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Paper : Access to Justice

Module : Access to Justice & Prisoners



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	Description of Module
Subject Name	Law
Paper Name	Access to Justice
Module Name/Title	Prisoners - Access to Justice
Pre-requisites	Understanding the meaning for the term consumer and his exploitation in the market place, Various statutory remedies available to protect his interest.
Objectives	To understand the concept of prison and to analyze various enactments dealing with prison system in India. To understand the provisions available under the Constitution and criminal law towards prison justice. Further to verify the rights of prisoners and reformative techniques in prison administration
Keywords	Prison, Pardon, Remission, Commutation, Convicted, Undertrial, Reformation, Suspend, Remit, Rights, Arbitrary action, Writ jurisdiction, Administration, Jail, Human, Exhaustive, Aggravating, Recommendations



Structure

1. Introduction
2. Learning Objectives
3. Enactments dealing with Prisoners
4. Prisoner and Constitutional provisions
5. Prisoner and role of Judiciary
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1. Introduction

The oldest penal institution is actually the jail which is commonly known as prison in all the countries. Prison is a place for detaining prisoners waiting and execution of sentence. It is a place where the criminal justice administration put its entire hopes. The correctional mechanism, if fails will make the whole criminal procedure in vain. The doctrine behind punishment for a crime has been changed a lot by the evolution of new human rights jurisprudence. The concept of reformation has become the watchword for prison administration. Human rights jurisprudence advocates that no crime should be punished in a cruel, degrading or in an inhuman manner. On the contrary, it is held that any punishment that amounts to cruel, degrading or inhuman should be treated as an offence by itself. The change caused to the criminal justice system and its correctional mechanism has been adopted worldwide.

Central government, State government and Judiciary play an important role in prison administration. Prison is a State/Union Territories (UT) subject under List-II of the Seventh Schedule to the Constitution of India. The management and administration of Prisons falls exclusively in the domain of the State Governments/UT Administrations, and is governed by the Prisons Act, 1894 and the Prison Manuals of the respective State Governments. Thus, States/UTs have the primary role, responsibility and authority to change the current prison laws, rules and regulations. The Central government providing assistance to the States/UTs to improve security in prisons, repair and renovation of old prisons, medical facilities, development of borstal schools, facilities to women offenders, vocational training, modernization of prison industries, training to prison personnel, and for the creation of high security enclosure. The Supreme Court of India has laid down various aspects of prison



administration in its judgments. The Apex Court has laid down three broad principles regarding imprisonment and custody. Firstly, a person in prison does not become a non-person; secondly, a person in prison is entitled to all human rights within the limitations of imprisonment; and, lastly there is no justification for aggravating the suffering already inherent in the process of incarceration.

2. Learning Objectives

- 1) To understand the term prison and its need in our society
- 2) To appreciate the specific enactments concerning prisoners
- 3) To find out the remedies available to prisoner under the Indian Constitution
- 4) To analyze the provisions accessible to prisoner under the Criminal Law
- 5) To examine the role played by the judiciary in incorporating a variety of rights to the prisoner

