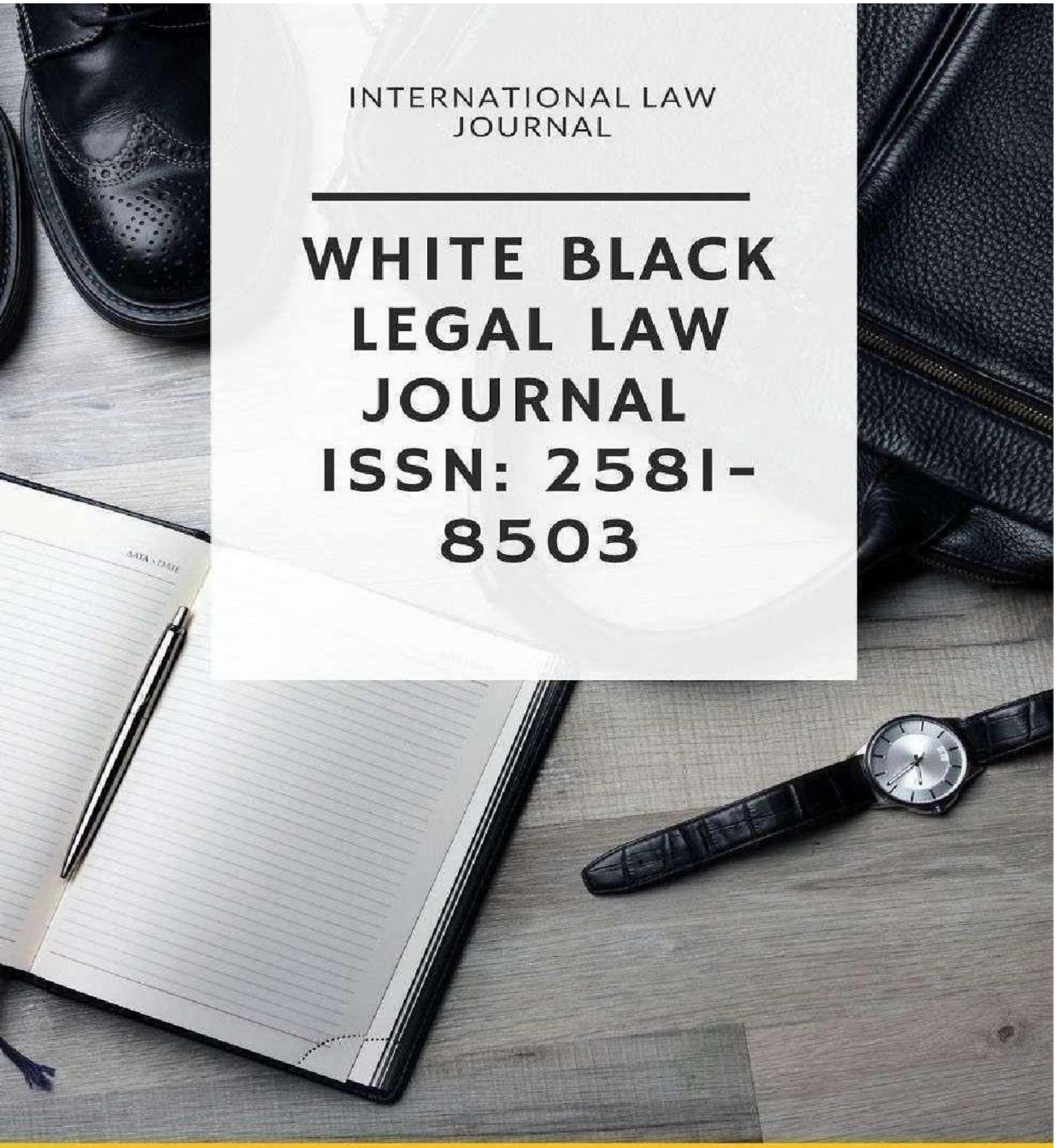


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# PUNISHMENT VERSUS REHABILITATION: A CRIMINOLOGICAL ASSESSMENT OF PRISON ADMINISTRATION AND PRISONER RE-INTEGRATION IN INDIA

AUTHORED BY - HARSHITA PRAKASH

## Abstract

Indian criminal justice has, on paper, chosen reformation over retribution. The Supreme Court has said so repeatedly, from the late 1970s onward, and Parliament has begun to say so as well. Yet anyone who works in or around a district jail knows that the choice made in the judgments has not been fully made in the barracks. This paper looks at the distance between the two. It sets out the theoretical contest between punishment and rehabilitation, traces the constitutional and statutory framework governing prisons, reads the leading and recent decisions of the Supreme Court on prisoners' rights and release, and then examines the administrative realities of overcrowding, undertrial detention, staffing, discrimination and weak after-care. The paper argues that the doctrine is largely settled and the implementation is not, and closes with practical recommendations drawn from the perspective of a practising advocate.

