

Behind Bars and Beyond Identity: Navigating Gender, Law, and Incarceration in India

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ABSTRACT

This paper presents a comprehensive socio-legal examination of the rights of prison in India, with a specific focus on the unique vulnerabilities faced by transgender prisoners. Imprisonment, while intended as the State's response to criminal conduct, does not strip a person from their fundamental humanity. Yet Indian prisons; overcrowded, under-resourced and institutionally indifferent, routinely fail to uphold even the minimum constitutional guarantees owed to these within their walls. This paper traces the philosophical underpinnings of punishment through the major theories of penology; surveys the classification of prisoners and their corresponding legal rights under constitutional, statutory and international framework; examines the particular cruelties visited upon transgender inmates through documented incidents of violence, discriminatory segregation, denial of medical care and institutional invisibilities and purposes concrete recommendations grounded in constitutional values, international human rights standards and the imperative of dignified treatment for all prisoners regardless of gender identity. The central argument is that the conditions of the transgender person in the Indian prison represents the intersection of every systemic failure; of the criminal justice; of the healthcare; of social acceptance, and of the legislative implementation. Addressing this failure is not a matter of charity but of constitutional obligation.

KEYWORDS: Transgender Prisoners, Rights of Prisoners, Theories Of Punishment, Article 21, Indian Prisons, NALSA Judgment, Yogyakarta Principles, Transgender Persons (Protection Of Rights) Act, 2019, Prison Reform, Custodial Violence.

I. INTRODUCTION

"A prisoner is a person and personhood does not perish at the prison gates." - **Justice V. R. Krishna Iyer**¹

Prisons are among the most powerful instruments of the modern State. They represent the ultimate expression of the State's authority to deprive a citizen of liberty, the most fundamental of all rights. Yet the manner in which a society treats those it has imprisoned is, as Winston Churchill famously observed, a measure of its civilization. In India, this test is failed daily. The Indian prison system houses over 5,54,000 persons as of the latest National Crime Records Bureau data, operating at an average occupancy rate of 130 percent. Of these, over 77 percent are undertrials, persons who have not been convicted of any offences but are awaiting trial, many for periods exceeding the maximum sentence they could receive upon conviction. This single statistic encapsulates the systemic dysfunction of India's criminal justice

¹ Sunil Batra v. Delhi Administration (1978)

system; a system that imprisons the unconvicted in conditions that violate the Constitution, while professing adherence to the rule of law.

Within this already troubled landscape, certain categories of prisoners are rendered invisible, their specific vulnerabilities unacknowledged by prison manuals, unaddressed by legislation, and unreported in official statistics. Foremost among these invisible prisoners are transgender persons. A community that has been marginalized, criminalized, and rendered socially dead long before the prison gates close behind them, transgender prisoners face compounded layers of violence; the violence of incarnation itself, the violence of a discriminatory prison system that does not know where to place them, and the violence of a society that has never accepted them. This paper undertakes a comprehensive examination of this intersection. It begins with the theoretical foundations of imprisonment; why do we punish at all, and what are we trying to achieve? It then surveys the constitutional and legal rights that all prisoners in India are entitled to, before narrowing its focus to the specific, acute, and largely undocumented crisis of transgender persons in Indian prisons. The paper draws on constitutional jurisprudence, statutory law, international human rights standards, documented incidents of violence, survey data, and comparative analysis to propose reforms that are at once legally grounded and morally urgent.

II. THEORIES OF PUNISHMENT

Before examining the rights of prisoners, it is essential to understand the philosophical justification for imprisonment itself. Why does the State punish? What does it seek to achieve through the deprivation of liberty? The answer to these questions shapes not only the structure of criminal law but also the conditions under which punishment is administered and the rights that must be preserved throughout. Six major theories have been developed across centuries of jurisprudential thought.

A. Deterrence Theory

Deterrence theory, the intellectual product of the Classical School of criminology founded by Cesare Beccaria (1764) and developed by Jeremy Bentham, holds that the primary justification for punishment is the prevention of future crime.

Deterrence operates at two levels. Specific deterrence punishes the individual offender to discourage that specific person from reoffending. General deterrence uses the punishment of one offender as a public signal to all potential future offenders. For deterrence to function, Beccaria insisted, punishment must satisfy three conditions; it must be certain (every crime attracts punishment), swift (the interval between crime and punishment must be short), and proportionate (punishment must match the gravity of the offence, no more and no less). The principle of proportionality, now embedded in Indian sentencing jurisprudence, traces directly to deterrence theory.

In the context of transgender prisoners, deterrence theory raises a critical question; if transgender persons are disproportionately arrested for offences rooted in social marginalization (begging, survival sex work, petty crime driven by poverty and exclusion), then imprisonment as deterrence is not only ineffective but perverse. It punishes the marginalized for the consequences of their marginalization, without addressing the social conditions that made crime necessary.

B. Retributive Theory

Retributivism holds that punishment is justified not by its future consequences but by the wrongfulness of the past act. Immanuel Kant's categorical imperative provides the philosophical foundation; a person who commits a wrong deserves to be punished for it, regardless of whether that punishment produces any

beneficial social effect. Punishment is, in Kant's famous formulation, not merely instrumentally justified, it is a matter of justice owed to the moral order and to the victim.

The retributive theory is backward-looking, it anchors punishment in the desert of the offender, not in the outcome for society. The principle of *lex talionis*, the punishment must be proportionate to the wrong, is retributivism's most recognizable expression. Retributivism also provides the philosophical foundation for the concept of desert-based sentencing; what a person deserves is determined by what they did, not who they are or what they might do in the future.

Applied to transgender prisoners, retributivism demands that punishment be calibrated exclusively to the offence, not to the offender's gender identity. The additional suffering imposed on transgender prisoners through discriminatory placement, denial of medical care, and exposure to sexual violence is not retribution for any offence; it is gratuitous cruelty that no theory of punishment can justify.

C. Rehabilitative/ Reformatory Theory

The rehabilitative theory treats the criminal not as a moral agent deserving punishment but as a person with social, psychological, or educational deficits that lead to offending; deficits that can, with appropriate intervention, be corrected. The purpose of imprisonment in this view is not to make the offender suffer but to change them through education, vocational training, psychological therapy, and social skills development so that they can be reintegrated into society as productive, law-abiding members.

