuman or degrading treatment with a person having disability respectively. Nevertheless, Indian prison or Prison authority continue to place person with disability be it psychological or physical, in solitary confinement under the pretext of managing violent or erratic behavior.<sup>269</sup> This practice not only exacerbates mental illness but also constitute direct infringement of his fundamental rights rather than providing treatment under the Mental Healthcare Act, 2017.<sup>270</sup> By allowing such practices, India disregards its CRPD commitment and treats punitive isolation as a substitute for psychiatric care.

#### IV. LEGAL FRAMEWORK IN INDIA

The legal regulation of solitary confinement in India must be understood through its historical continuity which begins with colonial legislation and extending to present day statute. The track shows that, in spite of constitutional human rights commitment, the criminal system still employs punishment from the colonial past.

##### A. Colonial Origins and the Indian Penal Code, 1860.

The Indian Penal Code which was enacted in 1860 under British rule codifies solitary confinement explicitly under Sec. 73 and 74. Sec. 73 authorizes court to impose solitary confinement as a part of rigorous imprisonment but it is subject to a maximum limit of three month as well as Sec. 74 restrict the duration of solitary confinement to fifteen days at a time, with intervals between terms.<sup>271</sup> The punishment was justified in colonial penal philosophy as a deterrent and retributive tool which emphasizes the physical and psychological pain of isolation as a form of exemplary punishment. According to Macaulay's Law Commission reports, Solitary Confinement can "tame the criminal mind", which is consistent with the disciplinary and utilitarian reasoning of nineteenth-century European prison system.<sup>272</sup> The IPC's continuance of solitary confinement reflects the colonial state's wider reliance on harsh carceral methods which includes whipping, rigorous imprisonment, etc. Scholars have argued that these provisions were to assert state power and control over communities rather than to promote rehabilitation.<sup>273</sup> Although India attained independence in 1947 but the provision related to solitary confinement remained intact under Sec. 73 and 74 which illustrate the inertia of colonial penal codes in shaping Independent India's criminal justice system.

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<sup>265</sup> Id.

<sup>266</sup> Convention on the Rights of Person with Disability, G.A. Res. 61/106, U.N. Doc. A/RES/61/106 (Dec. 13, 2006). <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>.

<sup>267</sup> INDIA CONSTI. art. 14.

<sup>268</sup> INDIA CONSTI. art. 21.

<sup>269</sup> Lakshmi Narasimha, Solitary Confinement: Is it considered Torture or Aid to the Prisoners?, 3 Jus Corpus L.J. 310 (2023).

<sup>270</sup> The Mental Healthcare Act, 2017, § 103, No. 10, Acts of Parliament 2017 (India).

<sup>271</sup> Indian Penal Code, 1860, §§73-74, No. 45, Acts of Parliament, 1860 (India).

<sup>272</sup> Thomas B. Macaulay, Report on the Indian Penal Code (1837).

<sup>273</sup> Nasser Hussain, The Jurisprudence of Emergency: Colonialism and the Rule of Law, Univ. of Mich. Press, 2019.

### ***B. The Prisons Act, 1894 & Prison Manuals.***

The Prisons Act of 1894 firmly institutionalized the use of Solitary Confinement by granting prison officials wide discretion to employ it as a tool of discipline. Sections 46 and 47 gave superintendents the authority to place inmates in isolation for breaking prison rules, though with some time limits<sup>274</sup>. What made the Act significant was that it separated solitary confinement ordered by courts under the Indian Penal Code from the kind imposed directly by prison authorities, which meant that isolation became easier to use and more widespread. Many scholars regard the Act as a telling example of the colonial “disciplinary state,” driven more by the need for control, surveillance, and order than by any commitment to reforming prisoners<sup>275</sup>. Although reform commissions and human rights groups have repeatedly called for change, the Act still forms the foundation of prison governance in much of India. Its rules remain embedded in prison manuals and state regulations, continuing to legitimize solitary confinement as a standard tool for managing inmates.

Significantly, Solitary Confinement in India cannot be understood solely through statutes and constitutional doctrine, Prison manuals and informal practices plays a critical function. State prison often authorizes “Separate confinement” as disciplinary measures which in practice amount to solitary confinement. Maharashtra notorious “Anda cell” named after its egg-shaped high security block. Prisoners confined in that cell have described condition of nearly total isolation, constant surveillance and deprivation of social interaction which amount to de facto solitary confinement.<sup>276</sup> The continuous use of the Anda cell and similar form of isolation in different states highlights that there is a wide gap between what the law prescribed and what actually happens inside prisons. Even when court has placed limits on solitary confinement prison authority often justify their act on the ground of administrative necessity. However many human rights group argue that this systematic reliance on solitary confinement reflects deep structural flaws within Indian prison which includes overcrowding, lack of trained staffs, and absence of mental health services<sup>277</sup>.