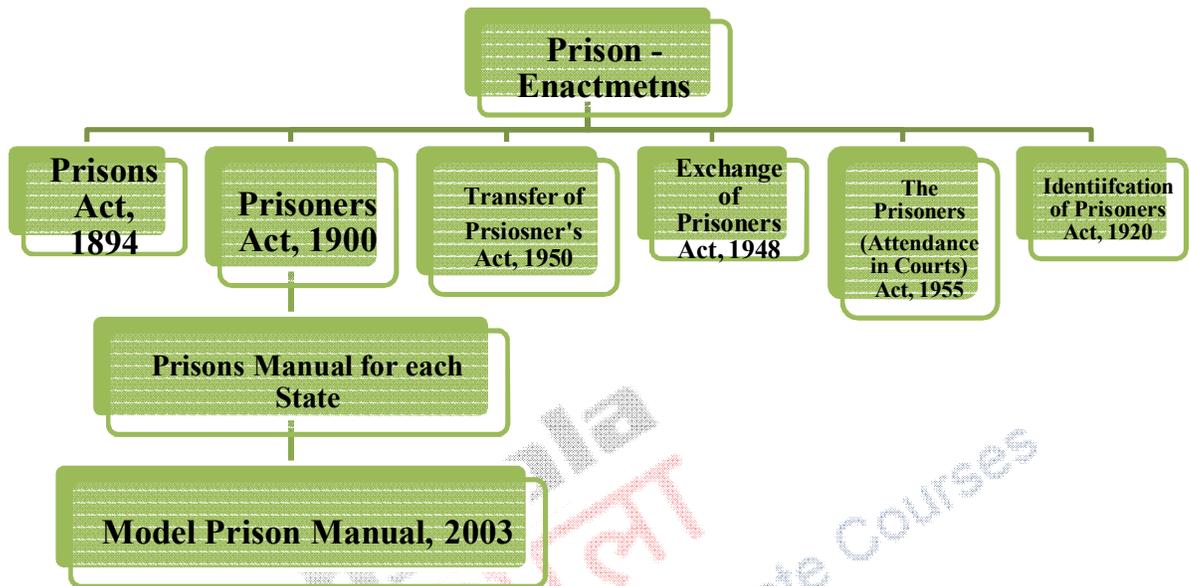
3. Enactments dealing with Prisoners

The prisons in India are in terrible conditions during the British rule under the East India Company. The British prison authorities made strenuous efforts to improve the condition of Indian prisons and prisoners. British set up various committees from time to time to make rules/recommendations for changes in the prison system in India.

The provisions of substantive prison laws in India having scope of reformation such as, Prisons Act, 1894, Prisoner Act, 1900. The term prison has been defined by the Prisons Act, 1894 in an exhaustive manner. Prison can be any place by virtue of a government order being used for the detention of prisoners. Thus even a jail will come under the definition of prison according to this definition. Similar definition has been given to prison by Prisoners Act, 1900. These two enactments still remains the basic premises by which the administration of prison has been regulated. The Prisons Act excludes police custody and subsidiary jails from the meaning of the word prison. The other two laws relating to prison include The Transfer or Prisoners Act, 1950¹ and the Prisoners (Attendance in Courts) Act, 1955².

¹ An Act to provide for the removal of person confined in a prison from one State to another State.

² An Act for the attendance in court of persons confined in prison for obtaining their evidence or answering a criminal charge



Prisons Act, 1894 is the first legislation regarding prisons regulation in India. This Act reacted to reformation of prisoners in one way or the other. This Act contain provisions relating to accommodation of prisoners, discipline of prisoners, food, clothing and bedding of civil, criminal and un-convicted prisoners, health of prisoners, employment of prisoners and prison offenses. This Act also prohibits any kind of inhuman treatment against the prisoner by the prison authorities. For example whipping shall not be inflicted as per Sec. 53, but it contains certain exceptions. Similarly confinement in irons is prohibited³ and prisoner cannot be ironed by jailer except under necessity.⁴

Highest administrative authority in respect of prison is DIG, Inspector General, for every prison there shall be Superintendent, Medical Officer, medical subordinate, Jailer and other officers (Warders) as the State government thinks necessary⁵. Prisoners are having the right to contact qualified legal advisor in the interest of justice without the presence of any other person as per the Act of 1894⁶.

³ Sec. 56 of Prisons Act, 1894

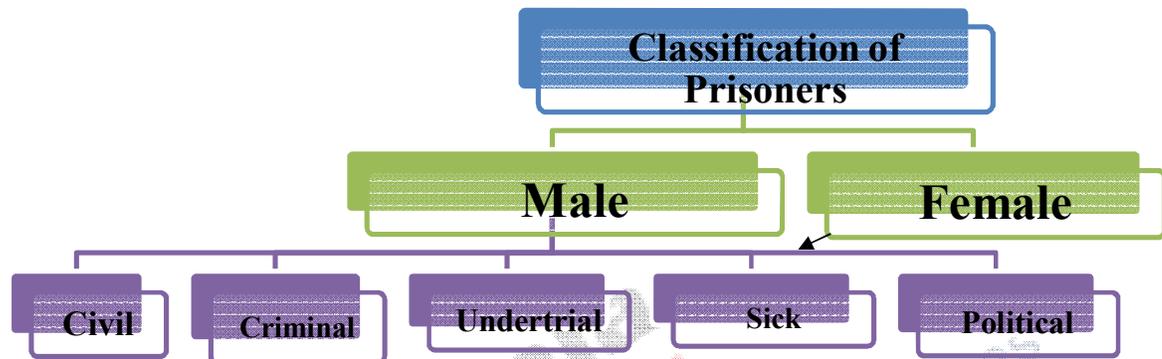
⁴ Sec. 58 of Prisons Act, 1894

⁵ Sec. 5 and 6 of Prisons Act, 1894

⁶ Sec. 40 of Prisons Act, 1894



Prisoners are broadly classified into male and female prisoners. Male and female prisoners further classified into civil, criminal, undertrial, sick and political prisoners, for the purpose of separation, treatment and administration within the prison.