The rehabilitative ideal dominated progressive penology from the 1930s to the 1970s and gave rise to indeterminate sentencing, the parole system, probation, juvenile justice courts, and the modern correctional institution. In India, the Model Prison Manual 2016² and the Juvenile Justice (Care and Protection of Children) Act 2015³ reflect rehabilitative principles. The Probation of Offenders Act 1958⁴ allows courts to release first-time offenders on probation rather than imprisonment.

For transgender prisoners, rehabilitation as a theory is not merely preferable, it is constitutionally mandated. If the root causes of a transgender person's offending lie in poverty, family rejection, educational exclusion, and occupational discrimination, then addressing those causes through rehabilitation is the only morally coherent and constitutionally consistent response. Mere incarceration without rehabilitation services perpetuates the cycle of marginalization.

D. Incapacitation Theory

Incapacitation justifies punishment through the simplest of mechanisms; a person in prison cannot harm society outside. The imprisonment of a dangerous offender protects potential victims by physically removing the threat from the community for the duration of the sentence. Selective incapacitation targets high-risk, repeat offenders for extended sentences based on actual risk assessment.

The incapacitative theory underpins 'three strikes' laws in the United States, the Habitual Offenders Act in India, and the extended sentencing of dangerous offenders in various jurisdictions. Its weakness is that it requires accurate risk prediction which is notoriously difficult and that it provides no mechanism for the rehabilitation of the offender or for addressing the social conditions that produced the criminal behavior.

E. Preventive Theory

Related to but distinct from incapacitation, the preventive theory focuses on disabling the criminal from future offending through measures short of full imprisonment; probation, community service, electronic monitoring, disqualification, restraining orders. It is forward-looking and pragmatic, the measure of

² <https://bprd.nic.in/WriteReadData/userfiles/file/5230647148-Model%20Prison%20Manual.pdf>

³ <https://cara.wcd.gov.in/pdf/jj%20act%202015.pdf>

⁴ https://www.indiacode.nic.in/bitstream/123456789/15408/1/the_probation_of_offenders_act%2C_1958.pdf

success is whether future offending is prevented, not whether the offender has been made to suffer a proportionate punishment.

F. Restorative Justice Theory

The most recently developed and increasingly influential theory, restorative justice shifts the paradigm entirely. Rather than asking ‘what does the offender deserve?’ or ‘how can we prevent future crime?’, restorative justice asks ‘what needs to be done to repair the harm caused by the offence?’. The focus is on the victim, the community, and the offender’s own accountability not on the infliction of State-administered pain.

Restorative justice mechanisms, victim-offender mediation, family group conferencing, community sentencing circles, have been shown to produce higher victim satisfaction, greater offender accountability and lower recidivism rates than conventional imprisonment for many offence categories. For transgender offenders, whose offending is often linked to poverty and social exclusion, restorative approaches that address the underlying social harm while requiring active community reintegration are both effective and more just than incarceration.

G. Eclectic Penology

Indian criminal law and judicial policy are broadly eclectic, drawing on multiple theories simultaneously. The Indian Penal Code prescribes punishments (retributive/deterrent). The Probation of Offenders Act implements rehabilitative theory. The Juvenile Justice Act is explicitly reformatory. The Supreme Court’s ‘rarest of rare’ doctrine for the death penalty in *Bachan Singh v. State of Punjab* (1980) seeks to balance retributive and deterrent considerations against the value of human dignity. Section 436A CrPC (now Section 479 BNSS) releasing undertrials who have served half their maximum sentence reflects a preventive and rights-based approach.

“The classical principles of penology, namely deterrence, prevention and reformation, have to be reconciled with the constitutional values of human dignity.” – Supreme Court of India in Bachan Singh⁵

III. INDIAN PRISONS: STRUCTURE, ADMINISTRATION AND STATISTICS

Prisons in India are a State subject under Entry 4 of List II (State list) in the Seventh Schedule of the Constitution. The management and the administration of the prison falls exclusively within the domain of the State Government, governed primarily by the prisons Act, 1894; a colonial-era statute now states through funding for security improvement, renovation, medical facilities, vocational training and modernization.

The Supreme Court of India has, through decades of public interest litigation and *Suo motu* intervention, articulated three broad constitutional principles governing imprisonment; first, a person in prison does not become a non-person; second, a person in prison is entitled to all human rights within the limitation of imprisonment; and third, there is no justification for aggravating the suffering already inherent in the process of incarceration.

A. Prison Statistics- The Scale Of The Crisis.

| Parameter | Data (NCRB 2022) |
|-------------------------|-----------------------------------|
| Total prison population | Over 5,73,220 prisoners |
| Undertrial prisoners | Approx 75-77% of total population |
| Average occupancy rate | 131.4% (national average) |

⁵ *Bachan Singh v. State of Punjab*, AIR 1980 SC 898

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|--------------------------------------|--|
| State with highest overcrowding | Uttar Pradesh (178%), Uttarakhand (183%), Delhi (174%) |
| Undertrials imprisoned for 3-5 years | Over 24,000 persons |
| Women prisoners | Approximately 4.3% of total |
| Juvenile offenders | Governed separately under JJ Act 2015 |
| Custodial deaths (judicial custody) | Over 1,700 per year |

These statistics reveal a system in structural crisis. Over three-quarters of India’s prison population consists of persons who have not been convicted of any offences. The average occupancy rate exceeds 130 percent nationally, with several States approaching or exceeding 180 percent. In these conditions, every right guaranteed by the constitution, to adequate food, to medical care, to separation of undertrials and convicts, to protection from violence become practically unenforceable.

