

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 9 | Issue 5

2026

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Constitutional and legislative protection of prisoners' rights in India: from retributive to reformative

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ABSTRACT

Every nation's citizens are legally entitled to human rights. The Indian State is also a signatory to many international human rights documents, including the Universal Declaration of Human Rights (UDHR), which declares that no one shall be subject to torture or cruel, inhuman, or degrading treatment or punishment. Furthermore, the State is required under Articles 14 and 21 to provide equality before the law and a judicial system that upholds justice based on equal opportunity for all. A prisoner is entitled to certain rights listed in Part III of the Constitution because, while in jail, they are still human. Fundamental rights such as the right to bail and the right to know the reasons for an arrest have been guaranteed under the Bharatiya Nagarik Suraksha Sanhita, 2023. The agenda for prison reform is increasingly centred on the rights of incarcerated individuals. More people are realising that incarceration does not automatically result in the loss of citizenship. With an emphasis on the constitutional and legislative protections of prisoners' human rights, this article seeks to conduct a thorough examination of the state of prisoners' rights in India as per the human rights provisions set out in the UDHR. In accordance with statutory law and the recently enacted BNSS, 2023, the study examines various aspects of prisoners' rights.

Keywords: Human rights, prisoners' rights, constitutional rights, BNSS

I. INTRODUCTION

“Both the practical extent and the guarantees of the minimum rights of the prisoner vary very greatly from country to country. In many, the continued existence of capital punishment is an assertion that in the last resort, the individual may forfeit every right,” wrote Margery Fry (1874–1958), a British magistrate and jail reformer, in *Human Rights and the Law Breaker*, her response to UNESCO's 1947 survey on the conceptual underpinnings of human rights.¹

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¹ *Protecting the Human Rights of Prisoners*, UNESCO, <https://www.unesco.org/en/articles/protecting-human-rights-prisoners-0> (last visited June 2025).

Human rights are the basis of all other rights. They embody the ideal rights framework, and they provide any system of rights with a moral foundation. All people are entitled to certain rights, including the right to be protected.² Human rights are legally protected for citizens of all countries. A set of rights known as “human rights” enables them to meet their basic needs and wants. These rights are therefore universal and belong to all people, regardless of their nationality, sex, religion, caste, or faith. Hence, irrespective of the type of governmental and social framework, all nations recognise fundamental rights.³

Initially, these claims lacked legal support. Rather, they were regarded as moral claims. As time passed, laws in several countries clearly acknowledged and protected these rights. That understanding was confirmed by the widespread violations of freedom and human rights in the 1930s, which set the stage for the horrors of the Second World War from 1939 to 1945. It could no longer be accepted that individual governments alone should decide how their citizens are treated. Every signatory to the 1948 Universal Declaration of Human Rights committed to protecting human rights and bringing them under the purview of international law.⁴

The State must use its constitution and other legal measures to safeguard fundamental human rights, as mandated by both national and international human rights law. In accordance with the Universal Declaration of Human Rights, which declares that “no one shall be subject to torture or cruel, inhuman, or degrading treatment or punishment,” the Indian State has also ratified several international human rights agreements.⁵

The United Nations Covenant on Civil and Political Rights, which states, among other things, that “everyone who is deprived of their freedom shall be treated with humanity and with respect for the inherent dignity of the human person,” is also highly important.⁶

Although the Constitution makes no express mention of prisoners’ rights, the courts have recognised and upheld essential rights to protect inmates. Article 14, which addresses the right to equality, Article 19, which addresses the right to freedom of speech and expression, Article 21, which protects life and personal liberty, and Article 22, which affords protection against

² *Id.*

³ A. Shankar & Girija B. Nanda, HUMAN RIGHTS THEORY AND PRACTICE: TWO DIFFERENT WORLDS 255-60 (2007).

⁴ Mohit Verma, *Changing Scenario of Human Rights in Prisons: A Case Study of Tihar Prisons*, in PROTECTION & PROMOTION OF HUMAN RIGHTS IN INDIA 167, 167-68 (Shashi K. Sharma, Paramjit S. Jaswal & Devinder Singh eds., 2017).