**Keywords:** *prison reform; reformative theory; Article 21; remission; parole; undertrial prisoners; reintegration; Sukanya Shantha.*

## I. Introduction

Outside most jail gates on a visiting day there is a small economy of its own: relatives holding plastic bags of clothes and papers, a man selling canteen coupons, a clerk who knows which warder to ask. I have stood in that queue more often than I can count, usually on behalf of a family that stopped asking me about sections long ago and started asking something simpler. When will he come out, and what will he be like when he does?

That question is the real subject of this paper. Indian criminal law makes two promises that do not always sit easily together. The first, found in the penal statutes, is that wrongdoing will meet a sentence in proportion to it. The second, which the Supreme Court has built up under Article 21 of the Constitution over almost five decades, is that a convicted person remains a

person, and that the sentence should so far as possible return him to society better equipped than he left it.[1] Between the sentence and the release stands the prison. Prison administration is where these two promises are either kept or broken.

My argument is a modest one. On the doctrinal question, Indian courts have for the most part chosen reformation over retribution as the guiding purpose of imprisonment. What remains unsettled is whether the machinery of the State is able, or willing, to act on that choice. Prisons are a State subject,[2] which means that the Supreme Court's judgments, however eloquent, reach the ground only through the prison departments of the individual States, each with its own manual, budget and habits. The distance between a judgment and a jail barrack is, in my experience, considerable.

The paper proceeds in the following order. Part II sets out the theoretical contest. Part III describes the legal and institutional framework. Part IV reads the principal decisions of the Supreme Court, both the older landmarks and the recent ones. Part V looks at what the data and the field reports say about conditions. Part VI deals with rehabilitation and reintegration proper, and Part VII offers an advocate's view of where the process fails in practice. Part VIII makes recommendations. The method is doctrinal, supported by official data and committee reports and, where I say so, by observations from practice.

## II. The Theoretical Contest: Why Do We Imprison?

Four justifications are usually offered for punishment: retribution, deterrence, incapacitation and reformation. Each has a long intellectual history and each has a place in Indian sentencing, though not in equal measure.

Retribution looks backwards. The offender deserves to suffer because of what he did, and the amount of suffering should match the gravity of the wrong. Deterrence looks forward and outward, aiming to discourage the offender and others from offending. The classical statement of it in modern penology is Beccaria's argument that certainty of punishment matters more than its severity.[3] Incapacitation is blunter still: a person in prison cannot offend outside it. Reformation, finally, treats the offender as someone capable of change and asks what the State can do, during the period of confinement, to make that change more likely.

None of these is a pure category in a courtroom. Herbert Packer's old point that the criminal

[1]INDIA CONST. art. 21.

[2]INDIA CONST. sch. VII, List II, entry 4.

[3]Cesare Beccaria, *On Crimes and Punishments* (1764) (trans. Richard Bellamy ed., Cambridge University Press, Cambridge, 1995).

sanction is both our prime guarantor and our prime threatener of human freedom still describes the difficulty well.[4] H.L.A. Hart, for his part, argued that the justification of punishment as a general institution and the question of who may be punished and how much are separate questions, and that confusing them produces bad policy.[5] Michel Foucault went further and suggested that the modern prison never really abandoned the older logic of discipline; it simply relocated it from the body to the routine of the cell.[6] One need not accept Foucault entirely to recognise the Indian jail in some of what he describes: the roll call, the lock-up hour, the uniform, the numbered history sheet.