B. MAJOR STRUCTURAL PROBLEMS OF INDIAN PRISONS

- **Overcrowding:** The most persistent and pervasive problem. Overcrowding is not merely a logical challenge, it is a constitutional violation. When a cell designed for 10 persons houses 30, sanitation collapses, disease spreads violence escalates and rehabilitation becomes impossible. The Supreme Court has repeatedly directed States to address overcrowding through bail reform, establishment of fast-track courts and use of open prison.
- **Undertrial crisis:** The domination of Indian prisons by undertrial prisoners presumed innocent is the system’s most egregious failure. The default position of the Indian criminal justice system has been to imprison first and try later. The Supreme Court’s intervention in *Satender Kumar Antil v. CBI, (2022)*⁶ directing all courts to expeditiously consider bail applications represents the most recent attempt to reverse this presumption.
- **Custodial Violence:** Physical abuse of prisoners by prison staff is a chronic and documented problem. Unwarranted beating, denial of food and water as punishment, use of solitary confinement as routine discipline, and sexual abuse of women and transgender prisoners have all been documented by NGO’s, the NHRC and judicial commissioners. The (D.K.Basu Guidelines, 1997)⁷ and the Supreme Court’s 2020 direction for CCTV installation in all prisons (Paramvir Singh Saini)⁸ represent attempts to curb this abuse.
- **Absence of legal aid:** Despite the constitutional mandate under article 21 (*M.H. Hoskot, 1978*)⁹ and Legal services Authorities Act, 1987¹⁰ effective legal aid at all stages of detention and trial remains largely unavailable to most prisoners. The absence of legal representation at the remand stage, when crucial decisions about detention are made, is particularly damaging.
- **Class-Based disparities:** As documented by Neier et al. (1991) and confirmed by subsequent research, Indian prisoners operate a rigid class system in which upper-class and middle-class prisoners receive significantly better treatment, accommodation and privileges than poor prisoners. This systemic inequality within an already unequal institution compounds injustice.

⁶ *Satender Kumar Antil v. CBI (2022) 10 SCC 51*

⁷ *D. K. Basu v. State of West Bengal (1997) 1 SCC 416*

⁸ *Paramvir Singh Saini v. Baljit Singh (2021) 1 SCC 184*

⁹ *M. H. Hoskot v. State of Maharashtra (1978) 3 SCC 544*

¹⁰ https://www.indiacode.nic.in/bitstream/123456789/19023/1/legal_service_authorities_act%2C_1987.pdf

IV. CLASSIFICATION OF PRISONERS

The classification of prisoners serves multiple functions; it determines the legal rights applicable to each category, the conditions of detention, the security measures applied, the rehabilitation programmes available and the procedural safeguards that must be observed. The Prisons Act, 1894 and the Model Prison Manual 2016 together provide the primary framework for prisoner classification in India.

A. Classification By Legal Status

- Undertrial prisoners: Person who have been arrested and remanded to judicial custody but have not yet been convicted of any offence. They are presumed innocent under the Constitution and are entitled to the full procedural rights including bail, legal aid, and speedy trial. They constitute over 75% of India's prison population, an extraordinary proportion by any international standard.
- Convicted criminal prisoners: Persons who are tried and convicted of a criminal offence and sentenced to imprisonment. Their rights are restricted by the fact of conviction and sentence but they retain all functional rights consisting of imprisonment.
- Civil prisoners: Persons imprisoned under civil procedure for contempt of court, non-payment of debt under a decree or failure to comply with civil court orders. They are governed by different rules; they are governed by different rules from criminal prisoners and must be kept strictly separate.
- Detenues: Persons detained under preventive detention laws (National securities Act, UAPA, etc.) without trial. They are neither accused nor convicted. Their detention through habeas corpus; are of critical importance.
- Women prisoners: A social category requiring separate accommodation, female-only staff, gynaecological care and provision for infants. Women constitute approximately 4.3 percent of India's total prison population but are disproportionately represented as undertrials.
- Juvenile offenders: Persons below 18 years of age in conflict with the law, governed exclusively by the Juvenile Justice (Care and protection of children) Act, 2015. They may not be sent to adult prisons and must be placed in Observation Homes or Special Homes with a focus entirely on rehabilitation.
- Foreign national prisoners: Persons who are citizen of other countries, entitled to consular access under the Vienna Convention on Consular Relation 1963¹¹ and to diplomatic protection through their respective governments.
- Transgender prisoners: Persons whose gender identity differs from the sex assigned at birth. This category has received virtually no formal recognition in Indian prison law, creating a legal vacuum that has enabled systematic abuse and discrimination.

B. Classification By Offence Gravity

- Bailable vs. Non-Bailable Offences: The first schedule to the CrPC classifies all offences as bailable or non-bailable. For bailable offences, bail is a right; not a discretion. For non-bailable offences, bail may be granted at the court's discretion. This classification fundamentally determines whether a person is imprisoned before trial.
- Cognizable vs. Non-Cognizable offences: Cognizable offences permit arrest without warrant, non-cognizable offences require a magistrate's order. This classification directly affects the livelihood of pre-trial detention.

¹¹ https://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf

- Heinous, serious and petty offences: Under the Juvenile Justice Act, offenders are classified as heinous (minimum 7 years imprisonment), serious (3-7 years) and petty (less than 3 years). This classification determines whether a juvenile between 16-18 may be tried as an adult.

C. Separation Requirements Under Law

Section 27 of the Prisons Act 1894 mandates that the following categories be kept strictly separate: male and female prisoners; civil and criminal prisoners; convicted prisoners and undertrials and juveniles from adults. The failure to maintain these separations, particularly between undertrials and convicts and between adults and juveniles, is a chronic violation documented in virtually every State's prison system. For Transgender prisoners, the absence of any specific category in law means they fall through the cracks of all classification systems, creating acute vulnerability.

V. CONSTITUTIONAL AND LEGAL RIGHTS OF PRISONERS

A. Article 21: the Cornerstone

Article 21 of the Constitution of India provides that no person shall be deprived of their life or personal liberty except according to procedure established by law. The Supreme Court has, over five decades of progressive interpretation beginning with (*Maneka Gandhi v. Union Of India*, 1978)¹² explained, "The procedure established by law must be right, just, and fair, and not arbitrary, fanciful or oppressive. Otherwise, there would be no procedure at all and the requirement of Article 21 would not be satisfied" expanded Article 21 from a procedural guarantee into a substantive right to live with dignity, for prisoners, article 21 is the primary source of Constitutional protection.

The Court has derived an extensive catalogue of prisoners' rights from Article 21 including: the right against custodial torture and cruel treatment (*D.K. Basu*, 1997) the right to speedy trial (*Hussainara Khatoon*, 1979)¹³ the right of free legal aid (*M.H. Hoskot*, 1978) the right against solitary confinement except in prescribed circumstances (*Sunil Batra*, 1978) the right against handcuffing as a routine measure (*Prem Shankar Shukla*, 1980)¹⁴ the right of adequate food, water and medical care (*Francis Coralie Mullin*, 1981)¹⁵ and the right to access courts through petition even from prison.

