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## **RIGHTS OF PRISONERS AS PER THE INDIAN LAW**

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### **INTRODUCTION**

It is likely that the reasons for incarceration will be seen as a combination of some or even all of these grounds. It is impossible to generalise about the impact of any of these factors without first establishing the context of each particular prisoner. On the other hand, there is a growing consensus that incarceration is an expensive option of last resort that should be utilised only in cases when it is crystal evident to the court that a sentence that does not involve incarceration would not be suitable. The incarceration of those who are currently awaiting their trials is a matter that is of particular importance. Their circumstance is very different from that of individuals who have been found guilty of committing an infraction. Since they have not been proven guilty of any crime, the law considers them to be innocent until and unless that guilt is established. The unfortunate truth is that they are frequently detained in the worst of conditions, conditions that, in some instances, violate basic standards of decency pertaining to human beings. The vast majority of inmates who are now incarcerated in a variety of countries are awaiting their trials. There are times when the percentage reaches as high as sixty percent. The manner in which pretrial detainees are handled and the fact that the access that they have to their attorneys and to their families is decided not by the administrators of the correctional facility, instead by a different authority, such as the prosecutor, gives rise to a special set of challenges. To be more specific, there are issues with the manner in which pretrial detainees are handled, namely when another authority decides whether or not they are permitted access to their family and attorneys. The length of time cases are detained awaiting trial is the key cause for worry about human rights in ongoing proceedings. Article 21 of the Constitution protects a prisoner's right to a speedy trial as part of the inmate's right to life and liberty. This clause also guarantees a fair and reasonable process.<sup>1</sup>

The provision of criminal justice includes the guarantee of a speedy trial for anyone accused of a crime. In order to swiftly condemn the guilty and exonerate the innocent once the court

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<sup>1</sup> Gautam, Madhavi. "Rights of Prisoners and Speedy Trial." *Issue 1 Indian JL & Legal Rsch.* 4 (2022): 1.

has taken notice of the charge, the trial must be expedited. Everyone is presumed to be innocent unless proven guilty. This necessitates an expedited determination of the accused's guilt or innocence. The court has a duty to guarantee that no criminal is freed, but it has an even larger responsibility to ensure that justice is swift and that the accused are not subjected to unending suffering. For this reason, the adage "justice delayed is justice denied" is aptly descriptive of the effects of a prolonged trial delay. Accused criminals must be brought to trial as soon as feasible; this is an absolute need. This assures that the accused will not spend any more time behind bars than necessary, regardless of the outcome of their bail hearings. The right to a speedy and impartial trial is increasingly seen as a basic human entitlement.

### **PRISONERS AND THEIR TYPE**

The term "prisoner" is often used to refer to somebody who is incarcerated or otherwise detained. The definition of "prisoner" in the Oxford English Dictionary is "a person who is being kept in prison." Inmates are classified into three groups, as specified in Section 3 of the Prisons Act of 1894. The terms "Criminal Prisoner," "Convicted Criminal Prisoner," and "Civil Prisoner" are used to distinguish between these three types of inmates.

Any person incarcerated pursuant to "Chapter VIII of the Criminal Procedure, 1882 (X of 1882)" or "the Prisoner's Act, 1871 (V of 1871)" is considered a "Criminal Prisoner," while any person committed to custody pursuant to the writ, warrant, or order of any Court or authority exercising criminal jurisdiction or by order of a Court - Martial is considered a "Convicted Criminal Prisoner."<sup>2</sup>

A "Civil Prisoner" is any inmate who is not doing time for a felony. Inmates may be roughly categorised in a number of other ways as well, such by length of sentence, kind of illness, age, gender, reason for incarceration (political vs. personal), type of crime (criminal vs. preventative), and so on.

### **RIGHTS OF PRISONERS & ITS COMPONENTS - AN OVERVIEW**

"Prisoners retain all rights enjoyed by free citizens except those lost necessarily as an incident of confinement. Moreover, the rights enjoyed by prisoners under Articles 14, 19 and 21, though limited, are not static and will rise to human heights when challenging situations arise." On the

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<sup>2</sup> Bhardwaj, Aditi. "Paradigms of Prisoner's Rights: International and Indian Perspective." *Issue 5 Int'l JL Mgmt. & Human*. 6 (2023): 1129.

other hand, human rights of a prison is wide concept and includes various rights guaranteed under law. It includes the following rights: -

- Right to life, which is a very wider term thus encompassing under its ambit all such rights that are essential to lead a meaningful and dignified life.
- Right to liberty which is legally considered as a facet of right to life
- Right to health which further includes right to food, right to sleep, right to medical aid - Right to privacy which is also legally interpreted as a part of right to life. This further includes right to be left alone and right to be forgotten, in the context of a crime - accused. - Right to fundamental freedoms including freedom of speech and expression, freedom - of movement, freedom of association, etc.
- Right to equality and equal treatment before law, Etc.

As mentioned earlier a prisoner only because is imprisoned does not lose his rights otherwise guaranteed by law. Rights declared as human rights are to be safeguarded so as to ensure that minimum entitlements of human beings are legally guaranteed and protected too. In addition to human rights, each fundamental right guaranteed by the Constitution [most of which are also regarded as human rights] are also guaranteed to a prisoner. However, to the extent it is necessary to administer prison system, implement punishment the inmate is undergoing and facilitate the legal process which an inmate is undergoing, certain restrictions on the rights of the prisoners can be imposed. However, such restrictions are required to be legally valid, reasonable and fair. They must not be unnecessary encroachment of the rights of prison inmates.

Apart from constitutionally guaranteed fundamental rights, there are certain rights that the constitution provides to every individual including a prison inmate which are on the other hand a correlative of duties of State imposed upon state by the Constitution under Chapter IV, that is, "Directive principles of State policy". Also, criminal laws including criminal procedure code, prison Act, prison rules and prison manuals also confer certain rights upon a prisoner. The human rights related laws to recognize certain rights of individuals which includes prison inmate's rights too.

