

CONSTITUTIONALISING PRISON REFORMS IN INDIA: PRISONERS' RIGHTS, CRIMINAL JUSTICE REFORM AND THE TRANSFORMATIVE CONSTITUTION

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ABSTRACT

Prisons in India are under Entry 4 of List II of the Seventh Schedule to the Constitution, it is a subject that is mainly under the state domain, prisons still are administered through the colonial-era Prisons Act, 1894 and State Prison Manuals. Yet the last four decades of constitutional adjudication have established, beyond serious dispute, that imprisonment curtails a convict's physical liberty without extinguishing the remainder of her constitutional personality. This article argues that prison reform in India can no longer be understood merely as an exercise in penological policy; it must be understood as an exercise in constitutional governance. Examining Articles 14, 15, 19, 20, 21, 22, 32 and 226, read together with the Directive Principles in Articles 38, 39 and 39A, the article traces the judicial construction of a body of "prison jurisprudence" from Maneka Gandhi through Sunil Batra, Hussainara Khatoon, D.K. Basu, Re: Inhuman Conditions in 1382 Prisons and, most recently, Sukanya Shantha v. Union of India (2024). It then examines how the new criminal law codes i.e., the Bharatiya Nyaya Sanhita, 2023, the Bharatiya Nagarik Suraksha Sanhita, 2023, and the Bharatiya Sakshya Adhiniyam, 2023 together with the Model Prisons and Correctional Services Act, 2023, purport to carry this constitutional vision into legislative and administrative practice, particularly through Section 479 BNSS on undertrial detention, the introduction of community service as a mode of punishment, and the reform of parole, furlough and remission. The article argues that India's prison system stands at an unfinished transition from prison as a place of custody, to prison as a constitutionally regulated institution, to prison as a correctional and rehabilitative institution and that the persistence of overcrowding, custodial violence, caste-based labour, and uneven implementation of model instruments shows that this transformation remains substantially incomplete. It concludes with recommendations for aligning prison administration with the transformative promise of the Constitution.

KEYWORDS: Prisoners' rights; Article 21; prison reform; Bharatiya Nagarik Suraksha Sanhita; Model Prisons Act; undertrial prisoners; custodial justice; transformative constitutionalism.

I. Introduction: From Incarceration to Constitutional Governance of Prisons

Punishing offenders has been regarded as a primary function of organised society since antiquity, and prisons, in one form or another, have existed throughout recorded history.¹ For a long period, it was assumed that rigorous isolation and custodial deprivation would by themselves reform the offender; experience showed that unmediated incarceration often produced the opposite effect.² The real difficulty, however, is not merely penological but

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¹ Punishing the offenders is the primary function of all civil societies, and prisons are known to have existed throughout history, their origins traceable to the ancient period.

² It was believed that rigorous isolation and custodial measures would reform offenders; experience belied this expectation, and imprisonment without more often produced the

constitutional: what happens to the fundamental rights of a person the moment a court, exercising the coercive power of the State, orders her confined? For much of India's post-Independence history, the working assumption of prison administrators inherited from colonial practice was that a convict retained no rights worth speaking of; incarceration was treated as a state of civil death in which the prisoner became, in Krishna Iyer J.'s memorable phrase, a person whom the law had reduced to being "a bundle of rights" only on paper.³

This article's central argument is that Indian prison law can no longer be adequately described, still less reformed, without placing the Constitution at the centre of the analysis. Beginning with *Maneka Gandhi v. Union of India*,⁴ the Supreme Court has progressively read into Article 21 a substantive and procedural content that survives the fact of imprisonment: dignity, health, legal representation, freedom from torture, and increasingly equality of treatment regardless of caste, sex, or gender identity. The State, upon conviction, acquires vastly enhanced control over a prisoner's physical liberty; it does not thereby acquire an unrestricted power over the prisoner's dignity, bodily integrity, privacy, health or access to justice. This is the proposition this article terms constitutional citizenship surviving incarceration, and it is developed as the organising thread running through every subsequent Part.

The article is structured as follows. Part II traces the historical and legal evolution of prison administration in India. Part III situates prisons within the federal distribution of legislative power under the Seventh Schedule. Part IV undertakes an article-by-article constitutional analysis of prisoners' rights. Part V traces the judicial evolution of prison jurisprudence through the leading decisions of the Supreme Court, culminating in the 2024 ruling on caste discrimination in prisons. Part VI examines the effect of the three new criminal codes that came into force on 1 July 2024. Parts VII to XVI examine, in turn, undertrial detention and overcrowding; parole, furlough and remission; legal aid; custodial violence and accountability; solitary confinement and segregation; women prisoners; transgender prisoners; health and mental health; and technology and rehabilitation. Part XVII examines the Model Prisons and

opposite effect. With the development of the behavioural sciences, it came to be recognised that reformation was not possible through detention alone.

³ See V.R. Krishna Iyer, *Perspectives in Criminology, Law and Social Change* (Allied Publishers, 1980); the phrase draws on the broader Krishna Iyer J. formulation, developed judicially in *Sunil Batra v. Delhi Administration*, AIR 1978 SC 1675, that "the prisoner retains all the rights enjoyed by a free citizen except those lost necessarily as an incident of imprisonment."

⁴ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597, holding that the procedure contemplated by Article 21 must be "right, just and fair" and not arbitrary, fanciful or oppressive, thereby reading Articles 14, 19 and 21 as an integrated code rather than isolated compartments the analytical premise for the entire subsequent development of prisoners' rights jurisprudence.

Correctional Services Act, 2023 and clarifies its non-binding, model character. Part XVIII draws together the central constitutional contradictions that persist in contemporary reform, and Part XIX offers recommendations before the Conclusion returns to the article's organising question.

II. Historical and Legal Evolution of Prison Administration in India

A structured system of prisons is documented in India from the earliest recorded period. Brihaspati is said to have laid stress on the imprisonment of convicts in closed institutions, whereas Manu was recorded as opposed to the practice; solitary confinement was, in the classical period, sometimes used as a device for self-introspection rather than as a form of aggravated punishment.⁵ The recognised modes of punishment during the Hindu and Mughal periods included the death sentence, hanging, whipping, flogging, branding, and, in extreme cases, starvation, and prisons of the period functioned principally as instruments of terror rather than reform.⁶

The British colonial administration marked the beginning of formal penal "reform," though the reform was directed chiefly at administrative uniformity and discipline rather than at prisoners' welfare. The Prison Discipline Committee of 1836 recommended the abolition of prisoners' being made to work on public roads; the office of Inspector General of Prisons was created in 1855 as the chief administrative authority over prisons; and the second Jail Enquiry Committee of 1862 drew attention to the insanitary conditions responsible for large-scale prisoner mortality, recommending improvements in food, clothing and medical care.⁷ These recommendations were eventually codified in the Prisons Act, 1894 (and the cognate Prisoners Act, 1900 and the Transfer of Prisoners Act, 1950), a framework of prison administration built around custody and discipline rather than reformation, and one which until the passage of the Model Prisons and Correctional Services Act, 2023 discussed in Part XVII, continued to furnish the primary statutory basis of prison

⁵ A well-organised system of prisons existed in India from the earliest period; Brihaspati favoured imprisonment of convicts in closed prisons, while Manu opposed this system, and solitary confinement was sometimes practised to allow prisoners an opportunity for self-introspection.

⁶ The object of punishment during the Hindu and Mughal periods was primarily deterrent, with recognised modes including death, hanging, whipping, flogging, branding and, in extreme cases, starvation; prisoners were frequently subjected to inhuman treatment, and prisons functioned as places of terror rather than reform.

⁷ The Prison Enquiry (Discipline) Committee of 1836 recommended abolition of the practice of prisoners working on public roads; the office of Inspector General of Prisons was created in 1855; and the second Jail Enquiry Committee of 1862 expressed concern at insanitary prison conditions causing prisoner deaths, recommending improved food, clothing and medical treatment.

administration in most States for one hundred and thirty years.⁸ It is important to record that even after Independence, prison administration was for decades treated as an executive housekeeping matter rather than a subject of constitutional concern; it was only from the late 1970s, through the interventions discussed in Part V, that prisons came to be recognised as sites where fundamental rights operate with undiminished force, subject only to the reasonable requirements of custody.