B. Article 14: Right to Equality

Article 14 guarantees equality before the law and equal protection of laws. Within prison, it prohibits arbitrary and discriminatory treatment; between different categories of prisoners, between prisoners of different social classes and between prisoners of different gender or gender identities. The systematic exposure of transgender prisoners to conditions materially worse than those faced failure to protect from violence, constitutes a direct violation of Article 14.

C. Article 32 and 226: Access to justice.

Prisoners retain the fundamental right to approach the Supreme Court under Article 32 and the High Court under Article 226. The Supreme Court established in *Sunil Batra* that a letter written by a prisoner to a judge may be treated as a writ petition, removing procedural barriers to judicial access. This right of access to courts is among the most critical of all prisoner rights, it is the mechanism through which all other rights are enforced.

¹² *Maneka Gandhi v. Union of India* AIR 1978 SC 597

¹³ *Hussainara Khatoon v. State of Bihar* (1979) 3 SCC 1322

¹⁴ *Prem Shankar Shukla v. Delhi Administration* AIR 1980 SC 1535

¹⁵ *Francis Coralie Mullin v. Administrator, UT Delhi* (1981) 1 SCC 608

D. Statutory Rights

- Prison Act, 1894¹⁶: Provides for separation of prisoner categories (section 27), prohibition on unauthorized punishment (section 46), dietary standards (section 31) and medical facilities (section 35) despite being over a century old, it remains the primary statutory framework for prison administration.
- Code of Criminal Procedure, 1973¹⁷: Section 167 CrPC provides default bail when investigation is not completed within the statutory period. Section 436A CrPC requires release of undertrials who have served half the maximum sentence. Section 309 mandates expeditious trial.
- Model Prison Manual, 2016: Provides updated standards for prisoner treatment including open prisons, mental health care, CCTV surveillance, legal aid clinics and rehabilitation programmes. It is advisory rather than binding but has persuasive authority in proceedings.
- Protection of Human Rights Act, 1993¹⁸: establishes the National Human Rights Commission with jurisdiction to inquire into human rights violation in prisons, including custodial deaths, torture and denial of medical treatment.

VI. RIGHTS OF UNDERTRIAL PRISONERS:

The undertrial prisoner occupies a paradoxical position in the Indian Legal System; constitutionally presumed innocent, practically treated as convicted. With undertrials comprising over 75 percent of the prison population and many held for periods exceeding the maximum sentence they could receive upon conviction, the protection of undertrial rights is not a peripheral concern, it is the central challenge of Indian prison reform.

- Presumption of innocence: an undertrial is constitutionally innocent until proved guilty by a court of law. This is not merely a procedural rule but a fundamental principle that must shape every aspect of the undertrial's treatment in custody. Undertrials must be kept separate from convicts, treated with full respect owed to innocent persons, and denied nothing that does not flow necessarily from the fact of their detention.
- Right to bail: Bail is the rule, imprisonment is the exception. The supreme court in the *Satender Kumar Antil v. CBI* (2022) issued comprehensive directions requiring all courts to consider bail applications expeditiously and to release undertrials who are no flight risks or danger to witnesses. For bailable offences, bail is a right and cannot be refused.
- Default bail under Section 167 CrPC: This is an indefeasible statutory right, once the period of investigation has expired without a chargesheet being filed, the undertrial acquires an absolute right to bail that cannot be defeated even by subsequent filing of chargesheet. In *Uday Mohanlal Acharya v. State Of Maharashtra* (2001)¹⁹ the supreme court held that this right cannot be waived or defeated by technicality.
- Right to legal aid: every undertrial who cannot afford counsel is entitled to free legal representation at state expense at every stage, including the remand stage, the bail application stage and the trial stage. NALSA and State Legal Services Authorities are mandated to provide this. The gap between mandate and reality remains vast. Right to be Produced before Magistrate within 24 hours: Article 22 (2) and

¹⁶ https://www.indiacode.nic.in/bitstream/123456789/20557/1/prisons_act_1894.pdf

¹⁷ https://www.indiacode.nic.in/bitstream/123456789/15272/1/the_code_of_criminal_procedure_1973.pdf

¹⁸ https://www.indiacode.nic.in/bitstream/123456789/13233/1/the_protection_of_human_rights_act_1993.pdf

¹⁹ *Uday Mohanlal Acharya v. State of Maharashtra* (2001) 5 SCC 453

section 57 CrPC provide that every arrested person must be produced before the nearest magistrate within 24 hours. This is a fundamental Constitutional safeguard against arbitrary detention and torture.

- Right against Prolonged Detention: established that undertrials imprisoned beyond the maximum sentence for their alleged offence must be released immediately. The right to speedy trial is a fundamental right under Article 21.

VII. RIGHTS OF CONVICTED PRISONERS

A conviction does not extinguish personhood. The supreme court has consistently held that convicted prisoners retain all fundamental rights except those necessarily forfeited virtue of lawful imprisonment, the right to physical liberty. The following rights survive imprisonment.

- Right against inhumane treatment: no prisoner shall be subjected to torture, cruel, degrading or inhumane treatment. This flows from Article 21 and India's obligation under the International Covenant on Civil and Political Rights (Article 7). Custodial torture is unconstitutional regardless of gravity of the offence.
- Right to adequate Food, Water and Clothing: Francis Coralie Mulin v. Administrator, UT Delhi (1981) held that the right includes the right to the bare necessities of life including adequate nutrition, clothing and shelter. Denial of adequate food water to violate the Constitution.
- Right to medical treatment: every prisoner has a right to prompt and adequate medical care. Pt. Parmanand Katara v. Union of India (1989) held that the right to emergency medical care is absolute and applies to all persons including prisoners. Denial of medical treatment, delay of treatment, or provision of inadequate treatment violates article 21.
- Right to communicate: prisoners retain a residual right to communicate, to write letters to court and legal representatives, to receive family visits and to consult with their advocate. Interception of a prisoner's correspondence with a court or a lawyer is unconstitutional.
- Right against solitary confinement as a routine: Sunil Batra (1978) and Sunil Batra No. 2 (1980) established that solitary confinement may only be imposed in accordance with prescribed statutory procedure and only in exceptional circumstances. Routine punitive use of solitary confinement is unconstitutional.
- Right to remission, parole and furlough: prisoners have statutory rights to be considered for remission of sentence, parole and furlough. Arbitrary denial of these rights without reasons violates article 14.
- Right to education and vocational training: the reformatory theory of punishment, reflected in the Model Prison Manual and various state manuals, entitles prisoners to access educational programmes, literacy classes and vocational training. Denial of these opportunities without justification is inconsistent with the constitutional mandate.
- Right against handcuffing as routine: Prem Shankar Shukla v. Delhi Administration (1980) held that routine handcuffing of undertrials violates Article 14 and 21. Handcuffing is only permissible where there is a clear and present danger of violence or escape that cannot otherwise be prevented.

