**BEHIND BARS AND BEYOND: A CONSTITUTIONAL ANALYSIS OF PRISONERS RIGHTS IN INDIA**

**A DISSERTATION SUBMITTED TO**

**AMITY LAW SCHOOL, AMITY UNIVERSITY MADHYA PRADESH (AUMP), GWALIOR**

**IN PARTIAL FULFILMENT OF THE REQUIREMENTS**

**FOR THE DEGREE OF**

**LL.M**

**(MASTER OF LAWS)**

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| **Submitted by:**  **KUMARI POORTI SHARMA**  **Enrollment: A61001824001** | **Supervised by:**  **Maj. Gen Rajinder. Kumar, AVSM, SM, VSM (Retd.)**  **Director**  **Amity Law School**  **Amity University Madhya Pradesh, Gwalior** |

**AMITY LAW SCHOOL**

**Amity University Madhya Pradesh**

**Gwalior (M.P.)**

**2025**

# DECLARATION

I, **Kumari Poorti Sharma**, a student of LL.M of Amity Law School, Amity University Madhya Pradesh, Gwalior with Enrollment No. **A61001824001**, do hereby declare that this dissertation entitled, “**Behind bars and beyond: a constitutional analysis of prisoners rights in india**” is my original work and a result of my own intellectual efforts. I have quoted titles of all original sources i.e., original documents and name of the authors whose work has helped me in writing this dissertation and have been placed at appropriate places. I have not infringed copyrights of any other author.

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This is to certify that Dissertation entitled “**Behind bars and beyond: a constitutional analysis of prisoners rights in india**”, which is being submitted by **Ms. Kumari Poorti Sharma** for the award of the degree of LL.Mis an independent and original research work carried out by him.

The dissertation is worthy of consideration for the award of Master of Law Degree of Amity Law School, Amity University Madhya Pradesh, Gwalior, M.P.

**Ms. Kumari Poorti Sharma** has worked under my guidance and supervision to fulfill all requirements for the submission of this dissertation.

The conduct of research scholar remained excellent during the period of research.

**Date: sd/-**

**Place: Gwalior Maj. Gen. Rajinder kumar, AVSM, SM, VSM (Rtd.)**

**Professor and Director**

**Amity Law School**

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**Date: sd/-**

**Place: Gwalior (Kumari Poorti Sharma)**

# PREFACE

The present dissertation titled “BEHIND BARS AND BEYOND: A CONSTITUTIONAL ANALYSIS OF PRISONERS RIGHTS IN INDIA” explores the intricate relationship between constitutional guarantees and the actual condition of prisoner rights in India. The protection of human dignity, even for those behind bars, forms the cornerstone of any civilised society, and this research attempts to assess whether India’s constitutional and legal mechanisms have been effective in upholding those ideals.

Historical Background:

The treatment of prisoners in India has undergone significant change over time, especially post-independence, with constitutional provisions such as Articles 14, 19, and 21 shaping a progressive legal landscape. Nevertheless, prison conditions, custodial deaths, lack of access to justice, and institutional apathy remain pressing concerns.

Justification of the Topic:

Despite several Supreme Court rulings and recommendations by various prison reform committees, the condition of prisoners often fails to reflect constitutional ideals. This dissertation was undertaken to critically evaluate the existing safeguards and highlight the gap between law and practice, thereby reinforcing the importance of reform rooted in constitutional morality and human rights principles.

Analytical Strategy and Findings:

The research adopts a doctrinal methodology, examining constitutional provisions, statutory frameworks, judicial precedents, and international conventions. The findings suggest that while India’s legal system does recognize prisoner rights, actual enforcement is inconsistent, particularly among marginalized groups such as women, Dalits, religious minorities, and the LGBTQ+ community.

Structure of the Dissertation:

* Chapter One: Introduces the topic with a focus on historical background, international and Indian legislative developments, and the rationale behind the study.
* Chapter Two: Discusses the evolution of prison systems in India and globally, along with key reform movements.
* Chapter Three: Examines the constitutional provisions and legal framework supporting prisoner rights, including landmark judgments.
* Chapter Four: Analyzes the institutional mechanisms and oversight bodies in place for ensuring prisoner rights.
* Chapter Five: Investigates challenges in implementation, such as overcrowding, lack of legal aid, and custodial violence.
* Chapter Six: Highlights how socio-economic, caste-based, gender, and other intersectional factors influence prisoners’ access to rights and rehabilitation.
* Chapter Seven: Summarizes findings and provides practical suggestions for reforms aimed at better protection and realization of prisoner rights.

This dissertation aspires to contribute meaningfully to the discourse on criminal justice reform in India and calls for a holistic approach that respects the dignity and rights of all individuals, including those behind bars.

# LIST OF ABBREVIATIONS

|  |  |
| --- | --- |
|  | **A** |
| AIR | All India Reporter |
| All | Allahabad |
| ALL ER | All England Law Report |
| AP | Andhra Pradesh |
| Art | Article  **B** |
| Bom | Bombay |
| BMFIS | Bio-metric Finger Identification System |
| BPR&D | Bureau of Police Research and Development  **C** |
| Cal | Calcutta |
| CCTV | Closed Circuit Television |
| Cri | Criminal |
| CrLJ | Criminal Law Journal |
| CrLR | Criminal Law Reporter |
| CrPC | Criminal Procedure Code  **D** |
| Del | Delhi |
| DELNET | Delhi Library Network |
| DTP | Desk Top Publication  **E** |
| ECG | Electrocardiogram |
| Edn | Edition  **G** |
| Gau | Guwahati |
| Guj | Gujarat  **H** |
| HC | High Court |
| Hon’ble | Honourable  **I** |
| IFA | Indian Foot-Ball Association |
| IGNOU | Indra Gandhi Open University |
| ILI | Indian Law Institute |
| INTAC | Indian National Trust for Art and Cultural heritage |
| IPC | Indian Penal Code |
| ISO | International Organisation for Standardisation |
| ISBN | International Standard Book Number |
| ISDN | Integrated Service Digital Network  **J** |
| J&K | Jammu and Kashmir |
| JGB | Juvenile Guidance Bureau |
| JJ Act | Juvenile Justice Act 2000 |
| JJB | Juvenile Justice Board |
| JT | Judgements Today |
| JWC | Juvenile Welfare Committee  **K** |
| Karn | Karnataka |
| Ker | Kerala  **L** |
| LJ | Law Journal |
| LPG | Liquified Petroleum Gas  **M** |
| Mad | Madras |
| Mah | Maharashtra |
| MBA | Master of Business Administration. |
| MCU | Multi point Control Unit |
| MLJ | Madras Law Journal |
| MP | Madhya Pradesh  **N** |
| NABARD | National Bank for Agricultural and Rural Development |
| NACJW | National Authority on Custodial Justice to Women |
| NCRB | National Crime Records Bureau |
| NIOS | National Institute of Open Schooling |
| NHRC | National Human Rights Commission |
| NISD | National Institute of Social Defence |
| **O** | |
| Ori | Orissa |
| P & H | Punjab and Haryana |
| PCP | Personal Cash Property |
| PNG | Piped Natural Gas |
| PO Act | Probation of Offenders Act |
| pp | Pages |
| PRC | Prison Reforms Commission |
| PUCL | Peoples Union for Civil Liberties |
| Punj | Punjab |
| **R** | |
| Raj | Rajasthan |
| Rs. | Rupees |
| RO | Reverse Osmosis |
| RUDSET | Rural Development and Self Employment Training Institute |
| **S** | |
| SC | Supreme Court |
| SCC | Supreme Court Cases |
| SCJ | Supreme Court Journal |
| SCR | Supreme Court Reports |
| SHRC | State Human Rights Commission |
| SLP | Special Leave Petition |
| Supp | Supplement |
| **U** | |
| UPSCLD | Uttar Pradesh State Co-operative Land Development Bank Limited |
| U/S | Under Section |
| UK | United Kingdom |
| UP | Uttar Pradesh |
| USA | United States of America |
| USSR | Union Soviet Socialist Republic  **V** |
| VIP | Very Important Person |
| Vol | Volume  **W** |
| WP | Writ Petition |

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# CHAPTER 1

**INTRODUCTION**

### 1.1 BACKGROUND AND CONTEXT

Individuals are judicious beings because of their humanity, they have certain essential and inevitable rights. In this way, human rights are the rights to which every individual has the right to be human because these rights have a place with them because of their presence, they become employable from birth. According to these lines, human rights, being the claims, are characteristic of each of the people, regardless of their caste, religion, religion, gender, and nationality because human rights are innate, they cannot live as individuals without them. Because of their immense significance for people: human beings are sometimes also referred to as fundamental rights, basic rights, inherent rights, natural rights, and birth rights. Human rights are rooted in the inherent dignity of the human person. These basic rights are based on shared values such as dignity, fairness, equality, respect, and independence. These values are legally established and protected. All persons deprived of their freedom must at all times be treated with humanity and with respect for the inherent dignity of the human person.

Rights are a generic term and includes civil rights, civil liberties, and social, economic, and cultural rights.” It is therefore difficult to give an accurate definition of the term “human rights”. As per Maurice Cranston, “These are the rights that nobody can be deprived of without a serious breach of justice.” The idea of human rights is therefore connected to the idea of human dignity. India’s Supreme Court Judge, J. S. Verma, has rightly stated that “human dignity is the essence of human rights”. However, dignity has never been determined precisely on the basis of consensus, but roughly corresponds to justice and a good society.

The World Conference on Human Rights held in Vienna in 1993 stated that all human rights are rooted in the dignity and value of human inheritance, and that human beings are the central subject of human rights and basic freedoms. D. D. Basu says “Human rights as the minimum rights that an individual must have over the state or other public authority by being a member of a human family, regardless of all other considerations.

**1.2 WHO IS A PRISONER?**

“In our world, prisons are still laboratories of torture, warehouses where human goods are kept sadistically and where prisoner spectrums range from driftwood youth to heroic dissidents.” “Convicted persons are not simply denied because of the conviction of all the fundamental rights that they otherwise have.” The word prisoner means any person detained in custody or prison for having committed an act prohibited by the law of the country. The word “prisoner” means any person who is currently in prison as a result of a requirement imposed by a court or otherwise that he is detained. A prisoner, also known as a prisoner, is anyone who has been deprived of freedom against their will. The Indian socio-legal is based on nonviolence, mutual respect, and human dignity of the individual. By committing a crime, a person does not change his humanity and yet he is endowed with all the aspects that require him to be treated with the human dignity and respect that a person deserves.

### 1.3 INTERNATIONAL LEGISLATIONS RELATING TO HUMAN RIGHTS OF PRISONERS

Prisoners and human rights: the relationship has not always been easy. Some people think that if you violate the rules of society by committing a crime, you lose your rights to the protection of society. The principle of the universality of human rights is the cornerstone of international human rights law. This principle, as first emphasized in the Universal Declaration of Human Rights in 1948, has been repeated in numerous international human rights treaties, declarations, and resolutions.

### 1.4 UNIVERSAL DECLARATION OF HUMAN RIGHTS

In 1948 a movement was started in the United Nations in the form of the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations. This organic document is also called a human rights statement. This important document contains some basic principles of case law. Among the provisions in the document are the following:

* No one may be subjected to torture or cruel, inhuman, or degrading treatment or punishment.
* 1.4.1 Everyone has the right to life, freedom, and security of people.
* 1.4.2 No one will be subjected to arbitrary arrest, detention, or exile.
* Anyone accused of a criminal offense has the right to be deemed innocent until found guilty by law in a public trial in which he has had all the necessary safeguards for his defence.

### 1.5 THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966

The ICCPR remains the most important instrumental convention on the protection of prisoners’ rights. The following relevant provisions of the covenants are:

1. No one will be subjected to cruel, inhuman, or degrading treatment or punishment.
2. Everyone has the right to freedom and security of people. No one will be subjected to arbitrary arrest or detention.
3. All persons deprived of their freedom must be treated with humanity and with respect for the inherent dignity of the human person.
4. No one may be detained solely on the grounds of inability to perform a contractual

1.5.1 obligation.

### 1.6 UN CORE CONVENTIONS AND SPECIFIC INSTRUMENTS

Standard minimum rules for the treatment of prisoners: In 1955 Amnesty International formulated certain standard rules for the treatment of prisoners. Some important relevant rules are:

The principle of equality must prevail; there will be no discrimination based on race, gender, colour, religion. Political or other opinion, national or social origin, property, birth, or other status among prisoners

1. 1.6.1 Men and women are detained as much as possible in a separate institution.
2. Complete separation between civilian prisoners and persons imprisoned for a crime; young prisoners must be kept separate from adult prisoners. 3. All types of cruel inhuman degrading punishments are completely prohibited.

### 1.7 INDIAN LEGISLATIONS RELATING TO HUMAN RIGHTS OF PRISONERS

The concept of prison discipline in India has undergone a drastic change in the modern administration of the criminal justice system.

The trend shows a shift from the deterrent aspect to the reforming and rehabilitating aspect. The recommendations of the Jails Committee of 1919-20 have paved the way for the abolition of inhumane penalties for indiscipline. This resulted in a positive enforcement of the discipline. All India Jail Reform Committee 1980-83 has also recommended various prisoner rights and prison discipline. However, it is extremely unfortunate that a humanized nation, like India, has not arranged prisoner privileges.

Whatever the case, it cannot be denied that the Hon'ble judiciary has not overlooked them and has observed a significant overview of the privileges of prisoners and all of them specialists must pursue these bearings without determination. In any case, for all intentions and purposes, these rights take place without determination only on the paper with hardly any power from prison. A conviction for a crime does not limit the person to a non-person whose rights depend on the whims of the prison administration and therefore the imposition of a severe punishment within the prison system depends on the lack of procedural guarantees.

### 1.8 INDIAN CONSTITUTION

Article 14 says that the state will not deny anyone equality before the law or the equal protection of laws in the territory of India. Article 19 guarantees six freedoms for all citizens of India. Among these freedoms, certain freedoms cannot be enjoyed by prisoners, except “freedom of expression” and “freedom to join an association.” Article 21 states that no one may be deprived of his life or personal freedom, except according to the legally established procedure. Article 22 (1) provides that no person arrested is denied the right to consult a lawyer of his choice. The constitution gives a suspect the right to a speedy trial.

### 1.9 CRIMINAL PROCEDURE CODE, 1973

According to Article 50 (1) Cr.P.C. “Any police officer or other person arresting a person without a warrant must immediately inform him of the details of the offense for which he was arrested or other grounds for such an arrest.” Section 50 (2) Cr.P.C. states that “when a police officer without justification arrests a person other than a person accused of a non-available crime, he will inform the arrested person that he has the right to be released on bail to be able to provide his securities.” Sections 56 and 76 Cr.P.C. provides that, “irrespective of whether the arrest is made without justification by a police officer, or whether the arrest is carried out by a person by a person, the person carrying out the arrest must bring the arrested person to a bailiff without undue delay.” It is also stipulated that “the arrested person may not be detained in a place other than a police station before being taken to the magistrate.” The Code of Criminal Procedure stipulates that a fair trial must be an open legal process.

### 1.10 INDIAN EVIDENCE ACT, 1872

The suspect even has the right to testify in his defence in case of a police report or private defence. Confessions of allegations to the police are absolutely excluded on the basis of Article 25 of the Evidence Act.

### 1.11 THE PRISONS ACT, 1894

1.11.1 This law is the first legislation regarding prison regulation in India.

1. 1.11.2 Accommodation and sanitary conditions for prisoners.
2. 1.11.3 Provisions regarding the mental and physical condition of prisoners.
3. Investigation of prisoners by a qualified doctor. 4. Separation of prisoners for male, female, criminal, civil, convicted and tried prisoners.

### 1.12 THE PRISONERS ACT, 1990

It is the duty of the government to remove prisoners who have been detained on the basis of an order or punishment from a court that is not wise for a madhouse and another place where he will receive proper treatment.

Any court that is a high court may, in the case where it has recommended to grant the government a free pardon to a prisoner, allow him to be free on his own knowledge.

### 1.13 VIEWS OF GANDHIJI ON PRISONS

It was Gandhiji who said that Prison should function as hospital as offenders are very much like sick people and need to be treated. Quoting Lord Lytton on the subject of Prisons, Mahatma Gandhi wrote in the “Young India” 18.2.1926 at page 67

“Lord Lytton in recently speaking about Jails to the Rotarians of Calcutta said that just as we send our sick in body to hospitals and not to Jails, so we must ‘provide moral doctors and moral hospital’ for sick in mind, i.e. criminals”. His Excellency introduced his subject:

“The ideal I wish to set before me, stated in the briefest and simplest form, is just this,- the substitution of reformation for retribution as the basis of our Penal Code.

Punishment can instil fear and enforce habits – it cannot inspire goodness. As a means of moral regeneration, therefore, it is worse than useless and should be abandoned. A morality which is only enforced by pains and penalties is a false morality, and those who would secure the acceptance of moral standards should employ other methods’’.

Of the uses and limitation of punishment Lord Lytton said: “Punishment, if resorted to at all, must always be aimed at teaching habits necessary for the well- being of the individual or discipline necessary to the well-being of a community, I do not say that punishment will always succeed; the form of punishment selected in any particular case may be well or badly suited for the attainment of its object. Again, I do not say that punishment is the only way of achieving this object, what I say is that those are the only objects which can be obtained by punishment. This one thing which can never be acquired by coercion is goodness or moral conduct. All punishment therefore which aims at correcting wickedness or teaching goodness is definitely mischievous.

Goodness is a condition of mind as health is a condition of body. Moral defects or character are no more to be cured by punishment than defects of the body. It may be necessary in the interest of health of a community forcibly to segregate a person with an infectious disease; it may be necessary on the same ground to segregate persons whose moral defects are a danger to the society".[[1]](#footnote-1)

### 1.14 TYPES OF PRISONS

As per the NCRB Reports in 2013 there are about 1391 different types of Jails in India viz., Central Jail (130), District Jail (346), Sub-Jail (780), Women Jail (19), Borstal School (21), Open Jail (53), Special Jail (38) and others (4), with a capacity to accommodate 3,47,859, Prisoners out of which 3,23,573 are Male Prisoners and 24286 are Female Prisoners.

### PRISON REFORMS

The Prison Reforms originated in Indian Prisons as soon as Lord Macaulay came to India in 1835. The first Committee in India viz. ”The Prison Discipline Committee” on the subject of Prison Reform was appointed in the year 1836 with Lord Macaulay as its Member. The Committee gave its report in 1838 and advocated, among other things, for construction of proper building, maintenance of health care and intra-moral employment which laid the foundation for future Prison Progress. The next committee to deal with the subject of Jail Management and Discipline was appointed in 1864.This Committee while reiterating the recommendations of Lord Macaulay Committee 1836, it made specific recommendations regarding the accommodation of Prisoners, improvement in diet, clothing, bedding, medical care etc. In 1877, there was a conference of experts to enquire into Prison Administration in which it was proposed to enact a Prison Law and a draft bill was prepared. The passing of The Prisons Act, 1894, and the Prisoners Act, 1900 and several other statutes dealing with prisons were the outcome of the recommendation of the Fourth Jail Committee 1888. The subsequent Committees to follow suit are:

The Indian Jail Committee, 1919-1920, Tamil Nadu Jail Reforms Committee, 1950-51, Dr.W.C.Wreckless Committee on the study of Prison Administration in India, 1951-52,

The All India Jail Manual Committee, 1956-57, Seminar on Correctional Services with the Inspector General of Prisons and Correctional Administrators in 1969, Conference on Probation and Allied Measures, 1971, Working Group, 1972, Justice Ismail Enquiry Commission, 1977, The Tamil Nadu Prison Reforms Commission 1978-79, A.N. Mulla Committee (All India Committee on Jail Reforms) 1980-83, Kapoor Committee, 1986, Justice Krishna Iyer Committee, 1987, Committee to Prepare a Model Prison Bill as per the direction of the Supreme Court in 1996.

At this juncture, it will not be out of place to quote the observation about prison reforms of Mahatma Gandhiji in his book “Young India” and Pandit Jawaharlal Nehru in his book “Prison Land” Appendix I as follows:

### 1.15 MAHATMA GANDHIJI’S VIEW ON PRISON REFORMS

“Let it be remembered that we are not seeking to destroy jails as such. I fear that we shall have to maintain jails even under Swaraj. It will go hard with us, if we let the real criminals understand that they will be set free or be very much better treated when Swaraj is established. Even in reformatories by which I would like to replace every jail under Swaraj, discipline will be exacted”.[[2]](#footnote-2)

### 1.16 PANDIT JAWAHARLAL NEHRU’S VIEW ON PRISON REFORMS

Any reform must be based on the idea that a prisoner is not punished but reformed and made into a good citizen. If this objective is once accepted, it would result in a complete overhauling of the prison system. At present few prison officials have even heard of such a notion.

Another error which people indulge in is the fear that ‘if gaol conditions are improved people will flock in! This shows a singular ignorance of human nature. No one wants to go to prison however good the prison might be. To be deprived of liberty, family life, friends and home surroundings is a terrible thing. It is well known that the Indian peasant will prefer to stick to his ancestral soil and starve rather than go elsewhere to better his condition. To improve prison conditions does not mean that prison life should be made soft; it means that it should be made human and sensible.

There should be hard work, but not the barbarous and wasteful labour of the oil pump or water pumps or mill. The Prisons should produce goods either in large scale modern factories where prisoners work or in cottage industries. All work should be useful from the point of view of the prison as well as the future of the prisoner, and the work should be paid at the market rate, minus the cost of maintenance of the prisoner. After a hard eight-hour day’s work, the prisoners should be encouraged to co-operate together in various activities – games, sports, reading, recitals, and lectures. They should above all be encouraged to laugh and develop human contacts with the prison staff and other prisoners. Every prisoner’s education must be attended to, not only in just the three R’s(Reformation, Re- socialisation, Re-integration), but something more, wherever possible.

The mind of the prisoner should be cultivated through the prison library, to which there must be free access, should have plenty of good books. Reading and writing should be encouraged in every way and that means that every prisoner should be allowed to have writing material and books. Nothing is more harmful to the prisoner than to spend twelve to fourteen hours at a stretch every evening locked up in the cell or barrack with absolutely nothing to do. A Sunday or a holiday means, for him a much longer period of locking up.

“Selected newspapers are essential to keep the prisoner in touch with the world, interviews and letters should be made as frequent and informal as possible. Personally, I think that weekly interviews and letters should be permitted. The prisoner should be made to feel as far as possible that he or she is a human being and brutal and degrading punishments must be avoided”.[[3]](#footnote-3)

### 1.17 PRISON ADMINISTRATION

Prison administration is one among the four wings of the Criminal Justice System viz. Legislature, Judiciary, Executive and the Correctional Administration. The Prisons are placed as State subject under article 246 of the Constitution of India, including it in the Seventh Schedule, List II (i.e.) State List, and Entry IV which read as follows: Prisons, Reformatories, Borstal Institution and other institution of the like nature, and person detained therein; arrangements with other States for the use of Prisons and Institutions.[[4]](#footnote-4)

For the purpose of carrying out the management of Prisons in India, the Government of India enacted The Prisons Act, 1894 and Prisoners Act, 1900 for guidance of all the State Governments. As per the power vested under section 59 of the Prisons Act, 1894, each State Government passed their own Rules for the management of their Prisons.

If any State does not have its own Prison Manual, the existing Central Act, i.e. The Prisons Act, 1894 is being followed. Model Prison Manual, 1960 is being taken as guidance in the Prison Administration.

Further, the Bureau of Police Research and Development has prepared the Draft National Prison Manual, 2003 to bring uniformity in Prison Administration throughout India. The view of the various State Governments on this Draft National Prison Manual was resorted and it is yet to be implemented. The main object of the new Manual is to remove certain disparities among certain States and transform prisons into correctional institutions.

To put it in a nutshell, the objectives of the prison administration must be: To make prison a safe place by maintaining security and discipline in objective terms; To provide basic minimum facilities to prisoners, to maintain human dignity; To make the best use of prison stay for reformation and rehabilitation, re-socialization and reintegration of prisoners.

### Existing statutes regarding regulation and management of prisons in India

Indian Penal Code, 1860; The Prisons Act, 1894; The Prisoners Act, 1900; The Identification of Prisoners Act,1920; The Tamil Nadu Borstal Schools Act, 1925; The Exchange of Prisoners Act,1948; The Constitution of India, 1950; The Transfer of Prisoners Act, 1950; The Representation of People’s Act, 1951; The Prisoners (Attendance in Courts) Act, 1955; The

Probation of Offenders Act, 1958; The Model Prison Manual, 1960;The Extradition Act, 1962;

The Code of Criminal Procedure, 1973; The Mental Health Act, 1987; The Juvenile Justice (Care and Protection), 2000; The Repatriation of Prisoners Act, 2000; The Draft National Prison Manual, 2003 (To be implemented).

### 1.18 PRISONERS

In an ordinary sense “Prisoner” means a person confined or kept in custody. As per the definition of the Oxford Dictionary Prisoner means “a person who is being kept in prison”.[[5]](#footnote-5)

### 1.19 KINDS OF PRISONERS

As per Section 3 of the Prisons Act, 1894, Prisoners are classified into three groups. They are Criminal Prisoner, Convicted Criminal Prisoner and Civil Prisoner. “Criminal Prisoner” means any Prisoner duly committed to custody under the writ, warrant or order of any Court or authority exercising criminal jurisdiction or by order of a Court - Martial. “Convicted Criminal Prisoner” means any Criminal Prisoner under sentence of a Court or Court - Martial and includes a person detained in prison under the provisions of Chapter VIII of the Criminal Procedure, 1882 (X of 1882) or under the Prisoner’s Act, 1871 (V of 1871). “Civil Prisoner” means any prisoner who is not a Criminal Prisoner. Prisoners may also be broadly classified according to the term of imprisonment, ailment, age, sex, political cause, cases of civil nature and cases of preventive arrest viz. Remand prisoner, Under - trial prisoner, Convicted prisoner, Short term prisoner, (Rigorous Imprisonment), Long term prisoner (Rigorous Imprisonment), Prisoner sentenced to Simple Imprisonment, Prisoner sentenced to life, Prisoner sentenced to death, Leper prisoner, Mentally ill prisoner, Juvenile in conflict with law, Adolescent offender, Adult prisoner, Male prisoner, Female prisoner, Political prisoner, Civil prisoner, Detenue.

### 1.20 TREATMENT OF PRISONERS

Crime is an outcome of the diseased minds and jail must have an environment of hospital for treatment and care. One should bear in mind that “prisoner is a ward and not the slave of the

State”. The Prisoners are sent to prison “not for punishment but as punishment.” But unfortunately prisoners are treated as if they have been sent to prison not only “as punishment” but even “for punishment.” The process of treatment should begin right from the time of admission of the inmate in prison. A newly admitted inmate faces a number of problems of adjustment with new environment. Study of the individual inmate, initial classification of prisoners, their care and welfare, firm and positive discipline in prison constitute essential prerequisite for planning balanced treatment programme.

The regimented routine of institutional life, the pattern and time of prison food and anxieties about health, family and domestic problems such as land, litigation etc., keep bothering him. He attempts to seek adjustment with inmate group and prison personnel and with the work allotted to him. If these urgent needs and problems are explored, identified and attended to by prison personnel sympathetically and with understanding, the inmate will have a lot of relief. This will also enable prison personnel to establish a rapport with the inmate and secure his cooperation in the effective implementation of treatment programme.

1.20.1 Therefore treatment of offender in prison should be looked at from three angles;

1. the essential pre-requisite for carrying out appropriate treatment programme conducive to rehabilitate the offender,
2. variety and contents of treatment programmes and 3. evolution of the effectiveness of treatment programme.

Looked from these angles, the elements and components of treatment programme in prisons can be identified as follows:- A relaxed positive and constructive atmosphere in the institution, Good personnel – inmate relationship based on mutual trust and confidence, Study of the individual inmate; Initial classification, Care and welfare of inmate, Firm and positive discipline, Attending to the immediate and urgent needs and problems of inmates, Attending to the long term needs, Planning a balanced and diversified training and treatment programme consisting of diversified education, work, vocational training, recreational and cultural activities, etc.,. Helping the inmate to maintain continuity of his conduct with his family, community and outside world. A good system of incentives for self- discipline such as remission, leave, transfers to semi-open and open institutions and pre-mature release, individual guidance, counselling and case work, group activities, group guidance and group work, social implantation of proper habits, attitudes and approaches, preparation for social living, Psychotherapy, Supportive therapy, personal positive influence of institutional personnel, periodical review of progress, reclassification, review of sentence and pre-mature release, planning for release, pre- release preparation, after care and follow-up and community participation.[[6]](#footnote-6)

### 1.21 HUMAN RIGHTS

Every human being needs certain necessities like food, water, clothes, shelter, health which are basic for sustaining life, without which one cannot live. Likewise, every human being is entitled to certain basic rights and fundamental freedom and in the absence of which one cannot live as human being.

All societies and culture have developed some conception of rights and principles that should be protected and respected as such rights evolved on some basic principles, which have been universally accepted, and contributed to the development of human rights.

