



Tata Institute
of
Social Sciences
ISSN: 2583-603X (PRINT)

Theme:
**Disability Studies, Artificial
Intelligence, ICT, and
Assistive Technology**

**TISS JOURNAL OF
DISABILITY STUDIES
AND RESEARCH**

A Peer Reviewed Journal
Half Yearly Journal
Volume-IV • Issue II • Dec 2024
UGC - Care Listed

Challenges of Prison Inmates with Disabilities: Need for Comprehensive Data and Prison Support System for Access to Justice

About the Author :

Praveen Kumar
Md Quadir Ali
Shubhendu Shekhar

Contact Information of the corresponding author :

Praveen Kumar
PhD Scholar
Centre of Social Medicine and Community Health, JNU

Md Quadir Ali
PhD Scholar, Department of Psychology,
Christ University, Bangalore – 560029.
Head, Research & Development Centre,
LAW Foundation, Patna – 800020.

Shubhendu Shekhar
Masters of Science in Criminal Justice Policy,
London School of Economics and Political
Science, London, United Kingdom – WC2A-2AE.
Shubhenduballb@gmail.com

Abstract

Disability, being a multifold concept, encompasses a variety of physical and cognitive limitations impacting an individual's capacity to perform activities. With the intersection of disability and incarceration, inmates with disability encounter discrimination and abuse, with the structural failure of the

justice system. Irrespective of the challenges, no data by the governing bodies has been included concerning the prison or crime statistics, resulting in weak policies and reforms on disability and their quest for justice and societal inclusion. This paper takes an in-depth case study approach to voice out the grey area and explore their challenges through the semi-structured interviews triangulated with the observation and the case records. The findings from the three cases of inmates with disability in one of the selected Central Prison of Bihar generated themes showing the challenges faced by them. The themes reflected the unexplored factors such as barriers to equitable trials and social exclusion facilitated by the prison officials and other inmates. It showed more susceptibility of individuals with a disability to false allegations and difficulty in voicing out their emotions and interactions during incarceration. The paper necessitates the inclusivity of disability statistics in the respective reports and the need for legal and policy reforms that accommodate their needs.

Keywords: Inmates with disability, social exclusion, justice system, challenges, legal aid.

Introduction

Disability is a multifaceted and complex concept, encompassing a variety of mental, physical, and cognitive limitations that impact a person's capacity to perform day-to-day activities. They often face significant challenges with the presence of discrimination, societal stigma, and a lack of support and accessibility in society. As per the Census Report 2011, in India, out of the 121 million population, around 2.21%, i.e., 26.8 million individuals, are classified as disabled. Persons with a disability grew from 21.9 to 26.8 million in 2001 and 2011, respectively, in 10 years (Pattnaik et al.,

2023). Until 1931, in India, they were referred to as *infirmity*, following the *Medical Model of Disability* that addresses fixing the impairment of them. In recent decades, due to the efforts of the government, the perspective on disability has shifted positively from the medical model to a more *Social Model of Disability* that focuses on breaking down societal barriers and promoting equality and inclusion. To promote the inclusion and acceptance of them individuals in society, the Indian government has implemented several policies and legal structures. The Rights of Persons with Disabilities Act, 2016 (RPwD Act) is India's principal piece of legislation for the rights of individuals with disabilities. It aligns with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), which the Indian government ratified in 2007. The RPwD Act offers a comprehensive legal framework for ensuring the rights of persons with disabilities in areas of education, social security, health, and rehabilitation while recognizing 21 distinct categories of disability. The National Policy for People with Disabilities, 2006 highlights the equal opportunity and significant participation in society of these individuals while prioritizing the significance of their education and rehabilitation.

However, the shift from a medical to a social model is still ongoing and requires further development, especially when encountered with the criminal justice system. This intersection of incarceration and disability presents a critical issue in the field of criminal justice. The disproportionate number of persons with disability in prisons is often due to the existing systemic flaws in the criminal justice and social services systems. They are often a victim falsely accused of crimes, frequently as a result of systemic biases, lack of significant awareness, and insufficient legal representation. As a result,

a disproportionate number of them are unjustly incarcerated, which exacerbates their marginalization and erodes their confidence in the justice system.

Across all racial, and sexual categories and ethnicities, the percentage of inmates with disability in Federal and State prisons was found to be higher than the ones without disability (Bixby et al., 2022). Maruschak et al. (2021) stated in their study that 4 out of 10 states and 3 out of 10 federal inmates reported having a disability. The Global Report on Health Equity for Persons with Disabilities by the World Health Organization showed that roughly 16% of the world's population, i.e., one in six people worldwide, is experiencing disability in one form or another, making this demography the largest minority. Irrespective of their disadvantage, they are still disregarded when it comes to policy reforms and data collection strategies and reports. The National Crime Records Bureau (NCRB), in their Prison Statistics Report 2022, has included the category of transgender in their crime reports but has left out the collection of disability statistics irrespective of the international conventions mandating the inclusion of data gathered on disability in the sustainable development goals (NCRB, 2023b; Tripathi et al., 2024).

The challenges faced by them are manifold, ranging from mental and physical issues leading to discriminatory acts to the dearth of accessible services and programs. As per the India Justice Report 2022, a significant proportion of Indian prisons lack adequate amenities that are suitable for meeting the needs of a normal individual, so one can imagine the conditions for individuals with a disability (India Justice Report, 2023). While these are the significant challenges faced by inmates with a disability, there is a paucity of research that addresses these issues, leaving many unanswered questions and gaps

in understanding the scope and implications of the problem. Considering that there is a lack of official statistics on the number of individuals with disability incarcerated in prison (Tripathi et al., 2024), this paper explores this untouched grey area. Therefore, this paper takes a fine-grained approach to explore and present a thorough analysis of the challenges encountered by the inmates with disability inside the prison and how dedicated data on them could open the portal of possibilities that break the existing social stigma and their inclusion in the police reforms and report that will support their quest for fair justice.

Literature Review

Dynamics of Inmates with Disabilities in India and Bihar

The Department of Empowerment of Persons with Disabilities, under the aegis of the Ministry of Social Justice and Empowerment, Government of India, analyzed the Census of India 2011 report while focusing on individuals with disability. Their analysis showed that out of 26.8 million individuals with a disability, around 56%, i.e., 15 million were men, and 44%, i.e., 11.8 million were women. Twenty per cent of these individuals with a disability were facing a disability in movement, around nineteen per cent were deaf, nineteen per cent were suffering from a visual disability, and eight per cent had multiple disabilities.