Thus, rights of a prison inmates include internationally recognized human rights, constitutionally guaranteed fundamental rights, legally recognized statutory rights. Each of these are enforceable to the extent to which respective laws provide for.<sup>3</sup>

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<sup>3</sup> *Id.*

## **RIGHTS OF PRISONERS AND INDIAN CONSTITUTION**

As mentioned earlier, Constitution under Chapter III confers various fundamental rights to its citizens. Most of these rights are also guaranteed to a foreigner present in India. Most of these rights are also extended to prison and hence must be conferred even to a prison inmate to the maximum extent possible. A prisoner doesn't cease to be a human being to be deprived of his right to life guaranteed under Article 21 of the Constitution.<sup>4</sup> A prisoner doesn't cease to be a human being to be deprived of his right to life guaranteed under Article 21 of the Constitution. A prisoner like anybody else is entitled to enjoy some of fundamental and human rights. These rights include the following:

- Right to life and personal liberty.
- Right to privacy and right to live with dignity;
- Right to health
- Right to humane facilities
- Right to live with dignity
- Right to equality
- Rights to freedom of speech and expression,
- Right to freedom of religion

Inmates in Indian prisons have their constitutional rights protected to the fullest degree feasible. Article 14 of Constitution guarantees everyone a fair trial and equal protection under the law. A prisoner has the same legal protections and guarantees as any other citizen. As a result, unjustifiable forms of discrimination violate the Constitution.

The criminal justice system benefits from the rights guaranteed by constitution since they increase an individual's ability to stand trial on fairgrounds. Article 20 ensures protections against self-incrimination and double jeopardy. A person facing criminal prosecution is likewise entitled to these protections. Article 20 further specifies that no criminal legislation may have retroactive effect. If an individual is arrested, they must be brought before a magistrate within 24 hours. This is required under Article 22.<sup>5</sup>

The important right that a prisoner [convict] should not be deprived of life or personal liberty unless pursuant to the method prescribed by law is guaranteed to him by Article 21. The accused has the right to bail, the right to legal representation, protection against torture in

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<sup>4</sup> Gupta, Yashaswi. "Rights of Prisoners." *Supremo Amicus* 14 (2019): 321.

<sup>5</sup> *Id.*

custody, and other protections under Articles 20 and 21. Since "right to life" is such a broad word, the law intends for it to include all the rights necessary for a person to lead a life of dignity. The right to life in India encompasses both procedural rights, such as the right to a fair trial, and substantive rights, such as the right to health care, clean water, and a safe environment.

Because Article 21 is seen as a "umbrella" provision that protects a wide range of human rights, it is broad enough to apply, at least to the degree that it can be applied, to a prisoner's rights. The right to health care, rest, a safe place to live, clean drinking water, an adequate education, access to the world wide web, a loving family, etc. are all included in this provision as part of the right to life.

The Bombay High Court recently ordered that an accused woman with terminal illness be sent from jail to a hospice for palliative treatment. Article 21 of the Constitution is a core principle of human right," the court said. Prisoners, whether convicted, accused, or detained, retain their humanity and, even when incarcerated, retain their constitutionally protected right to receive medical care in accordance with Article 21 of the Constitution. Article 21 of the Indian Constitution guarantees that no one will be denied access to medical care because of where they live or where they are incarcerated.

The right to freedom of expression is guaranteed to all Indian citizens under Article 19(1)(a). A prisoner must be granted this privilege unless doing so would significantly disrupt prison operations. A person's right to religious freedom is similar. To the degree that their position as inmates does not conflict with exercising their free speech and religious expression rights, all prisoners have such rights.

Article 14 of the Indian Constitution guarantees everyone a fair trial and the same protections under the law. A prisoner has the same legal protections and guarantees as any other citizen.<sup>6</sup> As a result, unjustifiable forms of discrimination violate the Constitution. The criminal justice system benefits from the rights guaranteed by the Indian constitution since they increase an individual's ability to stand trial on fairgrounds.

Article 20 ensures protections against self-incrimination and double jeopardy. A person facing criminal prosecution is likewise entitled to these protections. Article 20 further specifies that no criminal legislation may have retroactive effect. If an individual is arrested, they must be brought before a magistrate within 24 hours. This is required under Article 22. Article 21

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<sup>6</sup> Anand, Vishal. "Protection of Accused under Article 21 of the Indian Constitution: A Critical Analysis." *Indian JL & Legal Rsch.* 2 (2021): 1.

ensures that no prisoner [convict] will be deprived of life or personal liberty, except in accordance with the method prescribed by law.

The accused has the right to bail, the right to legal representation, protection against torture in custody, and other protections under Articles 20 and 21. Since "right to life" is such a broad concept, it is intended by law to include all of a person's basic human rights. The right to life in India encompasses not only procedural rights like the right to a fair trial, but also substantive rights like the right to health, the right to clean water, and the right to a safe and sanitary environment.

Because Article 21 is seen as a "umbrella" provision that protects a wide range of human rights, it is broad enough to apply, at least to the degree that it can be applied, to a prisoner's rights. The right to health care, rest, a safe place to live, clean drinking water, an adequate education, access to the world wide web, a loving family, etc. are all included in this provision as part of the right to life. The right to health is fundamental to leading a humane and respectable existence.

The right to health involves access to safe drinking water, a germ-free environment, and adequate lavatory facilities. "States must ensure that everyone, including people in detention, have access to safe sanitation," reads a statement published by the United Nations. Without it, detention centres violate the fundamental human dignity upon which the protection of all other rights rests. There is growing consensus that access to sanitation is a fundamental human right that must be upheld everywhere, even in penal institutions.

Inmates have the "Right to fulfilment of basic minimum needs," which the Model Prison Manual defines as including "adequate diet, health, medical care and treatment; access to clean and adequate drinking water; access to clean and hygienic conditions of living accommodation; sanitation and personal hygiene; and adequate clothing, bedding, and other equipment." In addition, it guarantees that the inmates' living quarters, especially their sleeping quarters, would be conducive to good health.

The Bombay High Court recently ordered that an accused woman with terminal illness be sent from jail to a hospice for palliative treatment. Article 21 of the Constitution is a fundamental human right, the court ruled in this instance. Prisoners, whether convicted, accused, or detained, retain their humanity and, even when incarcerated, retain their constitutionally protected right to receive medical care in accordance with Article 21 of Constitution. Article 21 of the Constitution guarantees that no one will be denied access to medical care because of where they live or where they are incarcerated.

