CHAPTER IV

PROTECTION OF PRISONERS’ RIGHTS:
THE LEGISLATIVE FRAMEWORK
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Law is the king of all mortal and immortal affairs which ought to be the chief, the ruler and leader of the Novel and the base and thus the standard of what is just and unjust, the commander to animals naturally social of what they should do, the forbidden of what should they not do.

- Justinian

The extent to which human rights are respected and protected within the context of its criminal proceedings is an important measure of society's civilization. In India the inhuman prison conditions, prolonged detention and maltreatment of under-trial prisoners have become the subject of fierce controversy. One pathetic aspect of criminal justice administration in India has been unduly large number of under-trial prisoners languishing in jail.1

When India is counted among nations where human rights are virtually non-existent, then all talk of being largest democracy in the world begins to sound a big hollow, in prisons and police lock-up the subjects are not guaranteed the protection they deserve.2 The Human rights have drawn much attention as a result of widespread tortures and tyrannies committed during the Second World War. Most of the democratic countries which are also the members of the United Nations, have given due consideration to the International Charter on Human Rights. In 1948, a movement was started in the form of Universal Declaration of Human Rights. The document provided certain basic principles of law, which should be applied in order to protect the fundamental rights of the prisoners all over the world. Amnesty

International contributed to the human right movements by-prescribing certain Standard Minimum Rules for the treatment of prisoners. It condemned the punishment like solitary confinement, reduction in diet and other heavy deprivative measures used by the prison authorities.

The Constitution of India under Part III provides for the protection of fundamental rights of the prisoner. Accordingly barbarous and inhuman treatment is a constitutional prohibition. The punishment of solitary confinement, hand-cuffing, harsh labour and degrading jobs in jail without judicial approvals violate the mandate of Article 21 of the Constitution. Besides the Constitution there are certain statutes like the Prisons Act, 1894, Prisoners Act 1900, Prisoners (Attendance in Court) Act, 1955, the Probation of Offenders Act 1958 and Juvenile Justice Act, 2000, where rights are conferred to the prisoners. Prisons and Police Manuals which also have certain rules and safeguards for the prisoners and cast an obligation on the prison authorities to follow these rules.

Thus, prisoners are human beings and are entitled to fundamental rights and their protection, of course, subject to certain reasonable restriction. The provisions made in the following statutes are directed to protect the basic rights of the prisoners.

[A] CONSTITUTIONAL PROTECTION

Constitution is the supreme law of the land in a democratic set-up. All laws must conform to the provisions of the Constitution, otherwise they will be unconstitutional. The Preamble sets the human tone and temper of the
constitution and envisages, among other things justice, equality and the dignity of the individuals. Part III of the Constitution contains a long list of fundamental rights which are essential for the attainment by the individual of his full, intellectual, moral and spiritual status.

In *Maneka Gandhi v. Union of India* speaking about the importance of fundamental rights Bhagwati J. observed:

> These fundamental rights represent the basic values cherished by the people of this country since the vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent. They weave a "pattern of guarantee" on the basic structures of human rights and impose negative obligations on the State not to encroach on individual liberty in its various dimensions."

Though there is no specific guarantees of prisoners rights in the Indian Constitution, certain rights which have been enumerated in Part III of the Constitution are available to the prisoners also because a prisoner remains a "person" in the prison.

In the preamble itself we find the spirit of fundamental rights of the prisoners. The preamble declares, we adopt, enact and give a Constitution to ourselves to secure to all its citizens Justice, social, economic band political; Liberty of thought, expression, belief, faith and worship; equality of status and opportunity; and to promote among them all fraternity assuring the dignity of the individual...

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4 *AIR 1978 SC 597.*  
5 *Id., at 617.*
Fundamental Rights — One of the important provisions in the Constitution of India is Article 14 in which principle of equality is embodied.

The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.6

The rule that like should be treated alike as provided in Article 14 is a useful guide for the Courts to determine the category of prisoners.

Some of the freedoms guaranteed under Article 19, such as freedom of speech and expression, freedom of association etc. can be enjoyed by the prisoner even behind the bars and his imprisonment or sentences has nothing to do with these freedoms, of course, within the limitations of the prison rules.

The constitutionals rights in the context of criminal jurisprudence are contained in Articles 20, 21 and 22 of the Constitution.