The Indian Government implemented changes to the laws in line with UCRPD principles, and despite the efforts, the Model Prison Management Bill of 1999, which was then enacted as the Model Prisons and Correctional Services Act 2023, failed to address the needs and rights of inmates with disabilities sufficiently. Even though there were chapters devoted to

women prisoners, transgender prisons, and women prisoners with children, there was no special provision for prisoners with disabilities (Tripathi et al., 2024). This loophole added to the significance of this study wherein the inmates with disabilities in Bihar were addressed.

Bihar was selected as the area of study given the higher proportion of marginalized communities, especially in the rural areas. As per the report, around 31 % of the individuals with disabilities lived in the cities, and 69% lived in the rural areas. Chakraborty (2015), pointed out that some number of prisons in Bihar are over a hundred years old in her Prisons of Bihar report, which showcases a dangerous concern from a health perspective. Reports like Prisons of Bihar, Prison Statistics of India 2022, Crime in Bihar, 2022, India Justice Report 2022 on Prisons and were analyzed to understand the prison dynamics in Bihar (NCRB, 2023a, 2023b; State Crime Records Bureau, 2022; India Justice Report, 2023). It was seen that prison occupancy in Bihar was around 140.1% till Dec 2021, reflecting the notion of overcrowding in the prisons. No data was found on the disability statistics; it was only found in just one section of the *Cases registered under Rape*, where it was mentioned in the section of *Rape other than Custodial rape*, i.e., On Women with Mental or Physical disability (Sec.376(2)(1) of NCRB, 2023b).

Interestingly, the number of inmates per officer in Bihar's prisons was found to be 253, with 787 inmates per single medical officer, reflecting the poor facilities provided to the inmates in Bihar. So, one can imagine the facilities given to the inmates with disability. All these indicate the poor structure of the prison environment, which directly hampers the health of the individuals incarcerated in the prisons of Bihar.

Initially, in India, the mentally ill and mentally disabled individuals were categorized under the head of "non-criminal

lunatics.” But after the judgment of the Supreme Court in *Sheela Barse Vs. Union of India and others* (Tripathi et al., 2024), the admission of non-criminal mentally ill individuals was seen as illegal. The Annual Report of Bihar State Legal Services Authority (2024) addressed the NALSA (Legal Services to the Mentally Ill and Mentally Disabled Persons) Scheme, 2015. This scheme advocated the preservation of human rights and fundamental freedom of individuals with disability, particularly those individuals who are mentally ill and mentally disabled.

Challenges faced by the individuals with disability inside the prison

In their examination of the intersections between social exclusion, disability, incarceration, and social exclusion, Bixby et al. (2022) highlighted the intricate connection between all these factors and how they affect individuals’s social outcomes and overall health. They drew attention to a lot of significant issues that demonstrate the vulnerabilities that individuals with disability face both in society and with the criminal justice system and society at large. According to the study by Wilper et al. (2009), inmates with disabilities have a lower likelihood of receiving essential medical attention than inmates without disabilities. This discrimination potentially exacerbates pre-existing illnesses and conditions, causing unnecessary suffering or even resulting in death.

The difficulties faced by prisoners with disability are made worse by the absence of accessibility in prisons. Many prisons abroad are not built to accommodate the special needs of these individuals, and access to vital services is prevented as well. The Americans with Impairments Act (ADA), mandates that all public institutes, inclusive of prisons,

should provide accessibility to individuals with disability. However, irrespective of that, very few have implemented these standards. The existing studies and reports indicated that prisoners in India frequently receive inadequate healthcare, but the situation is particularly bad for those with disabilities. Almost all the prisons of India fail to address the complicated healthcare demands of offenders with a disability, who require specialized care and medications. The analysis of the India Justice Report 2022 showed that a significant proportion of Indian prisons lack adequate facilities to meet the needs of a normal individual. Though there is no specific data for inmates with disability in the prisons in India, one can imagine the condition of these individuals if the facilities in the prisons were like that.

The extensive literature review showed a lack of comprehensive research and the scarcity of data statistics on the inmates with disability. The challenges faced by this particular population are still very less examined and inadequately documented, given the lack of detailed investigation. This loophole is further entrenched by the lack of dedicated disability statistics resulting in low public awareness and insignificant policy reforms. This paper explores this notion to address the pressing need for more focused studies that can shed light on the unique challenges and struggles of this population with the criminal justice system. This will not only inform the inclusion of disability statistics in the reports but will also inform evidence-based interventions and other supportive reforms in the criminal justice system.

To explore this critical and sensitive issue, several research methodologies were analyzed and compared. These were evaluated on the ground to explore the challenges faced by the inmates with disability and their quest for justice. It was seen

that the qualitative case study approach significantly stood up, showcasing its suitabilities in exploring this complex issue more practically and intensively. This approach allows for a deeper explanation of complex matters that have not yet been explored extensively. Yin (2013) advocated the use of the case study method in exploring complex behavioural procedures. Starks and Trinidad (2007) showcased the importance of the case study approach, which is often progressively applied in the field of social work. Simons (2009) stated that a case study enables the in-depth exploration of the topic from multiple perspectives while addressing the uniqueness and complexity of real life.

The oretical framework

In the late 1970s, Oliver (1990, 2017) contrasted the *Medical model of disability* with the *Social model of disability* and shifted the focus from the person's impairment to the societal barrier that limits the inclusion and participation of individuals with disability within society. The model situates itself in the paradigm stating that disability is not inherent but results from the social and physical environment of the individual that fails to accommodate their diverse needs. It promotes the idea of societal changes by opposing discriminatory beliefs, facilitating transparent and accessible communication, and removing societal barriers. This model is closely associated with the concept of "carceral ableism," elaborated in the works of Ben-Moshe (2020), where she defined the societal norms and the policies that are intended to criminalize disability. Carceral ableism extends the exclusion and segregation of individuals with disability in both prisons and traditional institutions. These spaces are designed to manage and control them while perceiving them as threatening to the social order.