The right to freedom of expression is guaranteed to all Indian citizens under Article 19(1)(a).<sup>7</sup> A prisoner must be granted this privilege unless doing so would significantly disrupt prison operations. A person's right to religious freedom is similar. To the degree that their position as inmates does not conflict with exercising their free speech and religious expression rights, all prisoners have such rights.

The Indian Supreme Court ruled in favour of inmates' human rights in the context of solitary confinement in the case of *Sunil Batra et al. v. Delhi Administration and Others*<sup>8</sup>. "Personal liberty of the person who is incarcerated is to a great extent curtailed by plaintive detention," the Supreme Court said. Even under preventative detention, it is limited. Any significant restriction on inmates' freedom to roam, mix, mingle, communicate, and have company with one another without legal justification would be a violation of Article 21. The method for limiting it is laid forth in Section 30(2), but it must be interpreted in light of this ruling. When Section 30(2) is narrowed in scope, the offensive part of the legislation disappears, and it can no longer be argued that it violates individual rights without legal justification. Thus, the Constitution proves to be a significant legal instrument safeguarding human rights for everybody, including prisoners, since its provisions include diverse human rights in the form of basic rights. Articles 226 and 32 of the Constitution provide for remedies in the event of unreasonable infringement of these rights.

## **RIGHTS OF PRISONERS AND CRIMINAL LAW**

Indian criminal laws do also in a way protect human rights of individuals. According to Indian Penal Code, detaining a person without authority of law and justification valid under law amounts to an offence of wrongful confinement. Abuse of powers by public servants is also criminalized under Indian Penal Code.

In case an accused facing criminal trial laws at times allows for arrest and custodial detention of such accused. Further post-conviction, a convict may also be required to undergo imprisonment. Hence criminal laws do deal with aspects related to a prison inmate including related to his rights while being in such custody of prison authorities. Most importantly criminal procedure code deals with such rights.

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<sup>7</sup> *Id.*

<sup>8</sup> *Supra* note 18



A person once arrested by police is required to be produced before a magistrate within 24 hours from the time his arrest. A magistrate then subjective to the requirements of the case, either release him on bail or discharge him or submit him to either police or judicial custody. Judicial custody here refers to detention in a prison.

According to section 167 of criminal procedure code, such person, in the course of an ongoing investigation, can be detained in judicial custody for a period not exceeding 60 days if the offence he is involved with is punishable with imprisonment up to 10 years and for a period not exceeding 90 days if the offence he is involved in is punishable with death sentence or life imprisonment or imprisonment of a term exceeding 10 years. For certain serious offences such as those covered under Arms Act, Anti-terror laws, etc. such custodial detention in prison pending an investigation can go longer than 60 or 90 days. During the course of this detention period an accused's legal rights including right to bail, right to appear before court which is a part of his right to defence, etc. are to be safeguarded by State against unnecessary restrictions.

### **OTHER RELEVANT ASPECTS UNDER CRIMINAL PROCEDURE CODE:**

Various provisions of criminal procedure code implies obligates essential to be discharged by the prison. Since custody determines being under safe and secured custody, custodial detention of a prisoner in a prison, imposes duties on the part of prison authorities to ensure safety and security of such prisoners. In case of under-trial prisoners, the code requires production of an accused before court while deciding the questions of custodial detention. According to Section 167, such accused can be produced through video conference mode if he is produced after or from judicial custody. Such production and facilitation of hearing by court and production of accused before court during such hearing is the duty of the prison administration. Similarly in the course of trial too, it is the responsibility of prison administration to facilitate production of accused from their custody by the concerned court, be it physical production or via video conference mode. Relevant provisions in this regard are as follows:

According to section 267 of the code<sup>9</sup>: -

*“(1) whenever, in the course of an inquiry, trial or other proceeding under this Code, it appears to a Criminal Court,-*

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<sup>9</sup> Section 267(1) in The Code of Criminal Procedure, 1973

- (a) that a person confined or detained in a prison should be brought before the Court for answering to a charge of an offence, or for the purpose of any proceedings against him, or  
– (b) that it is necessary for the ends of justice to examine such person as a witness, the Court may make an order requiring the officer in charge of the prison to produce such person before the Court for answering to the charge or for the purpose of such proceeding or, as the case may be, for giving evidence.

– (2) Where an order under sub- section (1) is made by a Magistrate of the second class, it shall not be forwarded to, or acted upon by, the officer in charge of the prison unless it is countersigned by the Chief Judicial Magistrate to whom such Magistrate is subordinate.

– (3) Every order submitted for countersigning under sub- section (2) shall be accompanied by a statement of the facts which, in the opinion of Magistrate, render the order necessary, and the Chief Judicial Magistrate to whom it is submitted may, after considering such statement, decline to countersign the order.”

“(1) The State Government may, at any time, having regard to the matters specified in sub- section (2), by general or special order, direct that any person or class of persons shall not be removed from the prison in which he or they may be confined or detained, and thereupon, so long as the order remains in force, no order made under section 267, whether before or after the order of the State Government, shall have effect in respect of such person or class of persons.

– (2) Before making an order under sub- section (1), the State Government shall have regard to the following matters, namely: -

(a) the nature of the offence for which, or the grounds on which, the person or class of persons has been ordered to be confined or detained in prison;

- (b) the likelihood of the disturbance of public order if the person or class of persons is allowed to be removed from the prison;

- (c) the public interest, generally” According to section 269: “Where the person in respect of whom an order is made under section 267: (a) is by reason of sickness or infirmity Unfit to be removed from the prison; or (b) is under committal for trial or under remand pending trial or pending a preliminary investigation; or

(c) is in custody for a period which would expire before the expiration of the time required for complying with the order and for taking him back to the prison in which he is confined or detained; or

*(d) is a person to whom an order made by the State Government under section 268 applies the officer in charge of the prison shall abstain from carrying out the Court's order and shall send to the Court a statement of reasons for so abstaining.”*

According to section 270 of the code<sup>10</sup>:

*“Subject to the provisions of section 269, the officer in charge of the prison shall, upon delivery of an order made under sub- section (1) of section 267 and duly countersigned, where necessary, under sub- section (2) thereof, cause the person named in the order to be taken to the Court in which his attendance is required, so as to be present there at the time mentioned in the order, and shall cause him to be kept in custody in or near the Court until he has been examined or until the Court authorizes him to be taken back to the prison in which he was confined or detained.”*

Additionally, the court under section 271 is empowered to issue a commission for the examination of a person who is a prison inmate as a witness.”