Article 20(1) protects the persons from “ex post facto laws.” This clause provides to protect a prisoner from being subjected to any punishment which was not authorized by law at the time when he committed the alleged act and to which he was convicted and sentenced after the trial then provided under the law. In other words no imprisonment conditions harsh labour can be enacted and inflicted on him who was not prescribed by the law at the time; he committed the crime for which the imprisonment in question was imposed.

6 Article 14, Constitution of India.
According to Article 20(2) no person shall be prosecuted and punished for the same offence more than once. One of the important safeguards which is useful for under trial and detenue is provided in Article 20(3). Accordingly the jail authorities or police authorities cannot compel the prisoners to give the testimony which is likely to expose them for the criminal consequences. It is the duty of the prosecution to prove the case beyond reasonable doubts.

Article 21 of the Constitution has been a major centre of litigation so far as the prisoner’s rights are concerned. Article 21 which has sprung into life with the decision of the Supreme Court in Maneka Gandhi’s case provides that “no person shall be deprived of his life or personal liberty except according to procedure established by law.” Thus a prisoner can be deprived of his life and personal liberty if two conditions are complied with, first, there must be a law and secondly, there must be a procedure prescribed by that law, provided that procedure is just, fair and reasonable. Due to the expanding reach and ambit of Article 21 by the Supreme Court the prisoners are entitled to live a dignified life in prison premises.

Article 22 proceeds to enact protection against arrest and detention in certain cases.

Article 23 provides for the right against exploitation and Article 25 to freedom of conscience and the right freely to practice religion which is available to prisoners subject to certain constitutional limitations.

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7 Maneka Gandhi v. Union of India, AIR 1978 SC 597
A declaration of fundamental rights is meaningless unless there is effective machinery for the enforcement of the rights. It was therefore, in the fitness of things that our Constitution has been provided for an effective remedy for the enforcement of these rights under Article 32. Article 32 is itself a fundamental right which is available to prisoners. Thus a prisoner can approach to Supreme Court and High Courts under Articles 32 and 226 respectively for the enforcement of his fundamental rights.

In *Sunil Batra v. Delhi Adm.*⁸ it has been held that the writ of habeas corpus can be issued for protecting prisoners from inhuman and barbarous treatment. Krishan Iyer J. declared that whenever the right of a prisoner either under the Constitution or under other laws are violated the writ power of the Court can run and should run to rescue.

The convicts are not by mere reason of their conviction deprived of all the fundamental rights which they otherwise possess. Thus, a prisoner is entitled to all his fundamental rights unless his liberty has been constitutionally curtailed.

[B] **STATUTORY PROTECTION**

In order to achieve the Constitutional mandate, specific provisions were incorporated in Statutes for the realisation of the aforesaid safeguards.

(i) **The Indian Penal Code, 1860**

The Indian Penal Code defined each and every offence and prescribed punishment for it. Imprisonment became the most conspicuous and most commonly used instrument of penal treatment. In his minute dated 14th

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⁸ AIR 1980 SC 1759.
December 1835. Macaulay states “Imprisonment is the punishment to which we must trust.”

Followings are relevant provisions for the imprisonment of offenders as mode of punishment under I.P.C.

Section. 53. The punishment for which offenders are liable under the provisions of this code are

First ...
Secondly: Imprisonment for life.
Thirdly...
Fourthly: Imprisonment which is of two descriptions, namely –

1. Rigorous, i.e. with hard labour.
2. Simple.

In the Indian Penal Code there is absolutely no scope of individualizing the punishment and it has become somewhat obsolescent and out of tune with the modern trends in the field of penology regarding the correction of the offender. Commenting upon this unhappy aspect of our penal system Krishna Iyer, J. observed in Shivaji’s case:“

To men in their twenties thus stand convicted of murder and have to suffer imprisonment for life because the punitive strategy of Penal Code does not sufficiently reflect the modern trends in correctional treatment and personalized sentencing. When accused persons are tender age then

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9 Macaulay, T.B. Minute dated 14 Dec., 1835. In (Howell A.P. under Secretary to Govt. of India-Note on Jails and Jail Discipline. At 1.)
10 Shivaji V. State of Maharashtra, 1973 Cr. L.J. 1783 (S.C.)
even in murder case it is not desirable to send them beyond the high prison walls and forget all about their correction and eventual reformation.

