ISSN (O): 2584-2196

INTERNATIONAL JOURNAL OF LEGAL AFFAIRS AND EXPLORATION

Volume 3 | Issue 2

2025

Website: www.ijlae.com

Email: editor@ijlae.com

ISSN (O): 2584-2196

DISCRIMINATION EVEN IN PRISONS? EXISTING CONDITIONS AND IMPLICATIONS

Kriti Chugh

LL.M. Student, Gitarattan International Business School, GGSIPU

Dr. Puja Paul Srivastava

Associate Professor at Centre for Legal Studies, Gitarattan International Business School, GGSIPU

ABSTRACT

The adoption of Indian Constitution "was an attempt to reverse the socializing of prejudice, discrimination, and power hegemony in a disjointed society"[1]*. Emergence of caste, gender and racial strife is still a primary concern in all reformatory institutions. Casteism or Racism in prison neither qualifies the 'ostensible purpose' nor the 'real purpose' of differential treatment*[2]*. Enactment of Prison Rules are indeed a major development in the current regime, however, an oversight towards rules against arbitrary handcuffing, special emphasis on creating classified prisoners perpetuates discrimination that is absolutely violative to the fundamental rights of prisoners. Incarceration itself casts annihilation, humiliation and scars forever and lowers the self -esteem of an individual. Amid such a situation, a right to basic dignified life is what may balance the justice administration. Nonetheless, special emphasis is still required against atrocities with women prisoners. Denial of basic amenities and inter- prison differentiation not only infringes Article 21,15,14 but it casts a mental scar too amounting to mental cruelty. An attempt however, has been made by the legislature to amend the Model Prison Manual, 2016, in order to rule out the arbitrary provisions, and to subject them more in conformity with the constitution. In this regard, this research paper thus, aims to bring out the current situation of the discrimination in prisons in various aspects, by analysing the landmark judgments of the*

[1] See. *Sukanya Shantha vs Union of India* 3rd October, 2024, Supreme Court (2024) INSC 753
[2] Ibid.

honourable Supreme Court. It also emphasises upon the provisions Model Prison Manual, 2016, Model Prisons and Correctional Services Act, 2023.

Keywords: Socialism, prison discrimination, casteism, racism, handcuffing, arbitrary, prison rules, gender discrimination.

INTRODUCTION

Socialism is the essence of the Indian Democracy. Inclusivity of each person in the society becomes its primary feature. The state shares quid pro quo relationship with its citizens. While it grants protection, the citizens are subject to the law and order of the state. Most ancient Indian Treatises, provide for punishments for infringing the law and order of the territory. Incidentally, there is Manu Smriti containing 18 heads of law, Narad Smriti which includes the procedural aspects of the law, and Kautilya's Arthashastra, which peculiarly provides for punishments of various offences in his 'dandniti'[3]. The texts significantly contain all the provisions, required to govern the state only excluding the equal and humane treatment towards prisoners. Although, he emphasized on the need of immediacy and equality as an ingredient of impartiality, he deferred to include partiality faced by those locked in the then 'bandhagara' and presently known 'reformatories.' The basic objective of introducing incarceration was to detain the offenders and thus, they used to be kept in cold, dark, dank prisons with no sanitation facilities. According to Harish Charitha, the living conditions of inmates were totally appalling. The punishment of incarceration was more severe and not common as compared to present system in India.[4] Nonetheless, there arises a question, is the present situation of the prisons at an equal footing vis a vis that of an ordinary person regarding his rights and treatment in the society? Is the state not duty bound towards the incarcerated persons for granting them only basic facilities and humane treatment? The theory of reasonable classification in the Constitution under Article 14 empowers the state to legislate in the interest of the minority and the discriminated groups. However, whether prisoners too fall under the category of such classified persons is still questionable. Tracing back the first judgment relating to this purpose, in Platek vs. Aderhold[5] it was observed that the court had no power to intervene in the conduct of the prisons. It implied that there could be no complaint against the discrimination in prisons