III. Prisons as a State Subject: Federalism and the Seventh Schedule

Entry 4 of List II (State List) of the Seventh Schedule to the Constitution assigns prisons, reformatories and other institutions of a like nature, and persons detained therein exclusively to the legislative and executive competence of the States.⁹ This allocation has three constitutional consequences. First, Parliament cannot, by ordinary legislation, impose a uniform prisons code on the States; it can only recommend model legislation, as is also mentioned under Model Prisons and Correctional Services Act, 2023 (Part XVII). Second, because prison administration is a State function, the primary constitutional remedy against prison illegality lies under Article 226 before the High Court having jurisdiction, even though the Supreme Court, through Article 32 and its continuing suo motu proceeding *In Re: Inhuman Conditions in 1382 Prisons*, has assumed an unusually active supervisory role notwithstanding the entry's State-List location.¹⁰ Third, although prison administration is largely handled by the States, this does not change the basic protection given by Part III of the Constitution. Prisoners in Kerala, Uttar Pradesh, Manipur, or any other State are entitled to the same protection under Articles 14, 19, 20, 21 and 22. The rules and prison laws may differ from one State to another, but these differences cannot reduce the fundamental rights guaranteed to prisoners. The main

⁸ The Prisons Act, 1894 was enacted to bring uniformity to prison administration; it provided for classification of prisoners and abolished the sentence of whipping, and was progressively supplemented, but not comprehensively replaced, until the Model Prisons and Correctional Services Act, 2023 was circulated to States in 2023 — see Part XVII below. On the persistence of the 1894 Act as the operative framework in most States as of 2025, see Ministry of Home Affairs, Reply to Rajya Sabha Unstarred Question, 6 August 2025.

⁹ The Seventh Schedule, List II, Entry 4 places "Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements for prisoners sent from other States" within the exclusive legislative competence of the States.

¹⁰ *In Re: Inhuman Conditions in 1382 Prisons*, (2016) 3 SCC 700, originating from a letter addressed to the Supreme Court by a former Chief Justice of India drawing attention to overcrowding and unnatural deaths in prisons, has since 2013 functioned as a continuing supervisory proceeding under Article 32 notwithstanding the State-List character of the subject matter, on the footing that systemic violations of Article 21 attract the Supreme Court's writ jurisdiction irrespective of the executive competence otherwise vested in the States.

constitutional concern, therefore, is not a difference in rights but differences in how those rights are implemented in different States.

The principle of separation of powers is also important in this context. Prison administration falls primarily within the executive authority of the State Government and is subject to legislative control. Therefore, the judiciary generally does not take over the administration of prisons. Instead, courts establish the minimum constitutional standards that prison authorities must follow and issue directions to ensure compliance. This limitation explains both the important achievements and the limitations of judicial intervention in prison reform discussed in Part V.

IV. The Constitutional Architecture of Prisoners' Rights

A. Article 14 — Equality and non-arbitrariness: Article 14 guarantees equality before the law and equal protection of the laws; in its post-*Maneka Gandhi* elaboration it also prohibits State action that is arbitrary.¹¹ In the context of prisons, Article 14 can be understood in two ways. First, it prohibits classifications that have no reasonable connection with a legitimate purpose of prison administration. This was clearly demonstrated in *Sukanya Shantha* (discussed in Parts V and XI), where the Court held that assigning prison labour and barracks on the basis of caste had no valid connection with prison discipline or any legitimate prison objective.¹² Second, Article 14 has also been used to challenge the broad and unchecked powers given to prison and executive authorities in matters such as remission, parole and premature release. The basic idea is that when authorities exercise such powers without clear rules or guidelines, their decisions may become arbitrary and unfair, which is contrary to Article 14 (discussed in Part IX).

B. Article 15 — Non-Discrimination: Article 15(1) prohibits discrimination by the State on grounds of religion, race, caste, sex or place of birth. Read together with Article 17 (abolition of untouchability) and Article 23 (prohibition of forced labour), Article 15 supplied an independent basis, alongside Article 14, for the Supreme Court's finding in *Sukanya Shantha* that assigning menial and manual labour along caste lines within prisons was unconstitutional, irrespective of any administrative convenience such classification was said to serve.¹³

¹¹ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597; *E.P. Royappa v. State of Tamil Nadu*, AIR 1974 SC 555 (equality is antithetic to arbitrariness).

¹² *Sukanya Shantha v. Union of India*, W.P. (C) No. 1404 of 2023, decided 3 October 2024, holding provisions in several State prison manuals assigning labour and barrack allocation on the basis of caste to be violative of Articles 14, 15, 17, 21 and 23.

¹³ *Ibid.*

C. Article 19 — Continuing Constitutional Freedoms: It is well established that conviction and incarceration do not extinguish the freedoms guaranteed by Article 19(1); they permit only such restrictions as are reasonable and proportionate to the fact of confinement.¹⁴ A prisoner therefore retains, subject to reasonable prison regulation, a qualified freedom of expression (recognised, for instance, in the Supreme Court's affirmation of press access to death-row prisoners in *Prabhu Dutt v. Union of India*¹⁵), a right to communicate with family and legal counsel, and increasingly, through the video-conferencing and telephone-access reforms discussed in Part XV a materially enlarged sphere of contact with the outside world that prison authorities may regulate but not eliminate.

D. Article 20 — Safeguards Relating to Criminal Punishment: Article 20 protects against ex post facto criminal laws, double jeopardy, and self-incrimination. Its relevance to prison reform is sharpened by the transitional questions thrown up by the new criminal codes: because BNS, 2023 introduces community service as a mode of punishment and enhances sentences for a number of offences,¹⁶ courts have had to consider whether, and to what extent, sentences may be recalibrated for offences straddling 1 July 2024 without offending the Article 20(1) bar on retrospective enhancement of penalty a bar that operates independently of, and as a check upon, the otherwise beneficial retrospective application the Supreme Court has given to Section 479 BNSS (Part VII below), which is remedial rather than penal and therefore attracts no Article 20(1) difficulty.

E. Article 21 — Life, Dignity, Privacy, Health and Humane Treatment: Article 21 is, without serious rival, the constitutional provision doing the greatest doctrinal work in prison law. Since *Maneka Gandhi* established that the "procedure established by law" restricting personal liberty must itself be fair, just and reasonable,¹⁷ the Supreme Court has read into Article 21 a widening set of entitlements applicable inside prison walls: the right to a speedy trial

¹⁴ See generally *State of Maharashtra v. Prabhakar Pandurang Sanzgiri*, AIR 1966 SC 424, recognising that a detenu does not lose all Article 19 freedoms merely by reason of detention, a principle subsequently extended to convicted prisoners.

¹⁵ *Prabhu Dutt v. Union of India*, AIR 1982 SC 6, holding that a journalist could not, absent valid grounds, be denied an interview with condemned prisoners, and recognising a qualified right of the press to access prison inmates subject to prison discipline.

¹⁶ Section 4(f), Bharatiya Nyaya Sanhita, 2023 introduces community service as a distinct category of punishment for the first time in Indian criminal law, applicable, among other provisions, to petty theft under the proviso to Section 303(2), public intoxication under Section 355, and defamation under Section 356.

¹⁷ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

(*Hussainara Khatoon*¹⁸); the right to live with human dignity, extending to nutrition, clothing, shelter and the right to move freely and mix with fellow human beings (*Francis Coralie Mullin*¹⁹); freedom from torture and degrading treatment, including the use of bar fetters and solitary confinement as measures of routine prison discipline (*Sunil Batra I and II*, *Charles Sobhraj*, *Prem Shankar Shukla*²⁰); the right to compensation for custodial death or torture as a public-law remedy independent of tortious liability (*Nilabati Behera*, *D.K. Basu*, *Challa Ramakrishna Reddy*²¹); and, most recently, the right to be free of caste-based indignity within the prison itself (*Sukanya Shantha*²²). Article 21 has also been read to encompass a right to health and to access to modern medical care, a proposition of increasing practical significance given the mental-health and healthcare deficits documented in Part XIV, and a right to privacy — recognised generally in *K.S. Puttaswamy v. Union of India*²³ — that now bears directly on the propriety of CCTV surveillance and digital record-keeping inside prisons (Part XV).

¹⁸ *Hussainara Khatoon v. State of Bihar*, AIR 1979 SC 1360, holding that the right to a speedy trial is implicit in Article 21 and directing the release of undertrial prisoners who had been detained longer than the maximum sentence for their alleged offence.

¹⁹ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, AIR 1981 SC 746, holding that the right to life under Article 21 includes the right to live with human dignity and encompasses the bare necessities of life together with the right to move freely and mix with fellow human beings, and, on the facts, striking down restrictive conditions on a detenu's access to counsel and family.

²⁰ *Sunil Batra v. Delhi Administration*, AIR 1978 SC 1675 (*Sunil Batra I*), holding that solitary confinement and the use of bar fetters as measures of routine punishment, unaccompanied by due process, offend Article 21; *Sunil Batra v. Delhi Administration (II)*, (1980) 3 SCC 488, extending judicial supervision to custodial torture and expanding the scope of habeas corpus to permit continuing supervisory jurisdiction over prison conditions; *Charles Sobhraj v. Superintendent, Central Jail*, AIR 1978 SC 1514, holding that punitive solitary confinement and bar fetters imposed without following fair procedure violate Articles 14 and 21; *Prem Shankar Shukla v. Delhi Administration*, AIR 1980 SC 1535, holding that routine handcuffing of undertrial prisoners without recorded justification is unconstitutional.