In Sunil Batra’s\textsuperscript{11} case the SC observed “hard labour in Section 53 has to receive a human meaning”.

**Section 55.** In every case in which sentence of imprisonment for life shall have been passed, the appropriate government may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

The Indian Penal Code criminalizes police atrocities. It stipulates an imprisonment for a term of 7 years to an officer or an authority who detains a person in his custody with a knowledge that he is acting contrary to law.\textsuperscript{12} It further provides an imprisonment for a term up to 7 and 10 years for those police officers who cause hurt or grievous hurt to a person to extort confession or information in regard to a commission of an offence.\textsuperscript{13} Similarly, it stipulates an imprisonment for a term up to three years for wrongfully confining a person for extorting a confession or information leading to detection of a crime. It is equally important to note that confinement on an individual in violation of these statutory provisions constitutes a wrongful confinement warranting an imprisonment for a term up to one year.\textsuperscript{14}

\textsuperscript{11} AIR 1980 SC 1579.
\textsuperscript{12} Section 220 of the I.P.C.
\textsuperscript{13} Id. Sections 330 and 331.
\textsuperscript{14} Id. Section 340; See also K. I. Vibhute "Abuse of Investigation power: Policing the police in India in pursuit of safeguarding Human Rights of Accused in the Criminal Process" in K.I. Vibhute, (ed.) Criminal Justice A Human Right Perspective of the Criminal Justice process in India, Lucknow EBK, 2000.
These provisions are ostensibly designed to deter a police officer who is empowered to arrest a person and to interrogate him during investigation of an offence from resorting to third degree methods, causing torture, or 'wrongful confinement' to extract confession. Though the Code provides certain safeguards to police officers for action taken in good faith but these cannot be availed of in situations where police is not acting.


Though the Code provides a gamut of powers to the police officers for effective criminal justice administration yet it also includes certain safeguards to ensure that the tendency of misuse of powers by the police officer is resisted. It provides that every police officer shall communicate to arrestee full particulars of the offence for which he is arrested or other grounds for such arrest. In other words, it confers a statutory right on an arrestee to know the grounds of his arrest.\(^\text{15}\)

The arrestee cannot be subjected to more restraint than is necessary to prevent his escape.\(^\text{16}\) A police officer, who is allowed to touch or confine the body of arrestee, is precluded from causing death of a person who is not accused of an offence punishable with death or with life imprisonment.\(^\text{17}\)

A police officer is under an obligation to produce arrestee before the nearest Magistrate having jurisdiction in the case\(^\text{18}\) within 24 hours of his arrest.\(^\text{19}\) The Magistrate can either order release or bail or remand to the police custody to facilitate the further investigation of the case. The maximum period for the remand is 15 days. The Magistrate should ascertain from the accused whether he has been kept in the custody for more than 24

\(^{15}\) The Code of Criminal Procedure, Section 50 (1).

\(^{16}\) Id. Section 49.

\(^{17}\) Id. Section 46.

\(^{18}\) Id. Section 56.

\(^{19}\) Id. Section 57 and Section 167.
hours or not, and whether he has been tortured by the police. If there are evidence of torture he should refuse to commit him to police remand.

The accused can also obtain bail and the Code obliges the police to inform him of his entitlement for bail.\textsuperscript{20} It also allows an accused, as a matter of right the case may be, to consult a lawyer of his choice and to seek legal assistance in order to defend himself.\textsuperscript{21} Apart from it, under the Code of Criminal Procedure, accused is bestowed with the right to a fair and speedy investigation and trial as well as the right to medical examination.\textsuperscript{22} A mandatory magisterial inquiry can be held if death of an accused is caused in police custody.\textsuperscript{23} It also prohibits forced confession and protects the suspect person against such confession.\textsuperscript{24}

(iii) \textbf{The Indian Evidence Act, 1862}

To discourage the police from illegal atrocities against an accused to extort confessions, the Act of 1872 makes confessions made to police irrelevant and inadmissible in a criminal trial. It specifically provides that no confession made to a police officer shall be proved as against a person accused of any offence.\textsuperscript{25} Even a confession made to a private person by a person in custody of the police, is also inadmissible in evidence.\textsuperscript{26}