⁵ G.A. Res. 217 (III) A, *Universal Declaration of Human Rights*, art. 5 (Dec. 10, 1948).

⁶ International Covenant on Civil and Political Rights art. 10, Dec. 16, 1966, 999 U.N.T.S. 171; G.A. Res. 217 (III) A, *Universal Declaration of Human Rights*, art. 5 (Dec. 10, 1948).

arrest and detention in certain cases, are among the most widely interpreted provisions of the Constitution when it comes to the defence of prisoners' human rights.⁷

Prison is defined "as a place properly arranged and equipped for the reception of persons who by legal process are committed to it for safe custody while awaiting trial or for punishment." People have been imprisoned since the beginning of time.⁸ "A prison is a place that has been adequately set up and furnished to receive individuals who have been legally committed to it for safe custody while awaiting trial or punishment," according to the Oxford Dictionary.⁹ A prisoner, in turn, is defined as "any person for the time being in a prison as a result of any requirement imposed by a court or otherwise that he be detained in legal custody" under section 1(6) of the Prison Security Act 1992 (United Kingdom).

The agenda for prisoner reform is increasingly centred on inmates' rights. Two key ideas are responsible for this. First, the prisoner "is no longer regarded as an object, a ward, or a 'slave of the state', who would be condemned to 'civil death' by the law and left at the prison entrance."¹⁰ A growing proportion of people are realising that imprisonment does not always mean that citizenship is forfeited. Second, prisoners are sent to prison as punishment, not for punishment.¹¹

The prison administration is not allowed to impose any further punishment without authorisation, and the prison sentence must be served in compliance with the court's directives. No one should be denied the opportunity to pursue justice because of a lack of funds or other limitations. The State is also required under Articles 14 and 21 to ensure that everyone has equal access to the legal system and that justice is administered on the basis of equal opportunity. The Legal Services Authorities Act was passed in 1987 to create a standardised legal framework for legal assistance programmes nationwide. The Act eventually came into effect on 9 November 1995.¹²

⁷ J.N. Pandey, *CONSTITUTIONAL LAW OF INDIA* 83-340 (54th ed. 2017).

⁸ S.K. Pachauri, *History of Prison Administration in India in 19th Century: Human Rights in Retrospect*, 55 *PROC. INDIAN HIST. CONG.* 492, 492-98 (1994), <https://www.jstor.org/stable/44143401>.

⁹ Amarendra Mohanty & Narayan Hazary, *INDIAN PRISON SYSTEM* (1990); P.J. Fitzgerald, *CRIMINAL LAW AND PUNISHMENT* 23 (1962).

¹⁰ Kurt Neudek, *The United Nations*, in *IMPRISONMENT TODAY AND TOMORROW: INTERNATIONAL PERSPECTIVES ON PRISONERS' RIGHTS AND PRISON CONDITIONS* 703 (Dirk van Zyl Smit & Frieder Dünkel eds., 1991).

¹¹ Jon Vagg, *PRISON SYSTEMS: A COMPARATIVE STUDY OF ACCOUNTABILITY IN ENGLAND, FRANCE, GERMANY AND THE NETHERLANDS* (1994).

¹² Rahul Tripathi, *Protection of Human Rights of Prisoners under Indian Constitution: An Overview*, 6 *INT'L J. MGMT. & SOC. SCI. RES.* No. 12 (2017), <https://www.amity.edu/jaipur/pdf/aur-naac/protection%20of%20human%20rights%20of%20prisoners%20under%20indian.pdf>.

II. PROTECTION OF THE HUMAN RIGHTS OF PRISONERS

Many of the rights that an accused person has in the administration of criminal justice stem from his human dignity. Whether a person is convicted and placed in a correctional or protective home or in another custodial, penal or non-penal facility, human dignity still matters. Living in humane conditions, free from torture and humiliation, among other things, seems to be based on and motivated by human dignity jurisprudence. Even the imposition of the death penalty and its execution must be humane.¹³ Human dignity has been a common way for Indians to demonstrate their humanity and to cultivate compassion in the criminal justice system.