Indian courts have taken a clear position. In *Mohd. Giasuddin v. State of Andhra Pradesh*, Justice Krishna Iyer treated the sentencing stage as an occasion for psychic and social diagnosis of the offender, and wrote that every saint has a past and every sinner a future.[7] Earlier, in *Ediga Anamma*, the Court had already accepted that the humane approach to sentencing required attention to the offender's circumstances.[8] When the Constitution Bench upheld the death penalty in *Bachan Singh*, it did so on the footing that the death sentence is exceptional, and listed among the considerations the probability that the offender can be reformed and rehabilitated, with the burden on the State to show that reformation is impossible.[9] That is a reformative principle written into the sentencing of the most serious offence known to our law. The legislature has been slower. The Bharatiya Nyaya Sanhita, 2023 does introduce community service as a form of punishment,[10] which is a real, if small, departure from the long reliance on imprisonment and fine. But for the greater part, the penal code still prescribes only maximum terms and gives the sentencing court little structured guidance on what the sentence is meant to achieve. In a courtroom, I have rarely heard a sentencing submission framed in terms of a theory at all. It is usually framed in terms of number of years.

## III. The Legal and Institutional Framework

### A. Constitutional position

The constitutional text says very little about prisoners as such. What we have is the product of

[4]Herbert L. Packer, *The Limits of the Criminal Sanction* (Stanford University Press, Stanford, 1968).

[5]H.L.A. Hart, *Punishment and Responsibility: Essays in the Philosophy of Law* (Oxford University Press, Oxford, 1968).

[6]Michel Foucault, *Discipline and Punish: The Birth of the Prison* (Alan Sheridan trans., Vintage Books, New York, 2nd ed., 1995).

[7]*Mohd. Giasuddin v. State of Andhra Pradesh*, (1977) 3 SCC 287.

[8]*Ediga Anamma v. State of Andhra Pradesh*, (1974) 4 SCC 443.

[9]*Bachan Singh v. State of Punjab*, (1980) 2 SCC 684.

[10]The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s. 4(f).

interpretation. Until 1978 the dominant view, going back to *A.K. Gopalan*, treated the Fundamental Rights as separate silos, and a person lawfully detained was thought to have little to complain about beyond the fact of detention.[11] *Maneka Gandhi* changed that by requiring that any procedure affecting life or personal liberty be fair, just and reasonable, and by reading Articles 14, 19 and 21 together.[12] Most of the prison jurisprudence discussed in this paper rests on that foundation.

**B. Statutes and rules**

The day-to-day law of the prison is still, in most States, the Prisons Act, 1894, a colonial statute whose concern was safe custody and discipline.[13] Alongside it sit the Prisoners Act, 1900, the Transfer of Prisoners Act, 1950 and the Repatriation of Prisoners Act, 2003.[14] The one statute that is plainly reformative in design is the Probation of Offenders Act, 1958, which allows a court to release suitable offenders on probation of good conduct or after admonition instead of sending them to prison.[15] In my experience it is under-used, partly because trial courts do not have probation officers' reports in front of them and partly because the habit of imposing a short custodial sentence is simply easier.

Remission and premature release are governed by the Code of Criminal Procedure, 1973 and, from July 2024, by the corresponding provisions of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS).[16] The appropriate Government may suspend or remit sentences, subject to the rule that a person sentenced to life for an offence punishable with death must serve at least fourteen years. The constitutional powers of the President and Governors under Articles 72 and 161 stand separately.

For undertrials, the key provision is the one limiting detention to half the maximum sentence for the alleged offence, earlier section 436A of the Code and now section 479 of the BNSS. The new provision keeps the half-term rule and adds that a first-time offender who has been detained for one-third of the maximum term is entitled to be released on bail, subject to conditions.[17]

[11] *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27.

[12] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

[13] The Prisons Act, 1894 (Act 9 of 1894).

[14] The Prisoners Act, 1900 (Act 3 of 1900); The Transfer of Prisoners Act, 1950 (Act 29 of 1950); The Repatriation of Prisoners Act, 2003 (Act 49 of 2003).

[15] The Probation of Offenders Act, 1958 (Act 20 of 1958), ss. 3, 4.

[16] The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), ss. 473–475 (corresponding to ss. 432, 433 and 433A of the Code of Criminal Procedure, 1973).

[17] The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 479.