The Rights of man – natural rights, civil rights, political rights, economic rights, social rights and cultural rights which evolved with different degrees of emphasis reflects one common feature – 'Human Dignity' which is considered indispensable for the attainment of individual’s wholesome personality . Thus, these rights come with birth and are applicable to all people throughout the world irrespective of the race, colour, sex, language or political or other opinion.

### 1.22 FUNDAMENTAL RIGHTS

The term fundamental right is a technical one. When certain human rights are written down in a Constitution and are protected by Constitutional guarantee, they are called fundamental rights in the sense that they are placed in the supreme or fundamental law of the land which has a supreme sanctity over all other laws of the land. Thus, when human rights are guaranteed by the written constitution they are called as fundamental rights. Unlike an ordinary right, a fundamental right is an interest, which is protected and guaranteed by the written Constitution. Such rights are called 'fundamental' because while an ordinary right may be changed by legislature in its process of legislation but the fundamental rights, being guaranteed by the constitution cannot be altered by any process short of amending the Constitution itself. The following are the fundamental rights guaranteed to an ordinary citizen.

Right to Equality – Article 14,15,16,17, & 18 Right to Freedom - Article 19, 20, 21, & 22 Right against Exploitation – Article 23 & 24.

Right to Freedom of Religion. - Article 25, 26, 27 & 28 Cultural and Educational Right – Articles 29 & 30 Right to Constitutional Remedies – Article 32.

### 1.23 RIGHTS OF PRISONERS

Prisoners are basically human beings. They being, human beings are to be entitled to human rights and constitutional rights except those that are to be necessarily denied because of their condition of imprisonment. The State is under a Constitutional obligation to honour and to protect their rights, particularly their right to live with human dignity.

The accused, under- trials, suspects and convicts do not cease to be human beings just because they are so named. Hence their rights as human beings are to be protected and respected. The fundamental rights, which are available to the prisoners, are not defined in the Indian Constitution in particular. The Judiciary, however, through the process of Judicial Activism has expanded the scope of various freedoms guaranteed to individuals in relation to prisoners by expanding the horizons of article 21 of the Indian Constitution and also taking into consideration the relevant provisions of International Covenants formulated for monitoring and supervising the prisoners.

#### A.K.Gopalan vs. State of Madras (1950)

In the beginning, the Supreme Court was not responsive to the protection of the rights of the prisoner. It examined the issue immediately after the commencement of the Constitution. It expressed the view that the prisoners are non- person and fundamental rights under the Constitution are not available to them by their being incarcerated. The Court declared that a person loses his right to personal liberty by way of detention under valid law enacted by a competent legislature and so long as he remains under such detention, he ceases to be entitled to enjoy his other fundamental rights.[[7]](#footnote-7)

#### State of Maharashtra vs. Prabhakar Pandurang Sangzgiri (1966)

The respondent was detained under the Defence of India Rules (1962). While under detention in jail, he wrote a book of scientific interest in Marathi called 'Anucha Antarangaat' (Inside the Atom), but was not allowed to publish it by the prison authorities.

The Bombay High Court issued a writ allowing Pandurang to publish the book. The State Government in an appeal to Supreme Court argued that freedom to publish was only a component part of speech and expression and the detenue ceased to be free in view of his detention, and hence he could not exercise his freedom to publish his book in view of an observation made in A.K.Gopalan case. Without going into the question regarding the relative positions of Articles 19 and 21, the Court observed that the view held in Gopalan case was not the last word on the subject. [[8]](#footnote-8)

The Court held the view that the right to 'Personal Liberty' under Article 21 included the right to write book and get it published and the refusal by the State Government to send the petitioner’s manuscript for publication, infringes his personal liberty manifested under Article 21. The Court found that there was nothing in the Bombay Detention Order 1951, prohibiting a detenue from writing or publishing a book and when a detenue exercises his right, its denial without authority of law, would violate Article 21. Dismissing the appeal of the State, the court further held that the book being the one on the subject of scientific interest which would not

otherwise be detrimental to public interest or safety as envisaged under the Defence of India Rules (1962).

#### Charles Chopra vs. The State of Bihar (1978)

In Charles Chopra’s case the Supreme Court pointed out “prisoners retain all rights enjoyed by free citizens except those lost necessarily as an incident of confinement.[[9]](#footnote-9)

#### Sunil Batra vs. Delhi Administration (1978) Sunil Batra (ii) vs. Delhi Administration (1980)

In Sunil Batra cases, while interpreting Articles 14, 19 & 21, the Supreme Court has assured many substantive rights to the prisoner. The extended dimension given to article 21 has proved to be multi-dimensional. The right to life enshrined in Article 21 has been liberally interpreted as to mean something more than survival and mere animal existence. It, therefore, includes all those aspects of which that go to make a man’s life meaningful, complete and worth living. This aspect of judicial pronouncement leads to emergence of prisoner’s right.[[10]](#footnote-10)

The significant areas of extension were the rights not to be handcuffed, put on bars and solitary confinement unless absolutely necessary. The right against custodial torture, right to speedy trial, right to counsel, proper condition of detenue, right to meet relatives, friends and lawyer, right to wages and even the right to compensation for violation of rights. Beginning with Sunil Batra case, the Court has armed itself and embraced the jurisdiction to attend the complaint of the prisoners where their rights either under the constitution or under the law are violated.

#### Nilabati Behera vs. State of Orissa (1993)

In Nilabati Behera vs. State of Orissa, the Supreme Court observed that “it is axiomatic that convict prisoners or under-trials are not denuded of fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental rights by such persons. It is an obligation of the state to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law while the citizen is in its custody.[[11]](#footnote-11)

This precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convict, under-trials or other prisoners in custody, except according to the procedure established by law.

#### State of Andhra Pradesh vs. Challa Rama Krishna Reddy (2000)

In the case of State of Andhra Pradesh vs. Challa Rama Krishna Reddy, the Supreme Court asserted that even a prisoner has fundamental rights including other human rights. In that case, the claimant and his father were lodged in jail. They requested the police to provide security to them apprehending danger to their life from their opponents. There was failure of police to provide adequate security in spite of being asked. When they were attacked by bomb in their jail cell, the father died and the claimant sustained serious injuries. The suit for compensation

was dismissed by lower Court but the High Court awarded Rs.1,44,000 as compensation. In the instant case, while dismissing the appeal filed by the State Government, the Court reiterated;

"Right to life is one of the basic human rights. It is guaranteed to every person by Article 21 of the Constitution and not even the State has the authority to violate that right. A prisoner be a convict or under-trial or detenue, does not cease to be a human being.

Even when lodged in the jail, he continues to enjoy all fundamental rights including the right to life guaranteed to him under the Constitution. On being convicted of a crime and deprived of their liberty in accordance with the procedure established by law, prisoners still retain the residue of constitutional rights."[[12]](#footnote-12)

### Further developments in Prisoner’s Rights

As an offshoot of the observations, comments, directions and pronouncements regarding the upholding of the rights of prisoners in relation to the rights guaranteed to an ordinary citizen under the Constitution in various land mark judgments by the Supreme Court on this subject, so many Commissions constituted succeeding the Supreme Court Judgments, adopted the rights of prisoners in their report for strict implementation in prisons. Efforts are also being made to amend the existing statutes connected with prison administration so as to incorporate the rights of prisoners and implement them mandatorily.

The National Human Rights Commission, State Human Rights Commission and Human Rights Court established under the Protection of Human Rights Act, 1993 also contributed much to the protection of Prisoners rights.

The Government of India granted financial assistance to all States under Five Year Plans and Matching Grant (at the rate of 50:50 ratio) under modernization of Prison Administration to improve the prison atmosphere and living condition in Prisons like additional accommodation, diet, clothing and bedding, hygiene and sanitation, health care, water supply, electrification, recreation facilities etc., The State Government by utilizing these funds took all possible efforts to improve Prison condition and extend all facilities to Prisoners to maintain human dignity.

### Prisoner’s Rights and International Covenants

The right of prisoners in International Law is found in a number of International Treaties and that too following the two World Wars. Due to the widespread denial of civil rights and liberties on the basis of racial, religious and political discrimination had a profound effect on the international law of prisoner’s right.

### 1.24 NEED OF THE PRESENT STUDY

The theory of treatment of offenders has changed from penal to reformative in the modern era. Due to this, the prisons of the old era have undergone tremendous change today which has led to transparency in the prison administration. The prison reforms in Indian prisons had its seed sown as soon as Lord Macaulay came to India in 1835. Following the study of the Prison Administration in India by the Dr. W.C. Wreckless Committee in the post-independence period

(1951-52), lot of improvements were made in Indian Prisons. The raising awareness among the common public and the nation on the need to protect the human rights of the prisoners led to the passing of several United Nations Instruments including the Universal Declaration of Human rights, 1948, United Nations Standard Minimum Rules for the Treatment of Prisoners, 1955, International Covenants on Civil and Political Rights 1966, Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishments, 1984 and Basic Principle for the Treatment of Prisoners, 1990. All such Instruments and Constitution of many of the Democratic Countries including the Constitution of India have recognized the human rights of the prisoners in principle. However, this does not mean that there is no violence at all. Cases of excesses by law enforcement agencies resulting in human rights violation come to light here and there now and then. The only relief is the higher judiciary, whenever such violations are brought to its notice, has intervened to set right such violations and ordered remedial measures. The Supreme Court of India, which is not only the supreme authority in the Judicial hierarchy, but also the guardian of the Constitution and the protector of the fundamental rights guaranteed under our Constitution, in exercise of its wide and varied Constitutional powers has time and again issued writs or orders to concerned authorities and those in-charge of and responsible for administration of criminal justice, giving direction and guidelines with a view of preventing the infringement of any fundamental right, to which every citizen of the country including the accused/prisoner are equally entitled to. The Judicial Activism of the Apex Court has a great impact on the criminal administration and upholding the rights of prisoners in all respects. As an offshoot of the directions from the Apex Court so many Prison Reforms Commissions were formed both at the Central and State level which recommended so many suggestions to improve the prison condition and extend better treatment to prisoners. Under this circumstance, the researcher felt it necessary to study the rights of the prisoners in India.

### 1.25 LITERATURE REVIEW

1. **Kannan, K. "Prisoners' Rights Under the Indian Constitution: A Critical Appraisal." National Law School of India Review, vol. 14, no. 2, 2002.:**

This article traces the historical development of prisoners' rights in India, highlighting significant legal milestones and judicial interpretations that have shaped the current legal framework.

1. **National Law School of India Review. "Prisoners' Rights Under the Indian Constitution: A Critical Appraisal," vol. 14, no. 2, 2002.:**

This scholarly journal article examines the implementation and effectiveness of key legislative enactments such as the Prisons Act, 1894, and the Code of Criminal Procedure, 1973, in protecting prisoners' rights.

1. **Human Rights Watch. "India: Prison Conditions Need Urgent Reform." 2020.:**

This report documents systemic challenges within the Indian prison system, including overcrowding, inadequate healthcare, and instances of abuse, shedding light on human rights concerns.

1. **Ratanlal & Dhirajlal. "The Constitution of India: Bare Act." LexisNexis India, 2021.:**

This legal text provides a comprehensive overview of the Indian Constitution, particularly Articles 14, 19, and 21, which form the foundation of prisoners' rights protections.

1. **1.25.1 Amnesty International India. "India: Prisons in Crisis." 2019.:**

This report highlights the crisis in Indian prisons, emphasizing the need for urgent reforms to address issues such as overcrowding and lack of access to healthcare.

1. **Chitranjan, S. (2020). Prison reforms in India: A legal perspective. Eastern Book Company.**

This journal is likely to be a seminal work in the field of prison law and policy, offering a nuanced understanding of the legal, institutional, and socio-economic dimensions of prisoner rights in India.

1. **Anand, V. (2018). Constitutional law of India: A critical commentary. Lexis Nexis.:**

This book is an indispensable resource for researchers, legal practitioners, policymakers, and students seeking to navigate the complexities of Indian constitutional law. In the context of prisoner rights, Anand's commentary is likely to offer valuable insights, critical analysis, and scholarly perspectives that contribute to the ongoing discourse on the protection of fundamental rights within the Indian legal framework.

1. **Sarkar, S. (2018). Prisoners’ rights under the Indian Constitution. Eastern Book Company.:**

This study provides a comprehensive analysis of "Prisoners’ Rights under the Indian Constitution" by Sarkar (2018), highlighting its key arguments, insights, and contributions to the broader discourse on prisoners' rights and constitutional law in India.

### 1.26 HYPOTHESIS

The dishonest application of constitutional rights and the non-adherence of legal safeguards the Indian prison system can put this in disorder and facilitate unfair treatment for prisoners.

### 1.27 STATEMENT OF THE PROBLEM

The incidence of human rights violations, such as torture and abuse, within Indian prisons represents an enormous chasm between the constitution and the law-making process and their effective execution.

### 1.28 OBJECTIVES

1. 1.28.1 To find out why human rights violations take place in Indian prisons.

1. 1.28.2 To assess how well current laws and policies protect prisoners' rights.

1. 1.28.3 To gather prisoners' perspectives on their treatment and conditions.

1. To explore potential solutions for improving accountability and upholding prisoners' rights.

### 1.29 RESEARCH QUESTIONS

1. What are the primary factors contributing to human rights abuses, such as torture and mistreatment, within Indian prisons ?

1. How effective are existing constitutional safeguards and legal frameworks in preventing and addressing human rights abuses in Indian prisons ?

1. What is the level of compliance with constitutional protections and legal standards among prison authorities and staff ?

1. What are the experiences and perspectives of prisoners regarding their treatment and rights within the prison system ?

1. What best practices and successful interventions from other jurisdictions or contexts could be adapted to improve the protection of prisoners' rights in India ?

### 1.30 RESEARCH METHODOLOGY

This study employs a mixed-methods approach, incorporating both doctrinal and empirical research methodologies to comprehensively assess the constitutional framework for protecting the rights of prisoners in India.

### 1.31 LIMITATIONS OF THE STUDY

* Study findings and recommendations can have a limited extent of applicability across different contexts of the present India or even of other countries. Legal system adaptation, socio-political dynamics, and cultural differences might render the study results untransferable for all.
* The limited availability and sometimes inadequate quality of the overall comprehensive and current prison conditions & treatment data in India can limit the level of analysis. Building data that are incomplete or already outdated can reduce the quality of the findings, and thus limit the ability to obtain definitive conclusions.

# CHAPTER 2

**HISTORY OF PRISONS**

Prison system which is a method of handling criminals was a result of historic accidents. It was not a carefully thought out plan. Prison existed from ancient days. Segregating criminals from society to protect it is an acknowledged necessity of every civilized State. Yet, unduly harsh treatment is not favoured by civilized State. Jail is one of the mysterious sections of the prison system. There have been jails and prisons for thousands of years, but prior to the eighteenth century, they were seldom used to incorporate convicted offenders. Jails, intended as places of “safe keeping” for persons awaiting trial, are at the same time utilized (deliberately or otherwise) as rehabilitation facilities for convicted offenders. Every year approximately lakhs of men, women and children are locked up in jails, convicted or awaiting trial for offences ranging from shop lifting to murder and from political demonstration to treason.[[13]](#footnote-13)

### 2.1 PRISONS IN THE WORLD SCENARIO

This is discussed under three heads viz., (1) Ancient Times. (2) Middle Age and (3) Modern Era.

### Ancient Times

The beginning of prisons can be traced back to the rise of the State as a form of social organization. Corresponding with the advent of the State was the development of written language which enabled the creation of formalized legal codes as official guidelines for society. The most well-known of these early legal codes is the code of Hammurabi, written in Babylon around 1750 B.C. The penalties for violation of the laws in Hammurabi’s Code were almost exclusively cantered on the concept of “laxation’s” i.e. law of retaliation where people were punished as a form of vengeance, often by the victims themselves. This notion of punishment as vengeance or retribution can also be found in many other legal codes from earlier civilization, including the ancient Sumerian codes, the Indian Manu Dharma Sastra, Hermes, Trismegistus of Egypt and Mosaic Code. The Gally slave was a common punishment in Early Modern Europe.

Some Ancient Greek Philosophers like Plato, began to develop the idea of using punishment to reform offenders instead of simply using it as retribution. Imprisonment as a penalty was used initially for those who could not afford to pay their fines. Eventually, since impoverished Athenians could not pay their fines, leading to indefinite periods of imprisonment, time limits were set instead.[[14]](#footnote-14) The prison in Ancient Athens was known as the Desmoterion (Place of chains).15

The Romans were among the first to use the prisons as a form of punishment rather than simply for detention. A variety of existing structures were used to house prisoners, such as metal cages, basements of public buildings and quarries. One of the most notable Roman prisons was the

Mamertine Prison, established around 640 B.C. by Ancus Marcius. This prison was located

within a sewer system beneath Ancient Rome and contained a large network of dungeons where prisoners were held in squalid conditions contaminated with human waste. Forced labour on public work projects was also a common form of punishment. In many cases, citizens were sentenced to slavery, often in Ergastula (primitive form of prison) where unruly slaves were chained to workbenches and performed hard labour.[[15]](#footnote-15)

### Middle Age

During the middle Ages in Europe castle, fortresses and the basement of public buildings were often used as makeshift prisons. The possession of the right and the capability to imprison citizens, however, granted an air of legitimacy to officials at all levels of Government , from Kings to Regional Courts to city councils; and the ability to have someone imprisoned or killed served as a signifier of who in society possessed power or authority over others.[[16]](#footnote-16) Another common punishment was sentencing people to gally slavery where they were chained together in the bottom of ship and forced to row on naval or merchant vessels. However, the concept of the Modern Prison largely remained unknown until the early 19th Century. Punishment usually consisted of physical forms of punishment, including capital punishment, mutilation and whipping and non-physical punishments such as public shaming rituals like the stock.[[17]](#footnote-17)

### Modern Era

During the 18th century**,** popular resistance to public execution and torture became more widespread both in Europe and United States and Rulers began looking for means to punish and control their subjects in a way that did not cause people to associate them with spectacles of tyrannical and sadistic violence. They began to look towards developing system of mass incarceration as a solution. The prison reform movement that arose at this time was heavily influenced by two somewhat contradictory philosophies. The first was based on Enlightenment ideas of utilitarianism and rationalism, and suggested that prisons should simply be used as a more effective substitute for the punishments inflicted in public corporal punishments such as whipping, hanging etc. This theory often referred to as deterrence, claims that primary purpose of prison is to be so harsh and terrifying that they deter people from committing crime out of fear of going to prison. The second theory which saw prisons as a form of rehabilitation or moral reform was based out of religious ideas that equated crime with sin, and saw prisons as a place to instruct prisoners in Christian Morality, obedience and proper behaviour. The later reformers believed that Prisons could be constructed as humane institutions of moral instruction, and that prisoners’ behaviour could be 'corrected' so that when they were released they would be model members of society.[[18]](#footnote-18)

Penal transportation of convicted criminals to penal colonies in the British Empire in the America from 1610 to 1770 and in Australia between 1788 and 1868 was often offered as an alternative to death penalty, which could be imposed for many offences. France also sent criminals to tropical penal colonies including Louisiana in the early 18th Century. Penal Colonies in French Guiana operated until 1951. Katorga prisons were harsh work camps established in 17th Century in Russia in remote, under populated area of Siberia and the Russian Far East that had few towns or food sources.[[19]](#footnote-19) Siberia quickly gained its fearful connotation of punishment. One reform of the 17th Century had been the establishment of London Bridewell as the house of correction for women and children.

The first State Prison in England was the Millbank Prison established in 1816 with the capacity for just fewer than 1000 inmates. By 1840s penal transportation and use of hulks was on the decline and the Surveyor-General of the convict prisons Joshua Jebb, set an ambitious programme of prison building in the country, with one large prison opening per year. Pentonville prison opened in 1842, beginning a trend of ever increasing incarceration rate and the use of prison as the primary form of crime punishment. In 1855 engraving of New York’s Sing penitentiary, which also followed the “Auburn or (or Congregate) system” where prison cells were placed inside of rectangular building that lent themselves more to large-scale penal labour.

In 1786, the State of Pennsylvania passed a law which mandated that all convicts who have not been sentenced to death would be placed in penal servitude to do public works projects such as building roads, forts and mines. Besides the economic benefits of providing a free source of hard labour, the proponents of new penal code also thought that this deter criminal activity by making a conspicuous public example of consequences of breaking law. However what actually ended up happening was frequent spectacles of disorderly conduct by the convict work crews, and the generation of sympathetic feelings from the citizens who witnessed the mistreatment of the convicts. But this law quickly drew criticism from the humanitarian perspective (as cruel, exploitative and degrading) and from a utilitarian perspective (as failing to deter crime and delegitimizing the state in the eyes of the public). Reformers such as Benjamin Rush came up with a solution that would enable the continued use of forced labour, while keeping disorderly conduct and abuse out of the eyes of the public. They suggested that the prisoners be sent to be secluded “Houses of repentance” where they would be subjected (out of the view of the public) to “bodily pain, labour, watchfulness, solitude and silence joined with cleanliness and a simple diet”.

Pennsylvania soon put this theory into practice, and turned its old jail at Walnut Street in

Philadelphia into a State Prison in 1790. This Prison was modelled on what became known as Pennsylvania system or 'separate system' and placed as prisoners into solitary cell with nothing other than religious literature and forced them to be completely silent to reflect on their wrong. New York soon built the New Gate State Prison in Greenwich Village, which was modelled on the Pennsylvania system and other states followed. This system‘s fame spread and attracted visitors to the U.S.

The use of Prisons in Continental Europe was never as popular as it became in the English speaking world, although State Prison system were largely in place by the end of the 19th Century in most European countries. After the unification of Italy in 1861, the Government reformed the repressive and arbitrary prison system they inherited and modernized and secularized criminal punishment by emphasizing discipline and deterrence. Italy developed an advanced penology under the leadership of Cesare Lombroso (1835-1909).[[20]](#footnote-20)

### 2.2 SPECIAL TYPES OF PRISON

This topic is dealt with fewer than five sub-titles like the prison for juveniles, women prisons, military prisons, and prisoners of war camps, political prisoners and psychiatric facilities prison.

### Prison for Juveniles

Prisons for Juveniles are known by a variety of names including 'youth detention facilities', 'Juvenile detention centres’ and 'Reformatories'. The idea of separately treating youthful and adult offenders is a relatively modern idea. The earliest known use of the term 'Juvenile delinquency' was in London in 1816, from where this quickly spread to the United States. The first Juvenile Correctional Institution in the United States opened in 1825 in New York City. By 1917, Juvenile Courts have been established in all but 3 States. It was estimated that in 2011 more than 95000 Juveniles were locked up in prisons in the United States (the largest youth population in the world). Besides prison, many other types of residential placements exist within Juvenile Justice System including Youth Homes; Community based programmes, Training Schools and Boot camps.

### Women Prisons

A growing awareness that female prisoners had different needs than male prisoners led to the establishment of first prison for women in Canada in 1874 (Andrew Mercer Reformatory, Toronto, Canada). The objective of this Reformatory was to create a homelike atmosphere for its female inmates and to teach them the skill necessary to lead a decent life once their sentence expired. The Training offered was intended to instil feminine Victorian virtues such as obedience and servility.[[21]](#footnote-21)

Female inmates experience high rates of rape and sexual violence while incarcerated. Sexual aggression and abuse by male prison staff was widespread. In the United States in 2008 (according to Bureau of Justice statistics) more than 216,600 people were sexually abused in prisons. Sexual offences against women prisoners includes rape, assault and groping during pat frisks. Male correctional officials often violate women prisoners privacy by watching them undress, shower and go to the bath room. It is observed in a research that "women with histories of abuse are more likely to accept sexual misconduct from prison staff because they are already conditioned to response to coercion and threats by acquiescing to protect themselves from further violence". In federal women’s correction facilities, 70% of guards are males, reinforcing female inmates’ powerlessness. Incarcerated women suffer disproportionately from HIV/AIDS, infectious disease, reproductive issues and chronic diseases. Within the American

Prison System, HIV became more prevalent among women than among men. In 2007, the Bureau of Justice Statistics stated that an average, 5% of women who entered into State Prison are pregnant and in Jail6% of women are pregnant.[[22]](#footnote-22)

### Military Prisons and Prisoner of War Camps

Captives at camp X-ray is a U.S. Military Prison located in Guantanamo Bay, Cuba where many people were being indefinitely detained in solitary confinement as part of the “War on Terror” The Prisoners were forced to wear goggles and headphones for sensory deprivation and to prevent them from communicating with other prisoners.

Prisons have formed part of Military systems since the French Revolution. France set up its system in 1796. They were modernized in 1852 and they were used variously to house prisoners of war, unlawful combatants those freedom is deemed a national security risk by military or civilian authorities and members of the military found guilty of a serious crime. In the American Revolution, British Prisoners held by the U.S. were assigned to local farmers as labourers. The British kept American sailors in broken down ship hulks with high death rate.

In the American Civil War, at first prisoners of war were released, after they promised not to fight again unless formally exchanged. When the Confederacy refused to exchange black prisoners, the system broke down and each side built large- scale prisoner of war (POW) camps. Conditions in terms of housing, food and medical care were bad in the Confederacy, and the Union retaliated by imposing harsh conditions.

By 1900 the legal framework of the Geneva and Hague Convention provided considerable protection. In the First World War, millions of prisoners were held on both sides, with no major atrocities. Officers received privileged treatment. There was an increase in the use of forced labour throughout Europe. Food and medical treatment were generally comparable to what active duty soldiers received, and housing was much better than front-line conditions.[[23]](#footnote-23)

### Political Prisons

Political prisoners are people who have been imprisoned because of their political beliefs, activities and affiliation. There is much debate about who qualifies as a 'Political Prisoner'. The category of 'Political Prisoner' is often contested and many regimes that incarcerate political prisoners often claim that they are merely 'criminals'. Others who are sometimes classified as 'political prisoners' include prisoners who were politicized in prisons and subsequently punished for their involvement with political causes.

Many countries maintain or have in the past had a system of prisons specifically intended for political prisoners. In some countries, dissidents are detained, tortured, executed and/or disappeared without trial. This can happen either legally or extra legally or sometimes while falsely accusing people or fabricating evidence against them.

Single cells in the B section Court yard of Robben Island Maximum Security Prison was used to house political prisoners in South Africa from 1961 to 1991. Many of the people including Nelson Mandela who were involved in resistance against the apartheid Government were confined in Robben Island.[[24]](#footnote-24)

### Psychiatric Facilities Prisons

Some Psychiatric facilities have characteristics of prisons, particularly when confining patients who have committed a crime and are considered dangerous. Many prisons have psychiatric units dedicated to housing offenders diagnosed with wide variety of mental disorder. The United State Government refers to psychiatric prisons as 'Federal Medical Centre'. (FMC).

### 2.3 MODERN PRISONS

To prevent escapes by the Prisoners, Prisons are surrounded by fencing, huge walls, earthworks, geographical features or other barriers. Many modern prisons depending on the level of security are having multiple barriers like a perimeter of high walls, razor wire or barbed wire, concertina wire, electrified fencing, motion sensors, guard towers, secured and defensible main gates, security lighting, dogs and roving patrols in order to prevent prisoners from escape. Remotely controlled doors, CCTV monitoring, alarm, cages, restraints, lethal and non-lethal weapons, riot control gear and physical segregation of units and prisoners must be present within a prison to monitor and control the movement and activity of prisoners within the facility.

Modern prison design has increasingly sought to restrict and control the movement of prisoners throughout the facility and also to allow a smaller prison staff to monitor prisoners directly. Smaller, separate and self-contained housing units known as 'pods' or 'modules' are designed to hold 16 to 50 prisoners and are arranged around exercise yards or support facilities in a decentralized 'campus' pattern. A small number of prison officers, sometimes a single officer, supervise each pod. The pods contain tiers of cell arranged around a central control station or desk from which a single officer can monitor all the cells and the entire pod, control cell doors and communicate with the rest of the prison.[[25]](#footnote-25)

### 2.4 PRISONS IN INDIA

In India, the early prisons were only place of detention where an offender was detained until trial and judgment and the execution of the latter. The structure of society in ancient India was founded on the principles enunciated by Manu and explained by Yajnavalkya, Kautilya and others. In Arthshastra, we find a long list of offences and the penalties therefor. The crimes which offended against person, property, the institution of marriage and administration of justice were regarded very heinous. The punishment for these crimes usually inflicted was mutilation, death and penance. Trials by ordeal were frequently resorted to. In some cases the accused was made to take a caustic drink and it was believed that if he spoke the truth the drink would do no harm.[[26]](#footnote-26) Expiation was recognized as a form of punishment.[[27]](#footnote-27)

Among various types of corporal punishments branding, hanging, mutilation and death, imprisonment was the mildest kind of penalty known in ancient Indian penology. Imprisonment occupied an ordinary place among the penal treatment and this type of corporal punishment was suggested in the Hindu Scriptures. The evil doer was put into prison to segregate them from the Society. The main aim of imprisonment was to keep away the wrong doer so that they might not defile the members of the social order. These prisons were totally dark dense, cool and damp, unlighted and unwarmed and that no proper arrangements for sanitation and no means of facility for human dwelling.

