

The Study of Rights of Prisoners In India: An Unfinished Revolution.

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Abstract: *India's Supreme Court has progressively held that prisoners retain fundamental rights under Article 21. Yet, Indian prisons remain overcrowded (131.4% capacity), understaffed (44% vacancies), and inhumane, with 75.8% of prisoners being undertrials. This paper examines the gap between constitutional promise and carceral reality. Through analysis of landmark judgments, NCRB data, legislative frameworks, and comparison with UK, US, and UN standards, the paper finds that implementation failure – not legal inadequacy – is the core problem. It concludes with recommendations for statutory codification, independent oversight, and expansion of open prisons.*

Keywords: Prisoners' rights, Article 21, undertrial prisoners, Nelson Mandela Rules, implementation gap, prison legislation

I. INTRODUCTION

The project traces the historical evolution of prisoners' rights from the colonial-era Prisons Act of 1894 to contemporary constitutional jurisprudence, analyzing how the Supreme Court has progressively expanded the substantive content of Article 21 to encompass rights to speedy trial, legal aid, humane conditions, and freedom from torture. Through a comparative analysis of the United Kingdom, United States, and United Nations standards—particularly the Nelson Mandela Rules the research identifies normative gaps in Indian prison administration.

II. HISTORICAL BACKGROUND

India's prison system originates in the colonial Prisons Act of 1894, which treats prisoners as objects of custody. The Constitution (1950) was silent on prisoners specifically. The post-Emergency period (1978-1983) saw the Supreme Court expand Article 21 to include dignity, speedy trial, legal aid, and humane conditions. International instruments; UDHR (1948), ICCPR (1966), and later the Nelson Mandela Rules (2015) influenced this jurisprudence.

III. LEGISLATIVE PERSPECTIVE

India's prison legislation is outdated, fragmented, and largely colonial. The Prisons Act, 1894. This colonial-era law still governs most Indian prisons. It contains no mention of prisoners' rights, legal aid, rehabilitation, or independent oversight. Prisoners are treated as objects of custody, not rights-holders.

The Prisoners Act, 1900 – These addresses limited matters such as removal of prisoners and their attendance in courts. It does not create any substantive rights.

The Repatriation of Prisoners Act, 2003 – This provides for transfer of prisoners between India and foreign countries. It is procedural, not rights-based.

Section 436A, Code of Criminal Procedure, 1973 – Inserted in 2005, this provision mandates release of undertrial prisoners who have served half the maximum sentence for their alleged offence. However, it is rarely enforced due to lack of legal aid and judicial awareness.



Constitutional Provisions – Article 21 (right to life and personal liberty) has been interpreted by courts to include prisoners' rights. Article 39A mandates free legal aid. However, no specific constitutional provision addresses prison conditions.

Model Prison Manual, 2016 – Issued by the Ministry of Home Affairs, this is a non-binding template for states. It embodies a reformatory philosophy but has no legal force.

Model Prisons and Correctional Services Act, 2023 – This proposed legislation would replace the 1894 Act. It includes provisions on prisoners' rights, legal aid, grievance redressal, and independent oversight. However, as of 2026, only a handful of states have enacted legislation based on this model. Most continue under the colonial framework.

Legislative Gap – Because "prisons" is a State List subject (Entry 4, List II, Seventh Schedule), the central government cannot enact binding prison legislation. States must adopt their own laws. Most have not. This fragmentation is a primary cause of the implementation gap.

IV. JUDICIAL INTERPRETATIONS

Foundational Cases (1978-1983):

Sunil Batra (I) (1978) – Prisoners retain fundamental rights. Judicial review extends to prison administration.

Hussainara Khatoon (1980) – Right to speedy trial is part of Article 21. 40,000 undertrial prisoners were ordered released.

Francis Coralie Mullin (1981) – Dignity includes nutrition, shelter, clothing, and family contact.

Prem Shankar Shukla (1980) – No routine handcuffing without written order based on individual assessment.

Recent Cases:

Inhuman Conditions in 1382 Prisons (2018) – Suo motu action. "Overcrowding is mother of all evils." High Powered Committees constituted in each state.

Re: COVID-19 in Prison (2023) – 50,000 prisoners released temporarily on interim bail or emergency parole.

2026 OCI Judgment – Directed states to establish Open Correctional Institutions, include women prisoners, and rationalise eligibility criteria. The Court held: "To deny women this right on speculative security grounds is to substitute administrative convenience for constitutional obligation."

V. COMPARATIVE ANALYSIS

UK: The Human Rights Act 1998 incorporates the European Convention. Prisoners can directly enforce rights. HM Inspectorate conducts unannounced inspections. The European Court held that less than 3 sq m per prisoner is degrading treatment.

US: The Eighth Amendment prohibits cruel and unusual punishment. *Brown v. Plata* (2011) ordered California to reduce prison population to 137.5% of capacity. However, solitary confinement remains widespread.

UN: The Nelson Mandela Rules (2015) are the gold standard. Key provisions include Rule 1 (dignity), Rule 43 (15-day solitary limit), Rule 83 (independent inspection), and Rule 89 (rehabilitation as aim). The Bangkok Rules (2010) address women prisoners.

VI. RECOMMENDATIONS

1. Expand open prisons – Follow 2026 judgment. Include women. Base eligibility on individual assessment, not rigid time thresholds.

2. Increase judicial capacity – Raise judge-to-population ratio from 21 to 50 per million (Law Commission recommendation). Establish fast-track courts for undertrial cases.

3. Improve data transparency – NCRB should publish real-time occupancy data. States should publish quarterly reports. Supreme Court should appoint an amicus-curiae to monitor implementation.



VII. CONCLUSION

The Supreme Court observed in its 2026 judgment that a democracy "is tested not by the liberties it guarantees in abstraction, but by how it treats those at its margins." India has the law, the judicial commitment, and the constitutional framework. What is missing is implementation, political will, and a shift from retribution to reformation. The colonial Prisons Act of 1894 still governs most states. The Model Prisons Act 2023 remains unimplemented. Staffing vacancies exceed 40%. Undertrials constitute 76% of prisoners. The revolution remains unfinished.

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