[3] Manashi Sharma, Prison System in Ancient India, WHITE BLACK LEGAL L. J., ISSN 2581-8503, https://www.whiteblacklegal.co.in/details/prison-system-in-ancient-india-by---manashi-sarma (last visited Mar. 7, 2025).
[4] Ibid.
[5] *Platek vs. Aderhold* 73 F.2d 173 (5th Cir. 1934)

or for any misconduct against prisoners. In 1955, guidelines for the treatment of prisoners were established through the Standard Minimum Rules (SMR). These rules, while not legally binding, were approved by Member States in 1957. Since then, they have become widely recognized as the baseline standards for prison management and inmate treatment. The SMRs have significantly influenced the development of prison-related laws, policies, and practices in countries worldwide. Thereafter, the courts recognized certain rights of prisoners, also discussed by several international conferences after the judgment of Johnson v. Avery[6].

THE RULES- FOR TREATMENT OF PRISONERS

Equal treatment of prisoners is not a new concept. The chronological order of adoption of international rules regarding the same is as follows:

i. **The Geneva Convention III, 1949 – Treatment of prisoners of war**- This convention provides for international legal standards for the humane treatment of prisoners of war, emphasizing their rights on basic necessities, protection from injury to their rights and fair and just treatment during captivity.[7]

ii. **The United Nations Standard Minimum Rules for Treatment of Prisoners, 1955** - The Standard Minimum Rules (SMR) for prisoner treatment which were established in 1955 and approved in 1957, have become globally recognized benchmarks for prison administration. These guidelines however non-binding, have influenced legislation, policies, and practices in correctional systems worldwide. The SMRs emphasize humane conditions, focusing on living standards, healthcare, and human dignity. They promote rehabilitation and successful reintegration of inmates into society. The enduring relevance of SMRs reflects a global commitment to upholding human rights in criminal justice systems, guiding efforts to balance security with ethical treatment of prisoners.

iii. **International Covenant on Civil and Political Rights, 1966** - It guarantees fundamental rights to all individuals. These rules apply to all individuals in custody, regardless of their reasons for imprisonment, and emphasize fundamental rights such

[6]Johnson v. Avery 393 U.S. 493(1969)
[7] Theresa U. Akpoghome & Chukwudumebi O. Joseph-Asoh, The Updated Commentary on the Third Geneva Convention, SCIRP, https://www.scirp.org/journal/paperinformation?paperid=121947 (last visited Mar. 24, 2025).

as the right to life, freedom from torture, and fair trials, thereby establishing legal boundaries on state authority in the context of incarceration.[8]

iv. **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984** - This Convention was adopted to combat the practice of torture and promote equal treatment. It strictly forbids all forms of inhumane treatment against prisoners. States signing and ratifying this agreement commit to preventing such acts in circumstances like:

- Extraditing individuals to countries where they risk torture during arrests and imprisonment, throughout interrogations, the training of police (civil or military), healthcare professionals, public servants, and any other individuals who might participate in the apprehension, holding, and investigation of a person.[9]

v. **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,1988**[10] **-** These Body of Principles establishes safeguards to individuals subjected to any form of detention or imprisonment

vi. **Basic Principles for the Treatment of Prisoners, 1990**- These principles reinforce the importance of respecting the human dignity of prisoners, advocating for their rehabilitation and social reintegration, and prohibiting discrimination within prison systems.

vii. **Revised United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules), adopted in 2015** - The revised rules update and expand upon the 1955 rules, emphasizing the prohibition of torture, improving healthcare access, and promoting rehabilitation and reintegration, with a focus on human dignity.

---

[8] International Norms and Standards Relating to Disability, UN ENABLE, https://www.un.org/esa/socdev/enable/comp202.htm#:~:text=Article%206%20of%20the%20ICCPR,deprived%20of%20his%20%2F%20her%20life (last visited Mar. 24, 2025).

[9] The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, Background to the Convention, OHCHR, https://www.ohchr.org/en/treaty-bodies/cat/background-convention#:~:text=How%20does%20it%20protect%20people,or%20degrading%20treatment%20or%20punishment. (last visited Mar. 24, 2025).