The important objectives of the Prisoners Act, 1900 is to interpret the provisions of the Statute and not to debate in Parliament on the Bill. This Act deals with the prisoners in the Presidency towns, removal of prisoners including lunatic prisoners, persons under imprisonment of life, discharge, and attendance of prisoners. Besides the above important enactments other specific laws deal with prisoners include Exchange of Prisoners Act, 1948 and Identification of Prisoners Act, 1948.

British government also introduced jails reform in India by appointing committees. Indian Jail Reforms Committee was appointed during 1919-20 to suggest measures for prison reforms. The committee was headed by *Sir Alexander Cadrew*. The committees suggested for reformative approach to prison inmates and discourage the use of corporal punishment in jails. It recommended utilization of prison inmates in productive work so as to bring reformation.

After independence in 1949 Pakwasa Committee was appointed for prison reforms. It suggested for utilizing prisoners as labour for road work without any intensive supervision over them. In 1951 Government of India invited *Dr. WC Reckless*, to make recommendations on Indian prison reforms. Thereafter, a committee was appointed to prepare an All India Jail Manual in 1957 on the basis of *Dr. WC Reckless*'s suggestions. Again the Government of India appointed an All India Jail Reforms Committee in 1980 with *Justice AN Mulla* as its chairman. The committee suggested setting up of a National Prison Commission as a continuing body to about modernization of prisons in India. Committee recommended for the classification of prisoners on scientific and rational basis. Further National Committee on Women Prisoners was appointed under the authority of *Justice VR Krishna Iyer*. The



committee submitted its report to the government in 1988 and recommended induction of more women in the police force in view of their special role in tackling women and child offenders. Once again a Jail Reform Committee of 1980-83, recommended for the segregation of offenders on the basis of sex, age, criminal record, social background, as an essential feature of modern prison.

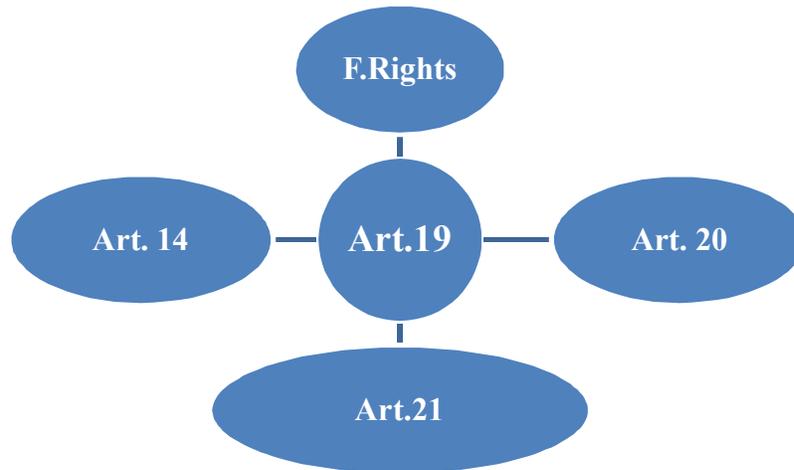
The Indian apex Court in *Ramamurthy v. State of Karnataka* (1996) brought to the forefront an urgent need for bringing uniformity in laws relating to the prisons and has directed the Central and State Governments to formulate a new *Model Prison Manual*. Earlier, the All India Committee on Jail Reforms (1980-83) had also emphasized the need for a consolidated law on prisons. Accordingly, with the approval of Ministry of Home Affairs, the Bureau of Police Research and Development constituted a *Model Prison Manual Committee* at the national level for the formulation of a Model Prison Manual. The Committee submitted the Model Prison Manual in the year 2003.

Prison administrations being a state subject the state governments have framed Prison Rules under the Prisons Act which are more or less similar with slight modifications in view of the local conditions.