Kautilya is a forerunner for the prison reforms that are being done today. In his Arthasastra he has prescribed that jail should be constructed in a capital and provide separate accommodation for men and women. He has discussed the problems of prisoner’s life and their welfare. He is of the opinion that every fifth day some prisoners should be made free who pay some money as fine or undergoes some other mild corporal punishment, promise to work for social upliftment. He has also suggested general amnesty on the birth of Prince, Royal Monarch or coronation of Royal Heir and on the occasion of Social Festivals.

In the early years of Asoka there was an unreformed prison in which most of the traditional fiendish tortures were inflicted and from which no prisoner came out alive. In the later period of his rule, particularly when he was influenced by Buddhism many reformative measures in prisons were taken.

During the period of Sultanates there were no regular prisons. Only old Forts and Castles were used as Prisons. During the time of Akbar there were two kinds of prisons. One for criminals who have committed serious offence and other for ordinary criminals. Important nobles and princess guilty of treason and rebellions were imprisoned in fortresses situated in the different parts of the country.

The legal system in the medieval India resembles that of ancient India and the Muslim Sovereigns seldom attempted to tamper with the day-to-day administration of Justice. Crimes were divided into three groups viz. (a) Offences against God (b) Offences against the State (c) Offences against private classes. The punishment for these offences were of four classes: (a) Hadd (b) Tazir (c) Qisas and (d) Tashhir Hadd means a punishment prescribed by canon law, Tazir is punishment intended to reform the culprits and depending on the discretion of the judge; Quisas is the personal right of the victim or his next of kin to inflict punishment; Tashhir is public degradation. The punishment for these offences were fines and confiscation, forfeiture of rank and title, subjecting to humiliations , banishment, whipping, mutilation of offending limbs, execution and other corporal punishments. Imprisonment was not resorted to as a form of punishment in case of ordinary criminals. It was used mostly as a means of detention only. There were fortresses situated in different parts of the country in which the criminals were detained pending trial and judgment. During the era of modern prisons, imprisonment became conspicuous and the most commonly used instrument of penal treatment.

### 2.5 PRISON REFORMS IN INDIA (PRE INDEPENDENCE PERIOD)

The prisons in India were in a terrible condition when the East India Company took over some of the provinces of India. The East India Company, however, was also not so keen to invest money on prison improvement being a non-profitable welfare programmes. Moreover the prison system in the more enlightened countries such as U.S.A and U.K. were also terrible in those days as deterrence was the only aim of a prison sentence.[[28]](#footnote-28)

### Prison Discipline Committee (Lord Macaulay Committee) -1836

Our contemporary prison administration is a legacy of the British Rule. Lord Macaulay who later became the author of the Indian Penal Code which provides for imprisonment as the most commonly used instrument of penal treatment, while presenting a note to the Legislative Council in India on 21st December 1935, pointed out for the first time, the terrible condition then prevailing in Indian prisons. He vehemently subscribed to the idea that “the best criminal code can be of very little use to a community unless there be good machinery for the infliction of punishment”. He stressed that “it is, therefore, of the greatest importance to establish such regulations as shall make imprisonment a terror to wrong-doers and shall at the same time prevent it from being attended by any circumstances shocking to humanity."

Lord Macaulay recommended that a committee be appointed to suggest measures to improve discipline in prisons. Consequently on 2nd January 1936, a committee was appointed by Lord William Bentick to study the conditions of discipline in Indian prisons. Lord Macaulay and some other most distinguished Statesmen and Jurists of the day constituted the committee. This committee known as Prison Discipline Committee gave its report in 1838 to Lord Auckland, the then Governor General. The Committee in its report noted its great disapprobation, the rampant corruption in the subordinate establishment, the laxity of discipline and the system of employing prisoners on extra-mural labour on public roads. Presumably under the influence of the reaction from these officials, the Committee recommended increased rigors of treatment and rejected all notions of reforming criminals through moral and religious teaching, education or any system of reward for good conduct. It advocated construction of central prisons and that the sentences were sought to be executed in such a way as to deter both the actual perpetrator of crime and the potential offender from committing crime.[[29]](#footnote-29)

### Commission of Enquiry into Jail Management and Discipline-1864

Sir John Lawrence’s examination of the conditions of jails in India lead Lord Dalhousie to appoint the second commission of enquiry into jail management and discipline in 1864. It is interesting to note that the British regime was interested in the prisons only from the point of view of administration and discipline. The sociological ideas of reformation or welfare of inmates had not crystallized till then. The report of the Commission of 1864, therefore, proceeding on the lines of the report of the previously constituted Committee (1836) laid down a system of prison regimentation which with modification may be said to be in operation in the name of prison discipline. The Commission also made some specific recommendations regarding accommodation for prisoners, improvement in diet, clothing, bedding and medical care only to the extent that these were incidental to 'discipline and management.' The Commission recommended separation of prisoners – males from females, adults from children. Prison discipline was codified in specific terms and violations made lead to prison offences attracting punishment of solitary confinement, reduction in diet, whipping and hard labour. onference of Experts in 1877

A Conference of Experts met in 1877 to enquire into the prison administration. By that time there were the following five enactments available in the country governing the management of prisons in various States. They are an Act for the better control of the jails within the Presidency of Bombay (1856), An Act for the regulation of jails in the City and Presidency of Bombay and enforcement of discipline therein (1864), An Act for the regulation of jails and enforcement of discipline therein (Bengal – 1864). Madras Jails Act (1860), Prisons Act (1870).

Prisons Act, 1870 was made by the Governor General in Council and the rest by the Governors in Council for their respective jurisdiction. These Acts differed interest on various important points governing the principles and practices of prison management. The remedy proposed by the conference of 1877 was the enactment of a prison law which could secure uniformity of system at least on such basic issues as reckoning of the terms of sentence. On the basis of the recommendation of the conference, a draft bill was actually prepared but as “circumstances were unfavourable” the matter was postponed.[[30]](#footnote-30)

### Fourth Jail Commission-1888

In 1888, the Fourth Jail Commission was appointed by Lord Dufferin to enquire into the facts on prisons. The object and scope of the Commission as given out in the Resolution appointing the Commission make an interesting reading particularly in view of the fact that after a lapse of almost a century we are still groping for a solution to the same problem.

The administration of Jails with respect to economy, sanitation and discipline has for many years received the careful attention of the Governor-General in Council. Three Commissions (in 1836, 1864 & 1877) have under the orders of the Government of India, considered and reported on the general principles which ought to be observed in the management of Indian Jails. There is on the part of Governor-General in Council no wish to reconsider the principle so laid down, but an examination of the statistics of Jails in different provinces and even of prisons in the same province shows that great diversity of practice exists in carrying the principles into effect. The Governor-General in Council is not to be understood as advocating absolute uniformity of administration in all provinces in connection with jail administration. He admits that local circumstances must always give rise to diversities of practice. But an examination of the provincial report for some years practiced by him that the divergences in regard to the cost of maintaining prisoners in regard to their sanitary conditions and in regard to discipline point to the existence of defects which is desirable to remove. There being no longer doubt regarding principles and the question being one of practice, it appears to His Excellency in Council that improvement can be best be effected by means of a careful and thorough examination of experts on the spot into the causes which operate in certain provinces and certain Jails to produce a variation.

The Jail Commission of 1888 visited various provinces and was of the opinion that uniformity could not be achieved without enactment of a single prisons act. On the basis of the recommendation of the Jail Commission of 1888, a consolidated Prison Bill was prepared.

Commission’s recommendations in regard to jail offences and punishments were specifically examined by a conference of experts on jail management from all Provinces, which was convened for the purpose in 1892 at Calcutta. They provided in the Bill for such prison punishment as gunny clothing, imposition of iron on hand and feet, penal diet, solitary confinement and whipping.

The draft bill was circulated to the local government with a letter addressed by Mr. C.J.Lyall, the then Secretary to the Government of India, Home Department in March 25, 1893 requesting the local government to forward their observations on it and after incorporating such observations as were necessary, the Bill was presented to the Governor-General’s Council. Thus came into being the Prisons Act, 1894 which is the current law governing management and administration of prisons in India. The Britishers had found it efficacious for the achievement of their political ends to run prisons according to the provisions of this Act. Even after 66 years of independence, it has hardly undergone any substantial change in the hands of our own government, although a lot of new thinking has emerged on the objectives, management and administration of prisons. The enactment of The Prisoners Act, 1900 also is an outcome of the recommendation of this Commission.

### Indian Jails Committee 1919-1920

The first ever comprehensive study of prison problems was made by the Indian Jails Committee. This Committee examined the conditions of prisons not only in India but also in England, Scotland, U.S.A, Japan, Philippines and Hong Kong. It produced its report containing as many as 584 recommendations which is indeed a land mark in the history of prison reforms in India. It can, in all fairness, be called the corner-stone of modern prison reforms in the country. For the first time in the history of prisons ‘reformation’ and ‘rehabilitation’ of offenders were identified as the objectives of prison administration.

The Committee recommended that the care of criminals should be entrusted to adequately trained staff, selected and recruited after careful scrutiny. It recommended that the salary of the prison personnel should be sufficient to secure and retain faithful service. It rejected the idea of excessive employment of convict officers and recommended the reduction of such excessive employment. Executive and clerical duties were recommended to be separated. The Committee also recommended the induction of technical staff in Jail service. As for improvement of physical condition the Committee recommended diversification of institutions stating that separate jails should be marked for various categories of prisoners. It recommended a minimum area of 75 square yard per inmate within the wall of the jail. It deprecated overcrowding and recommended remedial measures to prevent it. The Committee strongly repudiated the presence of children in jails meant for adult prisoners. It recommended the creation of Children’s Court for hearing all cases of juvenile delinquents and their housing remand home. The Committee made a forceful plea for introduction of warning, probation, and fine for work in lieu of short- term imprisonment. With a view to continuing the process of evolution of prisons problems and bringing in jail reform the Committee recommended that a conference of Inspector General of prisons be held every alternative year.

The recommendation of the Indian Jail Committee though radical in the light of the sociological thought of the day, could not be implemented due to particularly, two reasons. In the first place the diarchical system introduced by the Government of India Act, 1919 left the subject of prisons to the consideration and judgment of the provincial government without any effective supervision and control of the Central Government. As an obvious result most of the provincial government relegated the administration of prisons to a lower priority, neglecting the valuable recommendations for prison reforms made by the Committee. The other reason why the recommendation of the Committee could not have a substantial impact on the prison administration in the country was the political atmosphere that prevailed throughout the nation during the decades following the submission of the report. Widespread political agitations and government’s pre-occupation in quelling them over-shadowed the question of prison reforms. People were generally pre-occupied with the wider and more important problem of achieving political independence and their attention was drawn to the prevailing bad conditions of prisons only when they were imprisoned during the political struggle.

The Constitutional changes brought about by the Government of India Act, 1935 which resulted in the transfer of the subject of Jail to the control of provincial government further reduced the possibilities of uniform implementation of the recommendation of the Indian Jail Committee in the country. The periods from 1937 - 1947 was important in the history of Indian prisons because it arose public consciousness and general awareness for prison reforms at least in some progressive States. Efforts of some of the eminent freedom fighters who had known the conditions in prison succeeded in persuading the Governments of these progressive States to appoint committees to further enquire into prison conditions and to suggest improvement in consonance with the local conditions. Some of the Committees appointed and the progressive legislations passed during this period were: Mysore Committee on Prison Reforms, 1940 - 4, 1 Uttar Pradesh Jail Reforms Committee, 1946. The Bombay Jail Reforms Committee, 1946 - 48, The Madras Probation of Offenders Act, 1936. The Bombay Probation of Offenders Act, 1936 The C.P. and Berar conditional release of Prisoners Act, 1936. Besides, the first Jail Training School was established at Lucknow in 1940 for the training of Jail Officers and Warders.[[31]](#footnote-31)

### 2.6 PRISON REFORMS IN INDIA (POST INDEPENDENCE PERIOD)

When India gained independence in 1947, the memories of bad conditions in prisons were still fresh in the minds of political leaders and they, on assumption of power, embarked upon effective prison reforms. However, the Constitution of India which came into force in 1950 retained the position of the Government of India Act,1935 in the matter of prisons and kept 'Prisons 'as a state subject by including it in list II - State list of the VII schedule. The first decade after independence was marked by strenuous efforts for improvement in living conditions in Jails. A number of Jail Reforms Committees were appointed by the State Governments apparently to achieve certain measure of humanization of prison conditions and to put the treatment of offenders on a scientific footing. Some of the Committees which made notable recommendations on these lines were: East Punjab Jail Reforms Committee 1948 - 49, Madras Jail Reforms Committee, 1950 -51, Jail Reforms Committee of Orissa, 1950 - 55, Jail Reforms Committee of Travancore and Cochin, 1953 - 55, Uttar Pradesh Jail Industries Inquiry Committee, 1955 - 56. Maharashtra Jail Industries Re- organization Committee, 1958 - 59.

Unfortunately, the spirit and enthusiasm with which the subject of prison reforms was taken up by various governments did not last long. The reports and recommendations of these committees, desirable and important though they were, were not implemented in an effective manner. However, a few new ideas of prison reforms were introduced in the country are as follows: Availing of furlough and parole by prisoners, Granting nominal wages for prisoners for the work done by them, The introduction of Panchayat system with a view to improve the living condition of prisoners, Development of open prisons which serve as a half-way house for long term prisoners for their transition from prison to open society, Establishing a Jail Officers Training School at Pune.[[32]](#footnote-32)

### All India Jail Manual Committee 1957

In pursuance of the recommendation made by Dr. W.C. Wreckless and also the Eighth Conference of the Inspectors general of Prisons, the Government of India appointed the All

India Jail Manual Committee in 1957 to prepare Model Prison Manual. The All India Jail Manual Committee was also asked to examine the problems of prison administration and to make suggestion for improvements to be adopted uniformly throughout the country. The report of the All India Jail Manual Committee and the Model Prison Manual prepared and presented by that Committee to the Government of India in the year 1960 are commendable documents on prisons. They not only enunciate principles for an efficient management of prisons but also lay down scientific guidelines for corrective treatment of various classes of offenders. The Committee examined the laws affecting the custody and treatment of offenders and suggested amendments to provide a legal base for correctional work. While laying down the guiding principles for prison management, the Committee wrote:

"The institution should be a Centre of correctional treatment where major emphasis shall be given on the reduction and reformation of offender. The impacts of institutional environment and treatment, shall aim at producing constructive changes in the offender, as would be having profound and lasting effects on his habits, attitudes, approaches and his total value schemes of life."

Among the various recommendations of the Committee, the following are the important ones:

1. The Correctional Services, i.e., the prisons, probation, after-care and institutional services for children should be integrated under a Director or Commissioner of Correctional Administration and be under the control of the Home Department.
2. An O & M Division should be established to devote exclusive attention to the orderly growth and dynamic development of the organization.
3. The Deputy Inspector General should be in charge of various divisions and there should be a separate Deputy Inspector General for Health Services in Prisons.
4. The probation system should be used on a more extensive scale than at present in order to reduce the pressure on prisons.
5. There should be a well arranged network of diversified institutions. The Committee remarked, “If the institution has to be a place of corrective treatment, or if it has to function at least as a place where the offender will be saved from getting further demoralized or disintegrated, there is no other solution than to lay the foundation of scientific correctional work through a properly planned system of classified institutions. 6) A Central Bureau of Correctional Services should be organized at the Union Level.
6. A Central Advisory Board should be set up by the Government of India and there should be a Research and Planning Unit in each State.
7. 2.6.1 An All India Correctional Services should be set up.
8. There should be a separation of executive and clerical functions and of executive and accounts functions.
9. 2.6.2 There should be a State after-Care Organization in each State.
10. 2.6.3 The Jail Manual should be revised periodically.
11. 2.6.4 Solitary confinement as a form of punishment should be abolished.
12. Regarding classification of prisoners the committee remarked: “Classification is a method by which the treatment programme is adjusted to the inmate’s changing needs.

1. Classification procedure does not end with initial study and planning of programmes. It has to be a dynamic process, operating right from the admission of the inmates till his release. It has to pervade the entire institutional activity.[[33]](#footnote-33)

### Central Bureau of Correctional Services 1961 / National Institute of Social Defence 1975

In pursuance of the recommendation made by Dr. W.C. Wreckless and The All India Jail Manual Committee, the Central Bureau of Correctional Services was set up under the Ministry of Home Affairs in 1961. The functions assigned to it were: 1.To formulate a uniform policy and to advise the State Government in the latest methods relating to Jail administration, Probation, After-care, Juvenile and Remand Home, Certified and Reformatory Schools, Borstal, Protective Homes, Suppression of Immoral Traffic etc. 2. To standardize statistical form and collect, collate and interpret the statistical data relating to prevention of crime and treatment of offenders on all India basis. 3.To exchange information between India and foreign government and with United Nations. 4. To promote research and staff training including establishment and control of central institutions (when possible), afford aid and guidance to such other institutions which are undertaking study, survey and other required research and experimentation in the field and to disseminate information and stimulate interest by publication of bulletins, promotion of conferences etc., for the above purpose with a view to secure the necessary appreciation of progressive correctional methods and public co-operation for rehabilitation of offenders and prevention of crime.[[34]](#footnote-34)

The Central Bureau of Correctional Services took up vigorously with the State Government the matters relating to prison reforms with particular emphasis on the implementation of the recommendations made by the All India Jail Manual Committee and the revision of State Jail Manuals on the lines of the Model Prison Manual. In order to take up the review on these matters it organized an All India Seminar on Correctional Services in 1969. It also organized Inter-State Study team on open prisons and other correctional services. A central Advisory Board on Correctional Services was also constituted in 1969.

The Bureau organized the year 1971 as 'Probation Year' all over the country. The purpose was to create a general awareness amongst the principal branches of the Criminal Justice System viz. the Judiciary, the Police, the Prosecution and the Correctional Administration about the use of Probation as an effective non- institutional mode of treatment. Due to the important contribution made by this Bureau only the Regional Institute of Correctional Administration at Vellore was established in the year 1979 for the southern zone comprising the States of Tamil

Nadu, Andhra Pradesh, Kerala and Karnataka. In 1964 the Central Bureau of Correctional

Services was transferred from the Ministry of Home Affairs with the newly created Department of Social Security now known as Ministry of Social Welfare. However, the Bureau continued to be attached to the Ministry of Home Affairs for various matters concerning Jail administration and reforms. In 1975 the Bureau was reorganized into a National Institute of Social Défense. While through the Ministry of Home affairs, the Institute deals with administration and management of prisons and as the technical agency of the Ministry of Social Welfare, it assists the Government in the prevention and control of juvenile delinquency, welfare services in prisons and probation and allied matters.

# CHAPTER 3

**CONSTITUTIONAL PROVISIONS AND LEGAL FRAMEWORK**

## 3.1 FUNDAMENTAL RIGHTS

The State which is organized as a result of individual desire to achieve security, in course of time emerged as an organized sovereign power which violated the rights of the individual. This change directed the political thought towards devising a means by which to bind the unchartered will of the sovereign. This lead to the institution of written constitution. Such a written constitution could be an embodiment of rights and would be considered necessary for the protection of individual rights, liberties and freedoms against absolute and arbitrary action of the State.

The term Fundamental Rights is a technical one. When certain human rights are written down in a constitution and are protected by constitutional guarantee they are called fundamental rights in the sense that they are placed in the supreme or Fundamental Law of the land which has a supreme sanctity over all other laws of the land. Thus when human rights are guaranteed by the written constitution they are called as fundamental rights. Unlike an ordinary right a Fundamental Right is an interest, which is protected and guaranteed by the written Constitution. Such rights are called “Fundamental” because while an ordinary right may be changed by legislature in its process of legislation, but the Fundamental Rights, being guaranteed by the constitution cannot be altered by any process short of amending the constitution itself. The effect of guaranteeing Human Rights in a written constitution is to ensure that any State action including legislation which violates the Fundamental Rights shall be struck down by the Courts because the constitution is the Fundamental Law of the land. A right cannot be said to be 'fundamental' if it is not enforceable against the State by the Courts. When Human Rights are guaranteed by a written constitution they are called 'Fundamental Rights' because a written constitution is the Fundamental Law of a State.[[35]](#footnote-35) Constitution is not to be construed as a mere law[[36]](#footnote-36) or simply as a Statute. It is the fountain head of all the Statutes the Supreme Court of India, in a nine Judge Bench.

Decision has held that though India has a written Constitution its written text is not the exhaustive source of Constitutional Law which is enforceable in the Court of law. Thus even custom or usage when established would have the force of law and would be enforceable if not inconsistent with the fundamental rights guaranteed. "Conventions" as such would also pave a surer foundation to such rights as would be enforceable as law. Just as a written Constitution has evolved from the concept of natural law as a higher law, so the Fundamental Rights may be said to have sprung the doctrine of Natural Rights. As the Indian Supreme Court has put it “Fundamental Rights are the modern name for what have been traditionally known as 'natural

1.22.1 rights'." [[37]](#footnote-37)

### Fundamental Rights and Constitution of India

A few good reasons made the enunciation of the Fundamental Rights in the Constitution rather inevitable. For one thing the main political party, the Congress had for long been demanding these rights against the British Rule. During the British Rule in India Human Rights were violated by the Ruler in India in very wide scale. Therefore, the framers of the Constitution man of whom had suffered long incarceration during the British Regime had a very positive attitude towards these rights. Secondly, the Indian society as fragmented into many religions, cultural and linguistic groups, and it was necessary to declare Fundamental Rights to give to give to the peoples a sense of security and confidence.[[38]](#footnote-38)

Then, it was thought necessary that people should have some rights which may be enforced against the Government which may become arbitrary at times. Though, democracy was being induced in India, yet democratic traditions were lacking, and there was danger that the majority in the legislature may enact laws which may be oppressive to individuals or minority groups, and such a danger could be minimized by having a Bill of Rights.

The need to have the Fundamental Rights was so very well accepted on all hands that in the constituent assembly the point was not even considered whether or not to incorporate such rights in the Constitution. In fact, the fight all along was against the restrictions being imposed on them and the effort all along was to have the Fundamental Rights on as broad and pervasive a basis as possible.

The Fundamental Rights are a necessary consequence of the declaration in the preamble to the Constitution that the people of India have solemnly resolved to constitute India into Sovereign, Democratic Republic and to secure to all its citizens justice, social, economic and political; liberty of thought, expression, belief, faith and worship, equality of status and opportunity.

The Fundamental Rights in India apart from guaranteeing certain basic Civil Rights and freedom to all also fulfilled the important function of giving a few safeguards to minorities, outlawing discrimination and protecting religious freedom and Cultural Rights. During emergency, however some curtailment of the Fundamental Rights does take place. But all these curtailments of Fundamental Rights are of a temporary nature.[[39]](#footnote-39)

The Preamble, Fundamental Rights and Directive Principles of State Policy together provide for the basic Human Rights for the people of India which are discussed below in detail.

### Preamble

The preamble sets out the main object of the Constitution; the object which at the Constitution makers intended to be realized through it. It is a key to open the mind of the Constitution makers. The preamble is a legitimate aid in the construction of the provisions of the Constitution. The framers of the Constitution set out two purposes in the preamble. First, to constitute India into a Sovereign Democratic Republic. Second, to secure its citizens justice: social, economic, and political; liberty of thought, expression, faith and worship; Equality of status and opportunity; and to promote among the people of India fraternity, assuring dignity of the individual and the unity and integrity of the nation. Although the expressions' justice', 'equality' and 'fraternity', may not be susceptible to exact definition, yet they are not mere platitudes. They are given content by the enacting provisions of Constitution particularly by the Fundamental Rights and the Directive Principles of State Policy. Thus the preamble declares the great rights and freedom which the people of India intended to secure to all citizens and basic type of Government and polity which was to be established.[[40]](#footnote-40)

### 1.22 Fundamental Rights

Article 12 to 35 of the Constitution pertains to Fundamental Rights of the people. These rights are reminiscence of some of the provisions of the Bills of Rights in the United States Constitution but the former cover a much wider ground than the latter. Also the United States Constitution declares the Fundamental Rights in broad and general terms. But as no right is absolute, the Courts have in course of time spelled out some restrictions and limitations on these rights. The Indian Constitution however, adopts a different approach in so far as some rights are worded generally; in respect of some Fundamental Rights, the exceptions and qualifications have been formulated and expressed in a compendious form in the Constitution itself, while in respect of some other rights the Constitution confers power on the Legislature to impose limitations. The result of this strategy has been that the Constitutional provisions pertaining to Fundamental Rights have become rather detailed and complex.[[41]](#footnote-41)

The framers of the Indian Constitution learning from the experience of United States visualized a great many difficulties in enunciation of the Fundamental Rights in general terms and in leaving it to the Courts to enforce them, viz., the Legislature not being in a position to know what view the Courts would take of a particular enactment, the process of legislation becomes difficult; there arises a vast mass of litigation about the validity of the laws and Judicial Opinion is often changing so that law becomes uncertain; the Judges are irremovable and are not elected; They are, therefore, not so sensitive to public needs in the social, or economic sphere as the elected legislators and so a complete and unqualified veto over legislation could not be left in Judicial hands. Even then, certain rights especially economic rights have had to be amended from time to time to save some economic programmes.

The Fundamental Rights in the Indian Constitution have been grouped under seven heads as follows: (Article 14-18)

**1.22.1 Right to equality comprising articles 14-18 of which Article 14 is most important**

### Article 14. Equality before Law

Article 14 runs as follows. “The State shall not deny any person equality before the law or the equal protection of the laws within the territory of India". This provision corresponds to the equal protection clause of the 14th Amendment of the United States Constitution which declares "no State shall deny to any person within its jurisdiction the equal protection of the laws."

Two concepts are involved in Article 14 viz., equality before law' and ' equal protection of laws.' The first is a negative concept which ensures that there is no special privilege in favour of anyone, that all are equally subject to the ordinary law of the land and that no person, whatever be his rank or condition is above the law. The second concept, 'equal protection of laws' is positive in content. It does not mean that identically the same law should apply to all persons or that every law must have a universal application within the country irrespective of differences of circumstances.

Equal protection of the laws does not postulate equal treatment of all persons without distinction. What it postulates is the application of the same laws alike and without discrimination to all persons similarly situated. It denotes equality of treatment in equal circumstances. It implies that among equals the law should be equal and equally administered, that the like should be treated alike without distinction of race, religion, wealth, social status or political influence.

The Supreme Court has explained in Sri Srinivasa Theatre vs. The State of Tamil Nadu that the two expressions 'equality before law' and equal protection of laws' do not mean the same thing even if there may be much in common between them. ‘Equality before law' is a dynamic concept having many facets. One facet is that there should be no privileged person or class and that none shall ne above the law. Another facet is "the obligation upon the State to bring about through the machinery of law a more equal society ...... For, equality before law can be predicted meaningfully only in an equal society......."

The benefit of 'equality' before law and 'equal protection of laws' accrues to every person in India whether a citizen or not. As the Supreme Court has observed on this point: "We are a country governed by the Rule of Law. Our Constitution confers certain rights on every humanbeing and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws."[[42]](#footnote-42)

### Article 15. Prohibition of Discrimination on Grounds of Religion, Race, Caste, Sex or Place of Birth

**Article. 15(1)** specifically bars the State from discriminating against any citizen of India on grounds only of religion, race, caste, sex, and place of birth or any of them. Article 15 (1) is an extension of Article 14. Article 15 (1) expresses a particular application of the general principle of equality embodied in Article 14. Commenting on Article 15(1) the Supreme Court has observed:

"**Article 15(1**) prohibits discrimination on grounds of religion or caste identities so as to foster national identity which does not deny pluralism of Indian Culture but rather to preserve it".30While Article 14 is general in nature in the sense that it applies both to citizens as well as non-citizens, Article 14(1) covers only the Indian Citizen and does not apply to non-citizens. No non-citizen can claim any right under Article15 though he can do so under Article 14.[[43]](#footnote-43)

**Article 15(2)** Prohibits subjection of a citizen to any disability, liability, restriction or condition on grounds only of religion, race, caste, sex or place of birth with regard to: (a) access to shop, public restaurants, hotels and places of entertainment; or, the use of wells, tanks, bathing ghats, roads and places of public resorts maintained wholly or partly out of State funds are dedicated to the use of general public. This Article contains a prohibition of a general nature and is not confined to the State only. On the basis of this provision, it has been held that if a section of the public puts forward a claim for an exclusive use of a public well it must establish that the well was dedicated to the exclusive use of that particular section of the pubic and to the use of general public.31 A custom to that effect cannot be held to be reasonable or in accordance with enlightened modern notion of utility of public wells because of the force of Article 15.