The *Human Rights Model of Disability* incorporates the tenets of the previously mentioned Social Model, and it emphasizes the intrinsic dignity of individuals with disabilities as an essential aspect of human rights (Degener, 2016). This model emphasises that disability should be perceived through the lens of human rights which advocates non-discrimination, their right to full participation, and equality within the society. Extending the *Social model of disability*, it asserts that every individual should have equal access to all the opportunities, protections, and resources irrespective of the disability (Degner, 2017).

Research Methodology

Research Questions

The researcher sought to answer the following research questions through this paper:

1. What are the challenges faced by the prisoners with disability inside the prison and in their quest for justice?
2. What could be done to address the challenges faced by prisoners with disability inside the prison and in their quest for justice?

Research design

This paper incorporated exploratory qualitative design, following an interpretative and social constructivist perspective grounded in the relativism ontological stance. This research design was implemented through the case study method with the triangulation of data sources (see the Data Collection section).

Operational definition

1. Disability is operationalized as the physical, intellectual, sensory, or mental restrictions that substantially limit

- an individual's ability and interactions with the world around them by the framework set by the UNCRPD (Shakespeare, 2013; United Nations, 2006).
2. Prison Inmates with Disabilities are operationalized as any person with disabilities in any Prison setting having any type of disabilities scheduled as per the Rights for Persons with Disabilities Act ([RPwD Act, 2016] Ministry of Law and Justice, 2016).

The procedure of the study

The participants were identified in collaboration with an NGO working in the Criminal justice system of Bihar. After the identification and permission for data collection, the potential participants inside the prison were recruited based on their consent. Followed by the semi-structured interviews with the participants, observation and case records were triangulated to get a detailed description of the case study approach. The analysis was subsequently carried out, integrating all the data sources and generating appropriate themes in line with the questions sought in this study.

Participants

The participants (N =3) were selected for the case study approach through a purposive sampling method in line with the objective of this study. This number of samples was justified by the case study investigative papers by existing researchers (Gadberry, 2014; Manago, 2013). The saturation of data in this paper is termed as the gathering of sufficient data that meets the objective of the research (Alam, 2021; Constantinou et al., 2017). Additionally, considering the special population in the study, the case study of three participants seemed to be appropriate for the researchers.

an individual's ability and interactions with the world around them by the framework set by the UNCRPD (Shakespeare, 2013; United Nations, 2006).

2. Prison Inmates with Disabilities are operationalized as any person with disabilities in any Prison setting having any type of disabilities scheduled as per the Rights for Persons with Disabilities Act ([RPwD Act, 2016] Ministry of Law and Justice, 2016).

The procedure of the study

The participants were identified in collaboration with an NGO working in the Criminal justice system of Bihar. After the identification and permission for data collection, the potential participants inside the prison were recruited based on their consent. Followed by the semi-structured interviews with the participants, observation and case records were triangulated to get a detailed description of the case study approach. The analysis was subsequently carried out, integrating all the data sources and generating appropriate themes in line with the questions sought in this study.

Participants

The participants (N =3) were selected for the case study approach through a purposive sampling method in line with the objective of this study. This number of samples was justified by the case study investigative papers by existing researchers (Gadberry, 2014; Manago, 2013). The saturation of data in this paper is termed as the gathering of sufficient data that meets the objective of the research (Alam, 2021; Constantinou et al., 2017). Additionally, considering the special population in the study, the case study of three participants seemed to be appropriate for the researchers.

The participants were included, given that they were formally diagnosed with any disability, whether it be sensory, physical, or mental. Only the ones who were incarcerated in one of the Central Prison of Bihar [*anonymised*], were selected as the researchers and were given allowance to work on that specific prison by the Prison Authorities of Bihar. Participants who spoke Hindi, Bhojpuri, and Maghii were included. Those individuals who were below the age of 18 were not included. Additionally, the individuals who did not give informed consent were excluded from the study.

Data collection

The data from the participants were collected through semi-structured interviews (Clarke & Braun, 2013), triangulated with the observation from the researcher and the documents of their case records. The participants were asked to establish the connection between their legal representatives (if any) to gain more understanding of their case. Informed consent was obtained from the participants before going forward with the semi-structured face-to-face interviews. A structured interview guide in line with the objective of the study guided these interviews. The participants were observed on the premises of the prison to gain more detailed pictures of their experiences inside the prison. During the interview, direct observation was employed to record the behavior and body language of the participants. This method was deemed to be appropriate for developing a complete understanding of the sought problem.

Data analysis

To ensure the credibility of the data and maintain the semantic and criterion equivalence of the translated data, the interview data (which were a mixture of Hindi, Bhojpuri, and English)

were first transliterated into English characters. This version was then translated into a loosely held English grammatical structure to maintain the meaning and emotions in the data. Pseudonyms were applied to maintain the anonymity of the participants. The translated files were then back-translated by the third author, who was bi-lingual (Hindi and English) and an expert in the Criminal Justice System. These back-translated files were then verified with the original English transliterated file to check whether the meaning was similar or not. The first two authors examined these, and they were bi-lingual as well. After the verification and subsequent modifications, the file was then imported to Nvivo 14 (trial version) for analysis. Thematic analysis of Braun and Clarke (2006) and Clarke and Braun (2013) was implemented in the analysis of the data collected. Themes were generated inductively from the codes and were integrated with the theoretical framework mentioned previously.

Ethical Considerations

Key ethical considerations by past researchers while working within the prison system were followed in the study (Abbott et al., 2018; Unicef, 2021). The autonomy of the participants was ensured, and their beliefs and attitudes, irrespective of their demographic characteristics, were respected without any bias. Everyone received equal respect and treatment in accordance with the applicable inclusion and exclusion criteria of this study. They were assured that their participation was entirely voluntary, and they had the liberty to leave the research at any moment if they felt like it. The information collected was handled without any biases in the interpretation, and the identifying details of the participants were anonymized to maintain the trustworthiness of the collected data and ensure the ethical approach of the study.

Adequate time was given to the rapport-building process, and the notion of follow-up was taken to ensure that this research created no consequences or discomfort. Physical copies of the data were kept in a secured cabinet with limited access. The digital data were kept in an encrypted folder with a strong secured password.