4. Prisoner and Constitutional Provisions

Indian constitution intimates prison administration as a portfolio of state to legislate on. The fundamental responsibility of prison management is to secure custody and control of prisoners. Legislations if made by the states will always lack the unique standards for the protection of prisoners' rights. There should be a national policy framework that substitutes the varying state legislations. It is true that the system normally demands for a reformative framework that too one in tune with the international human rights law. This objective can be easily achieved by a national legislation rather through varying state laws. The most important national statutes applicable to all which provides various rights to citizens including a prisoner under the Indian Constitution.

The Indian constitution guarantees essential human rights in the form of fundamental rights under Part III and also directive principles of State policy in Part IV which are fundamental in the governance of the country. The most important Arts. 14, 19 and 21 are applicable to the prisoners



Art. 14 bars discrimination and prohibit discriminatory laws. Art.14 is proved as a bulwark against any arbitrary or discriminatory state action. Art.7 of the Universal Declaration of Human Rights, 1948 declares that all are equal before the law and are entitled without any discrimination to the equal protection of laws. By and large the same concept of equality inheres in Art. 14 of the Indian Constitution. Any kinds of discrimination by the State against a prisoner can be challenged as violation of Art.14. This Article also contemplates that like should be treated alike, and also provides the concept of reasonable classification. It is very useful guide and basis for the prison authorities to determine various categories of prisoners and their classification with the object of reformation. In *State (Delhi Administration) v. VC Shukla*,⁷ the Court said that the main object of the Act was to provide for the speedy trial of certain classes of offences. Offences committed by persons holding high public and political offices as trust. Quick disposal of such cases is necessary. Supreme Court held that the Act is valid. Art. 14 embody the principle of non discrimination. This Article should be read in conjunction with rights conferred by other Articles like 19 and 21.

Art.19 confers several freedoms on the citizens. There are certain freedoms which the prisoner cannot enjoy because of the very nature of these freedoms, such as freedom of movement, freedom of residence, and to settle and freedom of profession. This Article guarantees some of the basic, valued and natural rights inherent in a person. The freedoms which can be enjoyed by the prisoner also behind the bars and his imprisonment and sentence has nothing to do with these freedoms such as freedom of speech and expression, freedom to become member of an association. These freedoms are related to the concept of reformation of prisoners. Art. 19 apply to Indian citizen from state action, and violation of these freedoms comes within its purview.

Art. 21 lay down that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Judiciary interpreted the term life and liberty and incorporated various rights even applicable to prisoners. In *Maneka Gandhi v. Union of*

⁷ AIR 1980 SC 1382



*India*⁸, the Supreme Court of India interpreted Art. 21 and deeply influenced the administration of criminal justice and prison administration. In number of cases, the Apex Court has expounded several propositions with a view to humanize the administration of criminal justice in all its aspects.

In post Maneka era, in a catena of cases, the Supreme Court has exposed the cruelty of the system of Prison Administration in India and has sought to humanize it. The court has taken an active interest in seeking to improve a system which is cruel and insensitive to human pain and sufferings. In the process, the scope of fundamental rights of personal liberty guaranteed by Art. 21 have been broadened. Time and again, the Supreme Court has emphasized that Art. 14, 19 and 21 are available to prisoners as well as freemen. Prison wall do not keep out fundamental rights⁹.

In this connection the Court observed "A prisoner, be he a convict, undertrial or a detenu, does not cease to be a human being. Even when lodged in jail, he continues to enjoy all his fundamental rights including the right to life. On being convicted of crime and deprived of their liberty in accordance with the procedure established by law, prisoners still retain the residue of constitutional rights"¹⁰

The court has thus adversely commented several times upon certain aspects of prison administration, particularly, the practice of causing physical injury to the prisoners in the name of maintaining discipline. The court has laid great emphasis on the right of prisoner to the integrity of his physical person and mental personality. The court starts with the premise that fundamental rights do not stop at the prison gates.¹¹

In *Sunil Batra v. Delhi Admn.*¹² the court held that "a person under death sentence is held in jail custody so that he is available for execution of the death sentence when the time comes. No punitive detention can be imposed on him by jail authorities except for prison offences. He is not to be detained in solitary confinement as it will amount to imposing punishment for the same offence more than once which would be violative of Art. 20 (2)".

The conditions in jail are pitiable. To improve the conditions in prisons, the Supreme Court has made several suggestions in *Rama Murthy v. State of Karnataka*,¹³ that is the court has emphasized upon reducing overcrowding in prison and upon giving proper medical care to the prisoners.