²¹ *Nilabati Behera v. State of Orissa*, AIR 1993 SC 1960, recognising public-law compensation for custodial death as a remedy distinct from private-law tort liability; *D.K. Basu v. State of West Bengal*, AIR 1997 SC 610, laying down eleven mandatory safeguards to be followed during arrest and detention and affirming the availability of compensation for custodial violence as a public-law remedy under Article 21; *State of Andhra Pradesh v. Challa Ramakrishna Reddy*, (2000) 5 SCC 712, holding the State vicariously liable in damages for the death of an undertrial prisoner caused by the negligence of prison authorities, and rejecting sovereign immunity as a defence to a claim founded on the violation of Article 21.

²² *Sukanya Shantha v. Union of India*, W.P. (C) No. 1404 of 2023, decided 3 October 2024.

²³ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1, recognising privacy as a fundamental right flowing from Article 21, with implications for the extent of permissible surveillance, including of prisoners, discussed in Part XV.

F. Article 22 — Safeguards Concerning Arrest and Detention. Article 22 guarantees the right to be informed of the grounds of arrest, the right to consult and be defended by a legal practitioner of choice, and the right to be produced before a magistrate within twenty-four hours of arrest (subject to the separate regime for preventive detention under Article 22(4)-(7)). These guarantees operate at the threshold of custody, before a person becomes a "prisoner" in the strict sense, but their proper observance — reinforced by the *D.K. Basu* guidelines²⁴ and, since 2014, by the *Arnesh Kumar* direction restraining automatic arrest in offences punishable with imprisonment of up to seven years²⁵ — has a direct bearing on the size and composition of the undertrial population that dominates Indian prisons (Part VII).

G. Articles 32 and 226 — Judicial Protection of Prisoners. Article 32 (before the Supreme Court) and Article 226 (before the High Courts) supply the principal procedural mechanism through which the substantive guarantees above have been enforced. The prison jurisprudence surveyed in Part V is, almost without exception, the product of public interest litigation initiated by way of letter petitions, journalist-initiated writ petitions (as in *Sukanya Shantha* itself, commenced by a journalist's investigative article²⁶), or continuing mandamus proceedings such as *In Re: Inhuman Conditions in 1382 Prisons*, illustrating how Articles 32 and 226 have functioned less as one-off remedies than as standing institutional mechanisms of prison oversight.

H. Directive Principles: Articles 38, 39 and 39A. Articles 38 and 39 direct the State to secure a social order in which justice social, economic and political, informs all institutions of national life, and to direct its policy toward securing adequate livelihood and preventing the concentration of wealth and the abuse of the vulnerable. Article 39A, inserted by the Forty-Second Amendment, specifically directs the State to secure equal justice and free legal aid, and to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability.²⁷ Although Directive Principles are not directly enforceable, the Supreme Court in *Hussainara Khatoon* and subsequent decisions has treated Article 39A as informing the content of the Article 21

²⁴ *D.K. Basu v. State of West Bengal*, AIR 1997 SC 610.

²⁵ *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273, directing police officers to record reasons in writing before effecting arrest in offences punishable with imprisonment of seven years or less, a direction subsequently reflected in Section 35 BNSS and reaffirmed within the *Satender Kumar Antil* bail framework discussed in Part VII.

²⁶ The petition in *Sukanya Shantha* arose from an investigative article by the petitioner, a journalist, documenting caste-based labour and segregation practices in State prison manuals across the country.

²⁷ Article 39A, inserted by the Constitution (Forty-second Amendment) Act, 1976, directs the State to ensure that the operation of the legal system promotes justice on a basis of equal opportunity, and to provide free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability.

right of the poor undertrial to legal representation, thereby converting an ostensibly non-justiciable directive into an operative constitutional standard the doctrinal basis for the statutory legal-aid architecture examined in Part VIII.

I. Article 51A — Fundamental Duties: While Article 51A imposes duties on citizens rather than the State, clause (h) and clause (e) have occasionally been invoked interpretively by courts and commentators to reinforce the case for humane prison conditions and gender-sensitive treatment, though consistently with the settled position that fundamental duties do not by themselves create judicially enforceable rights this article treats Article 51A as an interpretive aid rather than an independent source of prisoners' entitlements.

V. Judicial Evolution of Prisoners' Rights: The Case-Law Arc

The doctrinal architecture described in Part IV did not emerge from a single decision; it is the product of a sustained judicial project spanning nearly five decades. *Maneka Gandhi* (1978) supplied the interpretive method reading Articles 14, 19 and 21 as an integrated, mutually reinforcing code without which none of the subsequent prison decisions would have been analytically possible.²⁸ Within months, the *Sunil Batra* litigation (1978-1980) applied that method directly to prison administration, holding that the "prisoner is a person" and that punitive measures such as solitary confinement, bar fetters and torture require independent justification under Article 21 rather than being assumed incidents of custody.²⁹ *Charles Sobhraj* and *Prem Shankar Shukla*, decided in the same period, extended the same reasoning to routine handcuffing and disciplinary segregation.³⁰ *Hussainara Khatoon* (1979) shifted the Court's attention from the treatment of convicted prisoners to the far larger population of undertrials, establishing that prolonged pre-trial detention without an expeditious hearing itself violates Article 21 a holding whose descendant, Section 479 BNSS, is examined in Part VII.³¹ *Francis Coralie Mullin* (1981) generalised the dignity principle beyond the prison context but has been consistently applied to prison conditions ever since.³² *Rama Murthy v. State of Karnataka* (1997) then took stock of the accumulated jurisprudence and identified nine systemic problems overcrowding, trial delay, torture and ill-treatment, neglect of health and hygiene, inadequate food and clothing, prison vices, deficiencies in communication, irregular jail visits, and poor management of open prisons that continue, largely unchanged, to define the reform agenda

²⁸ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

²⁹ *Sunil Batra v. Delhi Administration*, AIR 1978 SC 1675; *Sunil Batra v. Delhi Administration (II)*, (1980) 3 SCC 488.

³⁰ *Charles Sobhraj v. Superintendent, Central Jail*, AIR 1978 SC 1514; *Prem Shankar Shukla v. Delhi Administration*, AIR 1980 SC 1535.

³¹ *Hussainara Khatoon v. State of Bihar*, AIR 1979 SC 1360.

³² *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, AIR 1981 SC 746.

examined throughout this article.³³ *Nilabati Behera* (1993) and *D.K. Basu* (1997) established custodial-death compensation and arrest safeguards respectively as freestanding public-law remedies, later reinforced in *Challa Ramakrishna Reddy* (2000), which rejected sovereign immunity as a defence where prison negligence causes a prisoner's death.³⁴ From 2013 onward, the continuing proceeding *In Re: Inhuman Conditions in 1382 Prisons* has functioned as a standing supervisory mechanism addressing overcrowding, unnatural deaths, video-conferencing infrastructure, and as examined in Part VII the implementation of Section 479 BNSS.³⁵ *Arnesh Kumar* (2014) addressed the arrest stage directly, and *Satender Kumar Antil v. CBI* (2022) then supplied a comprehensive, category-wise bail framework intended to operationalise the "bail is the rule, jail is the exception".³⁶ These cases lay the backdrop, for the purposes of this article, in *Sukanya Shantha v. Union of India* (2024), in which the Supreme Court, applying Articles 14, 15, 17, 21 and 23 together, struck down caste-based labour and segregation practices embedded in State prison manuals and directed a nationwide revision of those manuals within three months – a decision this article treats as the most significant prisoners'-rights judgment since *Sunil Batra*, precisely because it demonstrates the continuing vitality of the constitutional method inaugurated in 1978.³⁷

VI. The New Criminal Codes and the Constitutionalisation of Prison Reform

With effect from 1 July 2024, the *Bharatiya Nyaya Sanhita, 2023* (BNS), the *Bharatiya Nagarik Suraksha Sanhita, 2023* (BNSS), and the *Bharatiya Sakshya*

³³ *Rama Murthy v. State of Karnataka*, (1997) 2 SCC 642, identifying overcrowding, delay in trial, torture and ill-treatment, neglect of health and hygiene, insufficient food and inadequate clothing, prison vices, deficiency in communication, irregular jail visits, and poor management of open prisons as the nine principal problems requiring urgent attention.

³⁴ *Nilabati Behera v. State of Orissa*, AIR 1993 SC 1960; *D.K. Basu v. State of West Bengal*, AIR 1997 SC 610; *State of Andhra Pradesh v. Challa Ramakrishna Reddy*, (2000) 5 SCC 712.

³⁵ *In Re: Inhuman Conditions in 1382 Prisons*, (2016) 3 SCC 700, and subsequent orders, including the order dated 23 August 2024 directing retrospective implementation of Section 479 BNSS (Part VII) and earlier orders (e.g., 8 May 2018) directing States to adopt Model Uniform Rules for Open Correctional Institutions (Part XVI).

³⁶ *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273; *Satender Kumar Antil v. Central Bureau of Investigation*, (2022) SCC OnLine SC 825, categorising offences into four classes (A: punishable with up to seven years' imprisonment; B: death, life imprisonment or more than seven years; C: offences under special statutes with stringent bail provisions such as the NDPS Act, 1985, the PMLA, 2002 and the UAPA, 1967; D: economic offences outside special statutes) and prescribing graduated procedural safeguards against unnecessary arrest and pre-trial detention for each category, with subsequent clarificatory orders forming what commentators describe as the "*Antil* trilogy."