International human rights instruments state that “everyone who is deprived of their liberty is to be treated with humanity and with respect for the inherent dignity of the human person,” that “everyone has the right to be recognised everywhere as a person before the law,” and that “inherent dignity is the cornerstone of freedom, justice, and peace.”

The Supreme Court has held that “prisoners have enforceable liberties, devalued may be, but not demonetised.” When asked whether inmates are to be regarded as persons, the Supreme Court has affirmed that “prisoners” are “persons.” The Court considered that answering the question in the negative would amount to condemning India and its Constitution for dehumanising people and to rejecting the international legal system that defends the rights of inmates.¹⁴

While behind bars, a prisoner has the right to humane treatment. He remains a person despite his antisocial behaviour and the imprisonment that followed. He is not deprived of his humanity, freedom, or dignity because of his imprisonment. He is still entitled to human dignity, which is the cornerstone of the entire system of so-called human rights and of human rights jurisprudence, and to be respected as a human being despite his incarceration. Freedom of opinion, conscience, and religion are all rights that he has. He is entitled to maintain his culture, language, and faith.¹⁵

A. Key Rights of the Prisoner

The following are some of the fundamental rights that prisoners have, which guarantee their humane treatment, fair trial, and rehabilitation:

¹³ *Shabnam v. Union of India*, AIR 2015 SC 3648 (India).

¹⁴ *Sunil Batra (II) v. Delhi Administration*, AIR 1980 SC 1579, para. 28 (India).

¹⁵ G.A. Res. 217 (III) A, *Universal Declaration of Human Rights*, art. 18 (Dec. 10, 1948); International Covenant on Civil and Political Rights arts. 18, 27, Dec. 16, 1966, 999 U.N.T.S. 171.

- **Right to privacy:** within the parameters of institutional security, prisoners are entitled to privacy. This includes safeguards against unauthorised searches of their person or property and the maintenance of the privacy of their personal data.
- **Right to religious freedom:** prisoners have the right to practise their religion or belief system, subject to reasonable restrictions necessary for institutional security and order. Prison authorities should accommodate prisoners' religious practices to the extent possible.
- **Right to legal redress and grievance mechanisms:** inmates are entitled to file complaints about their treatment and about the conditions of their detention, as well as to seek legal redress.
- **Right to education and vocational training:** inmates are entitled to educational and vocational training programmes that will help them develop their abilities and prepare for their release back into society.
- **Right to humane treatment:** inmates are entitled to dignity and respect. Protection from cruel, barbaric, or degrading treatment or punishment, including torture, is part of this. Necessities such as clothing, food, housing, and medical care must be provided to inmates by the authorities.
- **Right to healthcare:** prisoners are given the right to medical care, access to medication, and mental health assistance, among other healthcare services. Prison officials are responsible for ensuring that prisoners receive appropriate medical treatment and attention when they require it.

III. CONSTITUTIONAL AND STATUTORY PROVISIONS TO PROTECT PRISONERS' HUMAN RIGHTS

A. Safeguards under the Constitution

The rights of prisoners are not expressly guaranteed by the Constitution. Nonetheless, a prisoner retains access to some of the rights outlined in Part III of the Constitution, because a prisoner is still a human being while confined.¹⁶

B. The Principle of Double Jeopardy

Article 20(2), which embodies the "double jeopardy" principle, states that no person shall be prosecuted and punished for the same offence more than once.

¹⁶ Gagan Preet Kaur, *Human Rights Perspective of Prisoners in India*.

This provision gives effect to the common law principle *nemo debet bis vexari pro una et eadem causa*, which holds that no one should be put in peril twice for the same offence. The prior prosecution and punishment may be pleaded as a complete defence when the same offence is prosecuted and punished again.¹⁷

C. Protection against Conviction for Offences

Article 20 of the Constitution states that “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.” It further provides that no person accused of any offence shall be compelled to be a witness against himself, and that no person shall be prosecuted and punished for the same offence more than once.