⁸ AIR 1978 SC 597

⁹ T V Vatheeswaran v. State of Tamil Nadu AIR 1983 SC 361

¹⁰ State of Andhra Pradesh v. Challa Ramakrishna Reddy AIR 2000 SC 2083

¹¹ Sunil Batra v. Delhi Admn. AIR 1980 SC 1579 (II)

¹² AIR 1978 SC 1675

¹³ AIR 1997 SC 1739



5. Prisoners and Role of Judiciary

The Supreme Court of India came strongly in favour of judicial scrutiny and intervention whenever the rights of prisoners in detention or custody were found to have been infringed upon. In *Sunil Batra v. Delhi Administration and Others* (1978), Justice V. R. Krishna Iyer pronounced that, prisoners have enforceable liberties, devalued may be but not demonetised; and under our basic scheme, Prison Power must bow before Judge Power, if fundamental freedoms are in jeopardy.

Solitary confinement is still retained in the Prisons Act against which the judiciary had made their vehement dissent. The liberty to move, mix, mingle, talk, Share Company with co-prisoners if substantially curtailed would be violative of Art. 21, unless the curtailment has the backing of law and this law should lay down a fair, just and reasonable procedure. Prisons Act is also concerned about the prisoners' right to and meet visitors but that too is confined to under trial prisoners and civil prisoners. The concept of prison labour and earning are very vague from the Act.

In a number of judgements on various aspects of prison administration, the Supreme Court of India has laid down three broad principles

- i. A person in prison does not become a non-person.
- ii. A person in prison is entitled to all human rights within the limitations of imprisonment.
- iii. There is no justification in aggravating the suffering already inherent in the process of incarceration.

The above three principles have serious implications for prison administration. They not only call for a thorough restructuring of the prison system in terms of the humanisation of prison conditions, minimum standards for institutional care, reorientation of prison staff, reorganisation of prison programmes and rationalisation of prisons rules and regulations. From this viewpoint, among the various directives issued by the Supreme Court of India, in *Sunil Batra v. Delhi Administration* (1979), the following deserve a special mention: It is imperative, as implicit in article 21, that life or liberty shall not be kept in suspended animation or congealed into animal existence without the freshening flow of fair procedure. Fair procedure in dealing with the prisoners calls for another dimension of access of law-provision, within the easy reach of the law which limits liberty to persons who are prevented from moving out of prison gates.

Further the court held that No prisoner can be personally subjected to deprivation not necessitated by the fact of incarceration and the sentence of court. All other freedoms belong to him to read and write, exercise and recreation, meditation and chant, creative comforts like protection from extreme cold and heat, freedom from indignities like compulsory nudity, forced sodomy and other unbearable vulgarity, movement within the prison campus subject to requirements of discipline and security, the minimum joys of self-expression, to acquire skills and techniques and all other fundamental rights tailored to the limitations of imprisonment.



Every such affliction or abridgement is an infraction of liberty or life in its wider sense and cannot be sustained unless Article 21. There must be a corrective legal procedure fair and reasonable and effective. Such infraction will be arbitrary, under Article 14, if it is dependent on unguided discretion, unreasonable, under Article 19 if it is irremediable and nonappealable; and unfair under Article 21 if it violates principles of natural justice.

The Apex Court included other rights that are applicable in administration of criminal justice are like prisoner can avail fair trial, speedy trial, establishment of more criminal courts, right to legal assistance, prohibition of handcuffing of under trials, police torture, prison grievance etc.

6. Rights of Prisoners

It is, therefore, high time that in the light of the observations made by the Supreme Court of India, the rights and duties of prisoners are clearly spelt out. In this respect, the All India Committee on Jail Reforms, 1980-83 and Model Prison Manual 2003 has suggested as under:

RIGHTS OF PRISONERS:

Rights of the prisoners are divided in to the following categories. Following are the most important rights. The list is not exhaustive it is inclusive in nature. They are

1. Right to Human Dignity

Every person is having a right to live with dignity. Right to live with dignity is available even to prisoner. The term dignity includes the following

1. Right to be treated as a human being and as a person; this right has been stressed and recommended by the Supreme Court of India which has categorically declared that prisoners shall not be treated as nonpersons;
2. Right to integrity of the body; immunity from use of repression and personal abuse, whether by custodial staff or by prisoners;
3. Right to integrity of the mind; immunity from aggression whether by staff or by prisoners;
4. Right to non-deprivation of fundamental rights guaranteed by the Constitution of India, except in accordance with law prescribing conditions of confinement.