Since it is also the right of prisoner to know about his legal rights including the rights essential for him to face a fair legal process such as court proceedings, it is the duty of the prison administration to facilitate delivery of legal services, legal aid and legal awareness to the possible extent to its prison inmates.

## **RIGHTS OF PRISONERS AND PRISON LAWS**

In addition to the Constitution, India has various laws directly and indirectly recognizing and extending protection of human rights of prisoners such as prison laws including Prison Act and Prison manuals, Criminal Procedural laws, Human Rights Act, etc. the following is an overview of some of such law framework that India has:

### **PRISONS ACT, 1894:**

The Act aims to provide rules for the regulation of prison and within such rules takes care of concerns of prisoners that contributes to the protection of rights of prisoners.<sup>11</sup> Some of such rules are as follows:

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<sup>10</sup> *Id.* at Section 270.

<sup>11</sup> Dalal, Rajbir, and Rekha Chauhan. "Prison reforms in India: Emerging issues." *Asian Journal of Multidimensional Research (AJMR)* 8, no. 6 (2019): 243-254.

- Number of prisoners to be detained in prison shall be determined based on the concerns related to convenience and safety of prisoners. In case of epidemic the authorities are required to provide temporary shelters and safe custody of such prisoners.
- The Medical Officer of Prison is obliged to take care of “sanitary administration of the prison” as per Section 13
- Considering the importance of the mental health needs of a prisoner, section 14 obligates medical officer of prison to report cases of such prisoners about whom he has “reason to believe that the mind of a prisoner is, or is likely to be, injuriously affected by the discipline or treatment to which he is subjected”. Such report must be submitted to the Prison Superintendent along with details of relevant observations made by him.
- In case death of any prisoner, the Medical Officer is required to prepare a detailed report as prescribed in Section 15.
- Prison Jailers are also vested with various duties that contributes towards overall protection of prison inmates. Under section 18, it is the responsibility of the jailor to keep records in his safe custody. This includes documents related to warrants and all other documents confided to his care, and for the money and other articles taken from prisoners.
- Act also obligates for other medical needs to be provided within prison for prisoners who are sick. Act also requires every prison to have a hospital or proper place for reception of sick prisoners [Section 37 and 39] <sup>12</sup>

## **PRISON MANUALS**

According to the “Model Prison Manual”, prepared by the “Bureau of Police Research & Development, Ministry of Home Affairs in 2003”,<sup>13</sup> although it were the British who came up with the Jail Administration system, there has been drastic change over the years ever since India became independent.

Today’s objective of prison administration is not just limited to administering an institution of custodial detention and maintaining discipline in such institution. It is more about balancing the concerns of administration with an added objective of ensuring humane condition in the prison in general and protection of human rights of prison inmates to the maximum extent

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<sup>12</sup> *Id.*

<sup>13</sup> Manual, Model Prison. "For the Superintendents and Management of Prisons In India, Formulated By Bureau of Police Research and Development Ministry of Home Affairs Government of India New Delhi." *Chapter-IV 3* (2003): 44.

possible in specific. Thus, administration strategies must integrate all possible measure essential to promote and protect human rights of prison inmates. As has rightly recognized by the Model Prison Manual, on the basis of various judgments, three principles were given by the Supreme Court.

- (i) A person who is incarcerated does not cease to exist.
- (ii) A prisoner has all human rights, within the confines of jail, that any other citizen has.
- (iii) Adding to the pain that comes as a natural part of being locked up is unacceptable.

Inmates have the "Right to fulfilment of basic minimum needs," which the Model Prison Manual defines as including "adequate diet, health, medical care and treatment, access to clean and adequate drinking water, access to clean and hygienic conditions of living accommodation, sanitation, and personal hygiene, and adequate clothing, bedding, and other equipment." In addition, it guarantees that the inmates' living quarters, especially their sleeping quarters, would be conducive to good health.

### **THE PRISONS ACT, 1894**

The Prison Bill was introduced in the Legislature to repeal the four local Acts and prescribe a uniform system of the prison management in India. The Bill was mainly based on Act XXVI of 1870, (An Act to amend the law relating to prisons), which was in force in the North-Western Provinces and Oudh, the Punjab, the Central Provinces, Coorg and Burma, with amendments embodying the conclusions arrived at by the Government of India on the report of the Jail Committee of 1889 and the report of the Prison Conference of 1892. The All-India Jail Committee in 1892 resurveyed the whole concept of jail administration and laid down detailed rules that formed precursor to the Prisons Act, 1894 applicable to jails all over the country as a uniform law.

As far as this Act is concerned it shall apply to the whole of India except those territories comprised in Part B States before 1st November, 1956, and also the civil jails in the State of Bombay which are outside the city of Bombay as they are governed by the Civil Jails Act, 1874. The term prison for the purpose of this Act does not include police custody and subsidiary jails.

The Act empowered the then existing provinces to lay down their own prison rules for the overall prison administration which remain the same till today.

Some of the salient features of the Act were:

- Chapter 1 deals with the title, extent and commencement of the Act.
- Chapter 2 deals with the maintenance and officers of prisons
- Chapter 3 deals with the duties of officers such as superintendent, medical officer, jailer and subordinate officers.
- Chapter 4 deals with the admission, removal and discharge of prisoners. Chapter 5 deals with discipline of prisoners including segregation, solitary confinement and prisoners under sentence of death.
- Chapter 6 deals with food, clothing and bedding of civil and unconvicted criminal prisoners. Chapter 7 deals with the employment of prisoners.
- Chapter 8 deals with the health of prisoners.
- Chapter 9 deals with visits to civil and criminal prisoners.
- Chapters 10 and 11 deal with prison offences, power to arrest, punishment and the procedure when the offence is committed by prisoners as well as prison subordinates.
- The last chapter deals with the power of the state governments to make rules for its prison management.

The overall advantage brought by this Act is that it provided for the classification of prisoners, medical facilities which had already been extended to prisoners in the year 1866 were further improved and better amenities were provided to women inmates to protect them against contagious diseases.