D. The Right to a Speedy Trial

The right to a speedy trial is implicitly protected by the Constitution. However, the prolonged pre-trial custody of an accused person is one of the most dangerous aspects of the criminal justice system in India. The right to a timely trial is a fundamental part of the right to life and liberty enshrined in Article 21 of the Constitution. In *Sunil Batra v. Delhi Administration* and *Hussainara Khatoon v. State of Bihar*,¹⁸ the Supreme Court made note of this. Because of these decisions, the law has evolved into a tool of justice that addresses societal demands and seeks to bridge the gap between the general public and the legal system.¹⁹

E. The Right to Legal Aid

The case of *M.H. Hoskot v. State of Maharashtra*²⁰ was decided by the Supreme Court. “The right to legal aid is essential to a fair legal system. The accused has not requested it, and it is not a financial burden on the State; thus, it cannot be rejected. Legal aid is a constitutional right and is no longer a charitable endeavour. It is the Magistrate’s positive responsibility under Article 21 to determine whether the accused can retain legal counsel. If not, the State is required to pay for the accused’s attorney.”

The Court ruled that Article 22(1) preserved the accused’s right to counsel and to be represented by the lawyer of his choosing, even in proceedings before a *nyaya panchayat* where the

¹⁷ INDIA CONST. art. 20(2).

¹⁸ *Hussainara Khatoon (I) v. State of Bihar*, AIR 1979 SC 1369 (India).

¹⁹ Pushpa Kapila Hingorani, *The Problem of Undertrials: Hussainara Khatoon and Public Interest Litigation*, in PUNISHMENT AND THE PRISON: INDIAN AND INTERNATIONAL PERSPECTIVES 197 (Rani Dhavan Shankardass ed., 2000).

²⁰ *M.H. Hoskot v. State of Maharashtra*, AIR 1978 SC 1548 (India).

maximum penalty that may be imposed is a fine.²¹ Legal aid is now a constitutional right that the legal system should address in particular; it is no longer a matter of altruism or goodwill.²²

Article 21 was found to guarantee the right to legal aid by implication, read with Article 39-A (added in 1976) of the Directive Principles of State Policy.²³

According to the ruling in *Sheela Barse v. State of Maharashtra*, the State is required to provide the necessary financial resources for legal aid.²⁴

F. The Right to See Friends and Family

The Supreme Court has on several occasions issued rulings that have expanded the scope of human rights. Inmates have rights that protect them from physical pain and suffering while incarcerated, as well as from mental abuse. In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*,²⁵ “The Supreme Court held that the expression ‘Personal Liberty’ occurring in Article 21 includes the right to socialise with the members of family and friends, subject to any valid prison regulation and under Article 14 and 21,²⁶ such prison regulations must be reasonable and non-arbitrary.”

G. Protection against Handcuffing

Handcuffing has been declared inhuman, unreasonable, unduly harsh and, *prima facie*, arbitrary. It was deemed irrational and in violation of Article 21.²⁷ Consequently, the Court directed the Union of India to frame and circulate guidelines in this field.²⁸

H. The Right to Bail

The Supreme Court ruled in *Babu Singh v. State of U.P.*,²⁹ that denying bail to an accused person without good reason would be contrary to Article 21 and would deprive him of his personal freedom. The Court determined that the right to bail was a component of personal liberty under Article 21, and that a denial of bail would be contrary to that right, which may be curtailed only in accordance with the procedure established by law.³⁰

²¹ *State of M.P. v. Shobharam*, AIR 1966 SC 1910 (India).

²² Paramjit S. Jaswal & Nishtha Jaswal, HUMAN RIGHTS AND THE LAW 203 (1996).

²³ *Khatari (II) v. State of Bihar*, AIR 1981 SC 928 (India).

²⁴ *Sheela Barse v. State of Maharashtra*, AIR 1983 SC 378 (India).

²⁵ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, AIR 1981 SC 746 (India).