2. Right to Basic Minimum Needs

Right to fulfilment of basic minimum needs such as adequate diet, health, medical care and treatment, access to clean and adequate drinking water, access to clean and hygienic conditions of living accommodation, sanitation and personal hygiene, adequate clothing, bedding and other equipment.

3. Right to Communication

Right to information is a right available to every person as a fundamental right under Part III of the constitution. This right is available even to prisoner. Communication includes

- i. communication with the outside world
- ii. periodic interviews; and



- iii. Right to receive information about the outside world through various kinds of mass media.

4. Right to Access to Law

Prisoner has various legal or statutory rights from the date of detention till the completion of the sentence. Prisoner can avail the following legal rights

- i. Right to effective access to information and all legal provisions regulating conditions of detention;
- ii. Right to consult or to be defended by a legal practitioner of prisoner's choice;
- iii. Right to access to agencies, such as State Legal Aid Boards or similar organisations providing legal services;
- iv. Right to be informed on admission about legal rights to appeal, revision, review either in respect of conviction or sentence;
- v. Right to receive all court documents necessary for preferring an appeal or revision or review of sentence or conviction;
- vi. Right to effective presentation of individual complaints and grievances during confinement in prison to the appropriate authorities;
- vii. Right to communicate with the prison administration, appropriate Government and judicial authorities, as the case may be, for redressal of violation of any or all of prisoner's rights and for redressal of grievances.

5. Right against Arbitrary Prison Punishment

Right to entitlement in case of disciplinary violation

- i. to have precise information as to the nature of violation of Prisons Act and Rules,
- ii. to be heard in defence,
- iii. to communicate of the decision of disciplinary proceedings, and
- iv. to appeal as provided in rules made under the Act.

6. Right to Meaningful and Gainful Employment

Right to meaningful and gainful employment is a right as per the fundamental rights and duty of the state. No prisoner shall be required to perform *begar* and other similar forms of forced labour which is prohibited as a fundamental right against exploitation under Art.23 of the Constitution. Undertrial prisoners volunteering to do work may be given suitable work wherever practicable. Such prisoners should be paid wages as per rules.

No prisoner shall be put to domestic work with any official in the prison administration. Such work shall not be considered as meaningful or gainful, even if some monetary compensation is offered. Prisoner is having a right to get wages for the work done in prison.

7. Right to be released on the due date No prisoner shall be detained in the prison for longer duration. Once he completes his sentence he has a right to be released. It is the duty of the Prison authorities and State government to find out the tenure and release him in time.

8. Right to reformation- Parole and furlough are parts of the penal and prison system for humanizing prison administration. These are emerged and accepted as correctional devices in modern penology. Sec. 59 of the Prisons Act, 1894 empowers the State to make rules for release of prisoners of parole and furlough. Furlough is a matter of right, it is to be granted to the prisoner periodically irrespective of any particular reason merely to enable him to retain family and social ties and avoid ill effects of continuous prison life. Parole is not a matter of right basing on valid grounds and the competent authority is satisfied prisoner can be released



on parole. The Supreme Court in its judgment in *Ramamurthy v. State of Karnataka*,¹⁴ has observed that overcrowding in prisons can be considerably reduced by release of prisoners on parole, which is a conditional release of an individual from prison he has served a part of sentence imposed upon him.

7. Writ Jurisdiction

In case the rights available to prisoners under the constitution are violated by the State or its authorities the prisoner can avail the remedies by approaching the Supreme or High Court under Art. 32 and 226 of the Constitution. Remedy can be availed by the prisoner or any other person on his behalf. For instance if the State authorities detain a person without any justification, the detainees where about are not available to anyone in such situation any person can approach the Court and request the court to issue the writ of habeas corpus.¹⁵ In *Sunil Batra (II)*, the Supreme Court accepted the thesis of functional expansion of the writ of habeas corpus in the current milieu. The writ is capable of multiple uses as developed in the American jurisprudence. Further the court pointed out that its power under Art. 32 are free from rigid restraint of traditional English writs. Where the rights of prisoners either under the constitution or under the other laws are violated the writ power of the court can and should run to his rescue. Prison torture is within the reach of Supreme Court under Art. 32. The court treats letter from prisoner as writ.

The Supreme Court has assumed that under Art.32 jurisdiction to consider prisoner's grievances of ill treatment. In *Charles Sobraj*,¹⁶ the court has ruled that it can intervene with prison administration when constitutional rights or statutory prescriptions are transgressed to the injury of prisoner.