### C. Committees and model laws

The reform literature on Indian prisons is extensive and, frankly, repetitive. The All India Committee on Jail Reforms under Justice A.N. Mulla (1980–83) recommended, among much else, an All India Service for prison staff, a national policy on prisons and a stronger focus on treatment of prisoners.[18] The Committee on Women Prisoners under Justice V.R. Krishna Iyer reported in 1987.[19] The Ministry of Home Affairs circulated the Model Prison Manual in 2016, replacing an earlier 2003 draft, and a Model Prisons and Correctional Services Act in 2023, which is meant to replace the 1894 Act in spirit if not in form.[20] The difficulty is that these are model documents. They bind no State until the State adopts them, and adoption has been patchy and slow.

## IV. The Judicial Journey: From Hands-Off to Guardianship

### A. Prisoners retain their fundamental rights

The turning point came with a series of decisions between 1978 and 1981, most of them authored or shaped by Justice Krishna Iyer. In *Sunil Batra v. Delhi Administration* (*Batra I*), a death-row prisoner challenged his solitary confinement under the Prisons Act. The Court read the relevant provision narrowly, held that solitary confinement of a person under sentence of death before the sentence became final was unconstitutional, and declared that prison walls do not keep out fundamental rights.[21] In the second round of the same litigation, triggered by a letter from a prisoner alleging brutality by a warder against another inmate, the Court treated the letter as a habeas corpus petition and held that the writ could be used to challenge the conditions of detention and not merely the fact of it. It described the judiciary's role over prisons as one of continuing guardianship.[22]

*Charles Sobraj v. Superintendent, Central Jail, Tihar* arose from allegations of bar fetters and harsh treatment. The Court held that imprisonment does not strip a person of the fundamental rights, except to the extent that confinement itself requires, and that fetters or similar restraints must be justified by real necessity.[23] In *Prem Shankar Shukla*, the Court made the same point

[18]Government of India, *Report of the All India Committee on Jail Reforms (1980–83)* (Ministry of Home Affairs, New Delhi, 1983).

[19]Government of India, *Report of the Working Group on Women Prisoners* (1987).

[20]Ministry of Home Affairs, Government of India, *Model Prison Manual 2016* (New Delhi, 2016); Ministry of Home Affairs, Government of India, *Model Prisons and Correctional Services Act, 2023* (New Delhi, 2023).

[21]*Sunil Batra v. Delhi Administration*, (1978) 4 SCC 494.

[22]*Sunil Batra v. Delhi Administration* (II), (1980) 3 SCC 488.

[23]*Charles Sobraj v. Superintendent, Central Jail, Tihar*, (1978) 4 SCC 104.

about handcuffing of undertrials, rejecting routine handcuffing as inconsistent with human dignity.[24] And in *Francis Coralie Mullin* the Court held that the right to life includes the right to live with human dignity, and that a detenu is entitled to reasonable facilities for meeting family and counsel.[25]

Together these cases established what I would call the basic proposition of Indian prison law: a prisoner is a rights-holder, and the prison authorities answer to the courts for how they treat him. It sounds obvious today. When I began practice, it was already textbook law. But it was won, case by case, from a legal culture that for decades had treated the jail as a place beyond judicial gaze.

**B. The undertrial problem**

If the first generation of cases dealt with how prisoners are treated, the second dealt with who is in prison at all. *Hussainara Khatoon v. State of Bihar* was filed on the basis of newspaper reports that thousands of undertrials in Bihar had been in jail for periods longer than the maximum sentence for the offences with which they were charged. The Court held that speedy trial is implicit in the guarantee of life and personal liberty, and that an accused too poor to furnish surety cannot be left to rot in jail because of that poverty.[26] The Law Commission had already warned of the congestion of undertrial prisoners in 1979.[27]

More than four decades later, the same problem persists, and the Court has returned to it repeatedly. In *Sanjay Chandra v. CBI*, the Court said that bail is the rule and that pre-trial detention should not be used as a punishment.[28] In *Bhim Singh v. Union of India*, it directed that section 436A of the Code be implemented in earnest, with trial courts identifying eligible undertrials and releasing them.[29] And in *Satender Kumar Antil v. CBI*, a three-judge bench classified offences for the purposes of bail, laid down directions on arrest and remand, and noted the need for a dedicated bail statute.[30] In the ongoing proceedings regarding prison conditions, the Court in August 2024 directed jail superintendents across the country to compute eligibility under section 479 of the BNSS and to place the cases of eligible undertrials before courts, and clarified that the beneficial provision applies to proceedings pending on the