The doctrine of presumption of innocence is also the basis of Indian Criminal Jurisprudence and this important right is also provided to the accused person under the Act.\textsuperscript{27}

\textsuperscript{20} Section 50 Along with Section 437 and Section 438 of the Cr.P.C.
\textsuperscript{21} Sections 303, 304, The Code of Criminal Procedure.
\textsuperscript{22} Section 309 and 54 of the Cr. P. C.
\textsuperscript{23} Id. Section 176.
\textsuperscript{24} Id. Sections 162, 163 (1), 315 and 342 (9).
\textsuperscript{25} Section 25 of the Indian Evidence Act, 1872.
\textsuperscript{26} Id. Section 26 of the Indian Evidence Act.
\textsuperscript{27} See Chapter VII dealing with burden of proof.
(iv) The Indian Police Act, 1861

The Indian Police Act together with State Police Acts and Manuals also invariably curtails and streamlines police powers to avoid unreasonable use of force by the police. Primarily these Acts provide powers to police officers, yet they seek a balance between power and duty. These statutory instruments, among others, provide for disciplinary as well as punitive actions against 'erring police officers'. In this context one has to take note of two principal sections, namely, Sections 7 and 29, of the Act that provide punishment for breach of discipline. Section 7 authorises higher police officials to dismiss, suspend or reduce any police officer of the subordinate rank when they think that they have been remiss or negligent in the discharge of the duty or unfit for the same. They may also award 'lesser' punishments to subordinate ranks that are careless or negligent in the manner of performance of their duties or render themselves 'unfit' for performance. These punishments are: (i) fine, not exceeding one month's pay, (ii) confinement to quarters for a term not exceeding fifteen days, with or without punishment drill, extra guard, fatigue or other duty, (iii) deprivation of good conduct pay and (iv) removal from any office of distinction or special emolument. Similarly, section 29 provides, inter alia, for a penalty of imprisonment with or without labour, not exceeding three months or fine not exceeding three months pay or both if a police officer causes any unwarrantable personal violence to a person in his custody.28

(v) The Prisons Act, 1894

28 But action under these sections is hardly invoked by the police authority concerned, See also Ms Archana Sinha, "Torture is a challenge to the Administration of justice", 2001 5 PRP, 34.
The Prisons Act 1894, which is the current law governing management and administration of prisons in India, was largely based on deterrent principles concerned more with prison management than with treatment of prisoners. However, the following sections of Prisons Act deal with the fundamental rights of the prisoners and their welfare in the modern sense.

Section 27. Separation of Prisoners-

1. In a prison containing female, as well as male prisoners, the females shall be imprisoned in separate buildings, or separate parts of the same building in such manner as to prevent their seeing. Or conversing or holding any intercourse with the male prisoners;

2. Separation of young inmates from adults;

3. Unconvicted prisoners shall be kept apart from convicted prisoners,

4. Civil prisoners shall be kept apart from criminal prisoners.

The slurring over the rule in Section 27 and its violation must be visited with judicial correction and punishment of jail staffs. Sex excess and exploitative labours are the vices adolescents are subjected to by adults. It is inhuman and unreasonable to throw young boys to sex starved adult prisoners or run menial jobs affluent or though prisoners, Article 19 then interveneg and shields.

Section 29. Solitary Confinement- No cell shall be used for solitary confinement unless it is furnished with the means enabling the prisoner to communicate at any time with an officer of the prison, and every prisoner so
confined in a cell for more than twenty four hours shall be visited at least once a day by the Medical Officer or medical subordinate.

Section 33 (1). Every civil prisoners and unconvicted criminal prisoner unable to provide himself with sufficient clothing and bedding shall be supplied by the Superintendent with such clothing and bedding as may be necessary.

Section 39. In every prison a hospital or proper place for the reception of sick prisoners shall be provided.

Section 40. Visits to civil and unconvicted prisoners.-

Visits to prisoners by family and friends are a solace in insulation and only a dehumanized system can derive vicarious delight in depriving prison inmates of this human amenity. Subject, of course, to search and discipline and other security criteria, the right to society of fellow-men, parents and other family members can not be denied in the light of Article 19 and its sweep. Moreover, the whole facilitative purpose of sentencing is to soften, not to harden, and this will be promoted by more such meetings.