8. Prisoner and Criminal Law Provisions

General laws contain provisions, which are available and applicable to everyone in the country as well as to the prisoners. They are

1. The Indian Penal Code, 1860 and
2. The Criminal Procedure Code, 1973

Sentence awarded by the court against the prisoner can be commuted or reduced by the appropriate State government, the Apex Court and by the President of India. The *Indian Penal Code, 1860* contains various provisions benefitting the prisoners. This Act mainly deals with definition for various offenses¹⁷ under criminal law and specifies the punishment for such offense. State plays an important role in administration of criminal justice. In criminal matters always the State comes in to picture. Case is filed by the State on behalf of the victim, because the wrongful act affects the society at large.

¹⁴ (1997) 2 SCC 642

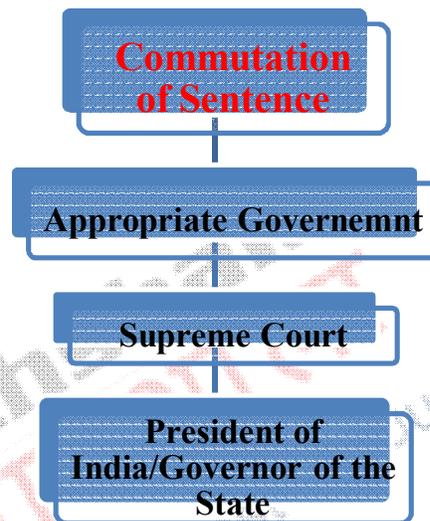
¹⁵ Habeas corpus literally means ÷to produce the body÷

¹⁶ AIR 1978 SC 1514

¹⁷ Offences relating to Human beings, property, documents, marriage, against State, Elections, public tranquility, justice, morality, weights and measures, coins etc,



Under Penal Code two sections are applicable to prisoners. First one, Sec. 54 of IPC, 1860 empowers the appropriate government to commute death sentence to life imprisonment. Commutation¹⁸ is not a right, but the appropriate government thinks it is fit it can reduce the sentence. Similarly Sec. 55 of the Act empowers the appropriate government to commute life imprisonment to fourteen years imprisonment. This power is given to the State because the State is financially not sound as a result if it thinks necessary, and they cannot maintain the prisoners lifelong which is expansive and if the prisoner shows reformation, he can be released before the completion of his sentence.