[24] *Prem Shankar Shukla v. Delhi Administration*, (1980) 3 SCC 526.
[25] *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608.
[26] *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81.
[27] Law Commission of India, *78th Report on Congestion of Under-Trial Prisoners in Jails* (1979).
[28] *Sanjay Chandra v. Central Bureau of Investigation*, (2012) 1 SCC 40.
[29] *Bhim Singh v. Union of India*, (2015) 13 SCC 605.
[30] *Satender Kumar Antil v. Central Bureau of Investigation*, (2022) 10 SCC 51.

date the BNSS came into force.[31]

Why is this a rehabilitation issue and not merely a bail issue? Because every month of unnecessary pre-trial detention is a month in which a presumptively innocent person loses employment, housing and family standing, and is exposed to the prison subculture. If reintegration is the goal, it has to begin by not removing people from society unnecessarily in the first place.

**C. Sentence, remission and release**

On the question of when a convicted person may be released, the Court's decisions have been less uniform. *Maru Ram v. Union of India* upheld section 433A of the Code, which sets the fourteen-year floor for life convicts in capital offences, and held that remission could not in effect override that floor, while recognising that the constitutional powers under Articles 72 and 161 remain untouched.[32] A few years later, *Laxman Naskar v. Union of India* gave a practical test for premature release, asking whether the offence affected society at large, whether there was any chance of recidivism, whether the convict had lost the potential to commit crime, whether any fruitful purpose was being served by continued detention, and what the socio-economic condition of the convict's family was.[33] I find that list a remarkably usable summary of what a reintegration-minded release policy should ask. It is also, in my experience, the part of the judgment that remission boards most often forget.

A significant development concerned the length of life imprisonment. In *Swamy Shraddananda (2)*, the Court devised a sentence of imprisonment for life subject to a minimum term beyond fourteen years, as a middle path between death and ordinary life imprisonment.[34] A Constitution Bench in *Union of India v. V. Sriharan* confirmed that courts may impose such fixed terms, or terms extending to the whole of the convict's natural life, but that the power to remit that sentence is for the appropriate Government and not for the court.[35] From a reformative standpoint, I confess to some unease about this development. A sentence of whole-life imprisonment, even if theoretically subject to executive remission, comes close to saying that reformation is impossible, which is the very proposition *Bachan Singh* asked the State to prove before taking a life.

[31] *Re: Inhuman Conditions in 1382 Prisons*, W.P. (C) No. 406 of 2013 (SC) (order of Aug. 2024); the earlier reported decision is (2016) 3 SCC 700.

[32] *Maru Ram v. Union of India*, (1981) 1 SCC 107.

[33] *Laxman Naskar v. Union of India*, (2000) 2 SCC 595.

[34] *Swamy Shraddananda (2) v. State of Karnataka*, (2008) 13 SCC 767.

[35] *Union of India v. V. Sriharan*, (2016) 7 SCC 1.

On parole, the Court's decision in *Asfaq v. State of Rajasthan* is worth remembering. It held that parole is a reformative measure meant to help a prisoner maintain family and social ties, and that it should not be denied simply because the offence was serious or because the prisoner is a so-called hardened criminal; the question is whether the individual prisoner can be released safely.[36]

The most recent significant statement on remission came in *Bilkis Yakub Rasool v. Union of India*, decided in January 2024. The Court quashed the Gujarat Government's remission orders for eleven convicts in the Bilkis Bano gang-rape and murder case, holding, among other things, that the power to decide remission lay with the Government of the State where the accused was tried and sentenced, which was Maharashtra, and not Gujarat where the offence occurred.[37] Whatever one thinks of the facts, the case is an important reminder that remission is a power to be exercised on legal grounds, by the right authority, with application of mind. It is not a favour. It also shows how public confidence in the remission system, and therefore in the whole idea of earned release, can be damaged when the process is perceived as arbitrary.

**D. Dignity, work and discrimination inside prisons**

*Rama Murthy v. State of Karnataka* is, to my mind, the most useful single decision for anybody who wants a map of the problem. The Court identified nine areas of concern: overcrowding, delay in trial, torture and ill-treatment, neglect of health and hygiene, insufficient food and clothing, prison vices, deficiencies in communication, streamlining of jail visits and the management of open-air prisons.[38] A quarter of a century on, the list reads like a description of the present.