In Article 15(2) occurs the expression 'a place of public resort' there is difference of opinion on the exact significance of this phrase. One view holds that a place with a 'place of public resort' only if the public have access to it as a matter of legal right.32 A broader view, however, regards a place of public resort as one to which members of the public are allowed access and where they habitually resort to.33The later view appears to be in more in accord with the tenure and purpose of the Constitutional provision as it would bar discrimination on a wider front.

**Article 15(3)** Under Article 15(3) the State is not prevented from making any special provision for women and children. While Article 15(1) and 15(2) prevent the State from making any discriminatory law on the ground of gender alone, by virtue of Article 15 (3) the State is permitted to make any special provision for women. Article 15(3) recognise the fact that the women in India have been socially and economically handicapped for centuries and, as a result thereof, they cannot fully participate in the socio-economic activities of the nation on a footing of equality. The purpose of Article 15(3) is to eliminate the socio-economic backwardness of women and to empower them in such a manner as to bring about effective equality between men and women. The object of Article 15(3) is to strengthen and improve the status of women. Article 15(3) thus relieves the State from the bondage of Article of 15(1) and enables it to make special provisions to accord socio-economic equality to women. The most significant pronouncement on Article 15(3) is the recent Supreme Court case Government of Andhra Pradesh vs. P.P. Vijaya Kumar.

The Supreme Court has ruled in the instant case that under Article 15(3) the State may fix a quota for appointment of women in Government services. Also, a rule saying that all other things being equal, preference would be given to women to the extent of 30% of the post was held valid with reference to Article 15(3). It was argued that reservation of posts or appointment for any backward class is permissible under Article 16 (2) but not for women and so no reservation can be made in favour of women as it would amount to discrimination on the ground of sex in public employment which would be violative of Article 16(2). Rejecting this argument the Supreme Court has ruled that posts can be reserved for women under Article 15(3) as it is much wider in scope and covers all state activities while Article 15 (1) prohibits the State from making any discrimination inter alia on the ground of sex alone by virtue of Article 15(3) the State may make special provisions for women. Thus, Article 15(3) clearly carves out a permissible departure from the rigors of Article 15(1)

**Article 15 (4) or Article 29(2)** does not prevent the State from making any special provisions for the advancement of any socially and educationally backward classes of citizens or for the Scheduled castes and the scheduled tribes. A major difficulty raised by Article 15(4) is regarding the determination of who are 'socially and educationally backward classes'. This is not a simple matter as sociological and economic considerations come into play in evolving proper criteria for its determination. Article 15 (4) lays down no criteria to designate 'backward classes'; it leaves the matter to the State to specify backward classes but the Courts can go into the question whether the criteria used by the State are relevant or not. The question of defining backward classes has been considered by the Supreme Court in a number of cases. From the several judicial pronouncements concerning the definition of backward classes several propositions emerge. The backward class envisaged by Article 15(4) is social and educational and not either social or educational. This means that a class to be identified as backward should be both socially and educationally backward.[[44]](#footnote-44)

### Article 16 Equality of opportunity in matters of public employment

Article 16(1) guarantees equality of opportunity to all citizens "in matters relating to employment" or "appointment to any office" under the State. According to this Article no citizen can be discriminated against or be ineligible for any employment or office under the State on the grounds only of religion, race, caste, sex , descent, place of birth or residence or any of them.

Article 16(2) is also an elaboration of a facet of Article 16(1). These two classes thus postulate the Universality of Indian citizenship. As there is common citizenship, residence qualification is not required in any State.

Under Article 16(3), Parliament makes a law to prescribe a requirement as to residence within a State or a Union Territory for eligibility to be appointed with respect to specified classes of appointments or posts. Thus, 16(2) which bans discrimination of citizens on the grounds of 'residence' only in respect of any office or employment under the State, can be qualified as regards residence, and a 'residential qualification’ imposed on the right of appointment in the State for specified appointments. This provision 16(3), therefore, introduces some flexibility and takes cognizance of the fact that there may be some very good reasons for restricting certain posts in a State for its residence. Article 16(3), however, incorporates a safeguard to ensure that it is not abuse. Power has been given to Parliament and not to the State Legislature to relax the principle of non-discrimination on the ground of residence, so that; only a minimum relaxation is made in this regard.

Under Article 16(4) the State may make reservation of appointments or posts in favour of any 'backward classes of citizen which in the opinion of the State, is not adequately represented in the public services under the State. The term 'State' denotes both the Central and State Governments and their instrumentalities. Explaining the nature of Article 16 (4) , the Supreme Court has stated in Mohan Kumar Singhania vs. Union of India, that it is 'an enabling provision' conferring a discretionary power on the State for making any provision or reservation of

1.22.2

appointments or forced in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the service of the State. It has been emphasized that the expression 'backward class’s is not synonymous with 'backward caste' or 'backward community'. In determining whether a section of population form a backward class for purposes of Article 16(4), a test solely based on caste, community, race, religion, sex, descent, place of birth or residence cannot be adopted because it would directly be violative of Article 16(2). Article 16(4) neither imposes any constitutional duty nor confers any Fundamental Right any one claiming reservation. Indra Sawhneyvs Union of India known as the Mandel Commission case is a very significant pronouncement of the Supreme Court on the question of reservation of posts for backward classes. The Court has dealt with this question in a very exhaustive manner.[[45]](#footnote-45)

**Article 16(5)** provides that a Law may prescribe that the incumbent of an office in connection with the affairs of a religious or denominational institution, or a member of the governing body thereof, shall be a person professing a particular religion or belonging to a particular denomination**.**

### Article 17 Abolition of Untouchability

Article 17 reads as 'Untouchability' is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of 'Untouchability' shall be an offence punishable in accordance with law. The main object of Article 17 is to ban the practice of Untouchability in any form. To give effect to Article 17, Parliament enacted the Untouchability (offences) Act, 1955, prescribing punishment for practicing untouchability in various forms. In 1976, the Act was renamed as the 'Protection of Civil Rights Act, 1955'. Parliament has also enacted the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Act, 1989, in order to - (i) to prevent the commission of atrocity against the members of the Scheduled Casted and Scheduled Tribes; (ii) to provide for setting up of Special Courts for the trial of offences under the Act and (iii) also to provide for the release and rehabilitation of victims of such offences. The word 'Untouchability' has not been defined either in the Constitution or in the Act, because it is not capable of any precise definition.

### Article 18 Abolition of Titles

Article 18(1) prohibits the State from conferring any 'title' except military or academic distinction. Article 18(2) prohibits citizens of India from accepting any title from a foreign Government. According to 18(3) a foreigner holding any office of profit or trust under the State cannot accept any title from any foreign State without the consent of the President. As per Article 18(4) no person holding any office of profit under the State is to accept without the consent of the President any present, emoluments or office of any kind from or under any foreign State.

#### ii. Article 19 Right to freedom comprising Articles 19 - 22 which guarantee several freedoms, the most important of which is the freedom of speech

Clauses (a) to (g) except (f) of article 19(1) guarantee to the citizens of India six freedoms viz. of 'speech and expression', 'peaceable assembly', 'free movement', residence and practicing any profession and carrying on any business. Originally, Article 19 guaranteed seven freedoms. The freedom to hold and acquire property was repealed in 1978. These various freedoms are necessary not only to promote certain basic rights of the citizens but also certain democratic values in and the oneness and unity of the country. Article 19 guarantees some of the basic, valued and natural rights inherent in a person. Article 19 protects the six freedoms of an Indian citizen from State action and violation of these freedoms by private conduct of an individual is not within its purview. A foreigner enjoys no right under Article 19 since this Article confers certain Fundamental Rights on the citizens and not on non-citizens of India.

The freedom guaranteed by Article 19(1) is not absolute as no right can be. Each of these rights is liable to be controlled, curtailed and regulated to some extent by Laws made by Parliament or the State Legislatures. Accordingly, Clauses ( 2) to (6) of Article 19 lay down the grounds and the purposes for which a Legislature can impose' reasonable restrictions' on the rights guaranteed by Articles 19 (1) (a-g). Three significant characteristics of clauses 19 (2) to 19(6) are as follows:

1. The restrictions under them can be imposed only by or under the authority of a Law; No restriction can be imposed by executive action alone without there being a law to back it up.
2. 1.22.4 Each restriction must be reasonable.
3. A restriction must be related to the purposes mentioned in Clauses 19(2) to 19(6).

### Article 20 Protection in respect of conviction for offences

Article 20(1) provides the necessary protection against an ex-post-facto law. It has two parts. Under the first part no person is to be convicted of an offence except for violating a 'law in force' at the time of commission of the act charged as an offence. A law enacted later, making an act done earlier (not an offence when done) as an offence, will not make the person liable for being convicted under it. Immunity is thus provided to a person being tried for an act, under a law enacted subsequently, which makes the act unlawful**.** This means that if an act is not an offence on the date of its commission a law enacted in future cannot make it so. The second part of Article 20(1) immunizes a person from a penalty greater than what he might have incurred at the time of his committing the offence. Thus a person cannot be made to suffer more by an ex-post-facto law than what he would be subjected to at the time he committed the offence. An ex-post-facto law which only mollifies the rigors of criminal law is not within the prohibition of article 20 (1). Therefore, an accused should have the benefit of a retrospective or retroactive criminal legislation reducing punishment for an offence**.**

**Article 20 (2)** runs as "No person shall be prosecuted and punished for the same offence more than once" contains the rule against double jeopardy. The roots of the doctrine against double jeopardy are to be found in the well-established maxim of the English Common Law, Nemodebet dis vexari, meaning that a man must not be put twice in peril for the same offence. The principle was in existence in India even prior to the commencement of the Constitution [Section 403(1) of the Criminal Procedure Code 1898 now Section 300, Criminal Procedure

Code 1973], but the same has now been given the status of a Constitutional, rather than a mere statutory guarantee. Both prosecution and punishment should co-exist for Article 20(2) to be operative. The prosecution without punishment could not bring the case within Article 20 (2). If a person has been prosecuted for an offence but acquitted, then he can be prosecuted for the same offence and punished.

A person accused of committing a murder was tried and acquitted. The State preferred an appeal against the acquittal. The accused could not plead Article 20 (2) against the State preferring an appeal against the acquittal. Article 20 (2) would not apply as there was no punishment for offence at the earlier prosecution; and an appeal against an acquittal was in substance a continuation of the prosecution. Enhancement of punishment by the revising authority does not amount to a second punishment. Preventive detention is not' prosecution and punishment ‘and therefore, it does not bar prosecution of the person concerned.

**Article 20(3)** which embodies the privilege against self-incrimination reads: 'No person accused of any offence shall be compelled to be a witness against himself.' On analysis, this provision contains the following components; It is a right available to a person 'accused of an offence'; It is a protection against 'compulsion' 'to be a witness'; It is a protection against such 'compulsion' resulting in his giving evidence 'against himself'. All these three ingredients must necessarily co-exist before the protection of Article 20 (3) can be claimed. If any of these ingredients is missing Article 20 (3) cannot be invoked.[[46]](#footnote-46)

### Article 21 Protection of Life and Personal Liberty

Article 21 lay down that no person shall be deprived of his life or personal liberty except according to this 'procedure established by law'. The most important words in this provision are 'procedure established by law'. Immediately after the Constitution became effective the question of interpretation of these words arose in the famous Gopalan case where an attempt was made to win for a detenue better procedural safeguards than were available to him under the Preventive Detention Act, 1950 and Article 22.[[47]](#footnote-47) But the Supreme Court ruled in this case that in Article 21, the expression ' the procedure established by law' meant the procedure as laid down in the law was enacted by the Legislature and nothing more. A person could thus be deprived of his 'life ' or personal liberty in accordance with procedure laid down the relevant law.[[48]](#footnote-48) The Court was thus was concerned with the procedure as laid down in the statute. Whether the procedure was fair or reasonable, or according to natural justice or not was not the concern of the Court. The ruling thus meant that to deprive a person of his life or personal liberty: There must be a law; it should lay down a procedure; and The executive should follow this procedure while depriving a person of his life or personal liberty. The way the majority handled Article 21 in Gopalan case was not free from criticism. Gopalan was characterised as a ‘High water mark of legal positivism'. Court's approach was very static, mechanical, and purely literal and was too much coloured by the positivists or imperative theory of law. The Court treated the Constitution as another Statute.[[49]](#footnote-49)

The case of Menaka Gandhi is a land mark case of the post emergency period. This case shows how liberal tendencies have influenced the Supreme Court in the matter of interpreting

Fundamental Rights, particularly, Article 21**.** This case showed that Article 21 as interpreted in Gopalan could not play any role in providing any protection against any harsh law seeking to deprive a person of his life or personal liberty. In fact, this case has acted as a catalytic agent for transformation of the judicial view on Article 21. Since then the Supreme Court has shown sensitivity to the protection of personal liberty. The Court has reinterpreted Article 21 and practically overruled Gopalan in Menaka Gandhi which can be regarded as a highly creative Judicial pronouncement on the part of the Supreme Court. Not only that, since Menaka, the Supreme Court has given to Article 21, broader and broader interpretation so as to imply many more Fundamental Rights. In course of time, Article 21 has proved to be a very fruitful source of rights of the people. Menaka Gandhi's case has been exerting multi-dimensional impact on development of Constitutional law in India. Menaka case has also deeply influenced the Administration of Criminal Justice and Prison Administration. In a number of cases the

1.22.5 Supreme Court has propounded several prepositions with a view to humanize the

Administration of Criminal Justice in all its aspects like arrest, fair trial, speedy trial, long pretrial confinement, more Criminal Courts, maximum imprisonment, right of appeal, legal-aid, handcuffing of under-trial, police torture, Prison Administration, prisoners grievances etc., A very fascinating development in the Indian Constitutional Jurisprudence is the extended dimension given to Article 21 by the Supreme Court in the post Menaka era. The Supreme Court has asserted that in order to treat a right as a Fundamental Right it is not necessary that it should be expressly stated in the Constitution as a Fundamental Right. Political, Social and Economic changes in the country entail the recognition of new rights. The law in its eternal youth grows to meet the demands of the society. The extension in the dimensions of Article 21 has been made possible by giving an extended meaning to the word 'life' and 'liberty' in Article 21. These two words in Article 21 are not to be read narrowly. These are organic terms which are to be construed meaningfully. The right to life enshrine in Article 21 has been liberally interpreted to mean something more than mere survival and mere existence or animal existence. It therefore, includes all those aspects of life which goes to make a man's life meaningful, complete and worth living. The Supreme Court has asserted that Article 21 is the heart of the Fundamental Rights. It has enough positive content and is not merely negative in its reach even though Article 21 is worded in negative terms.[[50]](#footnote-50)

### Article 22 Protection against Arrest and Detention in certain cases

Article 22 guarantees the minimum rights which any person is arrested will enjoy. The protection of the individual from oppression by the police and other enforcement officers is a major interest in a free society. Arrest and detention in police lock-up may be very traumatic for a person. It can cause him in calculable harm by way of loss of his reputation. Denying a person of his liberty is a serious matter. The Supreme Court has clarified in Joginder Kumar vs. State of Uttar Pradesh that no arrest can be made because it is lawful for the police officer to do so. The existence of the power of arrest is one thing, the justification for its exercise is quite another. The police officer must be able to justify the arrest apart from his power to do so. Accordingly the Court has laid down the following guidelines in this regard for the police to follow:

"No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the Constitutional rights of a citizen and there has in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bonafide of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest".

### Article 22(1) ensures the following two safeguards for a person who is arrested

1. He is not to be detained in custody without being informed, as soon as may be of the grounds of his arrest. Information about the grounds of arrest is mandatory under Article 22(1). The Supreme Court has said about this rule in Shobharam case: "In other words a person's personal liberty curtailed by arrest without informing him as soon as is possible, why he is arrested". The reason behind the rule requiring communication of grounds to the person arrested is to enable him to prepare his defence and to move the Court for bail or for a writ of Habeas Corpus Writ. Failure to inform the person the reason for his arrest would entitle him to be released.
2. He shall not be denied the right to consult, and to be defended by a legal practitioner of his choice. The Supreme Court in Shobharam case held that the person arrested on accusation of crime becomes entitled to be defended by a counsel at the trial and this right is no lost even if he is released on bail or is tried by a Court which has no power to impose a sentence of imprisonment. The Supreme Court in another case has observed in Joginder Kumar case that the arrested person has a right upon request to have someone informed and to consult privately with a lawyer. These rights are inherent in Articles 21 and 22(1) of the Constitution. The Court has directed that these rights of the arrestee be 'recognized and scrupulously protected'. The Court has laid down certain guidelines also for the effective implementation of these Fundamental Rights. The right to consult a legal practitioner starts right from the day of arrest. The right arises as soon as a person is arrested. The Supreme Court taking the traditional view of Article 22(1) ruled that ' the right to be defended by a legal practitioner of his choice' could only mean the right of the accused to have the opportunity to engage a lawyer and does not guarantee an absolute right to be supplied with a lawyer by the State.[[51]](#footnote-51)

**Article 22(2)** requires an arrested person to be produced before a Magistrate within 24 hours of his arrest. It thus ensures that a judicial mind is applied immediately to the legal authority of the person making the arrest and regularity of the procedure adopted by him. This is a mandatory provision. The Magistrate is not to act mechanically but should apply judicial mind to see whether the arrest of the person produced before him is legal, regular and in accordance with law. Otherwise, the protection afforded by Article 22(2) would be meaningless. The Supreme Court has strongly urged in Khatri case that the Constitutional requirement to produce an arrested person before a Judicial Magistrate within 24 hours of his arrest must be strictly adhered and scrupulously observed.

**Article 22(3)** makes two exceptions. Article 22(1) and 22 (2) do not apply to a. Enemy alien and b. To persons arrested or detained under a law providing for preventive detention.

### Article 22(4) to 22(7) Preventive Detention

Preventive detention means detention of a person without trial and conviction by a Court but merely on suspicion in the mind of an executive authority. Preventive detention is fundamentally and qualitatively different from imprisonment after trial and conviction in a Criminal Court. Preventive detention and prosecution for an offence are not synonymous. Preventive detention is thus preventive, not punitive in theory. Preventive detention is not to punish an individual for any wrong done by him but at curtailing his liberty with a view to preventing him from committing some injurious activities in future. Clauses 4 to 7 of Article 22 lay down a few safeguards and provide for minimum procedure, which must be observed in any case of preventive detention.[[52]](#footnote-52) If a law of preventive detention or administrative action relating thereto infringes any of these safeguards then the law or the action would be invalid as infringing the Fundamental Right of the detainee. It is immaterial whether or not the Constitutional safeguards are incorporated in the law authorizing preventive detention, because even if they are not, they would be deemed to be part of the law as a super imposition by the Constitution which is the supreme law of the land. The Supreme Court has developed certain norms out of Articles 22(4) to 22(7) with a view to protect the personal liberty of the detenu against bureaucratic lethargy, insensitivity, red tape and routine approach.

**Article 22(5)** has two limbs. One, the detaining authority is to communicate the detenue the grounds of the detention 'as soon as may be’. Two, the detenue is to be afforded 'the earliest opportunity' of making a representation against the order of detention. This is natural justice woven into the fabric of preventive detention by the Constitution. These are the rights guaranteed to the detenue by Article 22(5). If any of these rights is violated the detention order would become bad. Communication of grounds means communication to the detenue of all the basic facts, documents and materials which went to the subjective satisfaction of the authority to detain him. The detention order becomes bad if any factual components constituting the real grounds for detention are not fairly and fully put across to the detenue, the reasons being that if some facts are held back from him his right to make an effective representation against his detention is infringed. The Supreme Court has emphasized that Article 22(5) vests a real and not an imaginary or illusory right in the detenue. The communication of facts is a cornerstone of his rights of representation and an order of detention passed on uncommunicated materials is unfair and illegal. According to Supreme Court in Abdul Karim case, "the right of representation under Article 22(5) is a valuable Constitutional right and is not a mere formality'.[[53]](#footnote-53)

On the question of supply of documents to enable a detenue to make a representation, the Supreme Court has ruled in Kamarunnisa case that it is not sufficient to show that the detenue was not supplied the copies of some of the documents in time on demand but it must further be shown that the non-supply of the documents in question has impaired his right to make an effective and purposeful representation against his detention.68 Article 22(5) does not say as to whom the representation is to be made or what is to be done with it. However in order to make Article 22(5) meaningful and convert it into a safeguard to the detenue the Supreme Court has interpreted Article 22(5) to mean that the Government must consider the detenue's representation before sending it to the Advisory Board. The Supreme Court has observed in Hardhan Saha case as follows:

"If the representation of the detenue is received before the matter is referred to the Advisory

Board, the detaining authority considers the representation. If the representation is made afte the matter has been referred to the Advisory Board the detaining authority will consider it before it will send representation to the Advisory Board."

**Article 22(4) Advisory Board:** Advisory Board is another safeguard provided by Article 22(4) to a detenue under preventive detention. From the tenor of Article 22(4)(a), it is clear that a law of preventive detention may provide for detention up to three months without the safeguard of an Advisory Board. For preventive detention up to three months no reference to such a Board is necessary. Under Article 22(7)(c) Parliament is authorized to prescribe the procedure to be followed by an Advisory Board. Preventive detention for over three months is possible only when an Advisory Board holds that in its opinion there is sufficient cause for such detention. The Board must report before the expiry of three months. If the report is not made within three months of the date of detention, the detention would become illegal. The Board is to consist of persons who are, are have been, or are qualified to act as High Court Judges. The Supreme Court has spelled out the rule that not only the Advisory Board should report within three months of the date of detention order that, in its opinion there is sufficient cause for the detention of the detenue, but also the Government should itself confirm and extend the period of detention (beyond three months) within three months’ time limit. Failure on the part of the Government to do so will render the detention invalid as soon as three months elapse and any subsequent action by the Government cannot have the effect of extending the period of detention beyond three months. While confirming the order of detention, the Government has not only to pursue the report of the Advisory Board but apply its mind to the material on record. It is also necessary that the order of confirmation be in writing and being communicated to the detenue.

**Article 22 (7) (a)**. Under this Article Parliament may by law prescribe “The circumstances under which, and the clause or clauses or cases in which a person may be detained for a period longer than three months" without referring his case to an Advisory Board under Article 22(4)(a).

### Article 23 Right against Exploitation consist of Articles 23 & 24

Article 23 and 24, though Fundamental Rights, lay dormant for almost 32 years after the Constitution came into force and there was hardly any significant judicial pronouncements concerning these Constitutional provisions, since 1982, however these Articles have assumed great significance and have become potent instrument in the hands of Supreme Court to ameliorate the pitiable condition of the poor in the country.[[54]](#footnote-54)

According to Article 23(1), traffic in human beings, beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. A significant feature of Article 23 is that it protects the individual not only against the State but also against private citizens. Article 23(1) prescribes three unsocial practices viz., beggar, traffic in human beings and forced labour.[[55]](#footnote-55)

The term beggar means compulsory work without any payment. Beggar is labour or service which a person is forced to give without receiving any remuneration for it. The practice was widely prevalent in the erstwhile princely States in India before the advent of the Constitution.

It was a great evil and has, therefore, been abolished through Article 23(1). Withholding of pay of a Government employee as a punishment has been held to be invalid in view of Article 23 which prohibits beggar. "To ask a man to work and then not to pay him any salary or wages savours of beggar. It is a Fundamental Right of a citizen of India not to be compelled to work without wages". The expression 'traffic in human being' commonly known as slavery, implies buying and selling of human beings as if chattels and such a practice is constitutionally abolished. Traffic in women for immoral purposes is also covered by this expression. The word

'other similar form of forced labour' in Article 22(1) are to be interpreted ‘ejusdem generis’. The kind of ‘forced labour' contemplated by the Article has to be something in the nature of traffic in human beings or beggar. Conscription for police service or military service cannot come under either. Even payment of wages less than minimum wages would be regarded as forced labour. Giving a very expansive interpretation to Article 23 Bhagawathi .J said in the Asiad case:

"The word force must therefore be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leads no choice of alternative to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wages." The term 'forced labour' does not only mean when a person is forced to do labour for less than the minimum wages, it also means labour which a person is forced to do even though he is being paid his remuneration. It is the element of 'force' which makes labour as forced labour. Commenting on this ruling in Asiad case the Supreme Court has observed per Wadhwa. that, "thus this Court has held that under Article 23 no one shall be forced to provide labour or service against is will even though it be under a contract of service. Payment of full wages when labour extracted is forced will attract the prohibition containing Article 23."

Under Article 23(2), the State can impose compulsory service for public purposes, and in imposing that service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them. The State is not obligated to pay for the compulsory service imposed. It was said in justification of this provision in the constituent assembly that whenever compulsory service is needed it can be demanded from all and if the State demands service from all and does not pay any one then the State is not committing any very great inequality. The Government demanding services of teachers for census, lection, family planning duties is not violative of Article 23(1). Such services fall within the meaning of 'public purpose' under Article 23(2) and these services can also be treated as national service which is a fundamental duty of every citizen under Article 51A.

### Article 21 - Right to Life and Personal Liberty

Article 21 of the Indian Constitution is a cornerstone for the protection of fundamental rights and has been pivotal in shaping the jurisprudence around prisoner rights. It states:

"No person shall be deprived of his life or personal liberty except according to procedure established by law."

Over the years, the Supreme Court of India has expansively interpreted Article 21 to include a wide range of rights, thereby ensuring the protection and humane treatment of prisoners. Article 21 has been instrumental in ensuring that prisoners are not stripped of their fundamental rights merely because of their incarceration. The Supreme Court’s expansive interpretation of this article has encompassed a wide range of protections, from the right to a speedy trial and legal aid to humane treatment and health care. This progressive jurisprudence underscores the principle that prisoners retain their basic human rights and should be treated with dignity and fairness.

### Right to a Speedy Trial

*Hussainara Khatoon v. Home Secretary, State of Bihar (1979):* This case brought to light the inordinate delays in the trial process, resulting in prolonged detention of undertrial prisoners. The Supreme Court recognized the right to a speedy trial as a fundamental right under Article 21, ensuring that prisoners are not unduly deprived of their liberty.

### Right to Legal Aid

*M.H. Hoskot v. State of Maharashtra (1978):* The Court held that the right to legal aid is an essential part of Article 21. It emphasized that free legal services are a constitutional right of the poor and indigent accused to ensure a fair trial and access to justice.

*Khatri (II) v. State of Bihar (1981):* The Supreme Court reiterated that legal aid must be provided at all stages of the criminal process, ensuring that prisoners have the necessary legal representation to protect their rights.

### Right to Humane and Dignified Treatment

*Sunil Batra v. Delhi Administration (1978):* This landmark judgment addressed the issue of inhuman treatment and torture in prisons. The Court held that the right to life under Article 21 includes the right to live with dignity, and prisoners should not be subjected to cruel, inhuman, or degrading treatment. The judgment emphasized the need for humane conditions in prisons and proper medical care for inmates.

*D.K. Basu v. State of West Bengal (1997):* The Court laid down detailed guidelines to prevent custodial torture and deaths. These guidelines include mandatory procedures for arrest, such as immediate notification to a relative or friend of the detainee, timely medical examination, and maintaining arrest records. These measures are intended to safeguard the dignity and rights of prisoners.

### Right to Health and Medical Care

*Parmanand Katara v. Union of India (1989):* The Supreme Court held that the right to emergency medical treatment is a part of the right to life under Article 21. This ruling implies that prisoners are entitled to timely and adequate medical care while in custody.

*R.D. Upadhyay v. State of Andhra Pradesh (2006):* The Court focused on the health and wellbeing of children born to incarcerated women, ensuring that both the mothers and their children receive proper medical care and nutrition.

### Right to Fair Trial and Due Process

*Maneka Gandhi v. Union of India (1978):* This landmark case expanded the interpretation of Article 21, asserting that any law depriving a person of personal liberty must be "just, fair, and reasonable." This principle is fundamental to ensuring that prisoners are treated fairly and that their detention and trial processes meet constitutional standards.[[56]](#footnote-56)

### Protection Against Arbitrary Detention

*A.K. Gopalan v. State of Madras (1950):* Although initially, the Court took a narrow view, it later evolved to ensure that any deprivation of personal liberty is subject to stringent procedural safeguards to prevent arbitrary detention.

*K.S. Puttaswamy v. Union of India (2017):* The right to privacy was recognized as an intrinsic part of the right to life and personal liberty under Article 21. While not specific to prisoners, this judgment underscores the broad and evolving interpretation of Article 21, impacting various aspects of prisoner rights, such as the confidentiality of medical records and personal communications.

### Article 22 - Safeguards Regarding Arrest and Detention

Article 22 of the Indian Constitution provides crucial safeguards for individuals against arbitrary arrest and detention. These provisions are designed to protect personal liberty and ensure due process of law. Article 22 provides a robust framework for protecting individuals from arbitrary arrest and detention, ensuring that procedural safeguards are in place to uphold personal liberty and due process. The judiciary has played a crucial role in interpreting these provisions to prevent abuse of power and ensure that the rights of detainees are respected. These protections are vital for maintaining the rule of law and safeguarding the fundamental rights of individuals, including prisoners, within the criminal justice system.