The Bureau of Police Research and Development’s (BPR&D) Prison Reform Manuals reveals that the India’s approach towards solitary confinement continues rather than any reformative change. The 2003 Manual continued the colonial practices of the Prisons Act of 1894 by labeling solitary confinement of up to thirty days as a significant penalty which can be seen as embedding old colonial laws into modern legal system<sup>278</sup>. Even with the new manual related to prison reform it can be seen that India has not abandoned solitary confinement. Instead, it is now included in the provision with other rebranded names like “close confinement” or “disciplinary segregation”<sup>279</sup>. These new rules and names do not restrict the practice but rather make it seem more acceptable. Even BPR&D own Handbook for Board of Visitors acknowledge that the

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<sup>274</sup> The Prison Act, 1894, §§ 46-47, No. 9, Acts of Parliament, 1894 (India).

<sup>275</sup> Ranajit Guha ed., *A Subaltern Studies Reader, 1986-1995*, Oxford Univ. Press 2000.

<sup>276</sup> State of Maharashtra, Home Department, No. RJM 1070 (i)-xvi, (Oct. 23, 1970)

<sup>277</sup> Nidhi Suresh, Prisoner Mirza Himayat Baig recounts solitary confinement inside an anda cell, *The Caravan: A Journal of Politics & Culture*, (Aug. 17, 2025), <https://caravanmagazine.in/law/himayat-baig-solitary-confinement-anda-cell>.

<sup>278</sup> Bureau of Police Research and Development, Ministry of Home Affairs, Model Prison Manual (2003), [https://www.mha.gov.in/sites/default/files/2022-12/ModelPrisonMan2003\\_14112022%5B1%5D.pdf](https://www.mha.gov.in/sites/default/files/2022-12/ModelPrisonMan2003_14112022%5B1%5D.pdf).

<sup>279</sup> Bureau of Police Research and Development, Ministry of Home Affairs, Model Prison Manual (2016), [https://www.mha.gov.in/sites/default/files/2025-04/PrisonManualA2016\\_20122024\\_2.pdf](https://www.mha.gov.in/sites/default/files/2025-04/PrisonManualA2016_20122024_2.pdf).

solitary confinement is risky as it can be directly abuse by directing oversight bodies which inspect solitary cells<sup>280</sup>. This act shows that India is reluctant to adopt international human rights standard which mainly advocates for abolishing of solitary confinement.

### C. *The Bharatiya Nyaya Sanhita, 2023.*

The enactment of Bharatiya Nyaya Sanhita in 2023 was presented as a chance to break away from colonial-era penal practices. However, the provision of IPC has been replicated in BNS as we can see in Sec. 11 and 12 of BNS correspond to Sec. 73 and 74 of IPC which continue to permit Solitary Confinement as a part of rigorous imprisonment under certain condition.<sup>281</sup> Critics argue that the government failure to remove solitary confinement as a part of rigorous imprisonment demonstrate that there was a lack of political will to modernize penal policy in the line with constitutional jurisprudence and international norms. The fact that the BNS still permits solitary confinement is a real worry, and it makes you wonder what India's legal system is really trying to achieve. When you allow isolation to be a legitimate form of punishment, it seems the focus is more on retribution than on actually helping people get better. This is a very different approach from what you see in many other democratic nations.<sup>282</sup> In those countries, they've either strictly limited or completely done away with solitary confinement, recognizing just how harmful it can be especially for young people and those with mental health issues.

### D. *Constitutional Framework and Judicial Interpretation.*

The Indian Constitution gives us a strong legal foundation to challenge solitary confinement, especially through a few key articles like 14, 19, and 21. For a long time, the Supreme Court has said that our right to life and liberty isn't just about existing it's also about living with dignity<sup>283</sup>. That's why courts have repeatedly stepped in and ruled that isolating prisoners, if it's done arbitrarily or for too long, is a violation of that right. In landmark case of *Sunil Batra v. Delhi Administration*<sup>284</sup>, the court was clear that putting death row inmates in solitary confinement without a court order was a form of cruel and inhuman punishment. Justice Krishna Iyer, put it well when he said that prisoners don't lose their fundamental rights just because they're in jail. The court went further in *Sunil Batra (II) v. Delhi Administration*<sup>285</sup>, sticking down arbitrary uses of solitary confinement and also held that it is violation of Art. 21 and in *Charles Sobhraj v. Superintendent, Central Jail, Tihar, New Delhi*<sup>286</sup>, where it was again held that solitary confinement can't just be a routine thing for prison staff to use; it has to be strictly limited by law. A similar idea came up in the *Kishore Singh Ravinder Dev v. State of Rajasthan*<sup>287</sup>, where the Court said all punishments have to respect human dignity, emphasizing that a person's rights don't get left behind at the prison gates.