VIII. RIGHTS OF SPECIAL CATEGORIES OF PRISONERS.

A. Women Prisoners.

Women prisoners constitute approximately 4.3 percent of India's total prison population but face disproportionate vulnerability. They must be kept strictly separate from male prisoners at all times,

searched and supervised exclusively by female staff and provided with gender-specific medical care including gynaecological and obstetric services. Section 46(4) CrPC prohibits the arrest of a woman after sunset and before sunrise except with a magistrate's prior written permission. Pregnant women prisoners are entitled to deliver in hospital facilities and to retain their infants with them in prison up to the age specified in the applicable State prison manual. The Supreme Court in *Maharashtra v. Madhulkar Narayan Mardikar* (1991) held that every women, regardless of her background, has the right to privacy and protection from sexual assault by State actors.

B. Juvenile Offenders

Children in conflict with the law are governed exclusively by the Juvenile Justice (care and protection of children) Act, 2015. No child below 18 years may be sent to an adult prison. Children must be placed in observation homes or special homes with the exclusive focus on rehabilitation, reformation and reintegration. Children aged 16-18 accused of heinous crimes may be tried as adults only after assessment from the juvenile justice board. The identity of the juvenile in conflict with the law may not be disclosed in any media or public forum. The JJ Act reflects the reformatory theory of punishment in its purest form, treating every juvenile as capable of change and entitled to a second chance.

C. Death row offenders

Death row prisoners have been granted significant additional protections by the supreme court in *Shatrugun Chauhan v. Union of India* (2014)²⁰ the right to at least 14 days notice before execution; the right to have a mercy petition filed and decided without unreasonable delay; the right against execution while a mercy petition is pending and the right to have mental illness and prolonged incarceration considered as grounds for commutation. The court held that prolonged incarceration of a prisoner on a death row, combined with repeated reprieve and re-sentencing, itself commutes cruel and unusual treatment that can justify commutation of the sentence to life imprisonment.

IX. TRANSGENDER PERSONS AND INDIAN SOCIETY

“The transgender persons, down the centuries, have been subjected to extreme discrimination in matters of education, employment, health and so on, and have been subjected to violence as well.” – **National Legal Services Authority v. Union of India, (2014)**

The transgender community in India has historically been marginalized and discriminated against, socially, economically and politically. Transgender persons are viewed by many as “abnormal” or “deviant”, and face physical and emotional violence and abuse, including sexual assault. Many incidents go unreported due to fear of retribution or lack of legal recognition. Most of the transgender persons in India either engage in sex work or begging due to less or no job opportunities, most of them face gender-based abuse and violence on a daily basis.

According to a census which was conducted in 2011 the population of transgender people was 4.9 lakhs and in which only 46% of people were literate which is extremely less compared to the normal population which has a literacy rate of 74%. According to the right to education act, they are categorized as a ‘disadvantaged group’ which means they have 25% reservation as an economically weaker section. The reasons why they are less educated can be listed as poverty, exclusion from their own family and friends, mental health issues. Since they are not given education opportunities, this further results in not finding

²⁰ *Shatrugun Chauhan v. Union of India* (2014) 3 SCC 1

employment and even for those who pursue their education full of struggles, they are not given the same respect and value in the workplace.

The transgender community is often looked down upon as a lower class by society resulting in exclusion. They are not treated with equal respect and are restrained from getting equal opportunities in society. In many cases it has been recorded that individuals are thrown out by their own families and not accepted due to the fear that the society will not accept the family as well.

Transphobia refers to the prejudice, discrimination, or fear towards transgender individuals. It's the negative attitudes or actions directed towards people who do not identify with the gender they were assigned at birth. Transphobia can manifest in various ways, such as verbal abuse, harassment, or denial of rights. Compared to the people who identify themselves as heterosexuals, the transgender community faces a lot of harassment, discrimination, and intolerance from society. Due to the moral, religious, and societal beliefs few individuals turn out to be transphobic which results in attacks, negativity, workplace harassment, etc. this impacts the community and the society as well. This leads to mental issues, depression, loneliness, suicidal thoughts, etc.

The Transgender community is not legally protected as much as any other community and because of this, they are easily victimized for the crimes that they didn't even commit. They undergo a lot of violence and become victims of hate crimes.

While the treatment of transgender individuals in India has been a subject of concern for many years, there have been several developments and policy changes that have impacted the society. In 2019, the Indian Government introduced the Transgender Persons (Protection of Rights) Bill, which aimed to provide legal protection to the transgender community and prevent discrimination against them. The Transgender Persons (Protection of Rights) Bill, 2019 was introduced in Lok Sabha on July 19, 2019 by the Minister for Social Justice and Empowerment, Mr. Thawarchand Gehlot.

X. TRANSGENDER PERSONS IN INDIAN PRISONS: VISIBILITY, VULNERABILITY, AND INSTITUTIONAL GAPS

If life outside prison is difficult for transgender persons, life inside prison is a compounded and often unbearable ordeal. The prison environment concentrates every vulnerability that transgender persons face in the outside world such as discrimination, violence, denial of medical care, social exclusion, and institutional indifference, while adding the unique vulnerabilities of incarceration such as complete dependency on prison administration, the absence of the communities of support that provide some protection outside, and the systematic curtailment of the autonomy to advocate for oneself.

The Violence of Placement: Segregation on the Basis of Genitalia

Perhaps the most fundamental violation of transgender prisoners' dignity is the practice, confirmed by the prison authorities of at least 16 States, of segregating transgender prisoners on the basis of biological identification or genitalia rather than self-identified gender. A transgender woman, identified by the prison medical officer as having male genitalia, is placed in the male section of the prison, an environment in which she faces acute risk of sexual assault, harassment, and violence from male prisoners and staff.