[10] Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, General Assembly resolution 43/173, on 09 December 1988, OHCHR, https://www.ohchr.org/en/instruments-mechanisms/instruments/body-principles-protection-all-persons-under-any-form-detention#:~:text=A%20detained%20or%20imprisoned%20person%20or%20his%20counsel%20shall%2C%20subject,the%20place%20of%20detention%20or (last visited Mar. 24, 2025).

Indian Enactments regarding the same are namely:

viii. **The Prisons Act, 1894 and The Prisoners Act, 1900**

ix. **Model Prison Manual, 2016-** This manual provides guidelines for prison administration, focusing on prisoner welfare, rehabilitation, and the implementation of humane treatment standards within Indian prisons.

x. **Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW)–** It mandates that states ensure women in detention are treated without discrimination, guaranteeing access to healthcare, including reproductive health, and protection from gender-based violence. It requires that prison conditions respect the inherent dignity of women, addressing their specific needs and vulnerabilities within the criminal justice system[11].

xi. **Model Prisons and Correctional Services Act, 2023**.[12] - It emphasizes on rehabilitation and reintegration, moving far from an absolute punitive approach. The Act includes improved provisions for developed living conditions, healthcare, and vocational training, focussing on the specific needs of vulnerable populations, including women and transgender prisoners. It also aims to remove discriminatory practices, and provides guidelines for the states for implementation of open prisons, and other modern carceral practices as are practised in countries like- Norway, Finland, Germany etc.

BARRIERS BEHIND BARS

A prisoner wears the shield of basic liberty even behind the bars.[13] It is often perceived by an ordinary prudent person, that when an offender is put behind bars, it becomes the duty of the courts to curtail all its freedom, for him to realise the wrong done to society. However, what they fail to comprehend is that persons in the prison are peculiarly and doubly handicapped[14], and if basic right to life and dignity without a bar of discrimination is curtailed, absent robust institutional safeguards, presents a risk of systemic fragility. A prisoner is not just a person,

[11] Convention on the Elimination of All Forms of Discrimination against Women, United Nations General Assembly resolution 34/180, 18 December 1979, New York https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women (last visited on Mar. 24, 2025)
[12] Ministry of Home Affairs, Gov't of India, Model Prisons and Correctional Services Act, 2023 (2023).
[13] See *Sunil Batra vs. Delhi Administration* 1980 AIR 1579
[14] See Re-Inhuman Conditions In 1382 Prisons vs Vs. (5 February 2016) https://indiankanoon.org/doc/142387238/ (last visited on Mar. 18, 2025)

completing his sentence of conviction so awarded by the court, rather, it also includes the undertrial prisoners facing arbitrariness squarely. Thus, the barriers invariably can be classified ranging from exercising the right of free legal aid to the casteism so experienced. In the judgment of Ramamurthy v. State of Karnataka[15], the court determined the following issues regarding prisons and the reforms needed:

i. Overcrowding
ii. Ill treatment and torture
iii. Unreasonable delay in trials
iv. Communication deficiency
v. Neglected hygiene and health
vi. Insufficient food and inadequate clothing
vii. Streamlining of jail visits
viii. Managing open - air prisons

THE LAW OF HANDCUFFING – EXTENT OF IT'S ARBITRARINESS

It is quite brutalizing to handcuff any person in public or otherwise and it is unreasonable to do so. The law of handcuffing used to be a part of the Punjab Police Rules,1934[16] only, however, it has been strictly condemned by the honourable Supreme Court in not less than two landmark judgments of Sunil Batra v. Delhi Administration[17] and Prem Shankar Shukla v. Delhi Administration[18], holding it contrary to one's personal liberty under Article 21 of the Constitution. Earlier according to the state rules, handcuffing was allowed in the rare cases, where the public servants had the reason to believe that the accused was dangerous. Considering the injury to rights it causes handcuffing was strictly disallowed in general conditions. However, there has been a change in law with the enactment of the Bhartiya Nyaya Suraksha Santia, 2023.