³⁷ *Sukanya Shantha v. Union of India*, W.P. (C) No. 1404 of 2023, decided 3 October 2024, per Chandrachud, C.J.I., Pardiwala and Misra, JJ.

Adhiniyam, 2023 (BSA) replaced the Indian Penal Code, 1860, the Code of Criminal Procedure, 1973, and the Indian Evidence Act, 1872, respectively.³⁸ While these are, in the main, substantive and procedural criminal statutes rather than prison statutes as such, at least four of their features bear directly, and constitutionally, on prison administration.

First, Section 4(f) BNS introduces *community service* as an independent category of punishment for the first time in the history of Indian criminal law, applicable to petty offences such as theft of property valued below a certain amount, appearing intoxicated in a public place and causing annoyance, and defamation.³⁹ Section 23 BNSS defines community service as un-remunerated work ordered by the court that benefits the community.⁴⁰ Constitutionally, this represents a legislative endorsement of the reformatory philosophy long urged in the Directive Principles and by the judiciary, and marks a modest but real legislative movement away from imprisonment as the default response to low-level offending though commentators have noted that the scope of the provision remains narrow and the rules for its practical administration are still being worked out.⁴¹ Second, Section 479 BNSS reforms the law on the maximum period of undertrial detention, discussed in detail in Part VII, extending and clarifying the protection previously available under Section 436A of the former Code of Criminal Procedure. Third, the BNSS reorganises and, in several respects, tightens the procedural safeguards against arrest previously developed judicially in *D.K. Basu* and *Arnesh Kumar*, including Section 35 BNSS's restriction on arrest in offences punishable with imprisonment of up to three years for persons above sixty years of age, and its general requirement that reasons for arrest be recorded.⁴² Fourth, the BSA though concerned with the law

³⁸ The Bharatiya Nyaya Sanhita, 2023, the Bharatiya Nagarik Suraksha Sanhita, 2023, and the Bharatiya Sakshya Adhiniyam, 2023 received the assent of the President on 25 December 2023 and came into force on 1 July 2024, replacing the Indian Penal Code, 1860, the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872 respectively.

³⁹ Section 4(f), Bharatiya Nyaya Sanhita, 2023; community service is prescribed as an available punishment for, among other provisions, the proviso to Section 303(2) (theft of property of value less than a prescribed threshold, on return of the property), Section 355 (misconduct in public by a drunken person), and Section 356 (defamation).

⁴⁰ Section 23, Bharatiya Nagarik Suraksha Sanhita, 2023, defining community service as work which the court may order a convict to perform as a form of punishment that benefits the community, for which the convict is not entitled to remuneration.

⁴¹ PRS Legislative Research, *Legislative Brief: The Bharatiya Nyaya (Second) Sanhita, 2023* (2023), noting that the scope of the community service provision remains textually unclear and that rules governing its practical implementation are yet to be uniformly framed by States.

⁴² Section 35, Bharatiya Nagarik Suraksha Sanhita, 2023, restricting arrest without a warrant in offences punishable with imprisonment of up to three years in the case of persons above sixty years of age, save in specified circumstances, and requiring that reasons for arrest be recorded, substantially codifying the safeguards developed in *D.K. Basu v. State of West Bengal*, AIR 1997 SC 610 and *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.

of evidence rather than prison administration bears indirectly on prison conditions through its provisions on electronic and digital evidence, which interact with the video-conferencing and e-prison infrastructure discussed in Part XV, since remote testimony and virtual production of undertrial prisoners now rest on a more explicit statutory foundation than existed under the 1872 Act.⁴³

The overarching point, and the one central to this article's constitutional argument, is that none of these legislative changes alters the constitutional distribution of authority over prisons described in Part III: BNS, BNSS and BSA are laws of general application enacted under the Union's competence over criminal law and procedure (List III, Entries 1 and 2), not prison-specific legislation, and they must be read as operating *upon* a State-administered prison system rather than as displacing it. Whether that State-administered system, still substantially governed in most States by the Prisons Act, 1894, is capable of giving full effect to the reformatory philosophy embedded in the new codes is precisely the question examined in Part XVII.

VII. Undertrial Justice, Section 479 BNSS and the Constitutional Reality of Overcrowding

No feature of the Indian prison system illustrates the gap between constitutional promise and administrative reality more starkly than the undertrial population. According to the National Crime Records Bureau's *Prison Statistics India 2023* report (released in September 2025), Indian prisons held 525,446 inmates against a sanctioned capacity of 439,119 – a national occupancy rate of 120.8 percent, itself an improvement on the 131.4 percent recorded the previous year — of whom 389,910, or 73.5 percent, were undertrial prisoners rather than convicts.⁴⁴ Uttar Pradesh, Bihar and Maharashtra together account for the largest undertrial populations, and data categorised based on social background show that roughly two out of every three undertrials belong to Scheduled Castes, Scheduled Tribes or Other Backward Classes – a distributive pattern that gives the abstract constitutional guarantee of equality a sharply concrete, and troubling, empirical dimension.⁴⁵ This is, in substance, the same overcrowding

⁴³ Sections 61–63, Bharatiya Sakshya Adhiniyam, 2023, expanding the evidentiary treatment of electronic records, which bears on the admissibility of testimony and identification conducted through video-conferencing links from prison, as discussed in Part XV below.

⁴⁴ National Crime Records Bureau, *Prison Statistics India 2023* (Ministry of Home Affairs, released September 2025), recording a national prison population of 525,446 against a sanctioned capacity of 439,119 (occupancy rate 120.8%, down from 131.4% in 2022), of whom 389,910 (73.5%) were undertrial prisoners.

⁴⁵ *Ibid.*; see also National Crime Records Bureau, *Prison Statistics India 2023*, Table on social-category composition of undertrial prisoners, indicating that Scheduled Castes, Scheduled Tribes and Other Backward Classes together constitute approximately two-

problem *Rama Murthy* identified as endemic to Indian prisons in 1997⁴⁶ and that the original 2020 version of this article discussed in general terms; what has changed since 2020 is the legislative and judicial response.

Section 479 BNSS, which took effect on 1 July 2024, replaces and substantially strengthens the earlier Section 436A of the Code of Criminal Procedure, 1973. It provides that an undertrial who has undergone detention for one-half of the maximum period of imprisonment prescribed for the offence charged or, in the case of a first-time offender who has never previously been convicted, one-third of that period is to be released on bail (or bond, for first-time offenders), and, critically, imposes on the Superintendent of the jail a *statutory duty* to identify eligible prisoners and move the court for their release, rather than leaving the initiative, as under the former regime, to the prisoner or her counsel.⁴⁷ Offences punishable with death or life imprisonment are excluded, and the outer limit remains that no undertrial may be detained beyond the maximum sentence for the offence.⁴⁸

The provision's practical significance was substantially enlarged by the Supreme Court's order of 23 August 2024 in the continuing *In Re: Inhuman Conditions in 1382 Prisons* proceeding, holding that Section 479 applies *retrospectively* to undertrials in cases registered before the BNSS came into force on 1 July 2024, and directing jail superintendents across the country to process eligible cases within three months, with States and Union Territories required to file compliance affidavits.⁴⁹ This retrospective application does not offend Article 20(1) because Section 479 is a remedial and procedural provision governing the conditions of pre-trial detention rather than a substantive criminal offence or penalty; it is properly analysed as continuous with the Article 21 speedy-trial principle of *Hussainara Khatoon* rather than as an exercise of retrospective penal legislation. Compliance, however, has been markedly uneven: as of October 2024, only nineteen of thirty-six States and Union Territories had filed the compliance affidavits directed by the Court, prompting the Ministry of Home Affairs to issue a further advisory to Chief Secretaries

thirds of the undertrial population, a proportion that has risen, not fallen, over the preceding two decades.

⁴⁶ *Rama Murthy v. State of Karnataka*, (1997) 2 SCC 642.

⁴⁷ Section 479, *Bharatiya Nagarik Suraksha Sanhita*, 2023.

⁴⁸ *Ibid.*, proviso to sub-section (2), excluding offences punishable with death or imprisonment for life from the benefit of automatic release, and retaining the outer limit that no person may be detained beyond the maximum period of imprisonment prescribed for the offence.

⁴⁹ *In Re: Inhuman Conditions in 1382 Prisons*, order dated 23 August 2024 (Kohli and Mehta, JJ.), holding that Section 479 BNSS applies retrospectively to undertrials in cases registered before 1 July 2024, and directing Superintendents of jails to process eligible applications within three months.

urging proactive implementation.⁵⁰ The gap between the Supreme Court's clear legal direction and administrative compliance illustrates, in miniature, the central constitutional problem examined throughout this article: constitutional entitlement is not self-executing, and the transformation from custody to constitutionally compliant administration remains dependent on bureaucratic capacity and political will that the judiciary cannot itself supply.