More recent judgment related to solitary confinement where jurisprudence has echoed principles are *State of Uttrakhand v. Mehtab*<sup>288</sup>, where the High Court held that the under trial prisoners

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<sup>280</sup> Bureau of Police Research and Development, Ministry of Home Affairs, Handbook for Board of Visitors, <https://bprd.nic.in/uploads/pdf/Handbook%20for%20Board%20of%20Visitors.pdf>.

<sup>281</sup> The Bharatiya Nyaya Sanhita, 2023, § 11 & 12, No. 45, Acts of Parliament, 2023 (India).

<sup>282</sup> Penal Reform International, Solitary Confinement, Penal Reform International, <https://www.penalreform.org/issues/prison-conditions/key-facts/solitary-confinement/>.

<sup>283</sup> Unni Krishnan v. State of Andhra Pradesh, 1993 INSC 40.

<sup>284</sup> Supra note 1.

<sup>285</sup> Sunil Batra (II) v. Delhi Administration, (1980) 3 SCC 488.

<sup>286</sup> Charles Sobhraj v. Superintendent, Central Jail, Tihar, New Delhi 1978 AIR 1514.

<sup>287</sup> Supra note 10.

<sup>288</sup> State of Uttrakhand v. Mehtab, 2018 SCC OnLine Utt 391.

cannot be subjected to solitary confinement and also in the case of *Union of India v. Dharam Pal*<sup>289</sup>, where the court held that solitary confinement is a punitive measures that only be granted by a court and cannot be impose by prison officer. However, things get complicated because even with all these strong rulings, our courts have never said that solitary confinement itself is unconstitutional. Instead, they've only tried to stop its misuse. This has left us in a strange situation where the practice is technically legal but always seems to be on shaky constitutional ground. This lack of a clear legal stance has created a lot of inconsistency, and it allows some prison officials to take advantage of vague rules in their manuals to justify putting people in isolation.

## V. FROM PUNITIVE TO REFORM: RETHINKING SOLITARY CONFINEMENT IN INDIA

### A. Mental Health Care as a Constitutional Protection.

The psychiatric evidence shows harm caused by solitary confinement which necessitates that the state should treat mental healthcare not just as a simple choice but as a constitutional obligation. The Mental Healthcare Act, 2017 requires state to provide adequate treatment and proper housing for prisoners with mental illness which occur due to practice of placing such person in solitary confinement<sup>290</sup>. Therefore, substituting isolation with structural mental health support is not just a humanitarian reform but a constitution protection which is based on Article 21 of Indian Constitution. The Court in *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*<sup>291</sup>, expand the scope of right to life and liberty which includes dignity and humane treatment which reinforces the idea that solitary confinement should not violate prison's constitutional right.

### B. Restorative and Rehabilitative Model

Comparing the Criminal justice system of India with other country Criminal System, demonstrate that alternatives to solitary confinement have to be both feasible and effective. For ex. in Norway, Prisons are based on the idea that “the punishment is the restriction of liberty so therefore no further rights has to be removed,” which creates rehabilitation reform with very little use of isolation<sup>292</sup>. Similarly, Germany has open prison system which focuses on vocational training, social reintegration and psychological support and uses solitary confinement rarely and only with the strict judicial oversight<sup>293</sup>. The Rajasthan's open prisons system where the inmates live with families and work outside during the day, provide right approach towards the rehabilitation rather than punitive segregation.<sup>294</sup> Likewise, the Probation of offenders Acts, 1958 provide that the legislative has acknowledged that community-based reform should be preferred over incarceration for minor offences.<sup>295</sup> These approaches align with the Nelson Mandela Rules which state that solitary confinement should be an exception measures and should never be used

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<sup>289</sup> *Union of India v. Dharam Pal*, 2019 INSC 563.

<sup>290</sup> The Mental Healthcare Act, 2017, § 103, No. 10, Acts of Parliament 2017 (India).

<sup>291</sup> *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, 1981 INSC 11.

<sup>292</sup> Sharon Shalev, *Supermax: Controlling Risk through Solitary Confinement* 205 (2009).