SECTION 43 BHARTIYA NAGARIK SURAKSHA SANHITA, 2023 AND SECTION 46 OF THE CODE OF CRIMINAL PROCEDURE, 1973

[15] *Ramamurthy vs. State of Karnataka*, (1997) 2 SCC 642
[16] Punjab Police Rules, 1934, https://haryanapolice.gov.in/pdf/PPR_Volume-II.pdf (last visited Mar. 8, 2025).
[17] *Sunil Batra v. Delhi Administration,* 1980 AIR 1579
[18] *Prem Shankar Shukla v. Delhi Administration*, 1980 AIR 1535

ISSN (O): 2584-2196

Handcuffing is inhuman on the fact of it and therefore, is unreasonable, over harsh, and is arbitrary per se.[19] Section 46 of CrPC, 1973 does not contain the provision relating to handcuffing. The apex court has laid down that such a practice is manacle and must be used only in the cases where the accused is anticipated to abscond.[20] A settled law for the same is laid down in Prem Shankar Shukla v. Delhi Administration[21]. Krishna Iyer J. explains that maintaining human dignity of each individual vests in the culture of the constitution. Thus, to violate one's personhood, often by using the mask of 'dangerousness' is simply to dehumanize him. Prisoners too are persons, a part of the society and not animals, so fortiori is an undertrial prisoner. A question arises here, that why there has been a distinction in considering the rights of undertrial prisoners separately?

A rich criminal or an undertrial prisoner, is in no way different than a poor convict, in the matters of security. Another aspect for differentiation is the 'caste system' has been highlighted. In plain language, a better class undertrial cannot be handcuffed without reasons to be recorded in writing, in the general diary of the police officers, while an ordinary person not belonging to a higher class be handcuffed without any express recorded reasons during the transit between the jail and court. This quasi – caste system practice, does not by any interpretation fall within the egalitarian scope of Article 14. Rather, this jeopardy renders the invocation of Article 32, a writ of Habeas Corpus.

In stark contrast to court's reasoning, Section 43 (3) BNSS, empowering the police officers extensively, provides that thy may use the handcuff while making the arrest of any person keeping in mind the nature and gravity of the offence, of those who are habitual offenders, or have committed sexual offences or those relating to organized crimes; offences against the state. Howsoever specifically provided in this new enactment, the court has clarified quite early, that since there are other ways of ensuring safety, iron straps: handcuffing, shall not be forced upon an undertrial prisoner ordinarily.

THE REMEDY

While, handcuffing the body of a person is an infringement of Article 21, it amounts to wrongful confinement and invokes the writ of Habeas Corpus. It even amounts to a confinement or commitment to trial by a person having authority who knows that he is acting

[19] Ibid.
[20] Ibid. 17
[21] Ibid.18

contrary to law, punishable under section 220 of the Indian Penal Code, 1860 and presently under section 258 of Bhartiya Nyaya Sanhita, 2023 punishable up to 7 years of imprisonment or fine or both. Although, the court, following the international order and the principles of natural justice has been upright in strictly condemning and directing against this law, the practice cannot be curtailed unless it is made absolutely unconstitutional. For this, the 'caste' based discrimination of handcuffing at least may be made obsolete and even more specific provisions be enacted to provide for better substitutes against such humiliating iron straps in producing the offenders before the court. The Model Prison Manual, has not been supportive in resolving the ignored issue, which thus, need amendments and mandatory provisions for states to enact in their rules. Moreover, in the judgment of The State of Maharashtra vs Dr. Praful B. Desai[22] the attendance of the accused through audio- video electronic means has been made admissible. Therefore, such oppressive deprivation of personal liberty maybe made as justifiable reasonable restriction, only if such cruel means are fraught in necessity or beyond an alternative availability.

To facilitate the release of eligible detainees and convicts, the Under Trial Review Committee in each district is required to convene quarterly. The Secretary of the District Legal Service Committee must participate in these meetings to ensure appropriate actions are taken. Furthermore, a review of the implementation of The Probation of Offenders Act, 1958, is necessary, including the establishment of distinct guidelines for first-time offenders.

TREATMENT OF WOMEN PRISONERS

The recent judgment of Sukanya Santha v. Union of India[23] does not explicitly contain guidelines regarding the improvement required in treating women prisoners. A question arises here, that why women prisoners have to be dealt with separately, are they not included in the discrimination discussed generally for other prisoners?