This practice directly violates the NALSA judgment of 2014, in which the Supreme Court held that transgender persons have the right to self-identify their gender and that the State is obligated to recognize this self-identification for all purposes including government documents and official records. The continuation of biological-sex-based prison segregation in the face of this constitutional ruling represents institutional contempt for the Supreme Court's directive.

States including Arunachal Pradesh, Assam, and Nagaland claimed to have no information on segregation practices, a response that is itself alarming. States including Odisha, West Bengal, and Tripura stated that their jail manuals contain provisions only for male and female inmates, leaving transgender persons entirely outside the legal framework. Some States including Maharashtra, Kerala, Sikkim, Gujarat, Telangana, Karnataka, and Rajasthan reported isolating transgender prisoners in separate cells or hospital wards, a response that, while perhaps intended as protective, amounts to punitive solitary confinement for the ‘offence’ of being transgender.

Sexual Violence and Custodial Abuse

The documented incidents of sexual violence against transgender prisoners in India are deeply disturbing. The PUCL Karnataka report of 2003, one of the first documented reports of violence against LGBTQ+ persons in Indian prisons, recorded gruesome accounts of sexual abuse and violence against Kothi community members in Bangalore prison. In 2015, five transgender persons lodged in a jail in Mysuru reported incidents of sexual assault, harassment, and rape.

When a transgender person is placed in a male prison section based on genital examination, they are placed in precisely the environment in which they are most vulnerable to sexual violence. The power imbalance inherent in incarceration, combined with the historical dehumanization of transgender persons and the absence of any formal prison policy protecting them, creates conditions in which sexual violence is predictable, systematic, and largely unpunished. Reports indicate that transgender prisoners are frequently coerced into providing sexual favors in exchange for basic necessities such as food, blankets, protection from other prisoners, mirroring the dynamics of exploitation seen among women prisoners.

Denial of Medical Care

The medical needs of transgender prisoners are both standard (general healthcare applicable to all prisoners) and specific to their gender identity (hormone therapy, treatment related to gender-affirming procedures, mental health support for gender dysphoria). Indian prison medical systems, already grossly inadequate for the general prison population, are entirely unprepared to address transgender-specific medical needs.

A particularly stark example occurred in 2016 in Bengaluru Central Prison, where medical staff were found to be completely inept in treating an infection in the silicone implants of a transgender prisoner. The medical officers employed across Karnataka’s prisons were reported to be ill-equipped to treat transgender prisoners. Beyond specific incidents, the systemic denial of hormone therapy, which for many transgender persons is medically necessary for the management of gender dysphoria, constitutes cruel and inhuman treatment under Article 21 and the Nelson Mandela Rules. The abrupt withdrawal of hormone therapy upon incarceration can cause severe physical and psychological distress.

Mental Health Crisis

Transgender prisoners face an acute mental health crisis that is almost entirely unaddressed by Indian prison systems. Pre-existing mental health conditions linked to the experience of gender dysphoria, combined with the trauma of family rejection and social marginalization, are compounded by the additional trauma of incarceration, sexual violence, and institutional dehumanization. The absence of transgender-affirming mental health care within prisons including counselling, psychiatric support, and peer support means that the mental health needs of transgender prisoners are simply ignored, with predictable consequences for psychological wellbeing and rehabilitation outcomes.

Suicidal ideation and self-harm are significantly elevated among transgender prisoners globally, and there is no reason to believe Indian transgender prisoners are an exception to this finding. The absence of data,

itself a product of the institutional invisibility of transgender prisoners, makes it impossible to quantify the scale of the mental health crisis, but the qualitative evidence from advocacy reports and judicial proceedings is deeply concerning.

Discrimination in Prison Labour and Activities

Transgender prisoners face discrimination not only in their physical placement but in every aspect of prison life. They are excluded from work assignments, vocational training, and rehabilitative programmes on grounds that reflect the prison administration's inability or unwillingness to accommodate persons outside the male/female binary. This exclusion from the rehabilitative and reintegrative functions of imprisonment further diminishes the prospects of successful social reintegration upon release, perpetuating the cycle of marginalization and offending.

XI. PROCEDURE OF INCARCERATION AND ITS IMPACT ON TRANSGENDER PERSONS

The Model Prison Manual 2016 prescribes a detailed procedure for the admission of prisoners. Understanding this procedure through the lens of transgender incarceration reveals the points at which dignity is most acutely compromised.

- **Initial Examination (5.34):** The Assistant/Deputy Superintendent examines the warrant and the prisoner on admission. For transgender prisoners, this first point of contact often involves misgendering, treating them with visible contempt or curiosity rather than professional respect.
- **Search of Prisoners on Admission (5.43):** The body search of transgender prisoners, conducted according to the same procedures as for male or female prisoners, is a point of particular vulnerability. Where a transgender woman is searched by male staff, or a transgender man by female staff, the search becomes a site of humiliation, violation, and potential abuse.
- **Allocation to Wards:** Following the initial admission procedures, the prisoner is allocated to a ward. As documented above, this allocation, made on the basis of genitalia, is the primary mechanism through which transgender prisoners are exposed to violence and abuse. The absence of any protocol in the Model Prison Manual for transgender allocation represents a critical gap.
- **Medical Examination (5.66):** The medical examination on admission is the point at which the prison medical officer determines the prisoner's "sex" for the purpose of ward allocation. Sixteen States have confirmed that this biological determination overrides the prisoner's self-identified gender. The NALSA judgment's recognition of self-identified gender is thus being directly violated at this procedural step.
- **Orientation (5.46):** The orientation programme for newly admitted prisoners does not, in any State's prison manual, include any provision for the specific challenges faced by transgender prisoners, no information about complaint mechanisms for gender-based abuse, no provision for mental health support, no information about hormonal or other gender-affirming care, and no guarantee of protection from targeted violence.
- **History Ticket (5.47):** The History Ticket, the primary administrative record of each prisoner, captures basic biographical and criminal information. It does not include gender identity as a field, separate from biological sex. This administrative invisibility of transgender identity within the formal prison record-keeping system perpetuates institutional indifference.