1. **1.22.7 Protection Against Arbitrary Arrest and Detention - Article 22(1) and 22(2):**

These clauses ensure that any person who is arrested is informed of the reasons for their arrest and is entitled to consult and be defended by a legal practitioner of their choice. Additionally, the person must be produced before the nearest magistrate within 24 hours of arrest, excluding travel time. Detention beyond this period requires the authority of a magistrate.

*A.K. Gopalan v. State of Madras (1950):* This early case interpreted the procedural safeguards under Article 22, emphasizing the necessity for procedural fairness and the production of arrested individuals before a magistrate.

1. **1.22.8 Rights of Preventive Detention - Article 22(3) to 22(7):**

These clauses deal with preventive detention, allowing the state to detain individuals to prevent them from committing certain offenses. Preventive detention laws must contain specific procedural safeguards, including the right to be informed of the grounds of detention, the right to make representations against the detention, and the requirement that an advisory board reviews the detention order.

*A.K. Roy v. Union of India (1982):* This case upheld the constitutionality of preventive detention under the National Security Act but emphasized the importance of procedural safeguards to prevent abuse of power.

1. **1.22.9 Right to be Informed of Grounds of Arrest - Article 22(1):**

The arrested person has the right to know the grounds of arrest as soon as possible. This is crucial for ensuring that the detainee understands the reasons for their detention and can prepare a defence.

*Joginder Kumar v. State of U.P. (1994):* The Supreme Court emphasized that the police must inform the arrested person of the reasons for the arrest and their rights, including the right to inform a friend or relative.

1. **1.22.10 Right to Consult a Legal Practitioner - Article 22(1):**

This clause ensures that detainees have the right to consult and be defended by a legal practitioner of their choice, which is essential for preparing a defence and safeguarding personal liberty.

*Nandini Satpathy v. P.L. Dani (1978):* The Court ruled that the right to consult a legal practitioner is an essential safeguard to ensure fairness in the criminal justice process.

1. **1.22.11 Right to be Produced Before a Magistrate - Article 22(2):**

This clause mandates that the arrested person must be produced before a magistrate within 24 hours of arrest. This prevents unlawful and prolonged detention by police authorities.

*D.K. Basu v. State of West Bengal (1997):* The Supreme Court issued comprehensive guidelines for the arrest and detention of individuals to prevent custodial violence and ensure that detainees are promptly produced before a magistrate.

1. **1.22.12 Preventive Detention and Advisory Boards - Article 22(4) to 22(7):**

These provisions outline the procedural safeguards for preventive detention, including the requirement for an advisory board to review detention orders within a specified period. Detainees must be informed of the grounds of detention and have the right to make representations against the order.

*K.M. Basheer v. State of Karnataka (1992):* The Court highlighted the importance of adhering to procedural safeguards in preventive detention cases to ensure that individuals are not unjustly deprived of their liberty.

### Article 20 - Protection in Respect of Conviction for Offences

Article 20 of the Indian Constitution provides vital protections to individuals with respect to conviction for offenses. These protections ensure that individuals are not subjected to unfair treatment by the state during the process of criminal prosecution and punishment.

#### 1. Protection Against Ex Post Facto Laws (Article 20(1))

"No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence."[[57]](#footnote-57)

**Ex Post Facto Laws:** This clause prohibits the enactment of ex post facto criminal laws, meaning a person cannot be convicted for an act that was not an offense under the law when it was committed.

**Retrospective Punishment:** It also prevents the imposition of a greater punishment than that which was applicable at the time the offense was committed.

*Keshavan Madhava Menon v. State of Bombay (1951):* The Supreme Court held that the prohibition against ex post facto laws applies only to criminal laws and not to civil laws.

#### 2. Protection Against Double Jeopardy (Article 20(2))

1.22.13 "No person shall be prosecuted and punished for the same offence more than once."

**Double Jeopardy:** This clause embodies the principle of "double jeopardy," which means that a person cannot be tried and punished more than once for the same offense.

**Autrefois Convict and Autrefois Acquit:** It covers both situations where a person has been either convicted or acquitted of an offense.

*S.A. Venkataraman v. Union of India (1954):* The Supreme Court clarified that the protection against double jeopardy applies only when there has been a conviction or acquittal by a competent court and a subsequent prosecution is for the same offense based on the same facts.

#### 3. Protection Against Self-Incrimination (Article 20(3))

"No person accused of any offence shall be compelled to be a witness against himself." **Self-Incrimination:** This clause protects individuals from being forced to testify against themselves, thereby preserving the right to remain silent.

**Accused Persons:** It specifically applies to individuals who are accused of an offense, ensuring that confessions or statements are not obtained through coercion or compulsion.

*Nandini Satpathy v. P.L. Dani (1978):* The Supreme Court expanded the scope of this protection to include not only direct oral testimony but also the furnishing of documents or other incriminating evidence. The Court also ruled that the right to silence extends during police interrogation and throughout the trial.

### Interpretation of Articles 14, 19, 21, and 22

**1.22.14 Article 14:**

Article 14 of the Indian Constitution encapsulates the Right to Equality, which is a cornerstone of the democratic principles upon which India's legal system is built. This fundamental right operates on two key pillars: equality before the law and equal protection of the laws. The concept of equality before the law implies that every individual, regardless of their background, social status, or affiliations, is subject to the same laws and legal procedures. This principle ensures that the legal system treats everyone impartially and does not discriminate based on factors such as religion, race, caste, sex, or place of birth.[[58]](#footnote-58)

The second aspect, equal protection of the laws, extends beyond mere formal equality to substantive equality. It mandates that the laws must not only be applied equally to all but must also provide equal protection and benefits to all individuals under similar circumstances. This principle prohibits arbitrary or discriminatory actions by the state and ensures that individuals are not unfairly disadvantaged or favoured based on irrelevant considerations.

In its interpretation and application, Article 14 has been a dynamic force shaping legal and societal norms in India. Courts play a crucial role in interpreting and enforcing this right through judicial review. They examine laws and governmental actions to ensure they comply with the principles of equality and non-discrimination. This includes scrutinizing laws for reasonable classification, wherein differentiation is allowed if it is based on intelligible differentia and has a rational nexus with the objective of the law.

The impact of Article 14 is profound and far-reaching. It has led to the development of antidiscrimination measures in various domains such as employment, education, housing, and public services. It has also influenced policies aimed at providing equal opportunities and affirmative action to marginalized and disadvantaged groups, thereby promoting inclusivity and social justice.

In essence, Article 14 embodies the commitment of the Indian Constitution to uphold the dignity of every individual and ensure that the principles of fairness, justice, and equality permeate every aspect of governance and societal interactions.

**1.22.15 Article 19:**

Article 19 of the Indian Constitution encapsulates a cluster of fundamental freedoms that form the bedrock of democratic rights for Indian citizens. These freedoms are intricately woven into the fabric of Indian democracy, providing individuals with essential liberties to express themselves, assemble peacefully, form associations, move freely within the country, choose their residence, and engage in professions of their choice.

The first and foremost among these freedoms is the Right to Freedom of Speech and Expression (Article 19(1)(a)), which empowers citizens to articulate their thoughts, opinions, beliefs, and ideas through various mediums such as speech, writing, print, or any other form of communication. This right extends to the freedom of the press, allowing for a vibrant and critical media landscape that plays a crucial role in upholding accountability and transparency in governance.

The Right to Assemble Peaceably and Without Arms (Article 19(1)(b)) complements freedom of expression by enabling citizens to gather peacefully, without weapons, to express collective views or participate in peaceful protests and demonstrations. This right is foundational to democratic participation and the exercise of public dissent, subject to reasonable restrictions to maintain public order and prevent violence or disruption.[[59]](#footnote-59)

Similarly, the Right to Form Associations or Unions (Article 19(1)(c)) empowers individuals to organize into groups or unions for various purposes, including social, cultural, political, or economic activities. This freedom facilitates collective action and advocacy, amplifying the voices of marginalized or disadvantaged groups and fostering civic engagement and community participation.

The freedoms to move freely throughout the territory of India (Article 19(1)(d)) and to reside and settle in any part of the country (Article 19(1)(e)) underscore the principles of mobility and equality, allowing citizens to choose their place of residence and travel within the nation without undue restrictions or discrimination based on origin or background. These rights are essential for national integration, cultural exchange, and economic opportunities across regions.

Lastly, the Right to Practice Any Profession or Occupation (Article 19(1)(g)) ensures that citizens have the liberty to pursue their chosen professions, trades, or businesses without arbitrary barriers, promoting economic freedom and entrepreneurship.

While these freedoms are fundamental, it's important to recognize that they are not absolute and may be subject to reasonable restrictions imposed by the state in the interest of public order, morality, security, or the sovereignty and integrity of India. This delicate balance between individual liberties and collective interests is a hallmark of India's constitutional framework, reflecting a nuanced approach to protecting rights while upholding the broader welfare of society.

**1.22.16 Article 21:**

Article 21 of the Indian Constitution stands as a bulwark of individual rights, encapsulating the Right to Life and Personal Liberty in its most expansive and profound sense. At its core, this article guarantees every person the right to life, not merely in a biological sense but encompassing the right to live with dignity, security, and fundamental human rights. It recognizes that life without personal liberty and dignity is incomplete, and thus, it safeguards against arbitrary or unjust actions by the state or any other entity that may encroach upon these essential aspects of existence.

The Right to Life under Article 21 extends far beyond physical survival. It includes the right to live in a manner that preserves human dignity, free from any form of inhuman or degrading treatment. This encompasses protection against torture, cruel punishment, and custodial violence, ensuring that individuals are treated with respect and humanity even in adverse circumstances.[[60]](#footnote-60)

Moreover, Article 21 guarantees Personal Liberty, safeguarding individuals from arbitrary arrest, detention, or imprisonment. It mandates that any deprivation of liberty must be in accordance with fair, just, and reasonable procedures established by law. This includes the right to legal representation, access to justice, and procedural safeguards during legal proceedings, ensuring that individuals are not deprived of their liberty without due process of law.

The right to privacy is also implicit within Article 21, protecting individuals from unwarranted intrusion into their private lives by the state or other entities. This includes informational privacy, autonomy over personal choices, and freedom from surveillance or monitoring without lawful justification.

Over time, Article 21 has been subject to expansive interpretation by the judiciary, evolving to encompass a wide range of rights essential for a meaningful and dignified life. This includes environmental rights, right to education, right to health, and right to livelihood, reflecting the holistic understanding of life and liberty in a democratic society.

While Article 21 provides robust protection, it is not absolute and may be subject to reasonable restrictions in the interest of public order, morality, or national security. However, such restrictions must pass the tests of reasonableness, proportionality, and necessity, ensuring that they do not undermine the core essence of the right to life and personal liberty.

In essence, Article 21 serves as a beacon of justice and humanity, affirming that every individual, regardless of their circumstances, is entitled to a life of dignity, autonomy, and fundamental freedoms, thus embodying the essence of a democratic and inclusive society.

**1.22.17 Article 22:**

Article 22 of the Indian Constitution embodies crucial safeguards and protections against arbitrary arrest and detention, emphasizing the fundamental principles of due process, fairness, and judicial oversight. At its core, this article is designed to ensure that individuals' rights are safeguarded during the process of arrest and detention, and that they have avenues for legal recourse and protection against unlawful deprivation of liberty.

One of the key provisions of Article 22 is the right of every arrested person to be informed of the grounds of their arrest, a vital protection that prevents arbitrary arrests and provides transparency regarding the reasons for detention. This right is complemented by the guarantee of legal representation, allowing every arrested person the opportunity to consult and be defended by a legal practitioner of their choice. These provisions are essential pillars of fair legal proceedings and uphold the right to a fair trial enshrined in the Constitution.

Additionally, Article 22 imposes limitations on preventive detention, ensuring that individuals are not held in custody for extended periods without proper judicial review. Preventive detention beyond three months is prohibited unless an advisory board reviews and confirms the necessity of such detention, thereby preventing arbitrary or prolonged detention without judicial oversight. The requirement to produce detained individuals before a magistrate within 24 hours further reinforces the principle of prompt judicial review and protection against unjustified detention.

Moreover, Article 22 grants every person detained or arrested the right to challenge the legality of their detention before a court, ensuring that individuals have recourse to legal remedies against unlawful deprivation of liberty. This right to seek relief from unlawful detention is a crucial safeguard against abuse of power and ensures accountability in the criminal justice system.

Furthermore, individuals arrested or detained under special laws are provided additional protections under Article 22(5), including the right to be informed of the grounds of detention, representation by a legal practitioner, and the right to make representations against the detention. These safeguards are particularly important in contexts where special laws may be invoked, ensuring that even in such circumstances, individuals' rights are upheld and protected.

In essence, Article 22 reflects India's commitment to the rule of law, protection of individual liberties, and ensuring that legal processes are fair, transparent, and accountable. It serves as a critical safeguard against arbitrary state action, upholding the principles of justice, equality, and due process in the realm of arrest and detention.

### Judicial Activism and Evolving Jurisprudence

Judicial activism in the context of prisoners' rights refers to the proactive role of the judiciary in protecting and expanding the rights of individuals who are incarcerated. This activism has contributed significantly to evolving jurisprudence concerning the treatment, rehabilitation, and legal status of prisoners. [[61]](#footnote-61)

**1.22.18 Protection from Inhuman Treatment**:

Judicial activism has played a vital role in ensuring that prisoners are protected from inhuman or degrading treatment. Courts have intervened to address issues such as overcrowding, inadequate healthcare, poor living conditions, and instances of custodial violence or abuse within prisons.

**1.22.19 Right to Dignity and Humane Conditions**:

Activist judges have emphasized the right of prisoners to live with dignity and in humane conditions. This includes access to clean living spaces, proper nutrition, medical care, sanitation facilities, and opportunities for recreation and rehabilitation.

**1.22.20 Legal Protections and Due Process**:

Judicial activism has led to the expansion of legal protections and due process rights for prisoners. This includes ensuring fair trial procedures, access to legal representation, protection against arbitrary detention, and the right to challenge the legality of confinement.

**1.22.21 Rehabilitation and Reintegration**:

Courts have taken a proactive approach towards rehabilitation and reintegration of prisoners into society. This includes promoting educational and vocational programs, mental health support, substance abuse treatment, and initiatives to reduce recidivism rates.

**1.22.22 Access to Justice and Remedies**:

Activist judges have upheld prisoners' access to justice and remedies for grievances. This includes the right to file complaints, seek redressal for violations of rights, and challenge decisions affecting their legal status or conditions of confinement.

**1.22.23 Balancing Rights and Public Interest**:

While advocating for prisoners' rights, courts have also balanced these rights with considerations of public safety, security, and the interests of victims. This balancing act ensures that measures taken to protect prisoners' rights are consistent with broader societal concerns.[[62]](#footnote-62)

Judicial activism in the realm of prisoners' rights has led to a more robust framework for protecting the dignity, well-being, and legal rights of individuals in custody.[[63]](#footnote-63) It has contributed to evolving jurisprudence that recognizes the inherent worth and rights of prisoners, promoting a more humane and just criminal justice system.

### 3.2 EMERGENCE OF PRISONERS RIGHTS - JUDICIAL ACTIVISM

Judicial Activism is a facet of Judicial Review. If implementation of Rule of Law which is the bedrock of democracy is the basic responsibility of the Judiciary, then it is the obligation of the Judiciary to see that every aspect which is essential for proper implementation of Rule of Law ought to be taken care of. The Constitution itself approves it. The Obligation of the Judiciary is to ensure that not only the Judiciary does its work but also that every agency or instrumentality which is involved in the implementation of law, functions effectively. If it is malfunctioning then to correct that aberration. If it is not functioning, then to make it function. In this context Judicial Activism must necessarily mean "the active process of implementation of the Rule of Law, essential for the preservation of the functional democracy, not merely a tottering, but functional democracy. Since the administration of Justice is entrusted by the Constitution to the Judiciary it is the primary obligation of the Judiciary to ensure that this happens. Judicial review is the power of the Court to review statutes or administrative acts and Constitution for its Constitutionality.[[64]](#footnote-64)

The Constitution of India has vested an express power of Judicial Review in the Constitutional Court namely the Supreme Court and High Court under Articles 13, 32, 131-136, 143, 226 & 227 of the Constitution. By virtue of the powers so vested, the Constitutional Courts have come to play a variety of roles. As regards the Supreme Court, it plays the role of a Federal Court, the final Appellate Court in the country, the ' ultimate interpreter ' of the Constitution and other organic laws , the guardian of the Fundamental Rights of the citizens apart from being the advisor to the President in certain matters as per Article 143 of the Constitution. These vast variety of powers, give these Courts enough scope to exhibit judicial activism in one capacity or another. However the exhibition of Judicial Activism by the higher judiciary not only depends on its own strength but also depends on the weakness or indifference on the part of the other organs of the State viz., the legislature and the executive. Post emergency Judicial Activism grew out of the realisation that the narrow construction of Constitutional provisions such as Article 21 in A.K. Gopalan case was contradictory to its liberal stands in the Kesavanandha Bharti Sribadgalvaru's case. The Post emergency judicial activism was inspired by the Court's realisation that its elitist social image would not make it strong enough to withstand the future onslaught of a powerful political establishment. Therefore consciously or unconsciously, the Court moved close to the people. But even now the Court continues to be inaccessible to a large number of Indians and Justice continues to elude many because of its delays expense and formalism. In relative terms, however, the Court became much more accessible and its doctrinal law became much more people oriented. For this it adapted two strategy;

1. It reinterpreted the provisions of the Fundamental Rights more liberally so as to maximise the rights of the people and particularly the disadvantaged sections of the society.
2. It facilitated access to the Court by relaxing its technical rules of locus standi entertaining letter petition or acting Suo motu and developing a public law, proactive technology for the enforcement of human rights.

When law enforcing agencies submit complaint against an accused before a Court of law prayer is made for trial on the basis of materials which prima facie suggest that the accused may have committed the crime with which he is charged. The accused is still fortified with the presumption of innocence which has to be dislodged by leading evidence in Court. Thus Judiciary constitutes the highest authority in the scheme of administration of Criminal Justice. A prisoner may be an under-trial or a convicted person. In both their cases, their personal liberty will be deprived to the extent permitted by the law and in accordance with the procedure established by law. The great contribution of the Supreme Court has been that, it has come to recognize the fundamental rights of the prisoners even when they are convicted and laid down a new philosophy of personal liberty of prisoners inside the prison. The following are the landmark judgements in which the Supreme Court of India tested various aspects of Criminal Justice and Prison Administration by extending its views on Article 14, 19 and particularly 21 of the Constitution.

### Maneka Gandhi vs. Union of India

It is a landmark case of the post emergency period. This case shows how liberal tendencies have influenced the Supreme Court in the matter of interpreting Fundamental Rights particularly Article 21. The fact situation of the case was, as follows; Section 10(3) (c) of the Passport Act authorises the Passport Authority impound a pass port if it deems necessary. To do so it is in the interest of the Sovereignty and Integrity of India, the Security of India, friendly relation of India with any foreign country, or in the interest of general public. Menaka's passport was impounded by the Central Government under the Passport Act in the general interest of public. Menaka filed a writ petition challenging the order on the ground of violation of her Fundamental Rights under Article 21. One of the major grounds of challenge was that the order impounding the passport was null and void as it had been made without affording her an opportunity of being heard in her defence. The Court laid down a number of prepositions seeking to make Article 21 much more meaningful than hitherto.

* The Court reiterated the preposition that Article 14, 19, &21 are not mutually exclusive. A nexus has been established among these three Articles. A law prescribing a procedure for depriving a person of ‘personal liberty' has to meet the requirements of Article 19. Also, the procedure established by law in Article 21 must answer the requirement of Article 14 as well.

* The expression personal liberty in Article 21 was given an expansive interpretation. The Court emphasised that the expression 'personal liberty’ is of the "widest amplitude" covering a variety of rights "which go to constitute the personal liberty of man". Some of these attributes have been raised to the status of distinct fundamental rights and given additional protection under Article 19. The expression personal liberty 'ought not to be read in a narrow and restricted sense so as to exclude those attributes of personal liberty which are specifically dealt with in Article 19. The right to travel abroad falls under Article 21. Thus no person can be deprived of his rights to go abroad except according to procedure established by law.

The most significant and creative aspect of Menaka, is the reinterpretation by the Court of the expression 'the procedure established by law' used in Article 21. The Court now gave a new orientation to this expression. Article 21 would no longer mean that law could prescribe some semblance for procedure, however arbitrary or fanciful to deprive a person of his personal liberty. It now means that the procedure must satisfy certain requisites in the sense of being fair and reasonable. The procedure ' cannot be arbitrary, unfair or unreasonable'. The concept of reasonableness must be projected in the procedure contemplated by Article 21. The Court has now assumed the power to adjudge the fairness and justness of procedure established by law to deprive a person of his personal liberty. The Court has reached this conclusion by holding that Articles 21, 19, and 14 are not mutually exclusive but are inter- linked.

As the right to travel abroad falls under Article 21, natural justice must be applied while exercising the power of impounding a passport under the Passport Act. Although the Passport Act does not expressly provide for the requirement of hearing before a passport is impounded, yet the same has to be implied therein.

### Impact of Menaka Gandhi in Criminal Justice

Menaka Gandhi's case has been exerting multi-dimensional impact on development of Constitutional Law in India. Article 21 which had lain dormant for nearly three decades had been brought to life by Menaka. Article 21 has now assumed a "highly activist magnitude". Menaka has also deeply influenced the administration of criminal justice and prison administration. In a number of cases, the Supreme Court has expounded several prepositions with a view to humanize the administration of criminal Justice in all its aspect. Article 21 has proved to be a very protective source of several fundamental rights over and above those mentioned in the Constitution in Articles 14 to 21. A significant dimension of Menaka’s case is the impact it is having on the development of administrative law in India.

Menaka Gandhi is having a profound and beneficial impact on the administration of criminal justice in India. The administration of Criminal Justice and the conditions prevailing in prisons have long been extremely deplorable and sub- human; prisoners are mal-treated; criminal trials are inordinately delayed; police brutality is legendry; everyday one hears police brutality, prison mal-administration and inordinate long delays in trial of criminal cases resulting in grave miscarriage of justice. Inspite of the accent on socio-economic justice in the Constitution, precious little has been done so far to improve matters in the area of criminal justice.

Administration of Criminal justice is a State List. Fortunately by interpreting Article 21 in Menaka Gandhi and by giving up the sterile approach of Gopalan, the Supreme Court has found a potent tool to seek to improve matters and to fill in the vacuum arising from Governmental inaction and apathy to undertake reform in the area of criminal justice. The Court has now been seeking to humanize and liberalize the administration of criminal justice. The key to the Judicial Activism is the ruling in Menaka Gandhi that the phrase' procedure established by law' in Article 21 does not mean 'any procedure’ laid down in a statute but "just, fair and reasonable" procedure, and that the term 'law' in Article 21 envisages no any law but a law which is "right, just and fair and not arbitrary, fanciful or oppressive". An arbitrary law violates Article 14. Arbitrary procedure would be no procedure at all and the requirement of Article 21 would not be complied with. A procedure which is unreasonable or prejudicial to the accused cannot be in consonance with Article 21.

### Sunil Batra (1) vs. Delhi Administration

The case of Sunil Batra vs. Delhi Administrationis a landmark judgement by a Constitution Bench in the area of fundamental rights of prisoners. Sunil Batra displayed judicial concern for the miserable conditions of the prisoners to such an extent that the Chief Justice of India M.H. Beg along with Justice Krishna Iyer and Kailasam visited Tihar Jail on 23rd January 1978 for the first time in the history of the Court to ascertain the actual conditions there. In 1978, the Supreme Court in Sunil Batra case examined the Constitutional validity of Prisons Act 1894 and the conditions and powers conferred under which the Jail authority can impose solitary confinement and use of bar fetters for security of the prisoners. The two petitioners in this case were Sunil Batra an Indian under death sentence and Charles Gurumukh shobraj a French national and the under-trial facing detention under MISA from July 1976.

The petitioner Sunil Batra was sentenced to death in January 1977 by the Sessions Court of Delhi for Gruesome murder compounded with robbery and his appeal against the decision was pending before the High Court. He was detained in Tihar Jail Delhi during the pendency of appeal. Till then he was a 'B' Class prisoner eligible for certain amenities. After sentence pronounced the prison Superintendent stripped him of the 'B' Class facility and locked him in a single cell with a small wall yard attached beyond the view of other prisoners except the jail guards and formal visitors who visited in discharge of their official duties and a few callers on rare occasion. His appeal to the High Court for restoration of facility in jail and challenged his quasi-solitary confinement but without success. Thereafter he filed the present petition under Article 32 of the constitution of India to the Supreme Court. He questioned the legality of solitary confinement under Articles 14, 19 & 21. The respondent State justified the action of the Jail Superintendent under section 30 of the Prisons Act, 1894.

The Supreme Court examined the essentials of solitary confinement to distinguish it from "being confined in cell apart from all other persons" i.e. cellular confinement. The Court said that Batra or others like him could not be classified as persons "under sentence of death; therefore they could not be kept apart from others. After death sentence becomes executable apart from other prisoners with a day and night watch. But even here unless special circumstances exist, he must be within the sight and sound of other prisoners and be able to take food in their company. The Court further observed, A person under death sentence is held in jail custody so that he is available for execution of death sentence when the time comes. No punitive detention can be imposed on him by jail authorities except for prison offence. He is not to be detained in solitary confinement as it will amount to imposing punishment for the same offence more than once which would be violative of Article 20 (2).

The Court concluded that section 30 (2) of the Prisons Act, 1894 is not violative of the article 20(2) of the Constitution as there is no chance of imposing second punishment upon him. Once section 30 (2) is read down in this manner its obnoxious element is erased and it cannot be said that this arbitrary or that there is deprivation of personal liberty without the authority of law. The provisions as such cannot be said to be violative of Articles 14 & 19 of the Constitution. Solitary confinement is by itself a substantive punishment which can be imposed only by a Court of Law as provided in sections 73 and 74 of Indian Penal Code. It cannot be left to the Whims and caprices of the Prison Authorities.

### Charles Shobraj Case

In other part of the Sunil Batra's Judgement the Supreme Court dealt with the case of Charles Shobraj3. His grievance was against the disablement, by bar fetters of under-trials and for unlimited duration. The Judges visited the Tihar Jail and saw Shobraj standing in chains in the yard, with iron on wrists, iron on ankles, iron on waist and iron to link up firmly riveted at appropriate places. There were a number of under-trial prisoners with bar fetters in the jails and many of them were minors.

Under section 56 of the Prisons Act, 1894 the Superintendent of Prison may put a prisoner in bar fetters: (i) when he considers it necessary (ii) with reference either to the State of the prison or character of the prisoner and (iii) for the safe custody of the prisoner. Two basic considerations in the conduct of prison discipline are the security of the prison and safety of the prisoner. These being relevant consideration, the necessity of putting any particular prisoner in bar fetters must be relatable to them. Therefore the power under section 56 of Prisons Act 1894 can be exercised only for reasons and considerations which are aimed primarily at preventing the prisoners from escaping. Since there are other ways of ensuing security, it can be laid down as a rule that fetters shall not be forced on a person of an under-trial prisoner ordinarily. Hence the question arose in Shobraj's case is that determination of the necessity to put a prisoner in bar fetters is the other important issue for the Court to decide regarding the use of fetters for the 'safe custody' of prisoners in jail. Reacting sharply to the plea of the prison authorities based on security aspects the court observed:

"Assuming a few are likely to escape, would you shoot a hundred prisoners or whip everyone every day or fetter all suspects to prevent one jumping jail ?. These wild apprehensions have no value in our human order; if articles 14, 19 & 21 are the prime actor in the Constitutional play ....Life and liberty are precious values. Arbitrary action which tortuously tears into the flesh of a living man is too serious to be reconciled with articles 14 or 19 or even by way of abundant caution."[[65]](#footnote-65)

### The Court laid down the following set of condition precedent for placing bar fetter on prisoners which are applicable to all prisoners

1. 3.2.1 Absolute necessity for fetters
2. Special reasons why no other alternative but fetters will alone secure custodial assurance
3. The grounds for fetter shall be given to the prisoner and the reason shall be recorded in the journal of the Superintendent and in the history ticket of the prisoner. The latter should be in the language of the prisoner so that he may have communication and recourse to redress.
4. No fetter shall continue beyond day time as nocturnal fetters on locked- in detenues are ordinarily called for, viewed from consideration of safety
5. 3.2.2 The basic condition of dangerousness must be well grounded and recorded.
6. The iron regiment shall in no case go beyond the interval considerations and maxims laid down for punity 'irons'. They shall be for short spells, light and never apply if sores exist.
7. The fetter shall be removed at the earliest opportunity. That is to say even if some risk has to be taken it shall be removed unless compulsive considerations continue it for necessities of safety.
8. 3.2.3 There shall be a daily review of the absolute need for the fetters.
9. The prolonged continuance of 'iron ' as a punitive or preventive step shall be subject to previous approval by an external examiner like a Chief Judicial Magistrate or Sessions Judge who shall briefly hear the prisoner and record findings.
10. The Inspector General of Prisons shall, with quick despatch consider revision petitions by fettered prisoners and direct the continuance or discontinuance of the 'iron'. In the

absence of such prompt decision the fetter shall be deemed to have been negative and shall be removed.