This Act was however questioned many times for various reasons. It was originally enacted under the influence of English jurisprudence which is based on the deterrent principles and as reflected in the provisions it is concerned more with prison management, prison offences and punishments rather than the treatment of prisoners. The Supreme Court in *Rama Murthy v. State of Karnataka*<sup>14</sup> held that the century-old Prisons Act, 1894<sup>15</sup>, needs a thorough look and is required to be replaced by a new enactment which would take care of the thinking of Independent India and of our constitutional morose and mandate. During the national seminar on prison reforms in 2014, the NHRC stated that the Prisons Act 1894, being very old, contains archaic provisions some of which are no longer relevant and hence require drastic changes. Post jailbreak in Madhya Pradesh, the Hindustan Times carried a report whether the outdated 118 years old Prison Act was responsible for security lapses, as it bars guards from carrying

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<sup>14</sup> AIR 1997 SC 1739

<sup>15</sup> Srivastava, Prashant Kumar. *PRISONERS RIGHTS UNDER INDIAN CONSTITUTION*. 2021.

arms inside the jail. According to The Wire, the Supreme Court said that —Tihar Jail is in a sorry state of affairs, describing it as —a den of criminals and murders<sup>16</sup> and direct the Union Home Ministry to take immediate steps on prison reforms and enhance management.

One of the overlapping provisions found is that under clause (a) of section 3, the term prison does not include subsidiary jails, whereas clause (b) of Section 266 in CrPC, 1973 includes subsidiary jail, reformatory, Borstal institution or other institution of a like nature within the term prison.

Undoubtedly, efforts have been made to update the state prison manuals on the basis of which internal prison management are guided. However, to have the legal force of what has been provided in prison manuals, the old Prison Act of 1894 should be replaced by a new legislation, which will incorporate the modern principle of reformation and correction, rehabilitation and reintegration of prisoners. The prison administration in India has been governed by a pre-independence era Act called the Prisons Act of 1894 for 129 years. However, this Act is soon to be replaced by a new Act as the MHA has prepared a ‘Model Prisons Act 2023’ with an aim to overhaul the whole of prison administration and focus on the reformation and rehabilitation of inmates.

### **MODEL PRISONS ACT, 2023**

Regarding the Act of 1894, a recent development has been made by the Government of India. The MHA said that a comprehensive ‘Model Prisons Act 2023’ was finalised with the objective of holistically providing guidance and addressing the gaps in the existing Prisons Act, including the use of technology in prison management, making provisions for grant of parole, furlough, remission to prisoners to encourage good conduct, special provision for women/transgender inmates, physical and mental well-being of prisoners and focus on the reformation and rehabilitation of inmates. Along with the Prisons Act, 1894, the Prisoners Act, 1900 and the Transfer of Prisoners Act, 1950<sup>16</sup> have also been reviewed by the MHA and relevant provisions of these Acts have been ‘assimilated’ in the ‘Model Prisons Act, 2023’. State governments and union territory administrations can benefit from the Model Prisons Act, 2023 by adopting it in their jurisdictions, with such modifications which they may consider necessary, and repeal the existing three Acts in their jurisdictions, the MHA said.

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<sup>16</sup> Forsythe, Willam James. *The Reform of Prisoners: 1830-1900*. Routledge, 2020.

**THE PRISONERS ACT, 1900**

The Act was originally enacted as the Prisoners Act, 1871 and amended as the Prisoners (Amendment) Act, 1894. The present Act of 1900<sup>17</sup> was enacted to consolidate various laws relating to prisoners confined by the order of a Court including a Coroner and any officer lawfully exercising civil, criminal or revenue jurisdiction. Initially, the Act is divided into nine Parts altogether but subsequently parts-V and IX are repealed.

The main features of the Act include the following:

Part I – Preliminary

Part II – General

Part III – Prisoners in the Presidency-Towns

Part IV – Prisoners outside the Presidency Towns

Part VI – Removal of Prisoners

Part VII – Persons under sentence of imprisonment and removal thereto.

Part VIII – Discharge of Prisoners

Generally, it is also applicable to prisons including those declared by State Governments as subsidiary jails while part-IV and part-VI is specifically applicable to Reformatory Schools as well. However, it is not clear whether this Act will be applicable to Borstal institutions and other institution of a like nature which are included for prison under clause (b) of Section 266 in CrPC, 1973.

**THE TRANSFER OF PRISONERS ACT, 1950**

The main object of the Transfer of Prisoners Act, 1950<sup>18</sup> is to fill up the discrepancy in the Prisoners Act of 1920. It is found that section 29 of the latter Act provides for the inter-State transfer of prisoners between the States in Parts A, C and D of the First Schedule to the constitution. However, it did not provide for the transfer of prisoners from prisons in those States to prisons in Part B States and vice versa. Thus, in order to provide a legal sanction to such transfers or removal and for the administrative convenience, the Act was enacted which is applicable throughout India.

Altogether, there are only three sections in this Act. According to clause (c) of section 2, the term —prison<sup>19</sup> includes any place which has been declared by the State Government, by general

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<sup>17</sup> *Id.*

<sup>18</sup> The Transfer of Prisoners Act, 1950 (Central Act XXIX of 1950)



or special order, to be a subsidiary jail. Section 3 mentioned categories of punishment for which the offender may be transferred under the law which include;

- I. Sentence of death,
- II. Sentence of imprisonment or transportation,
- III. In default of payment of fine, or
- IV. In default of giving security for keeping the peace or for maintaining good behaviour.

### **THE PRISONERS (ATTENDANCE IN COURTS) ACT, 1955**

The purpose of this Act<sup>19</sup> is to provide for the attendance of persons confined in prisons for obtaining their evidence or for answering a criminal charge. This Act shall apply to those detained under preventive detention and institutions such as subsidiary jails, any reformatory, Borstal institution or other institution of a like nature. The Act have nine sections in total. Some of the important provisions are;

- I. Section 3 deals with the power of both the Civil and Criminal Courts to require the attendance of prisoners.
- II. Section 4 deals with the exemption power of the State Government.
- III. Section 5 deals with when prisoners are to be brought up.
- IV. Section 6 deals with the grounds on which the prison Officer-in Charge should abstain from carrying out the order.
- V. Section 7 deals with Commissions for the examination of prisoners by any civil Court.
- VI. Section 8 deals with the application of the Code of Criminal Procedure and Code of Civil Procedure.
- VII. Section 9 deals with the Power of the State Government to make rules.