XII. INTERNATIONAL STANDARDS: YOGYAKARTA PRINCIPLES AND NELSON MANDELA RULES

The Nelson Mandela Rules, 2015

The United Nations Standard Minimum Rules for the Treatment of Prisoners, revised in 2015 and renamed the Nelson Mandela Rules in honour of the most celebrated prisoner of the twentieth century, provide the global baseline for prisoner treatment. They are premised on the obligation to treat all prisoners with respect for their inherent dignity and value as human beings, and to prohibit torture and other forms of ill-treatment. The Rules specifically acknowledge that prison administrators must take into account the rights of prisoners with special needs.

Rule 2(1) prohibits discrimination on the grounds of gender and identity. Rule 11 requires that special accommodation and attention be given to prisoners with special needs, explicitly including LGBTQ+ prisoners in many interpretive guidelines. Rules 43-45 strictly limit solitary confinement, prohibiting its use for indefinite period and for vulnerable prisoners. Rule 24 guarantees healthcare equivalent to the community standard, which necessarily encompasses gender-affirming care for transgender prisoners.

The Yogyakarta Principles, 2006²¹

The Yogyakarta Principles is a document about human rights in the areas of sexual orientation and gender identity that was published as the outcome of an international meeting of human rights groups in Yogyakarta, Indonesia, in November 2006.

This document, in its Principle 7, states, ‘The Right to Freedom from arbitrary Deprivation of Liberty’. It suggests that, No one shall be subjected to arbitrary arrest or detention. Arrest or detention on the basis of sexual orientation or gender identity, whether pursuant to a court order or otherwise, is arbitrary. All persons under arrest, regardless of their sexual orientation or gender identity, are entitled, on the basis of equality, to be informed of the reasons for arrest and the nature of any charges against them, to be brought promptly before a judicial officer and to bring court proceedings to determine the lawfulness of detention, whether or not charged with any offence.

It suggests that the States shall:

- Take all necessary legislative, administrative and other measures to ensure that sexual orientation or gender identity may under no circumstances be the basis for arrest or detention, including the elimination of vaguely worded criminal law provisions that invite discriminatory application or otherwise provide scope for arrests based on prejudice.
- Take all necessary legislative, administrative and other measures to ensure that all persons under arrest, regardless of their sexual orientation or gender identity, are entitled, on the basis of equality, to be informed of the reasons for arrest and the nature of any charges against them, and whether charged or not, to be brought promptly before a judicial officer and to bring court proceedings to determine the lawfulness of detention.
- Undertake programmes of training and awareness-raising to educate police and other law enforcement personnel regarding the arbitrariness of arrest and detention based on a person’s sexual orientation or gender identity.
- Maintain accurate and up to date records of all arrests and detentions, indicating the date, location and reason for detention, and ensure independent oversight of all places of detention by bodies that are

²¹ <https://www.refworld.org/pdfid/48244e602.pdf>

adequately mandated and equipped to identify arrests and detentions that may be motivated by the sexual orientation or gender identity of a person.

The Principle 8 states, 'The Right to a Fair Trial'. It suggests that, everyone is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law, in the determination of their rights and obligations in a suit at law and of any criminal charge against them, without prejudice or discrimination on the basis of sexual orientation or gender identity.

It suggests that the States shall:

- Take all necessary legislative, administrative and other measures to prohibit and eliminate prejudicial treatment on the basis of sexual orientation or gender identity at every stage of the judicial process, in civil and criminal proceedings and all other judicial and administrative proceedings which determine rights and obligations, and to ensure that no one's credibility or character as a party, witness, advocate or decision-maker is impugned by reason of their sexual orientation or gender identity.
- Take all necessary and reasonable steps to protect persons from criminal prosecutions or civil proceedings that are motivated wholly or in part by prejudice regarding sexual orientation or gender identity.
- Undertake programmes of training and awareness-raising for judges, court personnel, prosecutors, lawyers and others regarding international human rights standards and principles of equality and non-discrimination, including in relation to sexual orientation and gender identity.

Principle 9 of this document states, 'The Right to Treatment with Humanity while in Detention'. It suggests that, Everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Sexual orientation and gender identity are integral to each person's dignity.

It suggests that the States shall:

- Ensure that placement in detention avoids further marginalising persons on the basis of sexual orientation or gender identity or subjecting them to risk of violence, ill-treatment or physical, mental or sexual abuse.
- Provide adequate access to medical care and counselling appropriate to the needs of those in custody, recognising any particular needs of persons on the basis of their sexual orientation or gender identity, including with regard to reproductive health, access to HIV/AIDS information and therapy and access to hormonal or other therapy as well as to gender-reassignment treatments where desired. Ensure, to the extent possible, that all prisoners participate in decisions regarding the place of detention appropriate to their sexual orientation and gender identity.
- Put protective measures in place for all prisoners vulnerable to violence or abuse on the basis of their sexual orientation, gender identity or gender expression and ensure, so far as is reasonably practicable, that such protective measures involve no greater restriction of their rights than is experienced by the general prison population.
- Ensure that conjugal visits, where permitted, are granted on an equal basis to all prisoners and detainees, regardless of the gender of their partner.
- Provide for the independent monitoring of detention facilities by the State as well as by non-governmental organisations including organisations working in the spheres of sexual orientation and gender identity.
- Undertake programmes of training and awareness-raising for prison personnel and all other officials in the public and private sector who are engaged in detention facilities, regarding international human

rights standards and principles of equality and non-discrimination, including in relation to sexual orientation and gender identity.

The Yogyakarta Principles provide and obligate the Government to implement such policies and provisions in regards to transgender prisoners. As mentioned before, another Act which talks about the rights of transgender persons is The Transgender Persons (Protection of Rights) Act, 2019.

ICCPR and Other International Instruments

India ratified the International Covenant on Civil and Political Rights (ICCPR) in 1979. Article 7 prohibits torture and cruel, inhuman, or degrading treatment. Article 10(1) requires that all persons deprived of liberty be treated with humanity and respect for their inherent dignity. Article 10(3) mandates that the penitentiary shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. The UN Human Rights Committee has interpreted Article 7 and 10 to prohibit the deliberate or reckless exposure of prisoners to sexual violence by other prisoners, directly applicable to the placement of transgender women in male prison sections.

XIII. LEGISLATIVE FRAMEWORK: THE TRANSGENDER PERSONS PROTECTION OF RIGHTS ACT, 2019

The Transgender Persons (Protection of Rights) Act, 2019, introduced in the Lok Sabha on July 19, 2019 by the Minister for Social Justice and Empowerment, Mr. Thaawarchand Gehlot, represents the most significant legislative acknowledgment of transgender rights in Indian history. The Act prohibits discrimination against transgender persons in education, employment, healthcare, public accommodation, and access to government facilities. It creates a mechanism for obtaining a certificate of identity that recognizes self-identified gender. It establishes offences and penalties for acts against transgender persons.