On prison labour, *State of Gujarat v. Hon'ble High Court of Gujarat* held that prisoners sentenced to rigorous imprisonment may lawfully be required to work, but that they must be paid equitable wages, and that the wage structure should be fixed on a rational basis, with part of the wages going to victim compensation where appropriate.[39] The decision matters for rehabilitation because meaningful work, paid at a rate that allows a prisoner to save something and support family, is among the few things in prison that translate directly to life outside. On children living with their mothers in prison, *R.D. Upadhyay v. State of Andhra Pradesh* laid

[36] *Asfaq v. State of Rajasthan*, (2017) 15 SCC 55.
[37] *Bilkis Yakub Rasool v. Union of India*, (2024) 5 SCC 481.
[38] *Rama Murthy v. State of Karnataka*, (1997) 2 SCC 642.
[39] *State of Gujarat v. Hon'ble High Court of Gujarat*, (1998) 7 SCC 392.

down guidelines on nutrition, education and conditions for such children.[40]

In the death penalty context, *Shatrughan Chauhan v. Union of India* recognised that undue delay in disposal of mercy petitions, mental illness and solitary confinement prior to rejection of the petition could justify commutation of a death sentence.[41] It reflected the broader theme that the manner of carrying out a sentence is itself subject to constitutional scrutiny.

The Court's long-running suo motu proceedings on prison conditions, *Re: Inhuman Conditions in 1382 Prisons*, began from a 2013 letter by the then Chief Justice, and in its 2016 order the Court directed the constitution of undertrial review committees in every district, the implementation of the Model Prison Manual and the filling of vacancies in prison staff.[42] In 2018 it appointed a committee headed by Justice Amitava Roy, a former judge of the Court, to examine the whole range of prison reform issues.[43]

The most recent landmark is *Sukanya Shantha v. Union of India*, decided on 3 October 2024. The petition, filed by a journalist, challenged provisions in several State prison manuals that allocated labour and barracks on the basis of caste, assigning sweeping and cleaning to certain castes and cooking to others, and that treated members of denotified tribes as presumptively habitual offenders. The Court held these provisions unconstitutional as violating Articles 14, 15, 17, 21 and 23, directed the States and Union Territories to amend their manuals, and directed that the Model Prison Manual and the 2023 Model Act be revised accordingly.[44] For anyone interested in reintegration, this decision is important for a reason that goes beyond equality. A prisoner who spends years being told by the institution that his place is at the bottom of a caste hierarchy is not being prepared for citizenship.

## V. Conditions on the Ground

Statistics alone do not describe a prison, but they tell us where to look. According to the National Crime Records Bureau's *Prison Statistics India 2022*, the country's jails held well above their sanctioned capacity, with an occupancy rate of over 130 per cent, and roughly three-quarters of all inmates were undertrials.[45] Put differently, the typical person in an Indian prison

[40] *R.D. Upadhyay v. State of Andhra Pradesh*, (1996) 3 SCC 422.

[41] *Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1.

[42] *Re: Inhuman Conditions in 1382 Prisons*, supra note 31.

[43] *Re: Inhuman Conditions in 1382 Prisons*, W.P. (C) No. 406 of 2013 (SC) (order appointing Justice Amitava Roy Committee, 2018).

[44] *Sukanya Shantha v. Union of India*, W.P. (C) No. 1404 of 2023 (SC, decided on Oct. 3, 2024).

[45] National Crime Records Bureau, *Prison Statistics India 2022* (Ministry of Home Affairs, Government of India, 2023). Readers should check the latest edition for updated figures.

has not been convicted of anything.

Crowding is not just a matter of space. It changes all the rest. Where one warder has to look after dozens of inmates supervision is a matter of control, and control is a matter of using convict officers or informal hierarchies among prisoners. Classification of prisoners by age, offence and risk is regarded by the Model Prison Manual as the basis of any treatment programme. Classification becomes impossible when there is just no room to place a first time offender apart from a repeat one. This was noted by the Mulla Committee in 1983 and reiterated by the Supreme Court in *Rama Murthy*[46].

Staff is a closely related problem. For decades, the Committee's Reports have been pointing out vacancies in the prison department, especially in the supervisory and technical posts. Specialised staff such as welfare officers, psychologists, counsellors and teachers who can actually run a rehabilitation programme are often absent or borrowed from other departments. A prison cannot rehabilitate without the people who are supposed to rehabilitate.