### **THE PROBATION OF OFFENDERS ACT, 1958<sup>20</sup>**

In India, probation received statutory recognition first through Section 562 of CrPC, 1898 Which is currently under Section 360 of CrPC, 1973. Later, the Jail Manual Committee of 1957 deliberated about the probation system, suggesting that probation should be used more extensively than before to reduce the pressure on prisons, and submitted its Report in 1959. Consequently, the Government of India passed the Probation of Offenders Act, of 1958, which contains an elaborate provision relating to the probation of offenders and it is made applicable throughout the country.

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<sup>19</sup> The Prisoners (Attendance In Courts) Act, 1955 ACT NO. 32 OF 1955

<sup>20</sup> The Probation Of Offenders Act, 1958 ACT NO. 20 OF 1958

Sections 3,4,6 and 12 of the Act provides four different methods of dealing with offenders in lieu of imprisonment, subject to certain conditions, which includes;

- Release after admonition.
- Release on entering a bond of good conduct.
- Persons under twenty-one years of age are not to be sentenced to imprisonment unless the court calls for a report from the probation officer or records reasons to the contrary in writing, and
- The person released does not suffer a disqualification attached to a conviction under any other law.

According to Section 19 of the Act of 1958, Section 562 (now Section 360) of CrPC, 1973, which also deals with release on probation, shall cease to apply to the States or parts thereof in which this Act is brought into force. The provision for probation is provided even in the Reformatory Schools Act, 1897 and the Prevention of Corruption Act, 1947 but it shall not be affected by the Act of 1958.

The release of offenders on probation is a treatment device prescribed by the court for persons convicted of offences against the law, during which the probationer lives in the community and regulates his own life under conditions imposed by the court or other constituted authority, and is subject to supervision by a probation officer. It is found that there is lack of uniformity with regard to rules of probation on the ground that the Principal Act of 1958 has authorized the State governments to make rules to carry out the purposes of this Act.

It is found that there is variation in terms of the procedure for granting as well as the kinds of offences for which prisoners may be considered qualified for probation.

### **THE MENTAL HEALTH ACT, 1987**

The Mental Health Act, 1987,<sup>21</sup> is to deal with two main aspects, such as, the treatment and care of mentally ill persons and to make better provisions with respect to their property and affairs. With the coming into force of this Act, the Indian Lunacy Act, 1912 and the Lunacy Act, 1977 are repealed. According to clause (m) of section 2, mentally ill prisoner means a mentally ill person for whose detention in or removal to, a psychiatric hospital, psychiatric nursing home, jail or other place of safe custody, an order has been made in section 27

Some of the main provisions that are related with mentally ill prisoners are mentioned below:

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<sup>21</sup> The Mental Health Act, 1987 ACT NO. 14 OF 1987

- Section 5 provides that the Central or the State Governments may establish a separate psychiatric hospitals and psychiatric nursing homes for those who have been convicted of any offence.
- Section 27 provides for the admission and detention of mentally ill prisoners. For the purpose of directing the reception of a mentally ill prisoner into any psychiatric hospital or psychiatric nursing home, an order under section 30 of the Prisoners Act, 1900, or under section 144 of the Air Force Act, 1950, or under section 145 of the Army Act, 1950, or under section 143 or section 144 of the Navy Act, 1957, or under section 330 or section 335 of CrPC, 1973, shall be sufficient authority for the admission of such person in such hospital or psychiatric nursing home to which such person may be lawfully transferred for detention therein.
- Section 39 provides that where a mentally ill prisoner is detained in jail, the inspection of such prisoners shall be done by the Inspector General of Prisons (IGP), a psychiatrist or a medical officer, for at least once in every three months and report the same. However, if such a prisoner is detained in a psychiatric hospital or psychiatric nursing home, inspection shall be done by all or any three of the visitors including one social worker, for at least once in every three months.
- Section 47 provides that the State Government may make general or special order for the purpose of transferring mentally ill prisoner from one psychiatric hospital or psychiatric nursing home or jail or other place of safe custody in the State to another State.
- Section 81 under Chapter-VIII of the Act specifically provides for the protection of human rights of mentally ill prisoners which states that; a. No mentally ill person shall be subjected during treatment to any indignity (whether physical or mental) or cruelty.  
b. No mentally ill person under treatment shall be used for the purpose of research unless such research would benefit him directly for the purposes of diagnosis or treatment, or such person has given consent voluntarily by writing and if incompetent by reason of minority or otherwise, either the guardian or other person competent to give consent on his behalf has given in writing for such research.

**THE REPATRIATION OF PRISONERS ACT, 2003**

The purpose of this Act<sup>22</sup> is to provide for the transfer of certain prisoners from India to another country and vice versa, based on the treaty entered into by the two contracting countries for such transfer. For the purpose of this Act, a prisoner under clause (c) of section 2 means a person undergoing a sentence of imprisonment under an order passed by a criminal court including the courts established under the law for the time being in force in contracting States. It is to be noted that before passing an order for transfer, the Central Government should be satisfied that;

- (a) no inquiry, trial or any other proceeding is pending against the prisoner;
- (b) death penalty has not been awarded to the prisoner;
- (c) the prisoner has not been convicted for an offence under the martial law;
- (d) transfer of custody of the prisoner to the contracting State shall not be prejudicial to the sovereignty, security or any other interest of India.

The provisions under this Act can be broadly classified into two sub-headings such as:

- Transfer from India to other country or place outside India: Sections 1 to 11 deals with transfer of prisoners from India to other countries. According to sections 4 and 6, any prisoner who is a citizen of a contracting State may make an application to the Central Government for transfer of his custody from India to that contracting State. However, if he is not able to make an application himself because of his ill health, mental condition, old age or being a minor, then, the application may be made by any other person entitled to act on his behalf. After due consideration, the Central Government shall forward such application to the Government of the contracting State along with all the information which it may consider necessary.