Trustworthiness and Credibility of the Study

To ensure the trustworthiness of the data, i.e., the authenticity, truthfulness, and quality, the interview guide created in the study was sent for expert validation while keeping in consideration the theoretical model and the research questions of this study. A detailed description of the data and its analysis ensured the overall trustworthiness. Triangulation of the data sources and the prolonged engagement ensured the maintenance and enhancement of the credibility of this study. The careful translation process mentioned previously in the data analysis section ensured the criterion and semantic equivalence of the data.

To dive further into the findings section, a brief overview of all three case studies has been provided to gain familiarity with the background of the participants and their cases.

Case study 1:

Vignesh Pandit [anonymized], a 27-year-old man, is an individual with disability with speech impairment since his birth. Being a resident of Patna district, he belonged to one of the marginalized communities of Bihar. He has been incarcerated in the selected Central prison of Bihar since 2020 for the accusation of sexual harassment of a minor girl, booked under the POCSO Act. The FIR was lodged by the mother of the survivor (aged 9), stating that Vignesh and Mahesh Pandit [anonymized] sexually assaulted the survivor and threatened to kill her if she spoke of them and the incident. Based on the

FIR, Vignesh was sent to police custody and later to judicial custody, while Mahesh was given a clean chit in the case.

In collaboration with the NGO, which was the legal representative of Vignesh, the jail records and chargesheet were analyzed by the researchers to gain more background information on his case and the struggles he faced. Given that the participant was speech-disabled and illiterate, observation and simple sign language were used to communicate with the participant. Additionally, a home visit of the participant was conducted, which added more depth to the information on him.

Case study 2

Saif Alam [*anonymized*], a 27-year-old man who hailed from a marginalized background, worked as a fruit seller in Patna. He found himself entangled in the criminal justice system after being arrested for theft while traveling to work. Despite claiming innocence, he has been incarcerated in the selected Central Prison of Bihar since 2022 under the IPC Section 379. His incarceration exposed the underlying mental issues, and he was later diagnosed with mental retardation in the prison. His mental capacity to store the information is minimal; therefore, proper rapport was built, and the interview was conducted at a slow pace. He has studied till the ninth standard and speaks Hindi quite well; surprisingly, he knows a few sentences of English as well. His parents come to meet him in Mulakati session once in 5-6 months. He repeatedly mentions his younger sister indicating his closeness towards her and how he is not able to interact with her. He is not aware that he can avail legal representation and stated that no one listens to or helps him inside the prison. The jail records and case records were analyzed to gain a better understanding of the information provided by the participant.

Case study 3

Pankaj [*anonymised*], a 25-year-old man, is a visually challenged individual who is from a culturally marginalized

background. He used to work with his family in selling used plastics in one of the regions of Bihar and used to beg for food from the nearby temples. He was apprehended by the police on the charge of theft and was taken into police custody for three days and later into judicial custody. He was booked under the IPC Section 457 and 380 for lurking house trespass by night and theft in a building that was used for storing property. He has been in the selected Central Prison since 2021 and is awaiting a fair trial by the justice system. Being illiterate, he was unaware of the legal accessibility and rights, and he mentioned that he was physically assaulted inside the police station for those three days. Inside the prison, he mentions that discrimination is present and the inmates are not sensitive towards the disability. The collaborator acting as the legal representative of Pankaj provided the case records and the other necessary documents as his case was in the trial stage.

Below is the table which outlines the types of disabilities and the specific challenges faced by the inmates within the selected case study of this research (See Table 1.1).

Table 1.1

Challenges faced by the inmates with disability in Prison

Case study sequence	Demography	Type of Disability
1	Age: 27	Inmate with Speech impairment since birth
	<p>Inmate challenges:</p> <p>Mis-interpretation of the communications and incomplete comprehension of his case by the legal representative and police officials. This is integrated with the feelings of isolation and loneliness brought on by the inability to communicate needs, worries, or feelings.</p> <p>Vulnerability to being taken advantage of and made fun of by other fellow inmates. And exclusion from conversations, group activities, and vocational training because of the impairment.</p> <p>Use of Gestural language and Signs to communicate</p>	
2	Age: 27	Inmate with Intellectual Disability
	<p>Inmate challenges:</p> <p>Frequent mis-understandings or bullying leading to social isolation.</p> <p>Susceptible to verbal / physical abuse from other fellow inmates who take advantage of his intellectual impairment, seeing them as "easy prey."</p> <p>Rejection from group activities and vocational trainings because of alleged incompetence.</p> <p>Suffer from poor communication skills, leading the medical professionals to misinterpret his issues.</p> <p>Limited vocabulary and Limited speech in day to day communication (Table 1.1 continues)</p>	

Table 1.1 continues

3	<p><i>Age: 25 Inmate with Visually Impaired</i></p> <p>Inmate challenges:</p> <p>Limited tactile cues and absence of auditory assistance or braille, leading to the difficulty in navigating the prison environment</p> <p>Lack of accessible infrastructure and leads to frequent falls and injury</p> <p>Viewed as weak and easy prey and susceptible to verbal / physical abuse by staffs and fellow inmates.</p> <p>Difficulty in recognising symptoms of health issues and unable to convey medical concerns to the medical professionals.</p>
---	---

Findings and Analytical Discussion

Four themes were generated addressing the research questions of this study (See Table 1.2). The findings discussed in this section are integrated with the analytical discussion triangulated with the analysis of the field observation and the case records of the participants.

Table 1.2

Generated themes and the list of main codes

Theme	Main Codes
Inadequate prison infrastructure and limited accessibility	Limited accessibility; Limited medical supply Absence of dedicated infrastructure Inaccessible restrooms; Cramped Spaces Inadequate bedding Lack of sign language interpreters
Barriers to Equitable Trial and Legal Representation	Exclusion from programs; Limited access to legal resources Absence of dedicated legal aid services Stigmatization of staffs and peers; Language misinterpretation Non-compliance with the Disability laws Lack of disability of advocacy Absence of redress mechanism
Limited Access to Healthcare and its physiological and psychological impact	Scarcity of specialized health professionals; Poor record-keeping; Loophole in the Case follow-ups Delayed emergency response
<i>Table 1.2 continues</i>	
	Lack of disability-specific medications Bedsore & hygiene issues Feelings of neglect; Learned helplessness
Discrimination and Social Exclusion by the prison staffs and inmates	Power dynamics of the fellow inmates Social isolation; No grievance mechanism Absence of peer-support programs Fear of retaliation; Feelings of inferiority Unequal treatment; Neglect of needs

Theme 1: Inadequate prison infrastructure and limited accessibility

This theme explores how the inadequate physical infrastructure and limited accessibility of services inside the prison create a barrier that impedes the daily activities of the inmates with disability. It encompasses the absence of handrails, ramps, accessible restrooms, and other facilities, creating physical barriers that contribute to a dehumanizing and isolating experience for these individuals. One of the participants indicated that:

You know it is difficult everyday, aa (pause) because this environment is not designed while keeping someone like me in mind. The structure is not properly defined and the restrooms are not structurally accessible. The prison structure prevents me from doing even simplest tasks, and it reminds me that I do not belong here.