Another neglected area is health, particularly mental health. Many prisoners arrive with substance dependence or untreated mental illness, and the jail doctor, if there is one, has little time or equipment. Women prisoners – a small fraction of the total but with particular needs – are often housed in sections of men's jails instead of in separate institutions, with little access to vocational activity, and with children who have not been convicted of any crime. The directions in Sheela Barse on safeguards for women in custody and on access to legal aid continue to be relevant.[47]

Violence, extortion by other inmates, and custodial deaths cannot be left out of any honest account. I will not pretend that I have seen the worst of this, but a practitioner who visits clients in jail hears enough to understand that complaints are rarely made, since the complainant has to go on living in the same barrack afterwards. That silence is itself a feature of the system and not evidence that there is nothing to complain about.

## VI. Rehabilitation and Reintegration in Practice

### A. What exists

It would be unfair to say nothing is being done. Several prison departments run education programmes in cooperation with open universities, and prisoners have completed school and degree courses behind bars. Tihar Jail in Delhi has run a vocational and industrial programme

[46] Mulla Committee Report, supra note 18; *Rama Murthy*, supra note 38.

[47] *Sheela Barse v. State of Maharashtra*, (1983) 2 SCC 96.

for many years, with products sold under its own label. Several States have open or semi-open prisons, where selected long-term convicts live with limited supervision, work outside during the day, and often live with their families. Rajasthan has one of the more extensive networks of these, and open institutions also exist in Maharashtra and elsewhere. Reports from these institutions are generally encouraging, with low rates of absconding. The Supreme Court has encouraged more of them in the *Inhuman Conditions* proceedings.[48]

Parole and furlough, if properly administered, are the bridge between the walls and the outside. They allow the prisoner to maintain family ties, attend to urgent personal matters and test his capacity to cope outside. *Asfaq* describes the logic well. In practice, however, the rules vary widely between States, the criteria are often framed in terms of the nature of the offence rather than the behaviour of the prisoner, and the grant of parole depends on police reports that are slow and sometimes hostile.

**B. What is missing**

The weakest link in the whole chain is what happens after release. The Model Prison Manual contemplates after-care and rehabilitation services, including linkage with employment, housing and counselling, but I know of very few places where this has meaning. A person released after ten years has no ID in many cases, may have lost his ration card, may have no home to return to, and has to explain the gap in his work history. Employers ask for police verification. The old habitual-offender laws, which several States have retained on their books, treat a past conviction as a continuing status. *Sukanya Shantha* addressed this in part by striking down the connected provisions in prison manuals, but the statutes themselves remain a separate matter.

Financial barriers keep some people inside who should be out. A sentence of fine, with a default term of imprisonment, can mean that a poor convict who has served the substantive term remains in jail for want of the fine, and undertrials routinely remain in custody because they cannot furnish bail bonds. Legal aid is meant to answer this. Section 12(g) of the Legal Services Authorities Act, 1987 entitles every person in custody to free legal services.[49] In practice, the quality of that representation varies enormously, and a prisoner whose lawyer does not turn up has few places to complain.

Victims, too, belong in this discussion. A reintegration policy that ignores the victim is neither

[48] *Re: Inhuman Conditions in 1382 Prisons*, supra note 31.

[49] The Legal Services Authorities Act, 1987 (Act 39 of 1987), s. 12(g).

politically sustainable nor morally complete. The decision in *State of Gujarat v. High Court of Gujarat*, which contemplated using prison wages for victim compensation, points to a middle path. I think the future of prison reform in India depends on showing the public that rehabilitation is not leniency. It is a way of reducing the likelihood that someone else becomes a victim.

## VII. A Practitioner's Perspective: Where the Process Breaks

I want to say something about the practical side, because the law reports tend to hide it. A prisoner's case for remission or premature release is not a single event. It is a file that has to travel. The prison authorities prepare a report; the district magistrate and police superintendent give opinions; a sentence review board meets, if it meets; the file goes to the State Government and sometimes to the Governor's secretariat. At each stage a missing document, an adverse police note or a change of officer can restart the clock. I have seen files in which the sentence had long been eligible for review on paper, but nobody had initiated the process, because no one had the job of doing so.