The direction was also issued for the fetters on Shobraj to be removed and to be allowed the freedoms of under-trials. The irons would not be forced on him except in the emergency situations when there was no other option and in any case not without compliance of natural justice.

### Sunil Batra (II) vs. Delhi Administration

The petitioner Sunil Bara a convict under death sentence, through a letter to one of the Judges of the Supreme Court alleged that torture was practiced upon another prisoner by name Premchand by a jail warder to extract money from the victim through his visiting relations. The letter was converted into a habeas corpus proceeding, the Court issued notice to the State and their concerned officials. It also appointed amicus curiae and authorized them to visit the prison, meet the prisoner, see relevant documents and interview necessary witnesses so as to enable them to inform themselves about the surrounding circumstances and scenario of events. The amicus curiae after visiting the jail and examining witnesses, reported that the prisoner had serious anal injury because a rod is driven into that aperture to inflict inhuman torture and that as the bleeding has not stopped he was moved to the jail hospital and later to the Irwin hospital. It was also reported that the prisoner's explanation for the anal rupture was an unfilled demand of the warder for money and that attempts were made by departmental officers to hush up crime by overawing the prisoner and Jail Doctor and offering a story that the injury was either due to fall of self-infliction or due to piles.

The petition was heard by the bench consisting of the Honourable Judges Krishna Iyer V.R., Pathak R.S. and Reddy, O chinnappa and Judgement delivered on 20. December 1979(W.P.no. 1009/1979). The Judgement of V.R. Krishna Iyer and O. Chinnappa Reddy, J. was delivered by V.R. Krishna Iyer, J. R.S. Pathak, J. gave a separate opinion. In the final judgement the Hon'ble Judges Justice V. R. Krishna Iyer and Justice O.Chinnappa Reddy jointly issued the following directions allowing the writ petition.[[66]](#footnote-66)

We hold that Premchand, the prisoner, has been tortured illegally and the Superintendent cannot absolve himself from responsibility even though he may not be directly a party. Lack of vigilance is limited guilt. We do not fix the primary guilt because a criminal case is pending or in the offing. The State shall take action against the investigating police for the apparently collusive dilatoriness and deviousness. Policing the police is becoming a new ombudsman task of the rule of law.

The Superintendent shall ensure that no corporal punishment or personal violence on Premchand shall be inflicted. No iron shall be forced on the person of Premchand in vindictive spirit. In those rare cases of ‘dangerousness’ the rule of hearing and reasons set out by this Court on Batra Case and elaborated earlier shall be complied with.

Lawyers nominated by the District Magistrate, Sessions Judge, High Court and the Supreme Court will be given all facilities for interviews, for visits and confidential communication with prisoners subject to discipline and security consideration. This has roots in the visitatorial and

supervisory judicial role. The lawyers so designated shall be bound to make periodical visits record and report to the concerned Court the results which have relevance to legal grievances. Within the next three months, Grievance Deposit Boxes shall be maintained by or under the orders of the District Magistrate and the Session Judge which will be opened as frequently as is deemed fit and suitable action taken on complaints made. Access to such boxes may be accorded to all prisoners.

District Magistrate and Sessions Judges shall, personally or through surrogates, visit prisons in their jurisdiction and afford effective opportunities for ventilating legal grievances, shall make expeditious enquiries there into and take suitable remedial action. In appropriate cases report shall be made to the High Court for the latter to initiate, if found necessary, habeas action. It is significant to note the Tamil Nadu Prison Reforms Commission's observations in para no 38.16: Grievance procedure: This is a very important right of the prisoner which does not appear to have been properly considered. The rules regulating appointment and duties of non- official visitors and official visitors to the prisons have been in force for a long time and their primary function is "to visit all parts of the jail and to see all prisoners and to hear and enquire into any complaint that any prisoner here make". In practice, these rules have not been very effective in providing a forum for the prisoners to redress their grievances. There are a few non-official visitors who take up their duties conscientiously and listen to the grievances of the prisoner. But most of them take this appointment solely as a post of honour and are somewhat reluctant to record in the visitor's book any grievance of a prisoner which might cause embarrassment to the prison staff. The Judicial Officers namely the Sessions Judge and the Magistrate who are also ex-officio visitors do not discharge their duties effectively. The Commission insist that the Judicial Officers referred by the Commission shall carry out their duties and responsibilities and serve as an effective grievance mechanism.

No solitary or punitive cell, no hard labour or dietary change as painful additive, no other punishment or denial of privileges and amenities, no transfers to other prisons with penal consequences, shall be imposed without Judicial appraisal of the Sessions Judge and where such intimation, on account of emergency if difficult, such information shall be given within two days of the action.

The Honourable Judges in their Judgements have also observed that the above said directions constitute the mandatory part of the Judgements and shall be complied with by the States. The Honourable Judges spelled out the following four quasi- mandatory directions for which they do not fix any specific time limit except to indicate the urgency of their implementation.

The State shall take every step to prepare in Hindi, a prisoner's hand-book and circulate copies to bring legal awareness home to the inmates. Periodical jail bulletins, stating how improvements and habilitative programmes are brought into the prisons may create a fellow ship which will ease tensions. A prisoners' wall paper, which will freely ventilate grievances will also reduce stress. All these are implementary of section 61 of the Prisons Act.

The State shall take steps to keep up to the Standard Minimum Rules for treatment of prisoners recommended by The United Nations especially those relating to work and wages, treatment with dignity, Community contact and correctional strategies.

The Prisons Act needs modification to facilitate rehabilitation and the Prison Manual a total over-haul, even the Model Manual being out of focus with healing goals. A correctional- cum -orientation course is necessary for the Prison Staff inculcating the Constitutional values, therapeutic approaches and tension free management.

The prisoners' rights shall be protected by the Court by its writ jurisdiction plus contempt power. To make this jurisdiction viable, free legal services to the prisoners programme shall be promoted by professional organization recognized by the Courts for example free legal-aid (Supreme Court) society. The district bar shall keep a cell for prisoner relief. In this connection, it is heartening to note that the Delhi University, Faculty of Law, has a scheme of free legal assistance even to prisoners.

In allowing the writ petition, the Honourable Judges also directed to issue a writ including the six mandates and further order that a copy of it, to be sent for suitable action to the Ministry of Home Affairs and to all the State Governments since prison justice has pervasive relevance. The Honourable Judge Pathak, R.S. gave his opinion separately endorsed the following finding and direction at the end of the judgement.

1. The prisoner, Premchand, has been tortured while in custody in the Tihar Jail. As a criminal case is in the offing, it is not necessary in this proceeding to decide who is the person responsible for inflicting the torture.
2. The Superintendent of Jail is directed to ensure that no punishment or personal violence is inflicted on Premchand by reason of the complaint made in regard to the torture inflicted on him.

Besides this, the Honourable Judge was in general agreement with Justice Krishna Iyer on the pressing need for Prison reform and the expeditious provision for adequate facilities enabling the prisoner, not only to be acquainted with their legal rights, but also to enable them to record their complaints and grievances and to have confidential interviews periodically with lawyers nominated for the purpose by the District Magistrate or the Court and Jurisdiction subject, of course, to considerations of prison discipline and security. It is imperative that District Magistrate and Sessions Judges should visit the Prisons in their jurisdiction and afford effective opportunity to the prisoners for ventilating their grievances and, where the matter lies within their powers to make expeditious enquiry therein and take suitable remedial action. It is also necessary that the Sessions Judge should be informed by the jail authorities of any punitive action taken against a prisoner within two days of such action. A statement by the Sessions Judge in regard to his visits, enquiries made and action taken thereon shall be submitted periodically to the High Court to acquaint it with the conditions prevailing in the prisons within the jurisdiction of the High Court.

### Other Landmark Judgements Pertaining to Criminal Justice System particularly: Prison Administration

The Indian Judiciary led by Supreme Court exercised vast powers of Judicial Review in respect of Legislative and Executive Function of the State. The most striking example of Judicial Activism of the Supreme Court of India is its interpretation of the right to life and personal liberty guaranteed under the Constitution of India. Starting with the landmark decision in Menaka Gandhi vs. Union of India, the Court by gradual phases has for all practical purposes introduced the concept of 'due process of law' in the expression 'procedure established by law' in that article, allowing the Court to review the unreasonableness of any law or an order affecting a person’s individual liberty. The protection of Article 21 extends to all persons - persons accused of an offence, under-trial prisoners, prisoners undergoing jail sentence etc., and thus all aspect of Criminal Justice fall under the umbrella of Article 14, 19 & 21. Such judicial reviews of the Supreme Court of India regarding the Criminal Justice System of India are discussed under the following heads.[[67]](#footnote-67)

# CHAPTER 4

**INSTITUTIONAL MECHANISMS FOR OVERSIGHT.**

### 4.1 HUMAN RIGHTS

Respect for Human Rights has always been one of the main concerns of every democratic society. It is universally recognised that democracy cannot survive and sustain itself without respect for Human Rights and sincere efforts to promote and protect them. Although Human Rights, in theory can be nurtured and enhanced within various political systems history has convincingly proved that they can be truly guaranteed only in conditions of the greatest possible transparency in decision making on the part of those who are in positions of power. However before appreciating this aspect one has to understand the concept and meaning of

1.21.1 ‘Human Rights’.

### Concept and Meaning

Human is a concrete concept which refers to us and “Right” means recognized and protected interest by law. So it can be said that our interest which is recognized by law is human rights. Every human being needs certain necessities like food, water, cloth, shelter, health which are basic for sustaining life, without which one cannot live. Likewise every human being is entitled to certain basic rights and fundamental freedoms and in the absence of which one cannot live as human beings. Thus 'Human Rights' are those rights which are essential to human beings to live as human being.[[68]](#footnote-68)

All societies and culture have developed some conception of rights and principles that should be protected and respected as such rights evolved on some basic principles which have been universally accepted and contributed to the development of human right. Rights of man – natural rights, civil rights, political rights, economic rights, social rights and cultural rights which evolved with different degrees of emphasis reflects one common feature – 'Human Dignity' which is considered indispensable for the attainment of individual’s wholesome personality . Thus these rights come with birth and are applicable to all people throughout the world irrespective of the race, colour, sex, language or political or other opinion.

The idea of human rights is tied to the idea of human dignity, which is the cornerstone of all human rights. All those rights which are essential for the protection and maintenance of dignity of individual and create conditions in which every human being can develop his personality to the fullest extent may be termed human rights. The principles of human rights were drawn up as a way of ensuring that the dignity of everyone is properly and equally respected. Any action, which would affect or violate the inherent dignity of the human being, would amount to violation of Human Rights.[[69]](#footnote-69)

Human Rights are those minimal rights which every individual must have against the State of other public authority by virtue of his being a 'member of the human family', irrespective of any other consideration. But the concept and meaning of 'Human Rights' is not as simple as stated above. According to Professor Upendra Baxi, the very term 'Human Rights' indeed problematic. In rights-talk, the expression often masks the attempts, to reduce the plentitude of its meanings to produce a false totality. One such endeavour locates the unity of all Human Rights to some designated totality of sentiment such as human 'dignity' 'well-being' and 'flourishing'. Another mode invites us to speak of human rights as' basic’, suggesting that some others may be negotiable, even dispensable. Those who are deprived, disadvantaged and dispossessed may indeed find it hard to accept and justifications for a very notion of Human Rights that may end of denial of their rights to be human. Yet another mode of totalisation makes us succumb to an anthropomorphic illusion that the range of Human Rights is limited to human beings, the new rights to environment (or what is somewhat inappropriately, even cruelly, called 'sustainable development') take us far beyond such a narrow notion as descriptive ventures, such attempts at totalisation reduced to a 'coherent' category forbiddingly diverse world of actually existing Human Rights. As prescription venture, such modes simply privilege certain preferred values over others. In both cases, the normative complexity and existential outreach of Human Rights norms and standards are made to yield their historic features to the demands of a uniform narrative. This, overall, obscure the contradictory nature of development of 'Human Rights'. There is not one world of 'Human Rights' but many conflicting words.

The plurality and multiplicity of the fecund expressions ‘Human Rights' is worthy of celebration only if we are able to designate distinctive modes of the sustaining networks of meaning and logics of popular action that protest against all forms of human violation. If the notion 'Human Rights' means many things to different people, these meanings need to be configured in some patterns without violating the richness of difference. Professor Baxi essays it tentatively under the following different rubrics. **viz.** Human Rights as Ethical Imperative; Human Rights as Grammar of Governance; Human Rights as Languages of Global Governance; Human Rights as Syndrome of shared Sovereignty**;** Human Rights as insurrectionary proxies; Human Rights as Juridical protection and Human Rights as culture.

### Human Rights according to Justice Palok Basu

The concept of Human Rights falls within the framework of Constitutional Law and International Law. For this purpose it has been identified to “defend by institutionalized means the rights of human beings against abuses of power committed by the organs of the State and at the same time to promote the establishment of human living conditions and the multidimensional development of human personality.

A close look at the above definition shows that Human Rights, represent, claims which individuals or groups make on the society. They include the right to freedom from torture, the right to live, inhuman treatment freedom from slavery and forced labour, the right of liberty and security, freedom of movement and choice of residence, right to fair trial, right to privacy, freedom of thought, conscience and religion, freedom of opinion and expression, the right to marry and form a family, the right to participate in one's Government either directly or indirectly or thought elected representative, the right to nationality and equality before law. These rights cannot be compromised universally. Human Rights are the birth right of the people the world over. Hence their fulfilment does not lie in the reproduction of the institution of the advanced world, but on the consciousness in the developing world, to ensure the respect and protection of Human Rights. This will forestall the ease in their denial as an incident of valid structural change.

### Origin of Human Rights

Human Rights are those irreducible minima which belongs to every member of the human race when pitted against the State or other public authorities or group and gangs and other oppressive communities, Being a member of a human family he has the right to be treated as human once he takes birth or is alive in the womb with a potential title to personhood. When legal ideas were not clear-cut that blurred, ancient Pandits thought of the doctrine if natural rights founded on natural law not because it is enacted but because it inalienably belongs to each of us as conceived in civilised political societies. When the priestly order denies this right using religion sanction and authority, the independent mind of man expresses dissatisfaction and defies. When kings and queens and other diadems and despotism sought to suppress the individual's freedom and appeal to natural law was made on the assumption that beyond religious superiors and crowned heads, there was a system of natural law which embodied reason, justice and universal ethics. Though the concept of Human Rights is as old as the ancient doctrine of 'Natural Rights' founded on natural law the expression Human Rights" is of recent origin, emerging from (post second world war) International Charters and Conventions. Human Rights are derived from dignity and are inherent in human beings. Human Rights are natural rights which come by birth as human beings which are basic, indivisible, inalienable and inherent with which a person is born. Broadly speaking, Human Rights may be regarded as those fundamental rights which are possessed by every human being. Such rights by their free nature constitute the minimum that is necessary for an individual to live in civil and political society as a free person with dignity and respect.

### Human Rights in Ancient India

The notion of Human Rights as we understand it today, as universalistic, has developed in western civilization. The struggle, interest or concern to defend and to protect, preserve and promote Human Rights is perhaps as old as human civilization. In fact, the concept of Human Rights is neither entirely western not modern. It is interesting to note that the cause of Human Rights is not alien to ancient India, which has age old culture of respecting Human Rights. It may be recalled that from time immemorial Indians have called their culture by name of human culture (Manava Dharma or Manava and sanskriti and it is inherent in the Hindu life.

Many centuries ago the principle of 'Vasudhaika Kutumbam' (we are all one human family) propounded universal brotherhood and equality and the highest ideal of human life was echoed 'Sarve Jana Sukhinobhavanthu' (let all people be happy) was proclaimed from this land. But the philosophy of human life was widely and wisely discussed on religious foundations and can be evident in the Rig Veda.

'No one is superior or inferior. All are brothers. All should strive for the interest of all and all should progress selectively'. (The original text is in Sanskrit and is taken from Mandala 5 Sukta 60 Mantra which states 'Ajyestasoakanishtasa etc., sambhratova vridhuuhu sowbhogya'). According to Rig Veda “there is one race of human beings" and validity of different traditions, religious in deed of paths to truth, has always been respected and the guiding principle 'Sava Dharma samanan' (all religions are equal).

Rig Veda cites three civil rights that of Tana (body) Skridhi (dwelling place and Jibhasi (life). Mahabharatha tells about the importance of freedoms of individuals (civil liberties) in a State.

An eminent historian U.N. Ghosal 11 pointed out a number of civil rights enjoyed by the individual in ancient India. He says that they occupy an important place in the literature of Smritis. These rights were enjoyed by ancient Indians either expressly knowing them as comprehended in dharma or inferred from the concept of duties. The ancient Indian concepts of Human Rights and humanitarian law were primarily based on conduct of war, and were laid down in the legal text such as Manu Smriti or code of Manu (200 B.C. - 100 A.D), the Mahabharatha 1000 B.C. Koutilyas's Arthasasthra (300 B.C. and Sukranitisara of Sukracharya.12

According to Manu, one who is sleeping with or without his armour or a person who is deprived of his weapons or who is engaged in fighting with another person or one who is only looking on the battle but not fighting should not be slain. Further, all such places of religious worship, houses of individuals could not be attacked or destroyed. The Mahabharata states that enemy captured in war not to be killed but is to be well treated. Koutilya's Arthasashtra evidenced that Chandragupta Mourya set free prisoners captured in war. The traditional practice of war was that attack should be informed earlier and war should take place only after sunrise and after sunset. In the 4th century B.C Koutilya's Arthasashtra elaborated on civil and legal rights. The concept of social, economic obligations of the State also mentioned that State (king) shall provide the orphan, the dying, the infirm, the affected and helpless with maintenance and shall also provide subsistence to mothers and children.

Both Buddhism and Jainism emphasized the principles of equality and non- violence. The Buddhist doctrine of non-violence in deed and thought is a humanitarian doctrine par excellence, dating back to 3rd century B.C. The Mauryan Empire Ashoka, the great king during his reign persuaded an official policy of Ahimsa (non-violence) and protection of human rights as his chief concern. Ashoka defined the main principles of non-violence, tolerance of all sects and opinions of all religious and ethnic groups were granted right to freedom of religious practice and equality.

1.21.2 National Human Rights Commission (NHRC)

The National Human Rights Commission (NHRC) in India is a statutory body established under the Protection of Human Rights Act, 1993. Its primary mandate is to protect and promote human rights across the country.

1. 1.21.3 Establishment and Structure:

The NHRC was established on October 12, 1993, under the Protection of Human Rights Act, 1993, in accordance with the Paris Principles. It is an autonomous body that operates independently of the government.

The Commission consists of a Chairperson and four members, who are appointed by the President of India. The Chairperson should be a former Chief Justice of the Supreme Court, and one member should be a serving or retired Judge of the Supreme Court, one member should be a serving or retired Chief Justice of a High Court, and the remaining two members should have knowledge or practical experience in human rights matters.[[70]](#footnote-70)

1. 1.21.4 Functions and Powers:

The NHRC is tasked with several functions, including:

* Inquiring into complaints of human rights violations either Suo motu or on petitions presented to it.
* 1.21.6 Intervening in legal proceedings related to human rights violations.
* Inspecting jails and detention centres to assess conditions and treatment of inmates.
* Promoting human rights literacy and awareness through education and training programs. ▪ Recommending measures for the effective implementation of human rights safeguards.

The National Human Rights Commission (NHRC) in India plays a crucial role in safeguarding and advocating for prisoners' rights, ensuring that individuals in custody are treated with dignity, fairness, and respect for their human rights.

In essence, the NHRC's multifaceted approach to prisoners' rights encompasses monitoring, investigation, legal aid, advocacy, and policy reform, all aimed at ensuring that individuals in custody are treated with dignity, fairness, and respect for their human rights. The Commission's proactive role contributes significantly to the development of a rights-based approach within the criminal justice system and the protection of vulnerable populations within prisons.

**Monitoring and Inspection**: The NHRC conducts regular visits and inspections of prisons nationwide to assess various aspects of detention, including living conditions, healthcare, hygiene, and treatment of inmates. These inspections serve as a crucial mechanism for identifying violations of prisoners' rights, such as overcrowding, lack of basic amenities, and instances of abuse or neglect.

**Investigation and Redressal**: One of the primary functions of the NHRC is to investigate complaints and petitions regarding alleged violations of human rights, including those related to prisoners. The Commission conducts impartial inquiries, gathers evidence, and takes appropriate action to redress grievances, ensure accountability, and provide remedies to affected individuals.

**Legal Aid and Awareness**: Recognizing the importance of legal representation and awareness among prisoners, the NHRC facilitates access to legal aid and assistance for indigent inmates. This includes ensuring that prisoners are informed of their rights, providing guidance on legal procedures, and facilitating legal recourse for grievances through workshops, seminars, and outreach programs.

**Advocacy and Policy Reform**: The NHRC engages in advocacy efforts to promote policy reforms and systemic changes within the criminal justice system. This includes advocating for alternatives to incarceration, rehabilitation programs, mental health support, and measures to address issues like overcrowding, juvenile justice, and conditions in detention facilities.

**Preventing Torture and Inhumane Treatment**: The NHRC actively works to prevent torture, inhuman, or degrading treatment of prisoners by monitoring and addressing instances of custodial violence, abuse, and neglect. The Commission's interventions aim to uphold human dignity, ensure humane treatment, and prevent violations of prisoners' rights.

**Monitoring Implementation and Impact Assessment**: Following its recommendations and interventions, the NHRC monitors the implementation of corrective measures by relevant authorities to assess their impact on improving prison conditions and protecting prisoners' rights. This ongoing monitoring and impact assessment contribute to accountability and continuous improvement within the criminal justice system.

**Reporting and Advocacy**: The NHRC includes findings, recommendations, and case studies related to prisoners' rights in its reports submitted to the government, Parliament, and other stakeholders. These reports serve as advocacy tools, raising awareness, fostering dialogue, and advocating for policy changes and legal reforms to uphold human rights standards in prisons.

### State Human Rights Commissions (SHRCs)

State Human Rights Commissions (SHRCs) are independent statutory bodies established at the state level in India to protect and promote human rights within their respective states. State Human Rights Commissions (SHRCs) in India play a crucial role in safeguarding and advocating for prisoners' rights within their respective states. SHRCs' engagement with prisoners' rights in India encompasses monitoring, investigation, advocacy, legal aid, and awareness-raising efforts aimed at protecting and promoting human dignity within the prison system. Their interventions contribute to improving prison conditions, preventing rights violations, and ensuring accountability and redressal for victims of rights abuses among prisoners.

**Establishment and Structure**:

SHRCs are established under the Protection of Human Rights Act, 1993, which mandates each state to have its own Human Rights Commission.

The composition of SHRCs typically includes a Chairperson and members appointed by the state government. The Chairperson should be a retired Chief Justice of a High Court, and the members should have experience or expertise in human rights matters.

**Functions and Powers**:

Investigate Complaints: SHRCs have the authority to inquire into complaints of human rights violations within their jurisdiction. Individuals, NGOs, and groups can file complaints with the SHRC regarding violations of civil, political, social, or economic rights.

Conduct Inquiries: SHRCs can conduct investigations, summon witnesses, gather evidence, and make inquiries into alleged human rights violations. They have quasi-judicial powers to gather information and make recommendations based on their findings.

Recommend Measures: Upon investigation, SHRCs can recommend measures to the state government or other authorities to address human rights violations, provide relief to victims, and prevent future occurrences of such violations.

Monitor Implementation: SHRCs monitor the implementation of their recommendations and ensure compliance by relevant authorities. They may follow up on cases to ensure that corrective measures are taken and victims receive appropriate redressal.

Public Awareness and Education: SHRCs engage in public awareness campaigns, educational programs, and outreach activities to promote human rights literacy, raise awareness about rights and responsibilities, and empower individuals to assert their rights.

**Monitoring Prison Conditions**: SHRCs conduct regular inspections and visits to prisons within their jurisdiction to assess the conditions of detention, treatment of inmates, and adherence to human rights standards. This monitoring helps identify violations of prisoners' rights, such as overcrowding, lack of basic amenities, and instances of abuse or neglect.

**Investigating Complaints**: Individuals, NGOs, and groups can file complaints with SHRCs regarding alleged violations of prisoners' rights, including torture, custodial violence, denial of medical care, and denial of legal rights. SHRCs have the authority to investigate these complaints, gather evidence, and take appropriate action based on their findings.

**Recommendations and Remedies**: Upon investigation, SHRCs can issue recommendations to state authorities and prison administrations to address human rights violations in prisons. These recommendations may include measures to improve living conditions, ensure access to healthcare, prevent abuse, and protect prisoners' legal rights. SHRCs may also recommend compensation or relief for victims of rights violations.

**Advocacy and Awareness**: SHRCs engage in advocacy efforts to raise awareness about prisoners' rights and the importance of upholding human dignity within the criminal justice system. They may conduct educational programs, workshops, and outreach activities to promote awareness among inmates, prison staff, and the general public.

**Legal Aid and Assistance**: Recognizing the significance of legal representation for prisoners, SHRCs may facilitate access to legal aid and assistance for indigent inmates. This includes providing guidance on legal procedures, facilitating legal consultations, and ensuring that prisoners are aware of their rights and avenues for seeking redressal.

**Monitoring Implementation**: Following their recommendations, SHRCs monitor the implementation of corrective measures by state authorities and prison administrations to ensure compliance with human rights standards. This ongoing monitoring helps address systemic issues, prevent recurring violations, and hold accountable those responsible for rights abuses.

**Reporting and Advocacy**: SHRCs include findings, recommendations, and case studies related to prisoners' rights in their reports submitted to the state government, legislature, and other stakeholders. These reports serve as advocacy tools, highlighting key issues, advocating for policy changes, and fostering dialogue on prisoners' rights reforms.

### Role of Judiciary in Ensuring Compliance

The judiciary plays a pivotal role in ensuring compliance with the rights of prisoners, which are fundamental to upholding human dignity and fairness within the criminal justice system. Through its interpretative and enforcement powers, the judiciary meticulously scrutinizes and safeguards prisoners' rights as enshrined in constitutional provisions, statutes, and international conventions. This oversight extends to every facet of prisoners' well-being, including their right to life and personal liberty, protection against torture and inhumane treatment, access to legal representation, fair trial guarantees, and the maintenance of humane conditions of detention.

Central to the judiciary's role is its capacity for judicial review, a mechanism through which courts assess the legality and constitutionality of prison conditions, policies, and practices. By conducting thorough judicial reviews, courts ensure that prisons adhere to prescribed norms, rectify deficiencies, and uphold the rights of inmates throughout their incarceration. Moreover, the judiciary serves as a vital forum for redressal, providing a platform for prisoners to voice grievances and seek remedies for alleged violations of their rights. Court interventions, in the form of orders, directives, and judgments, compel prison authorities to comply with legal obligations and implement corrective measures where necessary.

In parallel, the judiciary undertakes a proactive stance in monitoring and overseeing prisons, conducting regular inspections, visits, and follow-up proceedings to evaluate compliance with court orders, legal standards, and the overall conditions of detention. This ongoing oversight not only holds prison authorities accountable but also identifies systemic issues and fosters continuous improvement in prison management and the treatment of inmates.[[71]](#footnote-71)

Furthermore, the judiciary's role extends to the enforcement of its orders, ensuring that directives related to improving living conditions, providing medical care, preventing abuse, and protecting prisoners' rights are effectively implemented by prison authorities. Failure to comply with court orders may lead to contempt proceedings, underscoring the judiciary's commitment to ensuring adherence to its directives and upholding the rule of law.

Additionally, the judiciary actively engages in Public Interest Litigation (PIL) and advocacy initiatives focused on prisoners' rights, leveraging its influence to address systemic challenges, advocate for policy reforms, and promote compliance with legal norms that safeguard prisoners' rights. Through these multifaceted approaches, the judiciary plays a pivotal role in safeguarding prisoners' rights, promoting accountability, and contributing to a fair, humane, and rights-respecting criminal justice system.

**Interpretation and Enforcement of Prisoners' Rights**: The judiciary interprets and enforces the rights of prisoners as enshrined in the Constitution, statutes, and international conventions. This includes rights such as the right to life and personal liberty, protection against torture and inhuman treatment, access to legal representation, fair trial guarantees, and humane conditions of detention. Courts clarify the scope and application of these rights, establish legal precedents, and issue judgments and directives to ensure compliance with prisoners' rights.

**Judicial Review of Prison Conditions**: Courts conduct judicial review of prison conditions, policies, and practices to assess their compatibility with constitutional and legal standards. This includes examining issues such as overcrowding, healthcare services, sanitation, nutrition, safety, and treatment of inmates. Judicial review ensures that prison authorities adhere to prescribed norms, take corrective measures to address deficiencies, and respect prisoners' rights during their incarceration.