²⁶ INDIA CONST. arts. 14, 21.

²⁷ *Prem Shankar Shukla v. Delhi Administration*, AIR 1980 SC 1535 (India).

²⁸ *Aeltemesh Rein v. Union of India*, AIR 1988 SC 1768 (India).

²⁹ *Babu Singh v. State of U.P.*, AIR 1978 SC 527 (India).

³⁰ *Akhtari Bi v. State of M.P.*, AIR 2001 SC 1528 (India).

I. The Right to be Protected from Inhumane Treatment

In *Kishore Singh v. State of Rajasthan*,³¹ the Court ruled that “the police’s use of third-degree tactics violated Article 21. Putting inmates in bar fetters or subjecting them to solitary confinement for extended periods of time (eight to eleven months) based on insolent and uncivilised behaviour, such as loitering in the jail or tearing off their history ticket, must be considered barbarous and against human dignity, according to the Court, and thus violate Articles 14, 19, and 21.”

IV. SAFEGUARDS UNDER THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023

A. The Right to Meet an Advocate

Section 38 provides that a person who is arrested and interrogated by the police is entitled to meet an advocate of his choice during interrogation, although not throughout the interrogation. Anyone who is arrested and questioned by the police therefore has the right to consult an advocate of his own choosing in the course of the investigation.³²

B. The Right to be Informed of the Grounds of Arrest and of the Right to Bail

Section 47(1) governs the communication of the reasons for an arrest: where a police officer or other person makes an arrest without a warrant, he is required to communicate forthwith to the person arrested full particulars of the offence for which he is arrested, or the other grounds for such arrest. As to becoming eligible for release on bail, section 47(2) provides that where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.³³

C. Examination of an Arrested Person by a Medical Officer

Section 53(1) provides for the examination of a person who has been arrested. Soon after the arrest is made, the person is to be examined by a medical officer in the service of the Central Government or a State Government, and, where such a medical officer is not available, by a registered medical practitioner. A further examination may be carried out where the medical officer or the registered medical practitioner is of the opinion that one more examination is necessary. Where the arrested person is a woman, the examination of the body is to be made

³¹ *Kishore Singh Ravinder Dev v. State of Rajasthan*, AIR 1981 SC 625 (India).

³² The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023, § 38 (India).

³³ K. Swamyraj, TEXTBOOK ON THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 (ACT 46 OF 2023) 70 (1st ed. 2024).

only by, or under the supervision of, a female medical officer, and where a female medical officer is not available, by a female registered medical practitioner.³⁴

D. Production of the Arrested Person before a Magistrate

Under section 57, a person who has been arrested is to be taken before the Magistrate or the officer in charge of a police station. A police officer making an arrest without a warrant shall, without unnecessary delay and subject to the provisions as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station.³⁵

E. The Prisoner's Right to Legal Aid

Section 341(1) provides for legal aid: where, in a trial or appeal before a court, the accused is not represented by an advocate and it appears to the court that the accused does not have sufficient means to engage an advocate, the court shall assign an advocate for his defence at the expense of the State.³⁶

F. The Prisons Act, 1894

The Prisons Act, 1894 is one piece of government legislation that controls the operation and administration of prisons in India. It lays out rules for classifying prisoners, maintaining order, providing basic amenities, and the procedures for release on parole or furlough. The Act also outlines the responsibilities of prison personnel and the processes for addressing inmate complaints and grievances.³⁷

G. The Model Prison Manual

The Model Prison Manual, first prepared in 1960, replaced by a fresh Manual in 2003 and revised again in 2016, provides guidelines for the management and operation of Indian prisons and their inmates. It draws attention to prisoners' rights to medical care, legal aid, education, and vocational training. Although it is not legally binding, the Model Prison Manual serves as a model for state governments developing their own prison policies and procedures.³⁸

³⁴ *Id.* at 57-58.

³⁵ *Id.* at 59.

³⁶ The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023, § 341 (India).