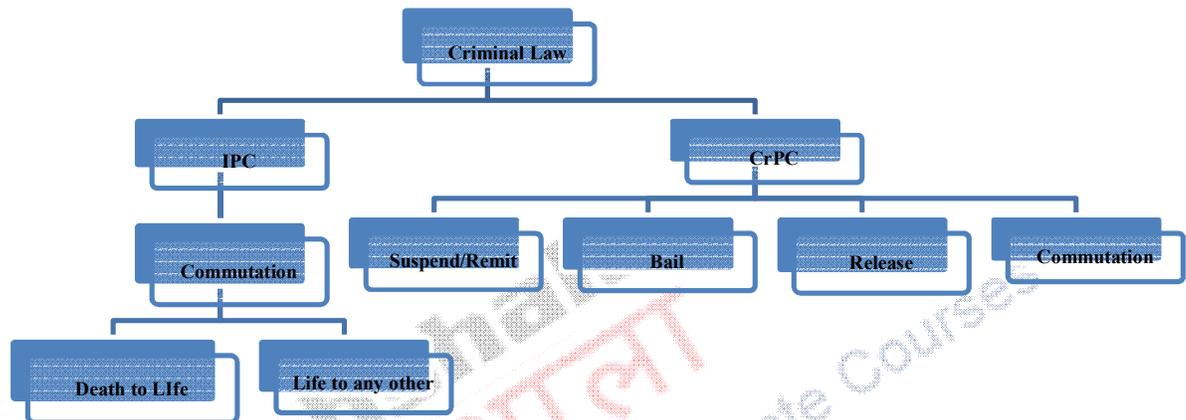


Criminal Procedure Code, 1973 deals with the procedure in criminal matters. Once a person commits any crime what procedure to be followed is laid down under this Code. Authorities should follow the procedure as per this code. They have no right to deviate from the procedure. In case of deviation court may dismiss/discharge/give notice to the authority. This Code contains provisions in favour of prisoner in the matters of commutation/suspension/remission of sentence. Firstly Sec. 164 of CrPC provides the procedure to be followed in case a confession is made by the accused person. If there is any lacuna it can be challenged as violative and inadmissible according to this provision. Another important provision is under Secs. 432 and 433. According to Sec. 432 empowers the appropriate government may at any time without the conditions may suspend the execution of sentence or remit the whole or any part of the punishment. Similarly Sec. 433 deals with commutation of sentence by the appropriate government. This sec is read with other sections (Sec 54 and 55) incorporated under IPC, 1860 Next provision is Sec. 436 is applicable to accused or detained person in case of non bailable offense. It further states that such person should be released on bail. Power to grant bail provided under Secs. 436 and 437 of the code vests in the court before whom an accused appears and is brought. The most important

¹⁸ Commutation implies reduction in the term of imprisonment but it does not wipe out the guilt of the accused



provision is *Sec. 436A*¹⁹. This section deals with undertrial prisoners who are detained in the jail for a period beyond the maximum period of imprisonment provided for the alleged offense. New *Sec. 436A* says that where an undertrial prisoner other than one accused of an offense for which death has been prescribed as one of the punishment has been under detention for a period extending to one-half of the maximum period of imprisonment provided for the alleged offense, he should be released on his personal bond, with or without sureties. Recently the Apex Court again and again ordered the lower judiciary to apply *Sec. 436A* of CrPC.



In India, power to grant pardon is conferred on the President of India and the Governor of the State under Arts. 72 and 161 of the Indian constitution respectively. Art. 72 empowers the President to grant pardon, suspend, remit or commute sentence in certain cases. Art. 161 empowers the Governor of the State to grant pardon, reprieve, respite or remission of punishment or suspend, remit or commute the sentence of person convicted of an offense against a law relating to a matter to which the executive powers of the State extends.

The Supreme Court of India also plays a role in commutation of death sentence or life imprisonment basing on the situation. Whenever there is delay in disposal of the mercy petition by the President of India. If the delay is unreasonable, prisoner is waiting for execution and undergoing mental torture, in such situation the court will commute death sentence to life imprisonment. The Supreme Court in its decision in *TV Vatheeswaran v. State of Tamil Nadu*,²⁰ held that prolonged delay in execution exceeding two years will be a sufficient ground to quash death sentence since it is unjust, unfair and unreasonable procedure and the only way to undo the wrong is to quash the death sentence.

However, in *Devender Pal Singh Bhullar & Anr. v. State Of NCT Of Delhi*,²¹ the Supreme Court expressed its reservation on mercy petitions by persons convicted under TADA and other similar statutes and said that they stand on a different footing than the petitions filed by persons convicted under general law. Terrorists are responsible for taking lives of hundreds of

¹⁹ Inserted by Criminal Procedure Code (Amendment) Act, 2005

²⁰ AIR 1983 SC 361

²¹ (2013) 6 SCC 195



innocent persons without having any mercy on them and so the delay in deciding such petitions, do not deserve mercy.

9. Concern

Prisoners are governed by specific enactments like Prisons Act, 1894 and Prisoners Act, 1900. Though the enactments are very old still they are applied in Indian to deal with rights of prisoners. Besides this prisoners can avail their rights under the Indian Constitution and Criminal law. Supreme Court incorporated various rights for the benefit of prisoners. Still prisoners are ill treated and undergoing inhuman treatment in the prison. There is a need to look in to the following aspects relating to prisoners

1. Need to create awareness about the rights to the prisoners
2. Prison authorities should not adopt inhuman or degrading treatment against the prisoner in the prison.
3. Reformative techniques like parole and furlough should be adopted regularly by the government and authorities to correct and reform the prisoners
4. Authorities and government should not delay in granting pardon, commutation, suspension or remission of sentence

10. Summary

In this module we discussed about prison and various specific enactments made from time to time to protect the rights of prisoners. Further we verified various provisions recognized under the Indian Constitution as well as Criminal law include IPC, 1860 and Criminal Procedure Code, 1973. We examined the role played by the Indian judiciary in incorporating various rights to prisoners through its judicial pronouncements. Finally we discussed various ways adopted in pardon, commutation, suspension, remission of sentence granted by the court. Present Criminal justice administration main object is to reform the criminal. To reform the criminal and to associate with family, friends and society they are allowed to sent on parole or furlough.