**Redressal of Grievances and Complaints**: The judiciary provides a forum for prisoners to raise grievances and complaints regarding violations of their rights. Courts entertain petitions, writs, and complaints filed by prisoners or their representatives, and conduct inquiries to investigate alleged violations. Courts may issue orders, directions, or judgments to redress grievances, provide remedies to victims of rights violations, and ensure that prison authorities comply with legal obligations.

**Monitoring and Oversight of Prisons**: Courts engage in monitoring and oversight of prisons through regular inspections, visits, and follow-up proceedings. They assess the implementation of court orders, compliance with legal standards, and the overall conditions of detention.

Judicial monitoring serves as a mechanism for holding prison authorities accountable, identifying systemic issues, and ensuring continuous improvement in prison management and treatment of inmates.

**Enforcement of Court Orders**: Courts issue orders and directives that must be enforced by prison authorities. This includes orders related to improving living conditions, providing medical care, ensuring access to legal representation, preventing abuse, and protecting prisoners' rights. Failure to comply with court orders may result in contempt proceedings, where non-compliance is addressed through legal sanctions to ensure adherence to court directives.

**Public Interest Litigation (PIL) and Advocacy**: The judiciary entertains Public Interest Litigation (PIL) and advocacy initiatives focused on prisoners' rights. PILs enable judicial intervention to address systemic issues, advocate for policy reforms, and promote compliance with legal norms that protect prisoners' rights. Judicial advocacy contributes to raising awareness, fostering dialogue, and influencing government policies and practices to improves the treatment and rights of prisoners.

# CHAPTER 5:

**CHALLENGES AND GAPS IN IMPLEMENTATION OF RIGHTS OF PRISONERS IN INDIA**

Addressing these challenges and bridging the gaps in the implementation of rights for prisoners in India requires a holistic approach that addresses systemic issues, promotes accountability, enhances infrastructure and services in prisons, strengthens legal aid mechanisms, and prioritizes rehabilitation and reintegration programs. Collaborative efforts involving government agencies, civil society organizations, legal practitioners, and international stakeholders are essential for advancing the protection and enforcement of prisoners' rights in India.

### 5.1 OVERCROWDING

Overcrowding and infrastructure deficiencies in Indian prisons present significant challenges to the implementation of prisoners' rights and the maintenance of a humane and dignified living environment. The issue of overcrowding stems from various factors, including high rates of incarceration, delays in legal proceedings, and inadequate facilities to accommodate the growing prison population. As a result, many prisons operate well beyond their intended capacity, leading to severe congestion, lack of personal space, and compromised living conditions for inmates.

The consequences of overcrowding are far-reaching and impact multiple aspects of prisoners' rights. Firstly, inadequate living space undermines prisoners' right to privacy, dignity, and physical well-being. Cramped cells and overcrowded dormitories make it difficult for inmates to maintain personal hygiene, exacerbating health risks and contributing to the spread of infectious diseases. Moreover, limited access to fresh air, natural light, and recreational areas further diminishes the quality of life within prisons, leading to increased stress, tension, and mental health challenges among inmates.[[72]](#footnote-72)

Additionally, overcrowding exacerbates challenges in providing essential services and facilities to prisoners. Basic amenities such as sanitation facilities, clean drinking water, and adequate nutrition become strained in overcrowded prisons, compromising the health and well-being of inmates. Medical facilities may also be overwhelmed, leading to delays in accessing healthcare services and inadequate treatment for medical conditions.

Infrastructure deficiencies compound the problems associated with overcrowding. Many prisons lack proper ventilation, lighting, and safety features, posing risks to both inmates and staff. Poorly maintained infrastructure increases the likelihood of accidents, injuries, and safety hazards within prisons, further jeopardizing prisoners' rights to a safe and secure environment. Addressing the challenges of overcrowding and infrastructure deficiencies requires comprehensive reforms and strategic interventions. This includes initiatives to reduce incarceration rates through alternative sentencing measures, expedite legal proceedings to reduce pre-trial detention periods, and invest in expanding and upgrading prison infrastructure to accommodate the needs of the prison population adequately. Additionally, improving access to essential services such as healthcare, sanitation, and nutrition is essential to safeguarding prisoners' rights and promoting their well-being within the criminal justice system.

### The consequences of overcrowding

The consequences of overcrowding in Indian prisons are multifaceted and impact various aspects of the criminal justice system, inmate well-being, and broader societal dynamics.

1. **Living Conditions**: Overcrowding leads to cramped living conditions where inmates have limited personal space and privacy. This compromises their dignity and contributes to a stressful and tense environment within prisons.

1. **Health Risks**: Overcrowded prisons face challenges in providing adequate healthcare services to inmates. Limited access to medical professionals, medication, and treatment facilities increases the risk of health issues and the spread of infectious diseases among inmates.

1. **Safety Concerns**: The congested environment in overcrowded prisons heightens safety concerns. Tensions, conflicts, and incidents of violence among inmates are more prevalent in overcrowded settings, posing risks to both inmates and prison staff.

1. **Mental Health Impact**: The overcrowded and stressful environment can have a significant impact on the mental health of inmates. Depression, anxiety, and other mental health issues may be exacerbated in overcrowded conditions, affecting inmates' overall well-being.

1. **Rehabilitation and Reintegration**: Overcrowding hinders efforts towards rehabilitation and reintegration of inmates into society. Limited resources and overcrowded facilities make it challenging to provide educational, vocational, and skill development programs that are essential for inmates' successful re-entry into the community.

1. **Legal and Human Rights Concerns**: Overcrowding can lead to violations of inmates' legal and human rights. Inadequate living conditions, lack of access to healthcare, and safety risks may constitute violations of prisoners' rights to a humane and dignified environment, healthcare, and protection from harm.

1. **Systemic Challenges**: Overcrowding is often symptomatic of broader systemic challenges within the criminal justice system, such as delays in legal proceedings, backlogs in courts, and a focus on punitive measures rather than rehabilitation. Addressing overcrowding requires addressing these underlying systemic issues.

1. **Financial Burden**: Overcrowding can also result in increased financial burdens on the prison system and government resources. The need to accommodate and care for a larger inmate population strains budgets and resources allocated to prisons, affecting the quality of services and programs provided to inmates.

Overcrowding in Indian prisons has far-reaching consequences that impact inmates' rights, well-being, rehabilitation prospects, and the effectiveness of the criminal justice system as a whole. Addressing overcrowding requires a comprehensive approach that includes reducing incarceration rates, improving infrastructure and resources in prisons, enhancing access to healthcare and support services, and promoting alternatives to incarceration.

### 5.2 ACCESS TO LEGAL REPRESENTATION AND JUSTICE

Access to legal representation and justice is a cornerstone of a fair and equitable criminal justice system, yet in Indian prisons, several challenges hinder inmates' ability to exercise these rights effectively. One of the primary barriers is the limited access to legal aid services, particularly for indigent prisoners who cannot afford private lawyers. The availability of legal professionals within prisons is often inadequate, leading to delays and difficulties in obtaining legal advice, representation, and assistance for navigating complex legal procedures.[[73]](#footnote-73)

Additionally, there is a lack of awareness and information among inmates about their legal rights and avenues for redressal. Many prisoners, especially those from marginalized communities or with low literacy levels, struggle to understand legal documents, communicate with legal professionals, and assert their rights during legal proceedings. Language barriers further exacerbate these challenges, making it difficult for inmates to access legal resources and understand the intricacies of the legal system.

Delays in legal proceedings pose another significant obstacle to access to justice for prisoners. Overburdened courts, procedural complexities, and backlogs in case disposal contribute to prolonged detention periods without resolution, leading to frustration, anxiety, and uncertainty among inmates awaiting trial or appeal. These delays not only impede access to timely justice but also undermine the right to a fair and expeditious trial guaranteed under the law.

Furthermore, the quality of legal representation available to inmates varies widely, with some receiving inadequate or substandard assistance due to factors such as overworked legal aid lawyers, lack of preparation time, and limited resources for building a robust defence. Inmates may also face challenges in maintaining confidential communication with their legal representatives or accessing legal materials and resources necessary for their defence.[[74]](#footnote-74)

Addressing these challenges requires a multi-faceted approach. Strengthening legal aid services within prisons by increasing resources, staffing, and training for legal professionals is crucial. Conducting awareness and education programs to inform inmates about their legal rights, procedures, and available legal assistance can empower them to navigate the legal process more effectively. Implementing measures to expedite legal proceedings, reduce backlogs in courts, and ensure timely resolution of cases involving prisoners is essential for upholding the right to a fair trial. Additionally, enhancing the quality and effectiveness of legal representation through ongoing training, supervision, and support for legal aid lawyers is necessary to ensure that inmates receive adequate legal support and representation during their interactions with the criminal justice system.

By addressing these challenges and improving access to legal representation and justice for prisoners, the criminal justice system can uphold fundamental rights, promote fairness and transparency, and foster trust and confidence in the legal process among inmates.

**Living Conditions**: Overcrowding leads to cramped living conditions where inmates have limited personal space and privacy. This compromises their dignity and contributes to a stressful and tense environment within prisons.

**Health Risks**: Overcrowded prisons face challenges in providing adequate healthcare services to inmates. Limited access to medical professionals, medication, and treatment facilities increases the risk of health issues and the spread of infectious diseases among inmates.

**Safety Concerns**: The congested environment in overcrowded prisons heightens safety concerns. Tensions, conflicts, and incidents of violence among inmates are more prevalent in overcrowded settings, posing risks to both inmates and prison staff.

**Mental Health Impact**: The overcrowded and stressful environment can have a significant impact on the mental health of inmates. Depression, anxiety, and other mental health issues may be exacerbated in overcrowded conditions, affecting inmates' overall well-being.

**Rehabilitation and Reintegration**: Overcrowding hinders efforts towards rehabilitation and reintegration of inmates into society. Limited resources and overcrowded facilities make it challenging to provide educational, vocational, and skill development programs that are essential for inmates' successful re-entry into the community.

**Legal and Human Rights Concerns**: Overcrowding can lead to violations of inmates' legal and human rights. Inadequate living conditions, lack of access to healthcare, and safety risks may constitute violations of prisoners' rights to a humane and dignified environment, healthcare, and protection from harm.[[75]](#footnote-75)

**Systemic Challenges**: Overcrowding is often symptomatic of broader systemic challenges within the criminal justice system, such as delays in legal proceedings, backlogs in courts, and a focus on punitive measures rather than rehabilitation. Addressing overcrowding requires addressing these underlying systemic issues.

**Financial Burden**: Overcrowding can also result in increased financial burdens on the prison system and government resources. The need to accommodate and care for a larger inmate population strains budgets and resources allocated to prisons, affecting the quality of services and programs provided to inmates.

### 5.3 DISCRIMINATION AND VULNERABILITIES

Discrimination and vulnerabilities among prisoners in India reflect systemic challenges that undermine human rights and exacerbate inequalities within the criminal justice system. One of the most pervasive issues is the discrimination faced by marginalized groups based on caste, religion, ethnicity, gender identity, or sexual orientation. These groups often experience differential treatment, prejudice, and abuse within prisons, creating a hostile and unsafe environment that infringes on their rights. Discrimination can manifest in various ways, including unequal access to resources, biased disciplinary actions, and limited opportunities for rehabilitation and reintegration.[[76]](#footnote-76)

Women prisoners are particularly vulnerable within the prison system, facing unique challenges related to healthcare, hygiene, and maternal needs. Pregnant inmates and those with children often lack adequate support and facilities, leading to health risks, separation from their families, and emotional distress. The absence of childcare provisions and menstrual hygiene products further compounds their vulnerabilities, highlighting the need for gender-sensitive policies and services to address the specific needs of women inmates.

Healthcare vulnerabilities are another critical concern, especially for prisoners with physical or mental health conditions. Limited access to medical professionals, medication, and specialized treatment can result in neglect, worsening health outcomes, and increased suffering among vulnerable populations. Elderly inmates and those with disabilities also face challenges in accessing necessary care and accommodations, raising questions about the adequacy of healthcare services within prisons.

Rehabilitation and reintegration pose significant challenges for vulnerable prisoners, including those with histories of substance abuse, mental health disorders, or trauma. Limited access to counselling, therapy, and social support programs hinders their ability to address underlying issues and prepare for successful re-entry into society. Without targeted interventions and community-based support systems, vulnerable inmates remain at risk of recidivism, perpetuating cycles of incarceration and marginalization.

Discrimination and vulnerabilities requires a comprehensive approach that prioritizes human rights, equity, and inclusion. This includes implementing anti-discrimination policies, promoting diversity training for prison staff, enhancing access to healthcare and support services, and strengthening legal protections for vulnerable populations. Collaborative efforts involving government agencies, civil society organizations, and community stakeholders are essential in addressing systemic inequalities and creating a more just and humane prison system that upholds the dignity and rights of all prisoners, regardless of their vulnerabilities.[[77]](#footnote-77)

**Marginalized Groups and Discrimination**: Certain groups of prisoners, such as those from marginalized communities based on caste, religion, ethnicity, gender identity, or sexual orientation, face discrimination and prejudice within the prison environment. They may experience differential treatment, harassment, and abuse based on their identity, exacerbating their vulnerabilities and compromising their rights. Discrimination can manifest in various forms, including unequal access to resources and services, biased treatment by prison authorities or fellow inmates, and barriers to participation in educational or vocational programs.

**Vulnerabilities of Women Prisoners**: Women prisoners, especially those with children or pregnant inmates, are particularly vulnerable within the prison system. They often face challenges in accessing adequate healthcare, hygiene products, and support services tailored to their specific needs. Issues such as separation from children, lack of childcare facilities, and limited access to menstrual hygiene products can further exacerbate the vulnerabilities of women inmates, impacting their physical and mental well-being.

**Healthcare Needs and Vulnerabilities**: Prisoners with physical or mental health conditions face vulnerabilities related to access to healthcare services, medication, and specialized treatment within prisons. Limited resources and inadequate medical facilities can lead to delays in diagnosis, treatment, and management of health issues. Vulnerable populations, such as elderly inmates or those with disabilities, may require additional support and accommodations to ensure their well-being and dignity during incarceration.

**Rehabilitation and Reintegration Challenges**: Vulnerable prisoners, including those with histories of substance abuse, mental health disorders, or trauma, often face challenges in accessing rehabilitation and reintegration programs. Limited availability of counselling, therapy, and social support services hinders their ability to address underlying issues and prepare for successful re-entry into society. Without targeted interventions and support, vulnerable inmates may be at higher risk of recidivism and social exclusion post-release, perpetuating cycles of incarceration and marginalization.

**Legal Protections and Safeguards**: Ensuring legal protections and safeguards for vulnerable prisoners is essential to address discrimination and protect their rights. This includes measures to prevent abuse, provide reasonable accommodations, promote equal access to services, and address intersectional forms of discrimination based on multiple identities. Strengthening oversight mechanisms, training for prison staff, and accountability measures can help mitigate vulnerabilities and promote a rights-based approach to prisoner management.

**Community Support and Reintegration**: Collaborative efforts involving government agencies, civil society organizations, and community stakeholders are crucial in providing support and resources for vulnerable prisoners both during incarceration and post-release. Community-based programs, reintegration services, and peer support networks can facilitate a smoother transition and reduce the risk of reoffending among vulnerable populations.

### 5.4 IMPUNITY FOR HUMAN RIGHTS VIOLATIONS

Impunity for human rights violations within Indian prisons is a deeply concerning issue that perpetuates a cycle of abuse, undermines the rule of law, and denies justice to victims of such violations. One of the primary factors contributing to impunity is the lack of accountability mechanisms and effective oversight within the prison system. Human rights abuses, including torture, excessive use of force, neglect, and mistreatment, often go unchecked due to inadequate monitoring, reporting, and investigation processes.

The culture of impunity within prisons is reinforced by a reluctance to hold perpetrators accountable, fear of reprisals among victims and witnesses, and a lack of transparency in addressing allegations of abuse. This culture of silence and fear creates a climate where human rights violations can occur with little fear of consequences, emboldening perpetrators and eroding trust in the justice system.

Inadequate legal frameworks and institutional barriers also contribute to impunity. Delays in legal proceedings, challenges in gathering evidence, and bureaucratic hurdles hinder efforts to prosecute perpetrators and provide redressal for victims. The absence of specialized mechanisms dedicated to investigating prison abuses and ensuring accountability further exacerbates the problem.

**Lack of Accountability**: Human rights violations, including instances of torture, abuse, excessive use of force, and neglect, are often perpetrated within prisons with impunity. The lack of accountability for such violations allows perpetrators, including prison staff and officials, to evade legal consequences and disciplinary actions. Weak mechanisms for monitoring, reporting, and investigating human rights abuses contribute to a culture of impunity within prisons, where violations go unchecked and victims are denied justice and redressal.[[78]](#footnote-78)

**Culture of Silence and Fear**: Fear of reprisals, retaliation, and further abuse often silences victims of human rights violations within prisons. Inmates may hesitate to report abuses or seek assistance due to concerns about retaliation from authorities or fellow inmates. The culture of silence and fear perpetuates a cycle of impunity, as perpetrators are emboldened by the lack of accountability and the reluctance of victims to come forward and report violations.

**Inadequate Oversight and Monitoring**: Weak oversight mechanisms and limited independent monitoring of prisons contribute to impunity for human rights violations. Lack of transparency, access restrictions for external observers, and limited public scrutiny shield abuses from accountability. Effective oversight and monitoring mechanisms, including regular inspections, independent investigations, and transparent reporting of findings, are essential for holding perpetrators accountable and ensuring adherence to human rights standards within prisons.

**Legal and Institutional Challenges**: Legal and institutional barriers, such as delays in legal proceedings, challenges in gathering evidence, and bureaucratic hurdles, hinder efforts to hold perpetrators accountable for human rights violations. The absence of specialized mechanisms, such as dedicated units for investigating prison abuses or independent ombudsman offices, further impedes accountability and redressal for victims.

**Impact on Prisoners' Rights**: Impunity for human rights violations directly impacts prisoners' rights by eroding trust in the justice system, perpetuating cycles of abuse, and undermining efforts to promote a culture of respect for human dignity and rights within prisons. Victims of human rights violations are denied justice, redressal, and access to remedies, leading to continued suffering, trauma, and a sense of helplessness among inmates.[[79]](#footnote-79)

Addressing impunity for human rights violations in Indian prisons requires comprehensive reforms that prioritize accountability, transparency, and respect for human rights. This includes:

* Strengthening oversight mechanisms through independent monitoring, regular inspections, and transparent reporting of findings.
* Enhancing legal frameworks and procedural safeguards to ensure prompt and effective investigation of human rights abuses, prosecution of perpetrators, and access to justice for victims.
* Implementing training programs for prison staff on human rights principles, ethical conduct, and the prevention of abuses.
* Promoting a culture of accountability, transparency, and respect for human rights within prisons through awareness-raising initiatives, public engagement, and advocacy for reforms.
* Establishing specialized mechanisms, such as ombudsman offices or independent review boards, to receive complaints, conduct impartial investigations, and recommend corrective actions to address human rights violations.

# CHAPTER 6

**SOCIO-ECONOMIC FACTORS AND INTERSECTIONALITY**

### 6.1 SOCIO-ECONOMIC FACTORS

Socio-economic factors and intersectionality play a significant role in shaping the experiences of prisoners within the Indian criminal justice system.

Addressing socio-economic factors and intersectionality requires a comprehensive approach that addresses systemic inequalities, promotes inclusivity, and prioritizes the rights and wellbeing of all prisoners, especially those from marginalized and vulnerable backgrounds. This includes:

Implementing policies and programs that address socio-economic disparities within prisons, including equitable access to legal aid, healthcare, education, and rehabilitation services. Adopting intersectional approaches to advocacy and policy development that recognize and address the unique challenges faced by individuals at the intersections of multiple identities and socio-economic factors. Promoting awareness, training, and capacity-building initiatives for criminal justice professionals, legal practitioners, and prison staff to address biases, discrimination, and intersectional inequalities within the system. Strengthening collaboration and partnerships between government agencies, civil society organizations, and community stakeholders to advocate for systemic reforms, address root causes of socio-economic inequalities, and promote a rights-based approach to prisoner management.[[80]](#footnote-80)

### Impact of Poverty, Caste, Gender, and Ethnicity

The impact of poverty, caste, gender, and ethnicity on prisoners within the Indian criminal justice system is profound, shaping their experiences, vulnerabilities, and access to rights and resources.

Addressing the impact of poverty, caste, gender, and ethnicity on prisoners requires a holistic approach that addresses systemic inequalities, promotes inclusivity, and upholds human rights. Implementing anti-discrimination policies and training programs for prison staff to address biases, promote cultural sensitivity, and ensure equitable treatment of all inmates. Strengthening access to legal aid, healthcare, education, and rehabilitation services for marginalized and vulnerable groups within prisons.[[81]](#footnote-81) Empowering prisoners from disadvantaged backgrounds through skills training, livelihood support, and socio-economic empowerment initiatives to facilitate successful reintegration into society. Promoting awareness, advocacy, and community engagement to address root causes of inequality, discrimination, and social exclusion within the criminal justice system. Fostering collaboration between government agencies, civil society organizations, and community stakeholders to develop and implement inclusive policies, programs, and interventions that prioritize the rights and well-being of all prisoners, regardless of their socio-economic status, caste, gender, or ethnicity.[[82]](#footnote-82)

**Poverty and Access to Justice:** Poverty significantly impacts access to justice within the Indian criminal justice system, creating barriers that hinder individuals from marginalized and economically disadvantaged backgrounds from exercising their legal rights effectively.

**Financial Constraints**: The most direct impact of poverty on access to justice is financial constraints. Many individuals living in poverty lack the resources to hire competent legal representation, pay court fees, or cover other legal expenses associated with navigating the legal system. The high costs associated with legal proceedings, including hiring lawyers, obtaining legal documents, and attending court hearings, often place legal services out of reach for economically disadvantaged individuals and families.

**Limited Access to Legal Aid**: Legal aid services are essential for providing legal assistance to those unable to afford private lawyers. However, the availability and accessibility of legal aid can be limited, particularly in rural areas and underserved communities where poverty is prevalent. Qualifying for legal aid may also be challenging due to strict eligibility criteria, leaving many individuals without the support they need to address legal issues effectively.

**Inequality of Legal Representation**: Poverty exacerbates inequalities in legal representation. Affluent individuals can afford experienced and skilled lawyers who can dedicate time and resources to building a strong defence or pursuing legal remedies. In contrast, individuals facing poverty may rely on overburdened legal aid lawyers or inexperienced attorneys, resulting in unequal access to quality legal representation and potentially affecting the outcomes of legal proceedings.

**Limited Awareness and Knowledge**: Lack of financial resources often correlates with limited awareness and knowledge of legal rights and procedures. Individuals living in poverty may not be familiar with their legal rights, avenues for redressal, or available legal resources and services. This lack of awareness can lead to missed opportunities to assert legal rights, challenge injustices, or seek legal remedies for grievances, further exacerbating disparities in access to justice.

**Impact on Legal Outcomes**: Poverty can impact legal outcomes, as individuals without adequate legal representation or resources may struggle to present a strong case, gather evidence, or navigate complex legal procedures effectively. In criminal cases, lack of access to quality legal representation can result in wrongful convictions, disproportionate sentencing, or denial of due process rights, particularly for vulnerable populations.

### 6.2 CASTE-BASED DISCRIMINATION

Caste-based discrimination is a pervasive and deeply entrenched issue within Indian society, and its impact extends to various aspects of life, including access to justice within the criminal justice system.

Implementing and enforcing anti-discrimination laws and policies that prohibit caste-based discrimination and promote equal treatment under the law. Enhancing diversity and representation within law enforcement agencies, the judiciary, and the legal profession to mitigate biases and ensure fair treatment for individuals from all castes. Providing training and sensitization programs for law enforcement officials, legal professionals, and judicial authorities on issues of caste-based discrimination, human rights, and fair trial standards.

Empowering marginalized castes through legal aid services, advocacy support, and community-based initiatives that promote awareness of legal rights, access to justice, and empowerment to challenge discrimination and seek redressal for grievances. Fostering collaboration between government agencies, civil society organizations, and community leaders to address caste-based discrimination comprehensively, promote social inclusion, and uphold the dignity and rights of all individuals, regardless of caste identity.

**Systemic Bias and Prejudice**: Caste-based discrimination manifests as systemic biases, prejudices, and unequal treatment based on an individual's caste or caste identity. Dalits and other marginalized castes often face discrimination and stigmatization, both within society at large and within the criminal justice system. Systemic bias can influence the behaviour of law enforcement officials, legal professionals, and judicial authorities, leading to unfair treatment, stereotyping, and differential outcomes based on caste identity.

**Police Discrimination and Profiling**: Dalits and lower-caste individuals may experience discrimination and profiling by law enforcement agencies, leading to disproportionate scrutiny, harassment, and wrongful targeting in criminal investigations. Police bias and prejudice can result in wrongful arrests, arbitrary detention, and denial of due process rights for individuals from marginalized castes, impacting their access to justice and fair treatment under the law.

**Legal Representation and Advocacy**: Caste-based discrimination can affect access to legal representation and advocacy. Individuals from marginalized castes may encounter challenges in securing competent legal counsel, facing biases or prejudices within the legal profession that impact the quality of legal representation. Advocacy efforts on behalf of Dalits and lower-caste individuals may face resistance, indifference, or backlash, hindering effective legal advocacy for addressing caste-based discrimination and securing justice for victims.[[83]](#footnote-83)

**Judicial Bias and Unequal Treatment**: Bias and prejudices based on caste can influence judicial decision-making, leading to unequal treatment and disparate outcomes in legal proceedings. Dalits and lower-caste individuals may experience discrimination in court judgments, sentencing, and access to remedies for human rights violations. Lack of diversity in the judiciary and legal profession can contribute to systemic biases and perpetuate castebased discrimination within the criminal justice system.

**Impact on Victim's Rights**: Caste-based discrimination directly impacts the rights of victims, particularly Dalits and lower-caste individuals, who may face barriers in accessing justice, reporting crimes, and seeking redressal for human rights violations. Denial of justice, impunity for perpetrators, and lack of accountability for caste-based crimes and discrimination further exacerbate the vulnerability of marginalized castes within the criminal justice system.

### 6.3 GENDER DISPARITIES

Gender disparities within the Indian criminal justice system have significant implications for access to justice, treatment, and outcomes for male and female prisoners.

**Differential Treatment and Discrimination**: Gender-based discrimination is prevalent within the criminal justice system, with women prisoners often experiencing differential treatment, stereotypes, and biases compared to their male counterparts. This can manifest in areas such as arrest procedures, detention conditions, and sentencing outcomes. Stereotypes and societal norms about gender roles and behaviour may influence how law enforcement officials, legal professionals, and judicial authorities interact with and perceive male and female prisoners, leading to unequal treatment and discriminatory practices.

**Access to Legal Representation**: Women prisoners may face challenges in accessing quality legal representation and advocacy services. Factors such as economic constraints, lack of awareness about legal rights, and gender-based barriers within the legal profession can limit women's ability to secure competent legal counsel. Legal aid services and support for women prisoners may be insufficient or inadequate, particularly in addressing gender-specific legal issues, such as domestic violence, sexual assault, or child custody matters.

**Healthcare Needs and Gender-sensitive Services**: Gender disparities in access to healthcare are pronounced within prisons, with women prisoners often facing barriers to reproductive health services, maternal care, and gender-specific medical needs. Inadequate healthcare infrastructure, lack of trained medical staff, and limited availability of gender-sensitive services can impact women's health and well-being. Pregnant inmates, new mothers, and women with specific health conditions require specialized care and support that may not always be available or prioritized within the prison healthcare system.

**Safety and Security**: Gender-based violence, harassment, and safety concerns are significant issues for women prisoners. Inadequate safety measures, lack of gender-specific security protocols, and vulnerabilities to exploitation or abuse by fellow inmates or prison staff can create unsafe environments for women. Addressing safety and security concerns requires gender-sensitive policies, training for prison staff on preventing and responding to genderbased violence, and ensuring mechanisms for reporting and addressing incidents of harassment or abuse.

**Rehabilitation and Reintegration**: Gender disparities extend to rehabilitation and reintegration programs, where women prisoners may have limited access to educational, vocational, and skill development opportunities compared to male prisoners. Socio-economic barriers, family responsibilities, and societal stigma can further hinder women's successful reintegration into society post-release. Tailored rehabilitation programs that address genderspecific needs, provide trauma-informed care, and support women's empowerment and economic independence are essential for promoting successful reintegration and reducing recidivism among female prisoners.

Addressing gender disparities in access to justice requires a gender-sensitive approach that recognizes and addresses the unique challenges faced by male and female prisoners.

### 6.4 Ethnicity and Cultural Diversity

Ethnicity and cultural diversity play a significant role in shaping the experiences, vulnerabilities, and access to justice within the Indian criminal justice system.