This insight goes in accordance with the understanding that the limited accessibility in the prison degrades the lifestyle of the prisoners with disability (Ben-Moshe, 2020). Existing research indicated that the inadequate infrastructure of the prison forces the inmates with disability to rely on other inmates or the staff for assistance, which often leads to feelings of dependency and helplessness. It was observed that the prison authorities did not adequately support the participants, and their behavior was primarily biased. As per the *Human Rights Model of Disability*, this theme shows how the absence of inclusivity of these individuals in the prison structure is negatively affecting their rights as a human being (Degner, 2016). A recurrent problem that came out from this study was the lack of acknowledgment from the staff members and the poor infrastructure, it added more difficulty to these individuals in navigating the prison with limited mobility. It

was expressed by one of the participants who said that:

I, aa, frequently feel that I am here just in my cell, I do not have that liberty to freely move inside the prison given the poor infrastructure. The guards in here are not supportive and there are moments where I do not get meal in assigned time. This whole environment constantly reminds me that I am not important and unworthy of care.

Additionally, it was observed from the data that the limited facilities pose safety risks to these individuals while degrading their lifestyle. On a similar note, Ben-Moshe and Steele (2023) reflected on these issues and mentioned that the spaces designed to incarcerate persons with disability are built to control them, and they are perceived to be something that is a threat to the social order. United Nations General Assembly (2018) stated that individuals with disability are specifically targeted and discriminated against inside the prison, and the whole environment is particularly punitive instead of a therapeutic response to their disability.

Theme 2: Barriers to Equitable Trial and Legal Representation

This theme encompasses the difficulties of inmates with disabilities when trying to access legal counsel and navigating the legal system for a fair trial. It covers the issues of the inmates being not aware of their rights, barriers to effective communication (for those who have speech or hearing disability), and the scarcity of legal aid services that are specifically to the requirements of individuals with disability.

In the prison, I have become worn out. I, aa, I struggle a lot here and I am always worried on how long will I be inside because I have not committed the crime yet I have been since ages. God knows why I have been incarcerated

irrespective of me not doing anything illegal. Wish justice could be served but I do not know whether that can be done.

This finding goes in accordance with the insights from Ben-Moshe (2020), who stated that individuals with disability are often criminalized and falsely accused, leading to their disproportionate representation in prisons. Subsequently, the study by Bixby et al. (2022) centered on the overrepresentation of individuals with disability within the incarcerated population, and it was observed that they face greater odds of being apprehended, conviction, and imprisonment as compared to individuals without disability. One of the participants accounted that:

You know previously I had a very hard time to go through all this case proceedings and all. The government advocate was not focusing on my case properly. Glad that I got the legal representation from the NGO. It has supported me to advocate my rights and all. I do not know what I could have done by myself, but now I feel that I might get justice.

This theme also takes into account the challenges they face during their participation in court proceedings, which hinders the opportunity to get a fair trial. As observed, their disability is not accommodated in any way, and they are treated in the same way as other prisoners by the police and judicial authorities, which was also indicatively seen in the work of Crowe and Drew (2021). All these prevent them from accessing justice and voicing out their truth. One of the participants reflected that:

When I was arrested, I was not aware of my rights and no one from the officials gave me a clear explanation of

these rights to me. The trial proceedings are not sensitive and were not fair. My previous lawyer was not sensitive to people like me, which prevented me in voicing out my feelings. I was wrongly framed and no one cared to listen to me. I feel overpowered and disoriented by all this.

It was noticed that the criminal justice system is not sensitive enough to recognize the needs of these individuals who are majorly falsely accused and incarcerated in prison (Morgan, 2018). They have the impression that the justice system is biased and is framed in such a way as to ignore their existence, as indicated by the emotions of one of the participants:

People like us and my son has no access to the legal resources and the concerned organisation do not count us and whoever is willing, they lack the expertise to handle our particular needs. My son has not done anything and yet the justice system of ours keeps us in dark and always denies us the resources and a fair trial.

This feeling of abandonment is related to the third theme generated in the findings, which relates to the development of existential crisis, which impacts their well-being. From the lens of the *Human Rights Model of Disability*, this theme showcases how the discrimination on their rights from the legal perspective exacerbates the struggles they face when encountering the criminal justice system.

Theme 3: Limited Access to Healthcare and its physiological and psychological impact

This theme emphasizes the dearth of appropriate medical care and rehabilitation services that inmates with disabilities face. It reflects on the scarcity of specialized healthcare professionals inside the prison and the absence of assistive devices, both of which are vital for maintaining the well-being

of the individuals. It also explores how this neglect worsens the pre-existing disabilities and causes further physical and mental degradation of the inmates with disability. This was reflected by one of the participants:

You know, my present condition necessitates frequent medical checkups and all, but if I am lucky, I get to consult the doctor once a month here. And he also is not sensitive to my needs given that he has not much experiences on dealing with individuals like me. The other personnel also do not know on what are things I require and nobody listens or care about my needs in here.

The understanding gained from this theme incorporates the physiological and psychological impact of incarceration on people with disabilities, which makes them susceptible to both physical health and mental health problems. It covers the effects limited medical care can have on these individuals, given that they are already susceptible to these issues previously, and their incarceration acts as a catalyst in surfacing these issues. Tripathi et al. (2024) and Barry et al. (2017) stated that risks of depression and suicidal ideation are found to be heightened among prisoners with disabilities, majorly because of the lack of specific healthcare services and their feeling of loneliness in prison. It was reflected by one of the participants:

Getting basic care in here is so difficult and then you can imagine the number of difficulties we face given our condition. I feel so weak sometimes but there is not such provision to address our need. I frequently feel that my needs are not a priority and my incarceration and disability has prevented me to receive the basich medial treatment.