<sup>293</sup> *Id.*

<sup>294</sup> Charu Bahri, *Why Open Prisons are the Solution to India's Overcrowded Prisons*, *INDIASPEND* (Sept. 20, 2018), <https://www.indiaspend.com/why-open-prisons-are-the-solution-to-indias-overcrowded-prisons>.

<sup>295</sup> The Probation of Offenders Act, 1958, No. 20 of 1958, Sec. 4, INDIA CODE (1958).

for vulnerable prisoners<sup>296</sup>. In contrast, the Indian penal system continues to use such punitive measures which show a broader failure to view imprisonment as a rehabilitative process.

### **C. Decarceration of Structural Solution**

Beyond mental health and rehabilitation study of solitary confinement in India, it must also be look from the lens of overcrowding as well as over criminalization of poverty and marginalized. While almost 75% of the India's prison population consist of undertrial prisoners, the use of solitary confinement mark as a management of systematic overcrowding rather than disciplinary measures.<sup>297</sup> Addressing solitary confinement require a broader commitment to decarceration which can be done through bail reforms, programs for minor offences, and non custodial sentencing. Such remedy will reduce prison overcrowding and undermine the administrative justification for solitary confinement which shifts the focus from punitive control to structural justice.

## **VI. RECOMMENDATIONS**

The legislative reform remains one of the important steps in addressing solitary confinement in India. The Bharatiya Nyaya Sanhita, 2023<sup>298</sup> and the Prisons Act, 1894<sup>299</sup> has to be amended to abolish the sanction of solitary confinement entirely because the procedural safeguard alone cannot align these practices with constitutional guarantees of dignity which is guarantee under Article 21. To move beyond the colonial framework, India has to harmonize its penal provisions related to solitary confinement which has to be aligning with International Human Rights standards. The Nelson Mandela Rules also prohibit prolonged solitary confinement and also prohibit its use on person with mental illness<sup>300</sup>. Similarly, the Bangkok rules calls for gender sensitive reforms that directly addresses the needs of the women prisoners<sup>301</sup> and the Convention on the Rights of Person with Disabilities (CRPD) requires reasonable accommodation for those who are suffering with psychosocial disabilities.<sup>302</sup> For LGBTQ+ prisoners who are often placed in “protective Solitary” under the guise of safety, needs reform which explicitly prohibit such discriminatory segregation and instead ensure inclusive housing policy that respect identity and dignity. While there are many International regulation related to solitary confinement India still continue the colonial era rules while often citing sovereignty as a reason. In many cases the Supreme Court held that there need to be an external oversight over enforcement of solitary confinement which is also recommended by BPR&D<sup>303</sup>. Ultimately, fundamental change requires for the prison cultural it which can be achieve by right-based training to the staffs and the goal should be to shift the focus from retribution to rehabilitation which will ensure humane correction practices that respect the diversity of the entire prison policy.

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<sup>296</sup> Supra note 20.

<sup>297</sup> Supra note 16.

<sup>298</sup> The Bharatiya Nyaya Sanhita, 2023, § 11 & 12, No. 45, Acts of Parliament, 2023 (India).

<sup>299</sup> The Prisons Act, 1894, § 45, No. 9, Acts of Parliament, 1894 (India).

<sup>300</sup> Supra note 20.

<sup>301</sup> Supra note 12.

<sup>302</sup> Supra note 30.

<sup>303</sup> Re: Inhuman Condition in 1382 Prisons, 2018 INSC 1200.

## **VII. CONCLUSION**

Solitary confinement a practice which is deeply rooted in India's colonial past continue to pose a significant legal and ethical challenges. Despite India's commitment to a rehabilitation criminal justice system its laws which includes Indian Penal Code (IPC), the Prisons Act, and the new Bharatiya Nyaya Sanhita (BNS) still has a framework for solitary confinement as it was in the colonial past, which amount to inhuman treatment. This is harmful to vulnerable groups like women, juvenile and individual with mental illnesses. While Supreme Court condemns the arbitrary use of solitary confinement, it does not rule the practice unconstitutional. The prisoner authority uses this practice to curb the violence within the prison and as for the administrative regulations. International standards such as the Mandela Rules and the Bangkok rules, characterize the solitary confinement as a form of torture and advocates for its abolition. By not following the rules laid down by the International standards, India is falling short of its constitutional promise of dignity under Article 21 and its International human rights obligations. Legislative reforms are necessary to totally eradicate solitary confinement substituting it with exhaustive mental healthcare and rehabilitative action plans. This will uphold the integrity of both global human rights along with fundamental rights.