According to section 8, it is the duty of the Central Government to authorize an officer not below the rank of a Joint Secretary to a State Government, to issue a warrant directing the officer in charge of the prison therein to deliver the custody of the prisoner to the person authorized by the contracting State to which the prisoner is to be transferred, presenting all the records relating to the prisoner.

According to section 9, in case the prisoner escapes from such custody, the prisoner may be arrested without warrant by any person who shall without undue delay deliver such prisoner to

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<sup>22</sup> The Repatriation Of Prisoners Act, 2003 ACT NO. 49 OF 2003

the officer in charge of the nearest police station and the prisoner so arrested shall be liable for committing an offence under section 224 of IPC and shall also be liable to be dealt with in accordance with the said warrant.

Section 10 provides that where a prisoner is or is to be transferred to a contracting State under the provisions of this Act, the Central Government shall send all records including judicial proceedings relating to that prisoner to the Government of the contracting State. Section 11 provides that the transfer of a prisoner from India to a contracting State shall not affect the power of the court which passed the judgment to review its judgment and the power of the Central Government or State Government to suspend, remit or commute the sentence in accordance with any law for the time being in force

(ii) Transfer into India:

Sections 12 and 13 deal with the transfer of prisoner into India from a contracting State or a place outside India. Section 12 provides that the Central Government may accept the transfer of a prisoner, who is a citizen of India, from a contracting State wherein he is undergoing any sentence of imprisonment subject to such terms and conditions as may be agreed to between India and that State. If the Central Government accepts the request for a transfer, then, it may issue a warrant and direct the officer authorized to receive and hold in custody any prisoner delivered to him under the direction made in the warrant. Section 13 deals with the determination of prison, the issue of a warrant for transfer and the procedure in case of escape.

In 2010, the Department-Related Parliamentary Standing Committee on Home Affairs submitted its 147th Report on 'The Repatriation of Prisoners (Amendment) Bill, 2010' seeking to amend the Act of 2003 by substituting the words 'martial law' with the words 'military law' as the former words are found not relevant in the Indian context. As a result, it was substituted by Act 6 of 2011.

### **MODEL PRISON MANUAL 2016**

As early as 1957, the Government of India appointed the All-India Jail Manual Committee with the purpose of preparing a draft of the Model Prison Manual and the Committee submitted its report in 1959. After two decades, the All-India Committee on Jail Reforms (1980-83) recognized that the Prisons Act 1894 was insufficient for the overall regulation of prisons, thus it recommended the enactment of a uniform prison manual. Later, in 1996, the Supreme Court

in the case of *Ramamurthy v. State of Karnataka*<sup>23</sup> highlighted the need for uniform law to serve as a model for all jails. Consequently, a Model Prison Manual was prepared in 2003 by evolving national consensus on relevant issues relating to prison reforms in India. After a course of time, a better understanding of ground realities was found, and that various relevant issues were not included in the previous manual. Thus, in 2014, based on the direction given by the Supreme Court, an expert committee was appointed to revamp and update the Model Prison Manual of 2003. In 2016, the new draft was finalized which was made uniformly applicable to all prisons in India till date. It is to be mentioned that the framers of The Model Prison Manual of 2016 were guided by the provisions of the Constitution, directions given by Supreme Court through various judicial pronouncements and the international commitments.

According to Model Prison Manual 2016, the following criteria must be adopted for the establishment of prisons:

- I. The State Government or Union Territory administration will establish sufficient numbers of prisons, as far as possible, and provide minimum needs essential to maintain standards of living in consonance with human dignity.
- II. Prisons administration will ensure that the prisoners human rights are respected.
- III. Prisons administration will ensure separation of the following categories: (a) Women (b) Young offenders (c) Undertrials (d) Convicts (e) Civil prisoners (f) Detenus and (g) High-risk offenders.
- IV. Prisons administration will endeavor to prepare prisoners to lead a law abiding, self-supporting, reformed and socially rehabilitated life.
- V. Diversified institutions will be set up by each State/Union territories according to its requirements.
- VI. In order to make prisons efficiently manageable units, norms regarding maximum population for different types of prisons will be laid down.
- VII. Service conditions of prisons personnel will be such as to secure and retain the best suited and qualified persons.
- VIII. Efforts will be made to enlist community participation in effective administration of prison programmes.

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<sup>23</sup> Supra note 19

Model Prison Manual 2016 comprise of 32 chapters covering vast areas relevant to prison administrations. Some of the key features which were introduced after the revision include the following:

- I. Access to free legal services
- II. Additional provision for women prisoners
- III. Rights of prisoners sentenced to death
- IV. Modernization of custodial management
- V. Focus on after-care services
- VI. Provisions for children of women prisoners
- VII. Organizational uniformity and increased focus on prison correctional staff
- VIII. Formal and informal inspection of prisoners
- IX. Repatriation of prisoners
- X. Uniform rule for remission
- XI. Setting out objective and procedure for Parole and Furlough
  
- XII. Bringing medical service in prison out of prison department and place it within the domain of state medical service/health department.
- XIII. Comprehensive classification of high-risk offenders. The purpose of framing Model Prison Manual is to serve as a guide for the States to draw from it a uniform standard of practice for prison administration throughout the country. After 2016, some of the states that were already regulated by its own manual, for instance, the capital territory of Delhi, have revised and updated its manual in 2018, incorporating the revised provisions of the new Model Prison Manual. However, till date, there are other states that are yet to frame the manual of its own, for instance, Meghalaya which is regulated by the rules of Assam Jail Manual. The practical challenge of applying manual of another state is that all the rules cannot be made applicable since the provisions are made to deal with the indigenous requirement of the state concerned. Besides, since prison is a state subject the capability of the government to deal with problems faced by prison administration varies from one state to another in terms of resources and personnel availability. Therefore, each state should exercise the power granted to it in the Prisons Act, 1894 to make rules and policies for its own state for better management of prison administration.