Women constitute a small portion of prison population. Only 2%- 9% of the total number of prisoners are women and children.[24] They frequently suffer health and sanitation issues more

[22] *The State of Maharashtra vs Dr. Praful B. Desai*, AIR 2003 SUPREME COURT 2053
[23] Ibid. 1
[24] Brenda J. van den Bergh et al., Imprisonment and women's health: concerns about gender sensitivity, human rights and public health, 89 Bulletin of the World Health Organization 689 (2011), https://pmc.ncbi.nlm.nih.gov/articles/PMC3165969/#sec2 (last visited Mar. 16, 2025)

than the male prisoners. Following are the cogent grounds for requirement of differential treatment of women prisoners:

1. **Overcrowding of Prisons –** Vulnerabilities faced by women prisoners are a direct consequence of intersection of all genders of prisoners leading to overcrowding and deteriorated health and sanitation facilities. Considering the order the apex court in Re Human Condition in 1382 Prisoners v. VS[25], a prison report of various districts of states including districts of Bihar, Maharashtra, Odisha, Andhra Pradesh were submitted before the court showing the capacity of prisons to hold prisoners versus the number of prisoners actually residing there.[26]

   Women prisoners include breast feeding mothers, menstruating age group of females, and such persons who indefeasibly require nothing less than separate cells which too are not too crowded along with privacy to avoid assault and harassment of any kind.

   The Bangkok Rules, through Rule 5, establish a standard for the accommodation of women in detention, recognizing their specific requirements (the Bangkok Rules)[27] mentions that the accommodation of women must necessarily contain all products of hygiene and regular water supplies, implying that there must be absolutely distinct accommodations for women prisoners, whether undertrial or convicted ones. Realising the plaguing complications regarding the overcrowding of prisons, the states were directed to amend their rules which are in conformity with the Model Prison Manual and international prison rules.

2. **Menstrual Hygiene-** Data from the fifth instalment of the National Family Health Survey (2019- 20) reported that majority of the women population of the reproductive age group were then using safe menstrual hygiene products. However, this survey does not include the data from the conditions of prisons. Most of the women prisoners belong to a reproductive age group, and their menstrual hygiene is often overlooked. The quality of sanitary napkins has recorded to be unsatisfactory. Although the Model Prison Manual of 2016 advises states to provide sufficient water and sanitation facilities

[25] Re-Inhuman Conditions In 1382 Prisons vs Vs. on 5 February, 2016 https://indiankanoon.org/doc/142387238/ (last visited on Mar. 18, 2025)
[26] In Re-Inhuman Conditions In 1382 Prisons, W.P.(C) No. 406/2013, Supreme Court of India, https://www.verdictum.in/pdf_upload/in-re-inhuman-conditions-in-1382-prisonswatermark-1635746.pdf (last visited Mar. 18, 2025)
[27] United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), G.A. Res. 65/229, UN OHCHR, https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-rules-treatment-women-prisoners-and-non-custodial (last visited Mar. 18, 2025)

for female inmates, most have failed to implement these guidelines. The challenges faced by imprisoned women in obtaining essential items like water, sanitary products, detergent, and soap during menstruation are worsened due to overcrowding and limited allocation of such resources.[28]

3. **Custodial Violence to Women Prisoners-** Sexual abuse, fraud and breach of trust against the women prisoners has been reported in the earliest judgment of Sheela Barse v. State of Maharashtra[29], after interviewing around 15 of them. They were reported to be assaulted by the police during detention period, defrauded by the lawyers as well during the period of judicial custody. P.N Bhagwati J. directed the Inspector General of Prisons Maharashtra to require all Superintendents of Police in Maharashtra to:
   i. Regularly share comprehensive under-trial inmate data with the district's Legal Aid Committee, including their jail entry dates, alleged offences (when known), and separate lists for male and female individuals.
   ii. Immediately report to the relevant District Legal Aid Committee any person detained for more than 15 days under suspicion according to Section 41 of the Criminal Procedure, 1973 providing detailed information.
   iii. Grant authorized Legal Aid Committee lawyers' access to the prison to conduct private interviews with inmates who have requested legal representation.
   iv. Provide Legal Aid Committee lawyers with all necessary inmate-related information to facilitate their legal representation.
   v. To ensure prisoners requesting legal assistance have access to it, they must be granted private meetings, within sight but out of earshot of jail officials, with lawyers from the District Legal Aid Committee. To facilitate this, the Maharashtra State Legal Aid and Advice Board will direct these committees to send designated lawyers to jails weekly, monitoring prisoner rights regarding bail, parole, and legal representation, and providing necessary aid. Lawyers will receive a set honorarium and travel expenses for these visits, and committees must submit regular reports to the state board. In Bombay, the High Court Legal Aid Committee will handle these