The *Satender Kumar Antil* framework (Part V) complements Section 479 by addressing the earlier stage of the criminal process i.e., arrest and the grant of bail after chargesheet through its four-category classification of offences and its emphasis that "bail is the rule and jail the exception," a principle traceable to *Gudikanti Narasimhulu v. Public Prosecutor*⁵¹ and reaffirmed with particular force given the scale of the undertrial crisis documented above.

VIII. Parole, Furlough, Remission and Premature Release: Constitutional Concerns

Parole, furlough and remission perform the dual reformatory function this article's original 2020 version identified: they permit a prisoner to maintain continuity with family life, guard against the psychological deterioration produced by continuous incarceration, and provide an incentive structure for good conduct, consistently with the objectives stated in the Model Prison Manual.⁵² Parole is ordinarily available after a prisoner has served at least one-third of her sentence and does not alter the prisoner's legal status; furlough, by contrast, is treated as a matter of right earned through good conduct over a specified custodial period, to be granted periodically rather than for a specific need.⁵³ Remission including the special remission schemes announced from

⁵⁰ As of 22 October 2024, only nineteen of thirty-six States and Union Territories had filed the compliance affidavits directed by the Supreme Court, prompting the Ministry of Home Affairs to issue a further advisory to Chief Secretaries urging proactive and fair implementation of Section 479 BNSS.

⁵¹ *Gudikanti Narasimhulu v. Public Prosecutor*, (1978) 1 SCC 240 (Krishna Iyer, J.), the foundational articulation of the "bail is the rule, jail is the exception" principle later systematised in *Satender Kumar Antil v. CBI*, (2022) SCC OnLine SC 825.

⁵² The Model Prison Manual identifies the objects of parole as enabling the inmate to maintain continuity with family life and deal with family matters, saving the inmate from the evil effects of continuous prison life, and enabling the inmate to retain self-confidence and an active interest in life; see also *Bhikhabhai Devshi v. State of Gujarat*, AIR 1987 Guj. 136.

⁵³ Parole is conventionally available after the prisoner has completed at least one-third of the sentence and does not change the prisoner's status as a convict; furlough, in contrast, is treated in most State rules as an entitlement accruing periodically on the basis of good conduct rather than a response to a specific family or personal need, though the precise threshold and periodicity vary by State Prison Manual.

time to time on occasions of national significance permits sentence reduction for good conduct and, in appropriate cases, premature release.

The constitutional difficulty, largely unchanged since 2020 but sharpened by subsequent litigation, is that all three mechanisms vest substantial discretion in State executive authorities, and unguided or selectively exercised discretion of this kind is acutely vulnerable to challenge under Article 14. This difficulty was thrown into sharp relief by widespread public controversy surrounding the remission and premature release of convicts in serious offences under State remission policies, prompting the Supreme Court to reiterate that remission decisions must be taken strictly in accordance with the policy applicable on the date of conviction, must be preceded by application of mind to all relevant factors including the nature of the offence and its impact on the victim and society, and are subject to judicial review where they are shown to be arbitrary, mala fide, or contrary to the applicable policy.⁵⁴ The constitutional principle, in other words, is not that remission is impermissible but that it must be principled a requirement flowing directly from the equal-treatment and non-arbitrariness guarantee of Article 14 rather than from any special solicitude for the convict as such, and one which cuts, in appropriate cases, in favour of victims and society as much as it cuts in favour of prisoners seeking release. Reformatory justice and public accountability, in this sense, do not pull in opposite directions but must be reconciled within a single, transparent standard of executive decision-making the reconciliation the Constitution requires but which policy discretion, left unstructured, tends to defeat.

IX. Legal Aid and Access to Justice for Prisoners

Article 39A's directive that the operation of the legal system should promote justice on the basis of equal opportunity, and that free legal aid should be provided where economic or other disability would otherwise deny access to justice, found statutory expression in the Legal Services Authorities Act, 1987, and, in the specific context of undertrial detention, was constitutionalised as an incident of Article 21 in *Hussainara Khatoon*, which held that a trial conducted without adequate legal representation for an indigent accused could not be regarded as fair, just and reasonable.⁵⁵ District Legal Services Authorities are now mandated to operate legal aid clinics within prisons, and the reforms surveyed in this article Section 479 BNSS in particular depend for their

⁵⁴ See generally *Laxman Naskar v. Union of India*, (2000) 2 SCC 595, laying down the factors relevant to premature release, and subsequent Supreme Court decisions reiterating that executive remission must conform to the policy in force on the date of conviction and remains subject to judicial review for arbitrariness or non-application of mind.

⁵⁵ *Hussainara Khatoon v. State of Bihar*, AIR 1979 SC 1360; *M.H. Hoskot v. State of Maharashtra*, AIR 1978 SC 1548, recognising a right to free legal aid for an indigent accused at the appellate stage as flowing from Articles 21 and 39A read together.

practical efficacy on precisely this legal-aid infrastructure, since a statutory entitlement to release means little to an undertrial who lacks the means or awareness to invoke it. It is telling, and constitutionally significant, that Section 479(3) BNSS shifts the initiating burden from the prisoner (historically dependent on legal aid to access the courts at all) to the jail Superintendent a structural correction of exactly the access-to-justice deficit Article 39A was designed to address, though, as the compliance data in Part VII shows, the correction remains only partially realised in practice.

X. Custodial Violence, Torture and Accountability of Prison Authorities

Accountability for custodial violence rests on the public-law compensation jurisprudence developed in *Nilabati Behera*, *D.K. Basu* and *Challa Ramakrishna Reddy* (Part IV.E), reinforced procedurally by the eleven safeguards laid down in *D.K. Basu* including the preparation of an arrest memo attested by a witness, information to a relative or friend of the arrestee, and a right to medical examination at the time of arrest and at intervals during detention several of which now find express statutory reflection in the BNSS.⁵⁶ Notwithstanding this doctrinal architecture, custodial deaths and unnatural deaths in prisons remain a recorded and persistent concern in successive editions of NCRB *Prison Statistics*, and the continuing *In Re: Inhuman Conditions in 1382 Prisons* proceeding has repeatedly directed High Courts to treat such deaths as matters requiring suo motu cognisance and victim compensation.⁵⁷ India's continued non-ratification of the UN Convention against Torture, and the absence of a standalone anti-torture statute notwithstanding the Prevention of Torture Bill having lapsed after passage by the Lok Sabha in 2010, remains a notable structural gap: constitutional remedies under Article 21 provide compensation and, occasionally, disciplinary consequences, but the absence of a specific, codified offence of custodial torture continues to be identified by the Law Commission and civil-society bodies as an unfinished item of criminal law reform, one which the new codes did not close.⁵⁸

⁵⁶ *D.K. Basu v. State of West Bengal*, AIR 1997 SC 610, laying down eleven requirements including preparation of a memo of arrest attested by at least one witness, the right of the arrestee to have a relative or friend informed of the arrest and place of detention, and periodic medical examination of the arrestee, several of which are now reflected in Sections 35--58 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

⁵⁷ *In Re: Inhuman Conditions in 1382 Prisons*, (2016) 3 SCC 700, and subsequent orders directing High Courts to treat unnatural prisoner deaths reported in NCRB data as matters for suo motu cognisance and compensation.

⁵⁸ Law Commission of India, *273rd Report on Implementation of United Nations Convention against Torture through Legislation* (2017), recommending a standalone anti-torture law; the Prevention of Torture Bill, 2010, though passed by the Lok Sabha, lapsed without being

XI. Solitary Confinement, Segregation and the Elimination of Caste-Based Discrimination

Sunil Batra I held that solitary confinement within the meaning of Section 73 and Section 74 of the (since repealed) Indian Penal Code is a distinct, judicially imposed punishment that prison authorities cannot administratively extend or impose on their own initiative without following the safeguards attaching to that specific sentence, and that its punitive use as an instrument of prison discipline offends Article 21.⁵⁹ The 2024 decision in *Sukanya Shantha* extended the constitutional scrutiny of segregation to a different, but related, phenomenon: the deliberate segregation of prisoners into barracks and labour assignments on the basis of caste, historically defended by some State authorities as a measure to prevent inter-community friction.⁶⁰ The Supreme Court rejected this justification, holding that caste-based segregation entrenches rather than dissolves the animosities it is said to prevent, and that classifications derogating from human dignity cannot be rescued by an appeal to administrative convenience or security. The judgment directed the revision, within three months, of prison manuals across all States and Union Territories to excise references to caste in the classification of prisoners and the assignment of labour, and it required the Union Government to amend the Model Prison Manual, 2016 and the Model Prisons and Correctional Services Act, 2023 accordingly an amendment the Ministry of Home Affairs carried out in December 2024, including a revised definition of "habitual offender" designed to prevent its use as a caste-linked proxy classification.⁶¹ By January 2025, the Supreme Court found it necessary to grant States and Union Territories a further opportunity to demonstrate compliance and to require the submission of status reports within three months, reflecting the same implementation gap already noted in respect of Section 479 BNSS.⁶² The persistence of this gap between an unambiguous constitutional ruling and uneven administrative follow-through is

enacted, and no equivalent standalone offence was introduced in the *Bharatiya Nyaya Sanhita*, 2023.