³⁷ MINISTRY OF HOME AFFAIRS, *Prison Reforms*, <https://www.mha.gov.in/en/commoncontent/prison-reforms> (last visited May 11, 2026).

³⁸ MINISTRY OF HOME AFFAIRS, *Model Prison Manual 2016*, https://www.mha.gov.in/sites/default/files/2024-12/PrisonManualA2016_20122024.pdf; *An Analytical Study of Prisoners' Rights in India: Challenges, Implementation, and Reform Perspectives*, 4 INDIAN J. INTEGRATED RSCH. L. (Issue II) (2024), <https://ijirl.com/wp-content/uploads/2024/04/AN-ANALYTICAL-STUDY-OF-PRISONERS-RIGHTS-IN-INDIA-CHALLENGES-IMPLEMENTATION-AND-REFORM-PERSPECTIVES.pdf>.

V. HINDRANCES IN IMPLEMENTING PRISONERS' RIGHTS

Even with India's diverse legal system and its efforts to defend prisoners' rights, a number of obstacles remain. The following are a few of the main obstacles:

- **Lack of legal awareness:** accessing legal aid and counsel is difficult for many prisoners, especially those from underprivileged socioeconomic backgrounds or marginalised areas. Delays in the legal process, a lack of legal aid, and a lack of knowledge about one's legal rights all make it difficult to obtain fair trials and to resolve complaints.
- **Corruption and mismanagement:** efforts to safeguard inmates' rights and to provide accountability for abuses are hampered by corruption, poor management, and a lack of openness within the prison system. Problems with safety, security, and access to services may be made worse by instances of bribery, extortion, and collusion among prison staff.
- **Poor healthcare services:** it is still quite difficult to obtain good healthcare services in jails. Many prisons lack the infrastructure, medical personnel, drugs, supplies, and facilities necessary to meet inmates' healthcare needs, which results in untreated illnesses and injuries and in insufficient mental health support.
- **Violence and abuse:** there are still incidents of violence, abuse, and mistreatment in Indian jails, both by inmates and by prison officials. The frequency of violence and abuse in the prison setting is influenced by a number of factors, including overcrowding, understaffing, poor training, and a lack of accountability.
- **Prison overcrowding:** Indian prisons frequently hold a number of inmates greater than the facilities can accommodate. Poor living conditions, restricted access to necessities, heightened tension among inmates, and an increased likelihood of violence and abuse are all consequences of overcrowding.
- **Inadequate infrastructure:** to guarantee the security, health, and welfare of inmates, many Indian prisons lack the necessary resources and infrastructure. Basic amenities, including air, clean water, sanitary conditions, and medical treatment, are often lacking or poor.
- **Manpower shortages in prisons:** prisons usually struggle to maintain security, to provide necessary services to inmates, and to maintain order because of manpower shortages. The incidence of misbehaviour and abuse by prison employees can also be attributed to inadequate staffing numbers.

VI. CONCLUSION

Human dignity, liberty, freedom, and equal rights are inalienable; an individual's rights and freedom cannot be taken away by a simple offence, for they are fundamental characteristics of all people. Human dignity must be preserved. Prisoners in India have endured torture and a lack of human dignity in Indian jails for ages. In India, preserving human dignity, guaranteeing equitable treatment, and encouraging rehabilitation within the criminal justice system all depend on the protection and advancement of prisoners' rights. India has made great progress in recognising prisoners' rights through court rulings and legislative frameworks, but many obstacles remain.

To put all of these issues in perspective, the government must establish committees to develop solutions. The most crucial and fundamental aspect of human existence is the individual's human rights. Therefore, in addition to enhancing the services and working conditions of the prison staff, the mechanisms now needed in the jail and in the operations of the prison authorities will guarantee a degree of accountability and transparency in prison administration.

Initiatives such as rehabilitation programmes, healthcare improvements, legal aid clinics, and advocacy for legislative change demonstrate a commitment to addressing the structural problems affecting inmates' rights. International partnerships and collaborations also offer invaluable assistance and knowledge to improve the efficacy of reform initiatives.