It was observed that no provision of mental health initiatives or medical services specifically addressed the needs of these

individuals. Following the understanding of the *Social model of disability*, this intersection of incarceration and disability exacerbates the feelings of giving up and despair, which overall impacts the health of these individuals. Sometimes, the prison authorities resort to the decision of solitary confinement of these individuals to maintain order in prison, but it has been documented by several investigations that it causes serious psychiatric, psychological, and physiological effects on these individuals, including the risk of suicide and self-harm (Metzner & Fellner, 2010). This notion was expressed by one participant, who share that:

I feel quite alone here, no one talks to me politely, everyone is so rude out here. The feeling of being in here is so bad, I do not feel like talking to anyone out it. I feel like everyone has forgotten me and no one cares about me. It is very hard to express my emotions and even if I do, there is no one to listen to.

The existing literature indicated that the long-term exposure to incarceration on people with disabilities hampers their emotional growth. This theme correlates with theme number 2, of them being falsely accused and unable to gain fair justice, which impacts their well-being as well. Additionally, it was noted by one of the participants that:

I am worried and uncertain all the time. I have none to discuss my issues or how I was falsely accused. My conditions has increased due to me being here and I do not have anyone to discuss about this. This lack of support ahhh, makes me feel like a failure.

Similar to the findings the study from Schnittker et al. (2012) showed how incarceration affects overall health and re-surfaces the issues which, in line with the feeling of social exclusion, leads to a degraded feeling. In almost all the cases,

it was observed that they were left in isolation, both socially and physically, and were excluded from the vocational programs as well.

Theme 4: Discrimination and Social Exclusion by the prison staffs and inmates

This theme incorporates the social exclusion and discrimination that occur inside the prison, contributing to the marginalization of the inmates with disability. It emphasizes the discrimination, unfavorable attitudes, and the existing stigma that these individuals encountered from their fellow inmates as well as from the staff members. This social exclusion relates to the *Social theory of disability*, which leads to them feeling the notion of being isolated, and with a lack of peer support, their quality of life degrades alongside the sense of security, as indicated by one of them, who mentioned that:

You know imprisonment and especially with a disability makes you a target. My son has received countless inhumane treatment from the other inmates and probably from the prison staffs as well. They do make fun of his disability aa, you know, he signalled about it when I went to meet him in the prison. This is how it is. In the prison, he is left by his own, and noone talks to him. I wish people had the decency to respect him as a human.

It was also observed that these individuals are seen as frail and often treated as burdens. Bixby et al. (2022) address the effect of incarceration on individuals with disability. They feel a significant social exclusion, and the whole prison environment and the behavior of the staff and the inmates exacerbate this notion of marginalization, which makes the lives of these individuals more difficult than it is already. In every case, it was seen that there was a lack of intervention

from the side of prison staff, showcasing their low sensitivity towards these individuals, wherein one mentioned that:

I will tell you one thing, you know, aa, I have been abused from the other staffs and prisoners. They call me names, bully me. They treat me like I do not belong anywhere, outside also it was the same. They make fun of me and always exclude me from any events. This is more painful and is feel completely alone as they reject me due to my disability.

Noticeably, it was seen that they were abused during the police custody as well. An extensive study by Tripathi et al. (2024) showed that injuries and torture during custody can lead to disability as well. Even though Section 54 of the Criminal Procedure states that the detainees should be safeguarded against custodial torture and should be subjected to examination by the medical officer, irrespective of that, it was observed that custodial violence on individuals with disabilities was inflicted in high capacity.

Discussion on Access to Justice and Landmark Judgements

The generated themes reflect how individuals with disability are more susceptible to false allegations, given their inability to speak clearly, navigate through the judicial system, or stand up for themselves in complex circumstances. These challenges should be considered so that adequate policies and infrastructure can be built for inmates with disabilities. These four themes align with the concerns that were raised by the Ministry of Social Justice, wherein the data on inmates with physical disabilities and the special infrastructure and care provided were sought from them. Despite this, the Ministry avoided the responsibility and refer it that it as a matter under

the State List (Lok Sabha, 2016). On a similar note, the Concluding Observations of the UN Committee on the Rights of Persons with Disabilities on the Indian report condemned that inadequate attempts were made to provide access to justice to these individuals and proposed suggestions that were not included in Union law (United Nations, 2019).

Accessibility Barriers faced by Inmates with Disabilities

Barriers in Accessibility of inmates with disabilities include (i) attitudinal barriers and stigma from prison staff and judiciary, (ii) language and communication barriers for providing logical verbal statement in context of deaf individuals who uses sign language demonstrates communication barriers in court premises, (iii) Infrastructural barriers with lack of ramps and lifts, wheelchair access (iv) Legal barriers and not knowing the legal procedures (v) Technology barriers (vi) social and cultural barriers which they face the exclusion due to society's mind-set.

In the case of *Smruti Tukaram Badade vs the State of Maharashtra*, the Hon'ble Supreme Court expanded the definition of vulnerable witness to include people with disabilities (Badade v. State of Maharashtra, 2022). The landmark judgement stated "*special centres for examination of vulnerable witnesses*" in criminal cases so as to facilitate a conducive environment for recording the statements of vulnerable witnesses. The fairness of the process of trial as well as the pursuit of substantive justice are determined in a significant measure by the manner in which statements of vulnerable witnesses are recorded. The dignity of person, which is an intrinsic 3 (2018) 11 SCC 163 element of Article 21 of the Constitution, cannot be left to the vagaries of insensitive procedures and a hostile environment. Access to

justice mandates that positive steps have to be adopted to create a barrier free environment. These barriers are not only those which exist within the physical spaces of conventional courts but those which operate on the minds and personality of vulnerable witnesses (Government of India, n.d). There is a pressing need to facilitate the salutary purpose underlying the creation of a barrier free environment where depositions can be recorded freely without constraining limitations, both physical and emotional. This requires not just the creation of infrastructure but sensitizing all stakeholders (Badede v. State of Maharashtra, 2022). The definition of “vulnerable witness” contained in Clause 3(a) of the ‘Guidelines for recording evidence of vulnerable witnesses in criminal matters. This involves:

1. Age Neutral Victims of sexual assault read with section 273 and 327 of the code of criminal procedure, 1973 and section 354 of Indian Penal Code, 1860
2. Gender neutral victim of sexual assault read with section 2(d) of Protection of children from Sexual Offences Act, 2012
3. Age and Gender Neutral victim of sexual assault under section 377 of Indian Penal Code 1860 read with para 34(1) of Sakshi (supra)
4. Witness suffering from Mental Illness under section 2(s), Mental Health Care Act 2017, read with section 118 of the Indian Evidence Act, 1872
5. Any witness deemed to have a threat perception under the Witness Protection Scheme 2018 of the Union Government as approved by this Court in Mahender Chawla v Union of India
6. Any hearing and speech impaired person who may require sign language or any person suffering from any

other disabilities who is considered as vulnerable witness. The court should adapt Vulnerable Witness Disposition Centres (VWDC). It was directed in *Smruti Tukaram Badade vs the State of Maharashtra, 2022* case that every High Court should set up in house permanent VWDC committee and continuously supervise implementation of the present directions (Badade v. State of Maharashtra, 2022). The court directed all authorities to implement suitable arrangements to ensure accessibility of the criminal justice system for persons with disabilities, whether as accused individuals or victims, suggesting the use of assistive technology and the establishment of a special courtroom. The findings call for the policy-level recommendation from this study, i.e., the development of a unified Standard Operating Procedure (SOP) by the Ministry of Home Affairs or even the State Government to address the unique needs of incarcerated individuals with disabilities and to ensure the compliance and their inclusivity in the criminal justice system. The SOP should be integrated with Section 12 of the RPwD Act with support from the Model Prison Manual, 2016. It should mandate the accessibility of the prison and court infrastructure, with the inclusion of ramps, tactile paths, and assistive technologies such as Braille, screen readers, scribes, or interpreters with simplified legal format of communication.

Policy Recommendations

The findings of the study showed the gap that there is no available method of testing and hence identifying persons with some forms of disabilities. Thus, there is an overrepresentation of individuals with disabilities in relation to crime and probation services. Besides, the police and lawyers need to

be trained on how to interact with persons with disabilities. The findings of the study call for the provision of concerned prison authorities to collaborate with NGOs who specialize in disability rights, such as to provide training and technical training and add more sensitivity to their staff on the life and the challenges faced by individuals with disability in the criminal justice system. These recommendations on the legal and policy reforms will accommodate their needs and help in the regulation of the reforms of the existing legislative provisions, as mediated by Khan (2022).

Conclusion

The case study approach allowed the researchers to examine and give an authentic voice to the inmates with disability, giving their voice the recognition of a “knowledgeable agent” inclusive of their emotions and perspective. The challenges showcased in the findings suggest that these not only exacerbate their existing limitations but also act as a barrier in navigating toward the quest for fair justice. This study prompts the changes in the legal aid system to facilitate the equal access to justice. With the inclusive initiatives, a comprehensive understanding on disability and the world surrounding it will foster the sensitivity in prison authorities and legal system. The findings of this study further advocate the support towards inmates with disability which decreases the likelihood of neglect, abuse, and mis-communication. The multifaced nature of these found out challenges sheds light on the urgency to amend reforms and provisions while spanning the criminal justice system to address these systematic inequities faced by inmates with disability.

Scope and Limitations

This paper extends the scope of future research by presenting a comprehensive understanding of the challenges occurring

with the intersection of disability and incarceration. It enables the prospects of policy intervention and reform, as discussed in the Conclusion section. The study is limited in terms of accessing the participants inside the prison, thereby limiting the data collection phase. The fewer practices by the civic society working with individuals with disability also limited the literature review and insights gained through it.

Acknowledgments

We would like to express our deepest gratitude to all those who have contributed to this project. We are grateful to the Prison Authorities of Bihar for permitting us to work within the prison and special thanks to the LAW Foundation and their team that helped in the data collection procedure.

Funding

This project did not receive any specific funding from public, commercial, or not-for-profit sectors. The authors personally managed all resources and expenses related to this project. Their support has been instrumental in the successful completion of this project.

Declaration of Conflict of Interests

The authors declare no conflict of interest in relation to this project.

References

- Abbott, P., DiGiacomo, M., Magin, P., & Hu, W. (2018). A scoping review of qualitative research methods used with people in prison. *International Journal of Qualitative Methods*, 17(1), 1609406918803824.
- Alam, M. K. (2021). A systematic qualitative case study: questions, data collection, NVivo analysis and saturation.

Qualitative Research in Organizations and Management: An International Journal, 16(1), 1-31.

Badade v. State of Maharashtra, 1852, S.C. (2019). <https://indiankanoon.org/doc/180453963/>.

Barry, L. C., Wakefield, D. B., Trestman, R. L., & Conwell, Y. (2017). Disability in prison activities of daily living and likelihood of depression and suicidal ideation in older prisoners. *International journal of geriatric psychiatry*, 32(10), 1141-1149.

<https://doi.org/10.1002/gps.4578>

Ben-Moshe, L. (2020). *Decarcerating disability: Deinstitutionalization and prison abolition*. U of Minnesota Press.

Ben-Moshe, L., & Steele, L. (2023). Introduction to the Symposium – Decarcerating Disability, Criminal Justice and Law: New Writing on Disability, Abolition and the Limits of Rights. *Feminists@law*, 12(1).

Bihar State Legal Services Authority. (2024). *The Annual Report of Bihar State Legal Services Authority 2023*. <https://patnahighcourt.gov.in/bslsa/PDF/Annual%20Report%20BSLSA.pdf>

Bixby, L., Bevan, S., & Boen, C. (2022). The Links Between Disability, Incarceration, And Social Exclusion: Study examines the links between disability, incarceration, and social exclusion. *Health Affairs*, 41(10), 1460-1469.

Braun, V., & Clarke, V. (2006). Using thematic analysis in psychology. *Qualitative research in psychology*, 3(2), 77-101.