⁵⁹ *Sunil Batra v. Delhi Administration*, AIR 1978 SC 1675.

⁶⁰ *Sukanya Shantha v. Union of India*, W.P. (C) No. 1404 of 2023, decided 3 October 2024, addressing three distinct practices: caste-based division of manual labour, caste-based segregation of barracks, and discriminatory provisions targeting persons from Denotified Tribes and those classified as "habitual offenders."

⁶¹ Ministry of Home Affairs, amendment to the Model Prison Manual, 2016 and the Model Prisons and Correctional Services Act, 2023, notified December 2024, prohibiting caste-based classification, discrimination and segregation of prisoners and revising the definition of "habitual offender."

⁶² Supreme Court of India, order in the continuing *Sukanya Shantha* proceeding, January 2025, granting States and Union Territories a further three months to file compliance reports demonstrating revision of their prison manuals in accordance with the October 2024 judgment.

treated in Part XVIII as one of the central unresolved contradictions of contemporary Indian prison reform.

XII. Women Prisoners and Constitutional Equality

Women constitute a small but consistently under-served fraction of the Indian prison population—approximately 4.1 percent nationally per the 2023 NCRB data, of whom nearly three-quarters are themselves undertrials⁶³—a numerical minority that has historically translated into inadequate gender-specific infrastructure, insufficient female custodial staff, and limited access to obstetric and gynaecological care. The constitutional basis for gender-specific prison reform rests on Article 15(3), which permits the State to make special provision for women, read together with Article 14's requirement of substantive rather than merely formal equality: identical treatment of male and female prisoners, given systematically different needs, itself risks producing unequal outcomes. The Model Prisons and Correctional Services Act, 2023 accordingly provides for the establishment of exclusive women's prisons where numbers justify it, for facilities addressing women-specific needs, and reiterates the long-standing requirement—recognised judicially well before 2020 in the context this article's earlier version discussed—that women prisoners be searched, escorted and supervised only by female staff.⁶⁴ The Model Prison Manual continues to provide that children up to the age of six may reside with an incarcerated mother where no suitable alternative caregiving arrangement exists, a provision whose administration engages the best-interests-of-the-child principle alongside the mother's own Article 21 rights.⁶⁵ Notwithstanding these provisions, implementation remains markedly uneven: as of 2023, eighteen States and Union Territories reported having adopted the 2016 Model Prison Manual (a figure that had risen to twenty-one States and all Union Territories by mid-2025), leaving a residual group of States in which even the pre-2023 reform baseline has not been formally adopted.⁶⁶

⁶³ National Crime Records Bureau, *Prison Statistics India 2023*, recording women as 4.1% of the total prison population, with an undertrial share among women prisoners of approximately 74%, comparable to the undertrial share in the overall prison population.

⁶⁴ Model Prisons and Correctional Services Act, 2023, ss. on women prisoners, providing for the establishment of exclusive women's prisons where the State Government considers it necessary, facilities to meet women-specific needs, and supervision of women prisoners exclusively by female staff.

⁶⁵ Model Prison Manual, 2016 (as amended), providing that children of women prisoners may ordinarily reside with their mothers in prison up to the age of six, subject to the child not being transferred, where avoidable, outside the town or city in which the prison is located.

⁶⁶ PRS Legislative Research, *Legislative Brief: The Rajasthan Prisons Bill, 2023* (recording 18 States/UTs as having adopted the Model Prison Manual, 2016 as of March 2023); Ministry of Home Affairs, Reply to Rajya Sabha Unstarred Question, 6 August 2025 (recording 21 States and all 8 Union Territories as having adopted the Model Prison

XIII. Transgender Prisoners and Constitutional Dignity and Non-Discrimination

The constitutional rights of transgender persons were authoritatively recognised in *National Legal Services Authority v. Union of India* ("NALSA"), which affirmed a right to self-determination of gender identity and directed the Union and State Governments to take measures for the welfare and legal recognition of transgender persons.⁶⁷ For years afterward, however, prison manuals including the Model Prison Manual, 2016 continued to organise prison accommodation on a strictly binary basis, leaving transgender prisoners without any settled institutional placement and exposing them to a documented risk of harassment from both staff and fellow inmates.⁶⁸ This gap was addressed, though not fully closed, by a Ministry of Home Affairs advisory of 10 January 2022 on the Treatment and Care of Transgender Persons in Prisons, which directs States to honour a prisoner's self-identified gender in admission and custodial records, to provide separate wards or enclosures for transgender prisoners distinct from both male and female wings, to ensure privacy in toilet and bathing facilities, to conduct searches through staff of the prisoner's preferred gender or a trained medical professional, and to ensure equal access to education, work, recreation, religious observance and legal aid.⁶⁹ The Model Prisons and Correctional Services Act, 2023 subsequently incorporated a similar direction, providing that separate enclosures or wards for transgender prisoners may be established with access to gender-specific healthcare and psychosocial support.⁷⁰ The Patna High Court's decision in *Law Foundation v. State of Bihar* (2022) is illustrative of judicial engagement with the issue at the State level, recording the creation of a dedicated cell for transgender prisoners and directing compliance with the Union advisory in letter and spirit.⁷¹ Nonetheless, the advisory route as opposed to binding statutory or manual amendment uniformly adopted across States leaves transgender prisoners in a position analogous to that of women prisoners

Manual, 2016, while confirming that no State had, as of that date, formally adopted the Model Prisons and Correctional Services Act, 2023).

⁶⁷ *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438, recognising the right of transgender persons to self-identify their gender and directing measures for their legal recognition and welfare.

⁶⁸ See generally Commonwealth Human Rights Initiative, assessments of the Model Prison Manual, 2016, noting the absence of explicit guidelines on the placement, searching, and record-keeping of transgender prisoners notwithstanding the NALSA judgment.

⁶⁹ Ministry of Home Affairs, Advisory on Treatment and Care of Transgender Persons in Prisons, dated 10 January 2022.

⁷⁰ Model Prisons and Correctional Services Act, 2023, providing that separate enclosures or wards for transgender prisoners may be provided, with access to specific healthcare and psychosocial needs.

⁷¹ *Law Foundation v. State of Bihar*, Patna High Court, 2022, noting the establishment of a separate jail cell for transgender prisoners in Bihar and directing implementation of the Union Government's guidelines.

under the still-unadopted Model Prisons Act: a body of protective norms exists, but its enforceability depends on State-by-State administrative uptake that remains incomplete, and NCRB data collection continues not to disaggregate prison statistics by a distinct transgender category, a data gap that itself impedes the accountability the NALSA framework contemplates.⁷²

XIV. Mental Health, Healthcare and the Right to Life in Prisons

Article 21's guarantee of the right to life has been read to include a right to health and to access appropriate medical treatment, a principle of particular importance in prisons given the concentration of pre-existing illness, communicable disease risk arising from overcrowding, and the psychological toll of incarceration, especially prolonged undertrial detention.⁷³ The Mental Healthcare Act, 2017 obliges every prison to have at least one mental health establishment or, at minimum, periodic visits by mental health professionals, yet implementation surveys and the continuing *In Re: Inhuman Conditions in 1382 Prisons* proceeding have repeatedly recorded that the great majority of prisons lack dedicated psychiatric staff, and that unnatural deaths in custody, including suicides, remain a significant and recurring category in NCRB data.⁷⁴ The constitutional argument here mirrors that developed in Part VII in relation to undertrial release: the entitlement to healthcare is not contested as a matter of doctrine, but its practical delivery depends on budgetary allocation and administrative capacity that lie substantially outside the reach of judicial direction, illustrating again the limits of a purely rights-declaratory approach to prison reform.

XV. Technology, CCTV, Digital Prison Administration and Prisoners' Privacy; Video-Conferencing and Access to Courts

Since the recognition of privacy as a fundamental right in *K.S. Puttaswamy*,⁷⁵ the expansion of CCTV surveillance, biometric record-keeping and the "e-Prisons" digitisation project intended to computerise prisoner records, track

⁷² See National Crime Records Bureau, *Prison Statistics India* series, which continues not to maintain a distinct disaggregated category for transgender prisoners notwithstanding the recognition of a third gender category in NALSA.

⁷³ See generally *Paramanand Katara v. Union of India*, AIR 1989 SC 2039 (right to emergency medical treatment as an incident of Article 21), applied in the prison context in successive orders under *In Re: Inhuman Conditions in 1382 Prisons*, (2016) 3 SCC 700.

⁷⁴ Mental Healthcare Act, 2017, s. 103, read with National Crime Records Bureau, *Prison Statistics India* series, recording unnatural deaths, including suicides, as a persistent category of custodial mortality, and *In Re: Inhuman Conditions in 1382 Prisons* orders directing States to report on the availability of medical facilities and mental health support in prisons.