Section 56. Confinement in Irons- Confinement in irons must be resorted to only in gravest situation. To fetter prisoners in irons is an inhumanity, unjustified save where safe custody is otherwise impossible.

Section 58. No prisoner shall be put in irons or under mechanical restraints by jailor of his own authority, except in case of urgent necessity, in which case notice thereof shall be forthwith given to the Superintendent.

(vi) The Probation of Offenders Act, 1958
The age old custodial measure and institutional incarceration presents two crucial problems, namely, it increases the dependence of offender and the same time decreases his capacity to readjust to normal society after release. Conformity with the strict prison discipline is resulted in the violation of the fundamental rights of the prisoners. Probation of offenders has been widely accepted as one of the extra-mural methods of dealing with corrigible offenders, the basic purpose of which is to keep the delinquent away from evil consequences of incarceration and offer him an opportunity to lead socially useful and respectful life.

When any person under twenty-one years of age is found guilty of having committed an offence punishable with imprisonment, (but not with imprisonment for life), the Court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and the character of the offender it would not be desirable to deal with him under Section 3 or Section 4, and if the Court passes any sentence of imprisonment on the offender it shall record its reason for doing so.  

The Probation of Offenders Act provides four different modes of dealing with offenders in lieu of sentence.

1. Release on admonition.
2. Release on entering a bond on probation of good conduct.
3. Persons under twenty-one years of age are not to be sentenced.

[29 Sec. 6, Probation of Offenders Act, 1958.]
[30 Id., Sec. 3.]
[31 Id., Sec. 4.]
[32 Id., Sec. 6.]
4. The person released on probation does not suffer a disqualification attached to a conviction under any other law.\textsuperscript{33}

Thus the object of the Act is to prevent the turning of corrigible offenders into criminals by coming into contact with hardened criminals in prisons and to secure their fundamental rights and ensure their liberty; thereby it seeks to socialize the criminals.

\textbf{PAROLE}

Parole is the release of an offender from the prison before the expiration of the term of imprisonment. The object of parole is to prepare the prisoner for adjustment to normal social life outside the prison and it therefore signifies the transitory phase from imprisonment to normal freedom. Thus being on parole the prisoner enjoys his fundamental rights subject to the conditions which may be imposed by the parole order.

In \textit{Hiralal Mallick v. State of Bihar}\textsuperscript{34} the Supreme Court observed: "One method of reducing tension by providing for vital links between the prisoner and his family. A prisoner insulated from the world becomes bestial and if his family ties are snapped for long, becomes dehumanized."

Parole is a method of humane treatment of prisoners which secures their human rights in course of their liberty.

Thus the main objectives of parole technique as stated in the Model Prison Manual are to enable the inmate to maintain continuity with his family life, to save him from the evil effects of continuous prison life and to

\textsuperscript{33} Id., Sec. 12.
\textsuperscript{34} (1977) 4 SCC 44.
enable the inmate to retain self-confidence and active interest in life as normal human being.\textsuperscript{35}

(vii) The Juvenile Justice (Care and Protection of Child) Act, 2000

The Juvenile Justice Act, 2000 is based on two fundamental assumptions:

First - Young offenders should not be tried, they should rather be corrected

Secondly - They should not be punished but be reformed.

In order to save the juveniles from the inhuman, cruel and degrading environment of the prison, and to protect their innocence personality Section 6 of the Act places a total ban on imprisonment of Juvenile delinquents. The Act empowers the state to establish special Homes for the custody of delinquent juveniles. Every such Home shall not only provide the Juvenile with accommodation, maintenance and facility for medical examination and education but also provide for vocal training and facility for useful occupation.

It is ample clear from the above outlined legislative sketch that the law not only exhibits a variety of assured safeguard to prisoners but also puts restrictions on the police and prison authorities. However, in spite of the existing constitutional and statutory provisions aimed at safeguarding the prisoners' rights, growing incidents of prisoners' victimization have been a disturbing factor. Though many reasons can be attributed to this dismal situation, lack of appropriate legislative measures in recognizing prisoners'

right is cited a major reason. The legislative developments regarding treatment of criminals are limited with regulation of administration.