[28] Editorial, "Menstrual hygiene in Indian prisons", The Hindu https://www.thehindu.com/sci-tech/health/menstrual-hygiene-in-indian-prisons-explained/article68222812.ece (last visited on Mar. 18, 2025)
[29] *Sheela Barse v. State of Maharashtra* 1983 AIR 378

responsibilities. This model, inspired by the successful Tamil Nadu program, aims to guarantee that prisoners' legal needs are met.

vi. Conforming to the provisions of Bhartiya Nagarik Suraksha Sanhita, 2023 the erstwhile Code of Criminal Procedure, 2023 of informing the grounds of arrest to the accused person; inform the relatives of the arrested, person the grounds of arrest; enquiry of female prisoners to be conducted by female public servants only; informing about medical examinations to every accused, medical examination by female medical practitioners only in case the arrested person is a female.

The aforementioned directions have been maintained in the Model Prison Manual, 2016, thereafter in the Act of 2023. Model Prisons and Correctional Services Act, 2023[30] unlike the colonial legislations, enables the complaints, police reports, inquiries of women prisoners regarding sexual harassment to be acted upon in the same manner as any other complaint or a police report would be considered. Similarly, there has been a re- look regarding the treatment of pregnant prisoners, women prisoners with babies who may presently keep the children with them until they turn 6 years old and introduction to differential and dignified treatment with transgender prisoners.

THE 'CLASS DIVIDE' IN PRISONS

Article 15 prohibits the practice of gender -based discrimination and on the basis class, caste, religion and place of birth. However, discrimination against Dalits and the so -called lower castes is not a new concept, not even in prisons, even till date. From the experience of a Dalit prisoner, Daulat Kunwar, it has been reported that the caste discrimination begins from the moment the inmate enters into the premises as a Dalit prisoner. Kunwar mentioned that the officials first enquire about the prisoner's caste which is then circulated through all prison authorities to determine the kind of work to be allotted to such prisoner. The lower castes are usually allotted the cleaning and sweeping tasks. They're even ordered to clean the toilets with or without brushes, with their bare hands. The inequality faced by them is beyond just the work. There are other instances where the lower caste prisoners were not allowed to have meals

[30] Ministry of Home Affairs, Gov't of India, Model Prisons and Correctional Services Act, 2023, [https://www.mha.gov.in/sites/default/files/advisory_10112023.pdf (last visited Mar. 23, 2025).

beyond a limit, while the upper castes could eat freely.[31] In a cast ridden society, discrimination persists both inside and outside the jail. Thus, social engineering is must at each place and phase of the society as propounded by the jurist, Roscoe Pound.

THE UNCONSTITUTIONAL 'MANUAL LABOUR' PRISON PROVISIONS

An incident came into consideration when a prisoner who was trained for being an electrician, was given the task of sweeping and cleaning the toilets, garden because he was identified to belonging to "dhobi (washerman) caste" by police officials. Recently, in 2023, a writ petition was filed by a journalist Sukanya Shantha against such widely practiced discrimination and against certain other state prison rules in lieu of extending the division of labour based on caste within the prisons categorising them as "habitual offenders" which essentially is a classification based on the colonial era principles. This petition sought the court to declare such rules ultra vires the basic structure of the constitution. In this recent landmark judgment[32] the apex court noted that a segregation was only possible when it is reasonably based on the parameters of 'intelligible differentia' owing to the 'custom', 'habit', 'usage' 'natural tendency to escape'. However, such a practice lacked a rationale connect to the correctional objectives of security and reform[33]. Considering the lacunae, the court highlights the following arbitrary principles of the Model Prison Manual[34] and Model Prisons and Correctional Services Act 2023[35] requiring amendment:

i. The Prison Manual mentions a list of people from de-notified or wandering tribes within the definition of habitual offenders. It may lead to separation and classification of the prisoners from DNT communities.