⁷⁵ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

undertrial status, and interface with court case-management systems raises a genuine, if underexamined, constitutional tension between the security and transparency justifications for such surveillance and the residual privacy interest a prisoner retains under Article 21.⁷⁶ The same technology, however, has also been the principal instrument through which the Article 19 and Article 21 rights discussed in Part IV are being given practical effect at scale: the Supreme Court's continuing directions in *In Re: Inhuman Conditions in 1382 Prisons* have repeatedly required States to install and maintain video-conferencing infrastructure to enable undertrial prisoners' court appearances without the security and cost burdens of physical production, and to enable confidential legal consultation and family contact.⁷⁷ High Courts, including the Karnataka High Court in 2024, have gone further, directing the provision of headphones and privacy safeguards during video-conferenced consultations to guard against the very privacy concern that unregulated surveillance technology threatens.⁷⁸ The Model Prisons and Correctional Services Act, 2023 formalises this dual thrust, providing expressly for scientific and technological interventions in prison administration and for video-conferencing facilities to connect prisoners with courts.⁷⁹ The constitutional lesson is that technology in prisons is not inherently either a threat to or a guarantor of prisoners' rights; its constitutional valence depends entirely on whether it is deployed to enlarge a prisoner's access to family, counsel and courts (as with video-conferencing) or to subject the prisoner to surveillance disproportionate to any legitimate security objective (as unregulated CCTV and biometric data collection) a distinction current Indian prison law has not yet elaborated with the specificity the issue requires.

XVI. Rehabilitation, Vocational Training, Education, Open Prisons and Reintegration

The reformatory philosophy that this article traces to the Directive Principles and to the Article 21 jurisprudence discussed in Part IV finds its clearest institutional expression in open and semi-open prisons, in which minimum-

⁷⁶ Ministry of Home Affairs, *e-Prisons* project, under the broader Interoperable Criminal Justice System initiative, aimed at digitising prisoner records and enabling data exchange between prisons, police, courts and forensic laboratories.

⁷⁷ *In Re: Inhuman Conditions in 1382 Prisons*, (2016) 3 SCC 700, and subsequent orders (including the order of 30 August 2023) directing States and Union Territories to report on the adequacy of IT infrastructure for virtual court production of undertrial prisoners and for family visitation.

⁷⁸ *Abdul Basheer v. State of Karnataka*, Karnataka High Court, 2024, directing the State to provide a robust video-conferencing system and headphones in all prisons to ensure privacy during interactions between inmates and their advocates and family members.

⁷⁹ Model Prisons and Correctional Services Act, 2023, provisions on scientific and technological interventions in prison management, including video-conferencing facilities with courts.

security inmates work in agriculture or a trade of their choosing, participate in recreational and sporting activity, and receive liberal remission historically up to fifteen days a month as an incentive toward eventual reintegration.⁸⁰ The State of Uttar Pradesh was the first to establish an open-air camp attached to the Model Prison at Lucknow in 1949, followed by Andhra Pradesh, Assam, Gujarat, Punjab and Kerala among others, and the institution has since been given renewed constitutional emphasis: the Supreme Court, in directions dating from 2018 and reaffirmed in subsequent orders within *In Re: Inhuman Conditions in 1382 Prisons*, has directed States to adopt and implement Model Uniform Rules for the Administration of Open Correctional Institutions, describing decongestion through open prisons as constitutionally mandated rather than merely administratively convenient, and holding that cost-effectiveness considerations are secondary to the dignity and rehabilitative interests Article 21 protects.⁸¹ Vocational training, correspondence-course access for prisoners pursuing higher studies, and for women prisoners training in trades such as tailoring and craft production, remain, as in the original 2020 version of this article, central planks of the rehabilitative model, now reinforced by the Model Prisons and Correctional Services Act's explicit chapter on welfare programmes, after-care and rehabilitation services as an integral component of institutional administration rather than an optional add-on.⁸²

XVII. The Model Prisons and Correctional Services Act, 2023 and the Model Prison Manual: Nature, Status and Limits

No feature of the post-2020 reform landscape requires more careful constitutional framing than the Model Prisons and Correctional Services Act, 2023, and it is essential, consistently with the terms of this revision, not to overstate its legal force. The Ministry of Home Affairs, in consultation with State prison authorities and correctional administration experts, finalised the Model Act and circulated it to all States and Union Territories on 10 May 2023 for adoption, with such modifications as each State considers necessary, in

⁸⁰ Open prisons are minimum-security institutions in which inmates work in agriculture or an occupation of their choosing and participate in recreational activity, historically qualifying for remission of up to fifteen days per month; Uttar Pradesh established the first such open-air camp attached to the Model Prison, Lucknow, in 1949, followed by Andhra Pradesh, Assam, Gujarat, Punjab and Kerala among other States.

⁸¹ *In Re: Inhuman Conditions in 1382 Prisons*, order dated 8 May 2018, directing States and Union Territories to align their prison rules with the Model Uniform Rules for the Administration of Open Correctional Institutions; see also *Suhas Chakma v. Union of India*, Supreme Court of India, 2025, reaffirming that Article 21 encompasses rehabilitative justice and that open correctional institutions are constitutionally mandated instruments for prison decongestion and social reintegration.

⁸² Model Prisons and Correctional Services Act, 2023, provisions on Welfare Programs for Prisoners and After-Care and Rehabilitation Services as an integral part of institutional prison administration.

place of the Prisons Act, 1894, the Prisoners Act, 1900 and the Transfer of Prisoners Act, 1950.⁸³ Because prisons remain, as Part III explains, an exclusive State-List subject, the Union Government has no constitutional power to impose the Model Act directly; its legal status is that of a *recommendatory template*, comparable in constitutional character to the Model Prison Manual, 2016 which preceded it, and it acquires binding force in a given State only when, and to the extent that, the State legislature enacts it (with or without modification) as State law. The Model Act's substantive content is genuinely comprehensive covering security classification and individual sentence planning, high-security and open-jail administration, provisions targeting the criminal networks of habitual offenders, welfare and rehabilitation programming, women's and transgender prisoners' facilities, video-conferencing and other technological interventions, and mechanisms for legal aid, parole, furlough and premature release⁸⁴ but comprehensiveness of drafting is not the same as legal force. As the Union Minister of State for Home Affairs confirmed to the Rajya Sabha in August 2025, no State had, as of that date, formally confirmed adoption of the Model Prisons and Correctional Services Act, 2023, even as twenty-one States and all eight Union Territories had by then adopted its 2016 predecessor, the Model Prison Manual.⁸⁵ Several States including Rajasthan, whose 2023 Prisons Bill was examined contemporaneously by that State's legislature have introduced or are considering State-specific prison legislation drawing on the Model Act's structure, but "drawing on" is analytically distinct from "adopting," and this article deliberately avoids the error, common in secondary commentary, of describing the Model Act as though it were already the binding law governing Indian prisons. The correct constitutional characterisation is that the Model Act is a piece of Union-facilitated soft law: authoritative in the sense of representing the considered, consultative judgment of the executive branch as to what reformed, constitutionally compliant prison legislation should look like, but non-binding until, and unless, translated into State enactments a status this article's Part XVIII returns to as one of the most significant unresolved contradictions of the reform project it otherwise commends.

⁸³ Ministry of Home Affairs, Reply to Lok Sabha Unstarred Question No. 3007, 8 August 2023, recording circulation of the Model Prisons and Correctional Services Act, 2023 to all States and Union Territories on 10 May 2023 for adoption with such modifications as considered necessary, in substitution for the Prisons Act, 1894, the Prisoners Act, 1900 and the Transfer of Prisoners Act, 1950.

⁸⁴ Ibid.; Press Information Bureau, Ministry of Home Affairs, "Model Prisons Act, 2023" (2023), summarising the Act's principal features including security classification, high-security and open-jail administration, welfare and after-care programming, and provision for women and transgender prisoners.

⁸⁵ Ministry of Home Affairs, Reply to Rajya Sabha Unstarred Question, 6 August 2025, confirming that no State had formally adopted the Model Prisons and Correctional Services Act, 2023, while 21 States and all 8 Union Territories had adopted the Model Prison Manual, 2016.

XVIII. Constitutional Scrutiny of Contemporary Prison Policy: The Persisting Contradictions

The preceding Parts make it possible to state, with some precision, the contradictions that continue to divide the constitutional promise of prison reform from its administrative delivery.