**Cultural Sensitivity and Awareness**: Ethnicity and cultural diversity within the prison population require a nuanced understanding of cultural norms, values, and practices to ensure respectful and culturally sensitive treatment of inmates. Cultural competence among prison staff, legal professionals, and service providers is crucial for promoting dignity, understanding, and effective communication.[[84]](#footnote-84) Lack of cultural awareness and insensitivity to diverse cultural backgrounds can lead to misunderstandings, conflicts, and barriers to accessing rights, services, and opportunities within the prison environment.

**Language Barriers and Communication**: Ethnic and linguistic diversity can create challenges related to language barriers and effective communication within prisons. Inmates who speak minority languages or dialects may face difficulties in accessing information, expressing themselves, or understanding legal proceedings and rights. Providing language interpretation services, multilingual materials, and cultural competency training for prison staff can help overcome language barriers and ensure equitable access to justice for ethnically diverse prisoners.

**Discrimination and Stigmatization**: Ethnic and cultural diversity can intersect with discrimination, stigmatization, and biases within the criminal justice system. Individuals from minority ethnic groups may face stereotypes, prejudices, and differential treatment based on their ethnic identity, leading to inequalities in access to justice and treatment. Addressing discrimination and promoting inclusive practices that respect ethnic and cultural diversity are essential for upholding human rights, fairness, and dignity within the prison system.

**Religious and Cultural Practices**: Ethnic and cultural diversity encompasses a range of religious beliefs, customs, and practices among prisoners. Respecting and accommodating religious observances, dietary preferences, and cultural rituals are fundamental to upholding freedom of religion, cultural rights, and the well-being of inmates. Providing appropriate facilities, resources, and support for religious and cultural practices within prisons fosters a sense of identity, belonging, and respect for diversity among ethnically diverse prisoners.

**Access to Support Services**: Ethnically diverse prisoners may have unique needs related to mental health support, trauma-informed care, and social services that address cultural and contextual factors. Cultural competence in service delivery, availability of culturally relevant programs, and peer support networks can enhance access to support services and promote holistic well-being. Recognizing and addressing the intersectional nature of ethnicity with other factors, such as socio-economic status, gender, and age, is essential for designing inclusive and responsive interventions that meet the diverse needs of prisoners.

The ethnicity and cultural diversity within the criminal justice system requires a comprehensive approach that promotes cultural sensitivity, inclusivity, and respect for human rights. Providing cultural competency training for prison staff, legal professionals, and service providers to enhance understanding and responsiveness to diverse cultural backgrounds.

Ensuring language interpretation services, multilingual materials, and accessible information for ethnically diverse inmates to facilitate effective communication and understanding of legal rights and procedures. Implementing anti-discrimination policies, protocols for addressing bias and prejudice, and mechanisms for reporting and addressing instances of discrimination based on ethnicity or cultural identity. Promoting diversity and inclusion in program development, service delivery, and policy-making to address the unique needs and experiences of ethnically

diverse prisoners, including access to culturally relevant support services, religious accommodations, and community engagement initiatives. Fostering collaboration with ethnic and cultural community organizations, civil society groups, and human rights advocates to promote awareness, advocacy, and policy reforms that uphold the rights, dignity, and wellbeing of all prisoners, regardless of their ethnic or cultural background.

### 6.5 IMPACT ON THE REHABILITATION AND REINTEGRATION

Ethnicity and cultural diversity have a significant impact on the rehabilitation and reintegration of prisoners within the Indian criminal justice system.

**Cultural Sensitivity in Programs**: Ethnic and cultural diversity among prisoners necessitates culturally sensitive rehabilitation programs that recognize and respect diverse cultural backgrounds, beliefs, and practices. Tailoring programs to accommodate cultural differences and preferences enhances engagement, participation, and effectiveness of rehabilitation efforts. Incorporating cultural elements, language-appropriate materials, and culturally competent facilitators in rehabilitation programs promotes a sense of inclusion, identity affirmation, and trust among ethnically diverse prisoners.

**Access to Support Services**: Ethnic minority groups may face unique socio-economic challenges, discrimination, and barriers to accessing support services post-release. Providing targeted support services that address cultural and linguistic needs, such as employment assistance, housing support, and community reintegration programs, is crucial for successful reintegration. Collaborating with community-based organizations, cultural groups, and ethnic associations can facilitate access to culturally relevant resources, networks, and social support systems for formerly incarcerated individuals.

**Addressing Stigma and Discrimination**: Ethnicity and cultural diversity intersect with stigma, discrimination, and societal biases that may hinder reintegration efforts. Overcoming stereotypes, challenging prejudices, and promoting inclusive attitudes toward ethnically diverse ex-prisoners are essential for fostering acceptance, social inclusion, and community integration. Education, awareness campaigns, and community engagement initiatives can help dispel myths, reduce stigma, and create supportive environments that facilitate the reintegration of individuals from diverse cultural backgrounds.

**Employment and Economic Empowerment**: Ethnic minority ex-prisoners often face challenges in securing employment, accessing economic opportunities, and overcoming socioeconomic disparities post-release. Discrimination in hiring practices, lack of job skills, and limited social networks can impede successful reintegration into the workforce. Providing vocational training, job placement assistance, entrepreneurship programs, and targeted support for economic empowerment can enhance the employability and self-sufficiency of ethnically diverse ex-prisoners, reducing recidivism and promoting long-term reintegration success.

**Family and Community Reconnection**: Ethnicity and cultural background influence family dynamics, social networks, and community ties, which are integral to the reintegration process. Reconnecting with family, rebuilding relationships, and strengthening community bonds are essential for social support, stability, and rehabilitation. Engaging families, community leaders, and cultural organizations in reintegration efforts, promoting family reunification programs, and facilitating community reintegration activities foster a supportive environment for ethnically diverse ex-prisoners to reintegrate successfully into society.

The impact of ethnicity and cultural diversity on rehabilitation and reintegration requires a holistic approach that recognizes diversity, promotes inclusivity, and addresses systemic barriers to successful reintegration.

Developing culturally sensitive rehabilitation programs that accommodate diverse cultural backgrounds, beliefs, and practices, and promote identity affirmation and empowerment. Enhancing access to support services, including targeted assistance for ethnic minority exprisoners, employment opportunities, economic empowerment programs, and social integration initiatives. Addressing stigma, discrimination, and societal biases through education, awareness campaigns, and community engagement to promote acceptance, reduce barriers to reintegration, and foster inclusive communities. Collaborating with ethnic and cultural community organizations, faith-based groups, and social service providers to leverage cultural strengths, networks, and resources in supporting the rehabilitation and reintegration of ethnically diverse ex-prisoners. Advocating for policy reforms, anti-discrimination measures, and social inclusion initiatives that promote equity, dignity, and opportunities for all individuals, regardless of their ethnic or cultural background, to reintegrate successfully into society post-incarceration.

### 6.6 Marginalization and Disproportionate Impact

Marginalization and its disproportionate impact are critical aspects of understanding the dynamics within the Indian criminal justice system. Marginalization refers to the social, economic, and political exclusion of certain groups based on factors such as caste, ethnicity, religion, gender, sexual orientation, and socio-economic status. These marginalized communities often face systemic barriers, discrimination, and limited access to resources, opportunities, and rights. In the context of the criminal justice system, marginalized communities, such as Dalits, Adivasis, religious minorities, LGBTQ+ individuals, and economically disadvantaged groups, are disproportionately impacted by unequal treatment, biases, and structural inequalities.

**Dalits (Scheduled Castes)**:

Dalits, also known as Scheduled Castes, represent one of the most marginalized communities in India, historically subjected to social discrimination, exclusion, and unequal treatment.

**Caste-based Discrimination**: Dalits continue to face deep-rooted caste-based discrimination, prejudice, and social stigma, which permeate various aspects of their lives, including interactions with law enforcement, access to justice, and treatment within the criminal justice system. Discrimination against Dalits can manifest in biases, stereotypes, and differential treatment by police officers, judicial authorities, and prison personnel, impacting their rights, dignity, and fair treatment under the law.

**Disproportionate Representation**: Dalits are disproportionately represented in the prison population, reflecting broader socio-economic inequalities, lack of opportunities, and systemic biases that contribute to higher rates of involvement in criminal activities and contact with the criminal justice system. Factors such as poverty, limited access to education and employment opportunities, and socio-economic marginalization contribute to the overrepresentation of Dalits in prisons, highlighting systemic injustices and structural barriers they face.

**Police Brutality and Harassment**: Dalits often experience police brutality, harassment, and abuse of power, leading to violations of their human rights, physical harm, and psychological trauma. Incidents of caste-based violence, custodial torture, and wrongful arrests disproportionately affect Dalit communities. Lack of accountability for police misconduct, inadequate redressal mechanisms, and impunity for perpetrators exacerbate vulnerabilities and injustices faced by Dalits within the criminal justice system.

**Access to Legal Aid and Justice**: Dalits encounter challenges in accessing legal aid, affordable representation, and awareness of their legal rights, leading to barriers in seeking justice, redressal for grievances, and fair trial procedures. Limited resources, language barriers, and discrimination within the legal profession further impede Dalits' ability to navigate the complexities of the legal system and assert their rights effectively.

### Adivasis (Scheduled Tribes)

Adivasis, also known as Scheduled Tribes, represent indigenous tribal communities in India who have historically faced marginalization, displacement, and challenges in accessing rights and resources.

**Land Rights and Displacement**: Adivasis often confront issues related to land rights, forest resources, and displacement due to development projects, land acquisition, and conflicts over natural resources. Displacement disrupts traditional livelihoods, cultural practices, and community cohesion, contributing to socio-economic vulnerabilities and challenges. Disputes over land and natural resources can lead to conflicts, legal disputes, and criminalization of Adivasi communities, exacerbating tensions and impacting their interactions with law enforcement and the justice system.

**Cultural Sensitivity and Legal Recognition**: Adivasis have distinct cultural identities, languages, and customary laws that may not always be recognized or respected within the formal legal framework. Cultural insensitivity, lack of awareness about Adivasi rights, and limited access to legal representation can hinder their ability to seek justice and protect their cultural heritage. Ensuring cultural sensitivity, linguistic rights, and legal recognition of Adivasi customs and traditions are crucial for upholding their rights, dignity, and access to justice within the criminal justice system.

**Environmental Conflicts and Criminalization**: Adivasi communities often reside in resource-rich areas such as forests, which are subject to environmental conflicts, land grabbing, and exploitation by external actors. Criminalization of Adivasis, including false charges, arrests, and imprisonment related to land disputes or resistance movements, is a recurring issue. Criminalizing Adivasi activism, dissent, and assertion of land rights undermines their fundamental rights, freedom of expression, and right to peaceful assembly, highlighting systemic injustices and power imbalances.

**Access to Justice and Legal Aid**: Adivasis face barriers in accessing justice, legal aid, and fair trial procedures, particularly in remote and marginalized areas where legal infrastructure and services are limited. Language barriers, lack of legal awareness, and geographical isolation further impede their ability to navigate the legal system effectively. Strengthening legal aid services, providing culturally competent legal representation, and promoting awareness of legal rights among Adivasi communities are essential for ensuring equitable access to justice and protection of rights.

**Socio-economic Marginalization**: Adivasis experience socio-economic marginalization, lack of access to education, healthcare, and economic opportunities, which contribute to higher rates of poverty, unemployment, and social exclusion. Economic vulnerabilities can intersect with legal challenges and interactions with the criminal justice system. Addressing socio-economic disparities, promoting inclusive development, and empowering Adivasi communities through education, skills training, and sustainable livelihood options are integral to reducing vulnerabilities and improving outcomes within the criminal justice context.

### 6.7 RELIGIOUS MINORITIES

Religious minorities in India, including Muslims, Christians, Sikhs, Buddhists, Jains, and others, face unique challenges and dynamics within the criminal justice system.

**Discrimination and Communal Tensions**: Religious minorities often experience discrimination, prejudice, and biases within society, which can extend to interactions with law enforcement, judicial processes, and treatment within the criminal justice system. Instances of religious profiling, hate crimes, and communal tensions can impact the safety, security, and rights of religious minority communities. Addressing discrimination, promoting interfaith dialogue, and fostering inclusive attitudes among law enforcement officials, legal professionals, and prison staff are essential for upholding the rights and dignity of religious minorities within the criminal justice framework.

**Hate Crimes and Religious Extremism**: Religious minorities may be targeted by hate crimes, religiously motivated violence, and extremism, leading to threats to their safety, well-being, and freedom of religion. Ensuring prompt and effective response to hate crimes, hate speech, and incitement to violence is critical for protecting religious minority communities and preventing further escalation. Collaborating with community leaders, religious institutions, and civil society organizations to promote tolerance, respect for diversity, and dialogue among different religious groups can contribute to reducing tensions and promoting peaceful coexistence within society.

**Legal Protections and Religious Freedoms**: Religious minorities have constitutionally guaranteed rights to freedom of religion, belief, and worship, which include the right to practice, profess, and propagate their faith without discrimination or coercion. Upholding legal protections for religious freedoms, including protection against forced conversions or religious persecution, is essential for safeguarding the rights of religious minority communities. Ensuring access to legal remedies, recourse to justice, and protection from discriminatory practices or policies based on religious identity are fundamental aspects of promoting equality, fairness, and human rights within the criminal justice system.

**Cultural Sensitivity and Religious Practices**: Religious minorities may have unique cultural practices, dietary requirements, and religious observances that require accommodation and respect within the criminal justice system. Providing culturally sensitive services, accommodations for religious practices, and religiously appropriate food options in correctional facilities are important considerations for upholding religious freedoms and dignity. Sensitivity training for prison staff, awareness programs on religious diversity, and consultation with religious leaders and communities can enhance cultural competence and promote inclusive practices within the criminal justice system.

**Victimization and Vulnerabilities**: Religious minorities may be disproportionately impacted by victimization, exploitation, and vulnerabilities within the criminal justice system, particularly in cases of communal violence, targeted persecution, or religiously motivated crimes. Ensuring adequate protection, support services, and access to justice for victims from religious minority communities is essential for addressing their specific needs and challenges. Collaborating with victim support organizations, legal aid providers, and hu man rights advocates to address the unique vulnerabilities and experiences of religious minority victims can contribute to fostering trust, resilience, and recovery within these communities.

### 6.8 LGBTQ+ COMMUNITY

The LGBTQ+ community within the prison system faces unique and significant challenges related to their rights, safety, and well-being. A detailed analysis of the intersection between the rights of LGBTQ+ prisoners and the broader context of their experiences within correctional facilities:

**Safety and Protection from Violence**: LGBTQ+ prisoners are at heightened risk of violence, including physical assault, sexual violence, and harassment, both from fellow inmates and sometimes from prison staff. Ensuring their safety requires proactive measures, including protective custody, anti-bullying policies, and swift action against perpetrators of violence. Correctional facilities must implement policies that specifically address the safety concerns of LGBTQ+ inmates, including training for staff on handling cases of violence and harassment sensitively and appropriately.

**Recognition and Respect for Gender Identity**: Transgender and gender non-conforming inmates face significant challenges related to the recognition and respect of their gender identity. Issues include placement in facilities that correspond to their gender identity, access to gender-affirming medical care, and the use of appropriate pronouns. Policies should allow transgender inmates to be housed according to their gender identity, provide access to necessary medical treatments, and ensure respectful and affirming interactions from staff and fellow inmates.

**Access to Healthcare**: LGBTQ+ prisoners, particularly transgender individuals, often face barriers in accessing appropriate healthcare, including mental health services and genderaffirming treatments. Ensuring comprehensive healthcare is critical for their physical and mental well-being. Correctional facilities must ensure that LGBTQ+ inmates have access to healthcare providers who are knowledgeable about and sensitive to LGBTQ+ health issues, including hormone therapy, mental health counselling, and HIV/AIDS treatment.

**Mental Health Support**: The mental health needs of LGBTQ+ prisoners are often exacerbated by discrimination, isolation, and the trauma of violence and harassment. Providing access to mental health services that are attuned to the specific experiences and needs of LGBTQ+ individuals is essential. Mental health support should include counselling services, support groups, and crisis intervention tailored to the unique challenges faced by LGBTQ+ inmates.

**Protection from Discrimination and Harassment**: LGBTQ+ prisoners frequently experience discrimination and harassment based on their sexual orientation or gender identity. Implementing strict anti-discrimination policies, providing staff training on LGBTQ+ issues, and establishing clear reporting and redressal mechanisms are critical. Correctional facilities must create an environment where LGBTQ+ inmates feel safe to report instances of discrimination and harassment without fear of retaliation or further victimization.

**Access to Support Networks and Legal Resources**: LGBTQ+ inmates often lack access to support networks, advocacy groups, and legal resources that can help them navigate the criminal justice system and advocate for their rights. Facilitating connections with external organizations and providing information on legal rights are important steps. Ensuring that LGBTQ+ prisoners have access to legal representation and advocacy services can help them address issues related to their treatment, access to healthcare, and protection from abuse.

# CHAPTER 7

**CONCLUSION**

### 7.1 CONCLUSION

The Prisons in India are not considered as a house for incarceration to deter criminal behaviour. On the subject of Crime, Mahatma Gandhi, our father of our nation, had once said "Crime is the outcome of a diseased mind and jail must have an environment of a hospital for treatment and Care." Indian Prison Administration is having a strong faith in this principle. Sentence of imprisonment would be justifiable only if it ultimately leads to social defence against crime. Such an aim could be achieved only if incarceration motivates and prepares the offender for a law abiding and self-supporting life after his or her release. Imprisonment deprives the offender of his liberty and self-determination and the prison system should not be allowed to aggravate the suffering already inherent in the process of incarceration. Hence the prison should endeavour to reform and re-assimilate the offender in the social milieu by giving them appropriate correctional treatment. Thus, the objectives of the Prison and Correctional Administration in India are:

1. To protect society against crime by secure and safe custody of prisoners and to develop a sense of discipline amongst them.
2. To provide such conditions to the prisoners as are conducive to their reformation and rehabilitation.
3. To provide basic minimum facilities to the prisoner for maintaining their human dignity.
4. To motivate the prison personnel to achieve the above objectives in their management of prisons.

The actual status of the Indian Prisons and Prison Administration has been elaborately discussed in Chapter II while tracing the early history of the Indian Prisons particularly preindependence and post-independence period but before judicial intervention on the prison administration in the name of Judicial Activism in the late 70s. In between this period so many Commissions and Committees were formed both at the Central and State Level in reforming the Indian Prisons and Prison Administration. Of course, there was a slow progress in the management of prisons and treatment of prisoners. Only after the intervention of the Apex Court in interpreting the Constitutional Rights in favour of the prisoners in the name of Judicial Activism many improvements were made in the day-to-day routine of the prisoners. In support of this, so many case laws have been cited with detailed discussion in Chapter IV. In fact after Judicial Activism only series of Committees like Justice Mulla (1980-83), Justice Kapoor (1986), National Expert Committee on Women headed by Justice Krishna Iyer (1986-87), were formed by the Government of India and on an off-shoot of the recommendation of these Committees tremendous improvements were witnessed in the treatment of Prisoners, living condition in Prisons, using modernised technologies in the Prison Administration. The immense financial support given by the Government of India under various schemes and the funds spared under the State Budget augmented the needs of the Prison Administration in providing the required facilities under the various treatment programmes in Prisons and also to improve the Prison Administration. After transferring the prison subject from NISD to BPR&D in 1995 remarkable improvements were brought into vogue in the Indian Prison Administration. The preparation of Draft Model Prison Manual, 2003 and Draft National Policy on Prison Reforms and Correctional Administration, 2007 are the contribution of BPR&D. These two drafts are yet to be approved by the Government of India. The compilation of Prison Statistics in India done by NCRB since 1995 is a humongous task. This enables the understanding of the Prison Administration in its totality. The best practices followed in Indian Prisons and the present position are analysed in the later part of Chapter V. The Critical analysis with the available data has also been done in Chapter VI of the Thesis. Inspite of so many improvements made in the Prisons of India as discussed in the earlier Chapters, the present Indian Prison Administration is not free from, comments, criticisms, litigations etc from various angles like the Inmates, Public, Mass-media, Judiciary, Human Rights Commission so on and so forth. This is on the one hand by the Prison Authorities due to the lacuna in executing the due provisions of the Rules and Regulations in letter and spirit and on the other hand by the Prisoners who are not observing the prescribed Code of Conduct as laid down in the manual either knowingly or unknowingly or under the influence of others. The general deviance of the prisoners which are noticed in the walk of life of the prisoners are Smuggling contraband articles including cell phone into prisons while on their admission, return from Court and leave, forming groups and taking an upper hand which leads to unnecessary clash among prisoners and with the Prison Personnel, teasing new prisoners, teaching the trick of the trade in committing offences and converting them into hard core criminals and escaping the clutches of law, Bribing the Prison Officials in order to get extra concession or/and suppress their illegal activities and deviating the Prison Rules. The authoritarian tone of the Prison Officials has not been changed. The principle of the prison is that "Remember that the prisoner is a ward and not the slave of the State". Still the prisons staff are under wrong notion that the prisoners are at their mercy forgetting the fact that they are the Correctional Officers. So Correction necessarily has to be started from the Correctional Officers rather than the prisoners. This is like two sides of the same coin. Even though some of the recommendations of the Committees which involve huge financial commitments are accepted in principle, they could not be implemented due to financial constraints, such recommendations could be implemented in a phased manner. Unless and otherwise an equilibrium is maintained between both levels, the optimum level of achievement could not be achieved and there will be always shortcomings, commission, and omission on both the ends. On careful analysis of the Conditions prevailed in the olden days, various recommendations and suggestions made by different Committees/Commissions on Prisons in India, the Directions of the Apex Court on Prison Administration and the current position and best practices followed in Indian Prisons the researcher would like to suggest the following in further improvement of the Prison and Prison Administration in India.

### 7.2 SUGGESTIONS

1. Incorporating the Principles of Management of Prisons and Treatment of Offenders in the Directive Principles of the State Policy embodied in Par IV of the Constitution of India.
2. Including the subject of Prisons and allied Institutions in the Concurrent List of the VII Schedule of the Constitution of India.
3. Enacting a new uniform and comprehensive Central Law by replacing the old Acts relating to Prisons and Prisoners viz. Prisons Act,1894, Prisoners Act, 1900, Identification of Prisoners Act, 1920, Exchange of Prisoners Act, 1948, Transfer of Prisoners Act,1950, and Prisoner (Attendance in Court) Act, 1955.
4. To get an early approval of the Draft Model Prison Manual, 2003 and Draft National Policy on Prison Reforms and Correctional Administration, 2007.
5. Revising the good old manuals of States / Union Territories where the revision has not been taken up on the lines of model prison manual.
6. Extensive use of Probation Services in deserving cases by amending the appropriate provisions of the Probation of Offenders Act, 1958, adequately strengthening the infra structure of the Probation Services and arranging sensitization programmes regularly for judicial Officers, Prosecuting Officers and Police Officers.
7. Insertion of a new Section 357-A in the Cr.P.C.,1973 for the payment of compensation to the victims of crime out of the earnings of the Prisoners under Wage Earning Scheme. 8. Amending the existing section 320 (1) of the Cr.P.C., so as to declare more offences compoundable.
8. Amending the existing Section 167 (3) of the Cr.P.C suitably so as to introduce the system of video Conferencing in which the alleged offenders are produced before the Magistrate through videoconferencing instead of physical presence in the Court for pretrial i.e. for adjournment or extension of the Judicial Remand.
9. Amending the existing sections 164, 267 & 275 of the Cr.P.C. to enable the trial through Video Conferencing.
10. Insertion of a new sub- Section 305- A in Cr.P.C so as to expedite and 'dispose of ' the trial cases of Under-trial Prisoners in custody by giving top-priority.
11. Insertion of a new sub-section 305-B in the Cr.P.C so as to provide lesser punishment in uncontested matter and also on free and frank admission of guilt.
12. Inserting a new sub-section 44-A in the Cr.P.C. to minimise the need for the arrest in pursuance of the guidelines of the Hon'ble Supreme Court in Joginder Kumar vs. State of Uttar Pradesh Cri.L. J 1994 SC 1981. Issuing appropriate direction by the State Government and Registrar of High Court for the effective implementation of the Section 436-A wherein liberalising Bail Provision has been liberalised for under-trials lodged in the Prisons who has undergone detention for a period extending up to onehalf of the maximum period of imprisonment specified for that offence and that he shall be released by the Court on his personal bond with or without sureties in order to decongest Prisons..
13. Amending the existing Section 53 of the Indian Penal Code so as to include the Community services as one of the punishments prescribed under this Section. Amending suitably the existing Section 433 of the Cr.P.C so as to consider and release under the Advisory Board Scheme the Lifers who offer good prognosis for reformation and rehabilitation even before the completion of 14 years of actual imprisonment say 8-10 years.
14. Expediting the work carried out at present in different Jails regarding the renovation, repairs, construction of additional accommodation and new Jails.
15. To assess the feasibility of constructing additional accommodation in the existing Jail and constructing new Jails in other areas wherever required.
16. Diversification of institution should be evolved for the basic segregation and treatment of homogenous group of Prisoners instead of keeping heterogeneous group of Prisoners under one roof. Segregating Prisoners according to their age, sex, conviction. security, period of detention etc., (Convict Prison, Remand Prison, Borstal School, Open Prison, Female Prison, High, Middle and Low Security Prison etc.,) will help the Prison Administration in maintaining security with minimum staff and to implement the welfare and rehabilitative programmes effectively in Prisons wherever and to whomsoever necessary.
17. Identifying the factors responsible for vitiating the atmosphere of the Prison Institution such as accommodation, hygiene, sanitation, food, clothing, medical facilities etc., and taking proper and immediate action at all levels effectively for rectification.
18. Strictly following the Rules and Regulations prescribed for the scientific classification of prisoners in letter and spirit with the support of Custodial and Correctional Staff and even NGOs.
19. Prison Work Programmes and Vocational training should be integrated with National Economic Plans.
20. Public participation in prevention of crime and treatment of offenders should be made a part of the National Policy on Prisons.
21. Relieving the Custodial Officer from all the clerical work as their primary duty is to supervise Prisoners and maintain security in the Prison.
22. Considering the meagre strength of Correctional Officers in Prisons like Welfare Officers, Psychologists, Social Case workers, Probation Officers etc., their strength should be increased in proportion to the inmate population so that individual attention on Prisoners on various spheres of correctional activities (Technique of casework, Group work, individual and group guidance and counselling) could be taken up effectively. Participation of outside agency shall be encouraged for utilising the potential prison labour available in plenty as an outsource by allowing the agency to start gainful trade by providing necessary infra-structure facilities in prison.
23. The feasibility of privatising the Prison Industry may be assessed through a pilot study wherever necessary as the custodial staff who presently manage the industries are lacking in experience in such industries.
24. Allowing NGOs and Philanthropists who are really interested in the welfare of Prisoners liberally in all the treatment programmes in Prisons like Classification, Education, Vocational training, Medical and Health care, Sanitation and Hygiene, Recreation Activities etc.
25. Increasing the rate of wages of the prisoners since the wages now paid to the prisoners in most of the Prisons is not on par with the market rate.
26. The practice of granting Furlough or Home leave may be extended in India Prisons unanimously as it is now in vogue in limited States only because it is unique in computing leave period towards the sentence and not at large period as in the case of other kinds of leave.
27. The system of mobile complaint box which was introduced at first in Tihar Jail may be strictly followed in all the Prisons in India as it will be an effective method of ventilating grievances for inmates.
28. The existing strength of Prison Staff in all categories should be increased in proportion to the souring prison inmate population and immediate step should be taken to fill up the vacant posts.
29. To review the prolonged cases of under-trial prisoners in prison periodical meetings should be conducted regularly with the Magistrate, Police and Prison Officers.
30. As per the existing provision the duties, rights and privileges of Prisoners should be printed in bold letters in vernacular language and pasted at several prominent places inside the Prison to make the prisoner aware of the same. Ahead of this, marquee of the above with picturisation may be installed in conspicuous places for better understanding and learning of the prisoners.
31. The system of non-official visitors should be revived by appointing persons who are genuinely interested in Prison Reforms and Prisoners Welfare.
32. To promote Prison Products, Show Rooms, Stalls and Exhibition Prison Bazaars, outlets and the like in all the States.
33. Constituting Committee in each State/Union territory to identify and enroll voluntary workers and agencies at the State, District and Sub-divisional levels.
34. The appropriate Government should give due patronage, financial assistance, recognition to voluntary agencies and individuals working in correctional filed.
35. After care Home with sufficient infrastructure shall be established in all States to meet the immediate needs of the released prisoners.
36. The Services of Probation Branch shall be utilised by strengthening theBranch.
37. Prisoners Welfare Fund with Government contribution shall be created in all the States to undertake various welfare measures for Discharged Prisoners and their families.
38. Establishment of permanent Prison Adalat in all Central and District Prisons where Remand and Under-trials are confined to avoid congestion in jails and also to take up speedy trial.
39. To ensure transparency in Prison Administration, dissemination of information about Prison and Prisoners should be provided through Newsletters, Prison Magazine, Website, short films documentaries etc.
40. Women Court and Women Adalat headed by women may be established in all the States for the speedy disposal of the cases of women offenders/prisoners.

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