Chakraborty, S. (2015). *Prisons of Bihar Status Report - 2015*. Bihar State Legal services Authority. https://himachal.nic.in/WriteReadData/1892s/240_1892s/bihar-prison-report-1-38321799.pdf

- Clarke, V., & Braun, V. (2013). *Successful qualitative research: A practical guide for beginners*. Sage.
- Constantinou, C. S., Georgiou, M., & Perdikogianni, M. (2017). A comparative method for themes saturation (CoMeTS) in qualitative interviews. *Qualitative research*, 17(5), 571-588.
- Crowe, B., & Drew, C. (2021). Orange is the new asylum: Incarceration of individuals with disabilities. *Behavior Analysis in Practice*, 14(2), 387-395.
- Degener, T. (2016). *A Human Rights Model of Disability*. In Blanck, P. (Ed.), *Disability Rights Law and Policy: International and National Perspectives*. Cambridge University Press.
- Degener, T. (2017). *A New Human Rights Model of Disability*. In: Della Fina, V., Cera, R., Palmisano, G. (eds) *The United Nations Convention on the Rights of Persons with Disabilities*. Springer, Cham. https://doi.org/10.1007/978-3-319-43790-3_2.
- Gadberry, A. L. (2014). Cross-cultural perspective: A thematic analysis of a music therapist's experience providing treatment in a foreign country. *Australian Journal of Music Therapy*, 25, 66-80.
- Government of India. (n.d). Article 21 in the Constitution of India. <https://indiankanoon.org/doc/1199182/>.
- India Justice Report. (2023). *India Justice Report 2022: Ranking States on Police, Judiciary, Prisons and Legal Aid*. https://indiajusticereport.org/files/IJR%202022_Full_Report.pdf
- Khan, S. A. (2022). Criminal justice and advocacy services for persons with disabilities. *International Journal of Research in Special Education*. 2(2), 13-18.

- Lok Sabha. (2016). *Unstarred Question number 2669 to Ministry of Social Justice and Empowerment*. <https://sansad.in/getFile/loksabhaquestions/annex/9/AU2669.pdf?source=pqals>
- Manago, A. M. (2013). Negotiating a sexy masculinity on social networking sites. *Feminism & Psychology*, 23(4), 478–497.
- Maruschak, L. M, Bronson, J, & Mariel, A. (2021). *Survey of Prison Inmates, 2016. Disabilities Reported by Prisoners*. U.S. Department of Justice Office of Justice Programs. Bureau of Justice Statistics. <https://bjs.ojp.gov/content/pub/pdf/drpspi16st.pdf>
- Metzner, J.L., & Fellner, J. (2010). Solitary confinement and mental illness in U.S. prisons: a challenge for medical ethics. *J Am Acad Psychiatry Law*, 38(1), 104-8.
- Ministry of Law and Justice. (2016). *The Rights for Persons with Disabilities Act, 2016*. <https://cdnbbsr.s3waas.gov.in/s3e58aea67b01fa747687f038dfde066f6/uploads/2023/10/202310161053958942.pdf>
- National Crime Records Bureau. (2023a). *Crime in India 2022*. Ministry of Home Affairs, Government of India. <https://www.ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/1701607577CrimeinIndia2022Book1.pdf>
- National Crime Records Bureau. (2023b). *Prison Statistics India 2022*. Ministry of Home Affairs, Government of India. <https://ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/psiyearwise2022/1701613297PSI2022ason01122023.pdf>
- Oliver, M. (1990). The social construction of the disability problem. *The politics of disablement*, 78-94.
- Oliver, M. (2017). Defining impairment and disability: Issues at stake. *Disability and equality law*. 3-18.
- Pattnaik, S., Murmu, J., Agrawal, R., Rehman, T., Kanungo, S., & Pati, S. (2023). Prevalence, pattern and determinants

- of disabilities in India: Insights from NFHS-5 (2019-21). *Frontiers in public health*, 11, 1036499. <https://doi.org/10.3389/fpubh.2023.1036499>
- Schnittker, J., Massoglia, M., & Uggen, C. (2012). Out and down: Incarceration and psychiatric disorders. *Journal of health and social behavior*, 53(4), 448-464.
- Shakespeare, T. (2013). *Disability Rights and Wrongs Revisited*. Routledge.
- Simons, H. (2009). *Case Study Research in Practice*. Sage Publications, London.
- Starks, H., & Trinidad, S. B. (2007). "Choose your method: a comparison of phenomenology, discourse analysis, and grounded theory." *Qualitative Health Research*, 17(10), 1372-1380.
- State Crime Records Bureau. (2022). *Crime in Bihar 2021*. State Crime Records Bureau. https://scrib.bihar.gov.in/images/CIB_21.pdf.
- Tripathi, S., Tripathi, S., & Singh, S. (2024). Prison systems must embrace disability rights as a human rights imperative. *Indian Journal of Medical Ethics*.
- United Nations. (2006). *Union Convention on the Rights of Persons with Disabilities*. <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>
- United Nations. (2019). *Committee on the rights of persons with disabilities: Concluding observations on the initial report of India (CRPD/C/IND/CO/1)*. <https://digitallibrary.un.org/record/3848327?ln=en&v=pdf>
- United Nations General Assembly. (2018). *Flagship report on disability and development: Realization of the Sustainable Development Goals by, for and with persons*

with disabilities. <https://social.desa.un.org/publications/un-flagshipreport-on-disability-and-development> 2018

United Nations Children's Fund (2021). *UNICEF Procedure for Ethical Standards in Research, Evaluation and Data Collection and Analysis*. <https://www.unicef.org/evaluation/documents/unicef-procedure-ethical-standards-research-evaluation-data-collection-and-analysis>.

Wilper, A. P., Woolhandler, S., Boyd, J. W., Lasser, K. E., McCormick, D., Bor, D. H., & Himmelstein, D. U. (2009). The health and health care of US prisoners: results of a nationwide survey. *American journal of public health*, 99(4), 666–672. <https://doi.org/10.2105/AJPH.2008.144279>.

Yin, R.K. (2013). *Case Study Research: Design and Methods*. Sage Publications, London.

United Nations. (2006). *Union Convention on the Rights of Persons with Disabilities*. <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

United Nations General Assembly. (2018). *Flagship report on disability and development: Realization of the Sustainable Development Goals by, for and with persons with disabilities*. <https://social.desa.un.org/publications/un-flagshipreport-on-disability-and-development-2018>