1. *Constitutional rights versus prison discipline:* Articles 19 and 21 guarantee prisoners continuing freedoms and dignity, yet prison discipline necessarily requires some restriction of movement, association and communication; the unresolved question, illustrated by the persistence of routine handcuffing and disciplinary segregation notwithstanding *Prem Shankar Shukla* and *Sunil Batra*, is not whether restriction is permissible but whether Indian prison administration has internalised the requirement that every restriction be individually justified rather than administratively presumed.
2. *Security versus dignity, and State control versus individual autonomy.* The same tension recurs in the transgender-prisoner context (Part XIII), where security-based justifications for placement decisions must be reconciled with the *NALSA* right to self-identification, and in the caste-segregation context (Part XI), where a security rationale advanced by State authorities was expressly rejected by the Supreme Court as constitutionally impermissible.
3. *Preventive detention versus personal liberty.* Although this article's focus is the ordinary convicted and undertrial population rather than preventive detention as such, the wider constitutional architecture of Article 22(4),(7) illustrates that even the Constitution's own text tolerates a bounded departure from ordinary liberty guarantees, underscoring that prisoners' rights doctrine operates against a background in which the Constitution itself contemplates carefully circumscribed exceptions to Article 21 a reminder that the case for prisoners' rights must be made in constitutional rather than purely humanitarian terms if it is to retain analytical rigour.
4. *Overcrowding versus Article 21.* The persistence of 120.8 percent national occupancy and a 73.5 percent undertrial share (Part VII), notwithstanding *Hussainara Khatoon*, *Rama Murthy* and now Section 479 BNSS, demonstrates that a constitutional right unaccompanied by administrative capacity additional judicial officers, additional prison infrastructure, functioning legal aid delivery risks remaining substantially aspirational.
5. *Solitary confinement and caste segregation versus human dignity* have been directly addressed in Parts IV and XI and require no further

elaboration here save to note that the *Sukanya Shantha* compliance record (uneven as of January 2025) shows that even the clearest possible judicial pronouncement does not automatically translate into administrative practice.

6. *Technological surveillance versus privacy* (Part XV) remains the least doctrinally developed of the contradictions identified in this article, precisely because Indian courts have so far addressed prison technology chiefly in its rights-enabling dimension (video-conferencing) rather than its rights-limiting dimension (surveillance), leaving a doctrinal gap this article recommends be closed (Part XIX).
7. *Remission and parole discretion versus equality and non-arbitrariness* (Part VIII) illustrates a recurring structural problem in Indian administrative law generally — wide executive discretion conferred by statute or policy, exercised without consistently articulated standards — that happens to arise with particular constitutional stakes in the prison context because the consequence of arbitrary exercise is continued deprivation of liberty.
8. *Prison security versus legal access, and reformatory justice versus continued dependence on imprisonment*, are perhaps best understood together: the introduction of community service under Section 4(f) BNS (Part VI) is a genuine, if modest, legislative acknowledgment that imprisonment need not be the default response to minor offending, yet the persistence of a 73.5 percent undertrial rate shows that pre-trial detention, rather than sentencing philosophy narrowly conceived, remains the primary driver of India's incarceration numbers — meaning that reformatory sentencing reform, however welcome, addresses only one, and arguably not the largest, part of the problem.
9. *Model Prison legislation versus State-level implementation* (Part XVII) is, in this article's assessment, the master contradiction beneath most of the others: because prisons remain constitutionally a State subject, the Union's undoubtedly reform-minded model instruments cannot, by themselves, close the gap between constitutional entitlement and administrative reality; that gap can only be closed by State legislatures and State executives, and the compliance data reviewed throughout this article shows that closure remains, as of September 2026, substantially incomplete.
10. *New criminal laws versus the continuing colonial legacy of prison administration*, finally, captures the overall thesis of this article: BNS, BNSS and BSA represent a genuine, in places significant, legislative reorientation toward a more rights-conscious and reformatory criminal

process, but they operate upon and have not replaced a prison administration apparatus still substantially governed, in most States, by the 132-year-old Prisons Act, 1894. The constitutionalisation of Indian criminal procedure has, in this sense, outpaced the constitutionalisation of Indian prison administration.

XIX. Gaps Between Constitutional Rights and Actual Prison Administration

Drawing the preceding analysis together, three gaps recur across every Part of this article. The first is a *legislative* gap: the operative prison statute in most States remains the Prisons Act, 1894, a custody-and-discipline framework never designed to give effect to the reformatory and rights-based vision the Constitution, through Articles 21 and 39A, now requires, and the Model Prisons and Correctional Services Act, 2023 that could close this gap remains, as Part XVII shows, unadopted. The second is an *institutional-capacity* gap: even where the law is unambiguous, as with Section 479 BNSS and the *Sukanya Shantha* directions, compliance depends on jail-level administrative machinery, legal-aid delivery, and judicial-officer capacity that remain under-resourced relative to the scale of the undertrial population. The third is a *data and accountability* gap: the absence of disaggregated NCRB data on transgender prisoners (Part XIII), the delayed release of the 2023 Prison Statistics report itself (published only in September 2025, nearly two years after the reference year), and the continuing incidence of unnatural deaths in custody together suggest that the monitoring architecture necessary to hold prison administration constitutionally accountable is itself in need of reform.

XX. Recommendations for a Rights-Based and Constitutionally Compliant Prison Framework

First, States that have not yet done so should be encouraged, through continued Union facilitation and, where appropriate, conditional fiscal incentives tied to prison infrastructure grants, to enact the Model Prisons and Correctional Services Act, 2023 (with such State-specific modification as local conditions warrant) as binding State legislation, thereby finally replacing the Prisons Act, 1894 as the operative statutory framework.

Second, compliance with Supreme Court directions on Section 479 BNSS implementation, on the elimination of caste-based segregation following *Sukanya Shantha*, and on video-conferencing infrastructure under the continuing *In Re: Inhuman Conditions in 1382 Prisons* proceeding should be institutionalised through periodic, published State-wise compliance dashboards rather than affidavits filed episodically in response to Court orders, so that the

existing constitutional entitlements translate into administrative routine rather than remaining dependent on continued litigation.

Third, remission, parole and premature-release policy should be codified with explicit, published criteria at the State level, removing to the greatest extent possible the unguided executive discretion identified in Part VIII and Part XVIII as a recurring source of Article 14 vulnerability, while preserving appropriate weight for victim and societal interests in the release decision.

Fourth, the National Crime Records Bureau should be statutorily required to publish Prison Statistics India within twelve months of the reference year, and to introduce a disaggregated transgender-prisoner category, addressing the data-accountability gap identified in Part XIX.

Fifth, a standalone custodial-torture offence, on the lines recommended by the Law Commission's 273rd Report, should be enacted to close the gap in the new criminal codes noted in Part X, converting the existing public-law compensation remedy into an additional, deterrent criminal sanction.

Sixth, express statutory or Model Manual guidance on the permissible scope of prison CCTV surveillance and biometric data retention should be developed, extending the *Puttaswamy* privacy framework explicitly into the custodial context, an area Part XV and Part XVIII identify as doctrinally underdeveloped.

Seventh, legal-aid clinics operating within prisons under the District Legal Services Authority framework should be resourced and monitored specifically for their role in identifying Section 479 BNSS-eligible undertrials, converting the statutory duty imposed on jail Superintendents (Part VII) into a genuinely joint, and therefore more reliably discharged, institutional responsibility.

XXI. Conclusion

This article set out to answer a single, precisely framed question: to what extent have contemporary Indian prison reforms transformed imprisonment from a system primarily concerned with custody and discipline into a constitutionally compliant, rights-based, reformatory and rehabilitative institution? The answer, on the evidence surveyed above, is that the transformation is real, substantial and judicially well-anchored, but institutionally incomplete. Doctrinally, the transition this article traces from prison as a place of custody, through prison as a constitutionally regulated institution, toward prison as a correctional and rehabilitative institution has been substantially accomplished: no serious constitutional argument today would support the proposition that a prisoner forfeits her dignity, her health, her access to counsel, or her equality before the law upon conviction. The Supreme Court's continuous elaboration of Article 21, culminating in *Sukanya Shantha*'s emphatic rejection of caste-based prison

administration, stands as conclusive doctrinal authority for the proposition, argued throughout this article, that imprisonment curtails physical liberty without extinguishing constitutional citizenship. Legislatively, too, the enactment of Section 479 BNSS, the introduction of community service as a mode of punishment, and the drafting of a genuinely reform-minded Model Prisons and Correctional Services Act together represent a legislative programme more ambitious, and more explicitly constitutional in its self-justification, than anything attempted in the preceding century.

What remains incomplete and this is where the 2020 version of this paper's diagnosis, updated rather than discarded, retains its force is the institutional and administrative infrastructure required to carry that doctrinal and legislative achievement into the daily life of India's roughly half a million prisoners. An occupancy rate of 120.8 percent, an undertrial share of 73.5 percent, nineteen-of-thirty-six State compliance with a clear Supreme Court direction, and zero States having formally adopted the Model Prisons and Correctional Services Act three years after its circulation are not failures of constitutional doctrine; they are failures of constitutional implementation, occurring precisely at the federal seam between Union-articulated constitutional standards and State-administered prison practice that Part III of this article identified as the structural fault line of Indian prison law. The transformative promise of the Constitution, applied to India's prisons, is therefore neither fulfilled nor illusory; it is, at present, a standing obligation whose discharge depends less on further judicial elaboration than on the State-level legislative and administrative follow-through this article's recommendations urge.