This is why the directions in *Laxman Naskar* and *Sriharan* should be read together with the Court's directions on timelines. The test for release is only worth something if the machinery for applying it actually runs. Where a prisoner is illiterate and his family is poor, the machinery runs only if a lawyer or a legal aid volunteer pushes it. I do not say this to advertise my profession. I say it because the burden of initiating a request for something to which the prisoner is already entitled should not fall on the prisoner.

There is also a legitimate criticism of reformist rhetoric that I think advocates should take seriously. Courts speak of reformation, but the same courts, in cases of grave offences, increasingly pass sentences of life without remission for a fixed number of years or for the whole of life. It is hard to teach a young prisoner that he is expected to reform when the sentence itself assumes that he will not be allowed to leave. The Constitution Bench in *Sriharan* gave constitutional sanction to such sentences, and the strain between that position and the reformative approach of *Giasuddin* and *Bachan Singh* has not yet been resolved. In fairness, the other side of the argument deserves a hearing: serious offences cause serious harm, victims and the public expect substantial punishment, and a legal system that is seen as soft will lose legitimacy. These are not trivial points. The answer, I think, is not to abandon either value but to be honest about which one is doing the work in a particular case and to apply individualised risk assessment rather than a blanket rule.

## VIII. Recommendations

The following suggestions are practical and are mostly not new. What has been missing is not ideas but follow-through.

1. **Reduce unnecessary entry.** Trial courts should apply section 479 of the BNSS and the guidelines in *Satender Kumar Antil* proactively, with jail superintendents flagging eligible prisoners on a regular schedule. District legal services authorities should audit this every quarter.
2. **Expand non-custodial sentencing.** Courts should call for probation reports as a matter of routine and use the Probation of Offenders Act and community service under the BNS in suitable cases, particularly for first-time and young offenders.
3. **Make release processes automatic.** Prison departments should be required to start remission and premature-release files at the time the prisoner becomes eligible, with fixed timelines and written reasons for rejection, following the factors in *Laxman Naskar*.
4. **Adopt a single reformative law.** States should enact legislation based on the Model Prisons and Correctional Services Act, 2023 and repeal the 1894 Act, with the revisions required by *Sukanya Shantha*, so that the legal basis for prison administration no longer stands on a colonial footing.
5. **Staff for treatment, not only custody.** Fill vacancies, and create cadres of probation officers, psychologists, teachers and social workers within the prison service. Train custodial staff in rehabilitation and human rights, not only security.
6. **Pay fair wages and certify skills.** Implement the wage principles of *State of Gujarat v. High Court of Gujarat*, issue recognised vocational certificates that do not mention imprisonment, and link training to local employment opportunities.
7. **Build after-care.** Establish a statutory after-care service, with identity documents, short-term housing and employment support available to released prisoners, in partnership with civil society organisations.
8. **Reform habitual-offender and verification practices.** Repeal or narrow the State habitual-offender statutes and ensure that police verification rules do not operate as a permanent bar on employment after a sentence has been served.
9. **Strengthen oversight.** Revive and empower boards of visitors, enable confidential complaint channels and ensure that district judges and legal services authorities inspect prisons regularly, as repeatedly directed by the Supreme Court.

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## IX. Conclusion

The question I began with, what will he be like when he comes out, is really a question about what the prison is for. If it is only a place to hold people for a fixed time, then the answer does not matter, and he will come out older, poorer and more embittered, and the cycle will repeat. If it is meant to prepare people for life outside, then we need to be judged by the answer.

Indian constitutional law has, for the most part, chosen the second view. *Sunil Batra*, *Charles Sobraj*, *Hussainara Khatoon*, *Rama Murthy* and, more recently, *Sukanya Shantha* all reflect a Supreme Court that treats the prisoner as a person with rights and the prison as an institution answerable to the Constitution. The decisions on release, from *Maru Ram* to *Bilkis Yakub Rasool*, show that the Court is equally conscious that release has to be principled, lawful and responsive to the public interest. What the case law cannot do by itself is build prisons, hire counsellors, or find a released man a job. That is work for legislatures, executives, and, to some extent, for the legal profession.

Punishment and rehabilitation are not true opposites. A sentence that is proportionate, administered with dignity and followed by genuine support is more likely both to satisfy the community and to reduce reoffending than one that merely locks the door. To borrow Justice Krishna Iyer's old formulation, every sinner has a future. Whether that future is also the community's is, in the end, a matter of administration.

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