---

[31] Editorial, Caste Based Labour & Limited Food: Dalits Recount Jail Horror, Times of India (India), https://timesofindia.indiatimes.com/india/caste-based-labour-limited-food-dalits-recount-jail-horror/articleshow/114199002.cms (last visited Mar. 24, 2024).

[32] *Sukanya Shantha v. Union of India*, on 3rd October, 2024, Supreme Court (2024) INSC 753

[33] Supreme Court Strikes Down Rules Perpetuating Caste Based Segregation and Discrimination in Prisons | Judgement Summary, SCOBSERVER, https://www.scobserver.in/journal/supreme-court-strikes-down-rules-perpetuating-caste-based-segregation-and-discrimination-in-prison-judgement-summary/ (last visited Mar. 25, 2025).

[34] Bureau of Police Research & Development, Model Prison Manual, 2016 (Ministry of Home Affairs, Government of India, 2016 https://www.mha.gov.in/sites/default/files/2024-12/PrisonManualA2016_20122024.pdf (last visited Mar. 25, 2025).

[35] Ministry of Home Affairs, Gov't of India, Model Prisons and Correctional Services Act, 2023 (2023). https://www.mha.gov.in/sites/default/files/advisory_10112023.pdf (last visited on Mar. 25, 2025)

ii. The manual prohibits only physical, caste - based discrimination against women prisoners only and does not consider this practice in general.
iii. It does not peculiarly recognize caste - based labour division, the reason for the states to continue such practice.
iv. Special treatment to upper caste groups has not been prohibited by the prison manual, of which the court particularly condemns about.
v. Outcomes of the legislation enacted in 2013 to eliminate manual scavenging and aid in rehabilitation Act, 2013,[36] have not been highlighted by the manual.

TREATMENT OF POLITICAL PRISONERS

The term political prisoner was defined for the first time in 1961 referring to the 'prisoners of conscience. Their imprisonment is mostly based on the political instances generally challenging the status quo of the governance, aimed at suppressing opposition and dissent.[37] The settled law regarding differential treatment was laid down by honourable Chief Justice D.Y Chandrachud[38], that it must be surrounded with cogent reasons of 'intelligible differentia'. The acts of such prisoners elevate to offences only when it tends to cause injury to public peace and tranquillity.

A different treatment of the political prisoners stems from the recognition that their imprisonment is often grounded in ideological conflict rather than common punishable offences involving the basic principles of criminality, demanding a balanced approach to safeguard their fundamental rights. Unlike ordinary offenders, political prisoners are generally detained for exercising freedoms of expression, association, or dissent, rights protected by the inherent principles of international law. However, the acts of such prisoners might not be absolutely in fair exercise of their rights, it might be certainly covered with negligence and infringement of the directive principles. Therefore, it is crucial to ensure they are not subjected to the same punitive measures as those convicted of violent or economic offences.

Their rights thus include:

[36] Supreme Court Strikes Down Rules Perpetuating Caste-Based Segregation and Discrimination in Prisons | Judgement Summary, SCOBSERVER, https://www.scobserver.in/journal/supreme-court-strikes-down-rules-perpetuating-caste-based-segregation-and-discrimination-in-prison-judgement-summary/ (last visited Mar. 25, 2025).
[37] Democracy Beyond Bars: Bringing Political Prisoners to Light, INST. FOR YOUTH IN POL'Y, https://yipinstitute.org/policy/democracy-beyond-bars-bringing-political-prisoners-to-light (last visited Mar. 25, 2025).
[38] Ibid. 31

i. access to impartial legal representation,
ii. protection from torture and ill-treatment,
iii. the ability to maintain communication with their relatives and advocates, as outlined in principles of the International Covenant on Civil and Political Rights (ICCPR)[39] and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.[40] These safeguards are essential to prevent the abuse of state power and uphold the principles of justice and human dignity in cases where imprisonment is politically motivated.