**NATIONAL POLICY ON PRISON REFORM AND CORRECTIONAL ADMINISTRATION, 2007**

The Government of India has constituted a high-powered committee under the chairmanship of Director General, BPR&D<sup>24</sup> for drafting a national policy paper on Prison Reforms and Correctional Administration on 1st December, 2005 with following terms of reference:

- To review the present status of the legal position and suggest amendments if required on the prison related laws enacted by the Centre and States.
- To review the recommendations made by various Committees & cull out tangible recommendations which are required to be implemented by the Centre and the States.
- To review the status of implementation of these recommendations with reference to the physical conditions of prisons, condition of prisoners, correctional administration, prison personnel and any other issues related to modernization of prisons and correctional administration. Suggestions regarding alternatives to imprisonment.
- The Committee after reviewing the above-mentioned references concerning prisons made a huge number of recommendations, some of which are given below:
- The principles of management of prisons and treatment of offenders may be incorporated in the Directive Principle of the State Policy embodied in Part IV and the subject of prisons and allied insinuations may be included in the Concurrent List of the Seventh Schedule to the Constitution.
- A new uniform and comprehensive Central Law may be enacted on Prisons by replacing the Prisons Act, 1894 based on modern principles and procedures regarding reformation and rehabilitation of offenders.
- A specific mention should be made in the preamble to the legislations relating to administration of correctional services that correction, reformation and rehabilitation are objectives of punishment awarded to offenders.
- Revision of Prison Manuals of all States/UTs on the lines of the Model Prison Manual prepared and circulated by the BPR&D should be given top priority.
- According to the Insurance Manual under the Life Insurance Corporation Act, 1956, convicts are not entitled to be insured. The Manual should be amended so that

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<sup>24</sup> Sarraf, Adv Sanjay. "Beyond the Walls: A Comprehensive Look at the History and Future of Open Prisons."



Central/State Govt./NGOs working for welfare of the prisoners' families or the convict themselves can fund single or group insurance schemes for the convicts.

- A State Level Board should be set up to review all applications for remission/commutation of sentence headed by a retired/ serving Judge of the High Court with DG Police / Additional DG Police; Secretary (Prisons); Legal Remembrance; Director (Prosecution); and a member from NGOs as members and Director / Inspector General of Prisons and Correctional Services as its Member Secretary.
- For the extensive use of probation services, Judicial Officers, Prosecuting Officers, and Police Officers should be sensitized regularly about the statutory provisions of Probation of Offenders Act, 1958, and Juvenile Justice (Care and Protection) Act, 2000 also Sections 360 and 361 of the CrPC, 1973.
- The State Government may provide such industrial undertakings in prisons for imparting vocational training to the prisoners which have market value and could be learnt in a short period and could be started with minimum investment to earn their bread and butter.
- A State level Advisory Committee for Aftercare Services should be constituted to aid and advise the State Governments in the matters of aftercare services to, and rehabilitation of, the released prisoners.<sup>25</sup>
- A new Section 357-A should be inserted in the CrPC, 1973 for the payment of compensation to the victims of crime through sharing of wages of the convicts.
- The disposal of mercy petitions should be speedily disposed of positively within the six months.
- State Government and Registrar of High Court should issue appropriate directions for the effective implementation of Section 436-A of the CrPC, 1973, liberalizing bail provisions for undertrial lodged in the prisons, to decongest prisons.
- A new Section 305-A should be introduced in the CrPC, 1973 to expedite the disposal of cases of undertrial prisoners in custody by giving priority to the trial of cases of undertrial prisoners confined to jails over those granted bail.
- Special Courts/Lok Adalats should be established in prisons to expedite the disposal of undertrial cases in addition to the Fast Track Courts and regular courts already in place.

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<sup>25</sup> *Id.*

- One seat of toilet should only be for 10 prisoners with arrangement of flushing and privacy and one covered bathroom for every 10 prisoners to maintain the privacy.
- A model site plan for Central Prison, District Prison and Sub Prison should be prepared as per the norms laid down in the Model Prison Manual prepared and circulated by the BPR&D on priority in order to maintain the uniformity in the architectural design of all prisons throughout the country with slight climatic changes.
- Use of advanced technology be promoted for keeping Personal Information System and record of their personal belongings and property shall be kept after verification of their warrants.
- Prisons are hitherto a closed world. It is necessary to open them to some kind of positive and constructive public discernment. Selected eminent public-men shall be authorized to visit prisons and give independent report on them to appropriate authorities.
- The State shall endeavour to secure and encourage voluntary participation of the community in prison programme and in non-institutional treatment of offenders and shall extend financial and other assistance to voluntary organizations or individuals willing to extend help to prisoners and ex- prisoners.<sup>26</sup>
- Effective Grievance Redressal Mechanism shall be provided in each prison.
- Treatment programs in prisons should be assessed and evaluated continuously by evolving an in-built mechanism for a periodical review of the progress made by the inmates.
- Prison Departments of the States should organize Bandi Divas in which games, sports, and cultural programs should be organized for the prisoners and also for the prison staff to boost their morale and to develop a positive environment for their reformation and rehabilitation.
- Prison officials should be provided adequate exposure to the interaction at the international level with their counterparts through participation in the conferences/seminars/workshops etc., to be funded by the MHA, Government of India.
- A well-equipped National Academy of Correctional Administration should be established by the MHA, Government of India under the supervisory control of the BPR&D to cater to the training needs of middle and senior supervisory officers.

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<sup>26</sup> *Id.*

- The scope of the Centrally Sponsored Modernization Scheme of Prison Administration should be expanded by including the funding of creation of infrastructure for setting up of correctional services; court rooms; video- conferencing facility; new medical units; acquisition of ambulances and prison vans; application of modern technology; in-house garbage disposal on scientific lines etc.
- The probation services should be brought under the administrative control of the Directorate of Prisons and Correctional Services only.
- The government shall endeavor to provide in law new alternatives to imprisonment such as community service, forfeiture of property, payment of compensation to victims, public censure, etc.
- Government recognizes that the process of reformation and rehabilitation of offenders is an integral part of the total process of social reconstruction, and therefore, the development of prisons shall find a place in the National Development Plans.
- In view of the importance of the uniform development of the prisons in the country, the Government of India has to play an effective nodal role in this field. For this purpose, the Central Government should set up a separate Directorate of Prisons on a permanent basis. This shall be a specialized body to advise the Government of India, the State Governments and the Union Territory Administrations on all matters relating to prisons and allied services. Adequate staff and funds shall be placed at the disposal of this Directorate for enabling it to play an effective and nodal role in the development of prisons and other welfare programs. The Directorate shall prepare an annual national report on the administration of prisons and allied services, which shall be placed before the Parliament for discussion.