CONCLUSION

Our country's founding document admits no exception to discriminate, even against the prisoners. Courts thus, are duty bound to keep the prison justice unadulterated except with the adherence to rules prescribed by the law. In furtherance of the petitions of atrocities against such prisoners, the Manual of 2016 was implemented which primarily focussed on the aspects relating to prisons, the institutional and infrastructural framework, custodial management of sentenced and the undertrial prisoners as well, medical and health care, prisoners' education and training, their maintenance, situations of emergency, remission, probation, parole and inspection of prisons, among certain other mandates. The Model Prison Manual 2016[41] also focuses on "digitalisation in prisons, includes aspects, such as specific accommodations for women in custody, reintegration services, the rights of individuals facing capital punishment, the transfer of prisoners across international borders, and improved training for prison staff. Chapters on the right to legal aid and inspection of prisons have also been incorporated. Moreover, taking into consideration the law of handcuffing and the related arbitrariness, it has been well settled by Krishna Iyer J. that, Article 14 interdicts capricious cruelty, discriminatory

[39] International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171. https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights (last visited on Mar. 25, 2025)
[40] Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. Res. 43/173, U.N. GAOR, 43d Sess., Supp. No. 49, at 297, U.N. Doc. A/43/49 (1988) https://www.ohchr.org/en/instruments-mechanisms/instruments/body-principles-protection-all-persons-under-any-form-detention-or (last visited on Mar. 25, 2025)

[41] Bureau of Police Research & Development, Model Prison Manual, 2016 (Ministry of Home Affairs, Government of India, 2016 https://www.mha.gov.in/sites/default/files/2024-12/PrisonManualA2016_20122024.pdf (last visited on Mar. 25, 2025

dealings and arbitrary treatment[42]. Article 19 allows restrictions on free movement solely when they serve the interest of public. Article 21, the safeguard of inviolable human rights, requires due process and prohibits any form of barbarity, be it punitive or procedural. To impose restraints without fair procedure and monitoring is to employ tactics akin to those of the animal kingdom, a clear affront to the protections afforded by Article 21. The explicit law against handcuffing however, seems to be negated under the new criminal procedural legislations. To one's astonishment, there had been a caste system followed against prisoners for distribution of work as well as for handcuffing. For, the latter, it was clarified by the court that regardless of socioeconomic status, no undertrial prisoner should be handcuffed for visiting the court unless the specific reasons for this necessity are documented in the daily or general diary. However, the former aspect of discrimination in prisons based on one's caste has now been settled by the Supreme Court in Sukanya Shantha v. Union of India[43]. The court declares that as the differential treatment for division of labour, does not qualify any reasonable purpose, it shall be strictly prohibited. While treatment of women prisoners and political prisoners is another aspect, it seems to remain unanswered in the recent decision. Thus, it may not be read as conclusive or settled law for the purposes. The Prison Manual Act of 2023 however, renders a complete chapter on treatment of women prisoners who are pregnant or those belonging to the menstruating age group. One aspect which has remained untouched is the requirement of reasonable discriminatory provisions for political prisoners, who have been arrested for their acts committed in good faith. What is implied here is that, even the international conventions have been unable to provide a conclusive definition for political prisoners, what could be the acts which could exempt them from being arrested. Moreover, the question as to the kinds of rights for such prisoners which renders them at a higher footing than the other 'classes of prisoners' yet justify their position, remain unanswered and leaves a wide scope of interpretation and legislation with an intent that is in harmony with the principles of the constitution, international law and in the public interest.

[42] Quoted from- *Sunil Batra v. Delhi Administration*, [1978] 4 S.C.C. 494 @ 545
[43] *Sukanya Shantha v. Union of India*, 3rd October, 2024, Supreme Court (2024) INSC 753

ISSN (O): 2584-2196