Section 11 - Complaint Officer: Section 11 requires the designation of a complaint officer to deal with complaints of violation of rights of transgender persons. In the prison context, only 13 States and 2 Union Territories had designated complaint officers as of the latest review, a dismal rate of compliance that reflects the gap between legislative mandate and administrative reality.

Section 18 - Offences and Penalties: Section 18 creates specific offences including compelling a transgender person to beg, denial of access to public places, forcing a transgender person to leave their household, and physical, sexual, verbal, emotional, or economic abuse. These offences are directly applicable to conduct by prison authorities but enforcement is virtually non-existent.

Self-Identification: The Act provides for a self-identification mechanism through a certificate of identity process. However, the requirement of a district magistrate's certificate (though the unconstitutional requirement for a medical certificate for gender reassignment cases was modified) continues to create barriers to legal recognition of gender identity.

The Act has attracted significant criticism from transgender rights advocates and legal scholars. The Act does not provide reservations in education and employment, which transgender rights activists argue are essential given the community's historical exclusion. The penalty provisions for offences against transgender persons (maximum 2 years imprisonment) are considered disproportionately lenient relative to analogous offences. The Act does not address the specific vulnerabilities of transgender persons in prisons. Most significantly, the gap between the Act's provisions and their implementation reflected in the survey data discussed below, means that its protections remain largely theoretical for most transgender persons.

XIV. AWARENESS IN THE SOCIETY

A survey conducted for this paper demonstrated that a significant majority of respondents remain unaware of the rights of transgender persons in general society, let alone in prison. The survey findings reveal several important dimensions of the awareness problem.

- Segregation Awareness: When asked whether prisoners are identified and segregated on the basis of biological identification or self-identified gender, 72.6 percent of the 124 respondents believed that biological identification was used, consistent with the actual practice in 16 States as documented by the Times of India²². Only 27.4 percent believed that self-identified gender was respected. This near-accurate public perception of discriminatory practice suggests that the violation is not hidden but simply accepted.
- Welfare Scheme Awareness: When asked whether specific welfare schemes for transgender prisoners exist, 62 out of 124 respondents were unaware of any such schemes. The factual position is stark, only 7 States and 2 UTs have specifically provided for measures to facilitate transgender prisoners' access to welfare schemes. The majority of States have simply extended existing schemes, designed without reference to transgender needs, to transgender prisoners.
- Awareness of the 2019 Act: 56 out of 124 respondents were unaware of the Transgender Persons (Protection of Rights) Act, 2019. Nearly half of the surveyed educated individuals were unaware of the primary legislation protecting transgender rights.

The survey data collectively point to a systemic failure of dissemination of the law, of the rights it confers, and of the violations that persist despite it. This failure operates at multiple levels; among prison administrators who are not trained in transgender-specific rights, among transgender prisoners themselves who do not know their legal rights, among lawyers who are not equipped to advocate for transgender prisoner rights, and among the general public whose ignorance enables institutional indifference to continue unchallenged.

XV. RECOMMENDATIONS

The following recommendations are grounded in constitutional values, international human rights standards and practical realities of transgender incarceration in India. They are addressed to the central government, state government, prison administration, judiciary and civil societies.

A. Legislative and policy reforms.

Enactment of a new prisons act: the prisons act, 1894 is 130 years old and entirely silent on the rights of transgender prisoners, mental health care, CCTV surveillance, open prisons and rehabilitative programming. A new, comprehensive prisons act, recommended by the law commission in multiple reports and by the Justice Amitava Roy Committee (2018) must be enacted urgently. It must specifically include provisions for transgender prisoner classification, placement, medical care and protection from violence.

Amendment of the Model Prison Manual: the model prison manual 2016 must be urgently amended to include a dedicated chapter on transgenders prisoners covering self-identified gender as the basis of all classification and placement decisions; protocols for body searches of transgender prisoners by

²² <https://timesofindia.indiatimes.com/india/transgender-prisoners-must-be-treated-at-par-with-other-inmates-says-sc-panel-on-prison-reforms/articleshow/103245926.cms>

appropriately assigned staff, gender-affirming medical care including continuity of hormone therapy, mental health support, protection from violence and grievance redressal mechanism.

Strengthening the transgender persons act: the transgender persons (protection of rights) act 2019 must be amended to include, reservation in education and employment: enhance penalty provisions for offences against transgender persons in criminal justice system, mandate transgender specific prison protocols in all States and provide for independent monitoring of compliance.

B. Administrative reforms

Self-identified gender for placement: all prison authorities must immediately implement the NALSA judgment and place transgender prisoners according to their self-identified gender, not on the basis of genital examination. Ideally, a dedicated transgender ward, adequately resourced and properly survived, should be established in all Central Prisons.

Separate, safe sanitation: every prison housing transgender prisoners must provide separate, safe and clean sanitation facilities accessible to transgender inmates without exposure to harassment from other prisoners or staff.

Gender-Affirming medical care: Prison medical staff must be trained in transgender-specific healthcare needs. Continuity of hormone therapy and other gender-affirming treatments must be guaranteed upon admission. The frequency of health check-ups for transgender prisoners should be increased. Referral pathways to specialist transgender health services must be established.

Mental health services: all prisons must provide access to mental health professionals competent in transgender-specific issues, including counselling for gender dysphoria, trauma for sexual violence and the compounded psychological effects of incarceration for persons already experiencing severe social marginalization.

Training of prison personnel: mandatory, regular training on transgender rights, gender identity and specific vulnerabilities of transgender prisoners must be provided to all prison staff, from superintendents to guards. This training must be developed in consultation with transgender rights organizations.

Complaint officers and accountability: every prison must designate a complaint officer as required by section 11 of the Transgender Persons (Protection of Rights) act 2019. Complaints by transgender prisoners of abuse, discrimination or rights violations must be investigated promptly and independently, with perpetrators facing discrimination or rights violations must be investigated promptly and independently with perpetrators facing disciplinary and criminal consequences.

Employment and vocational training without discrimination: transgender prisoners must have equal access to all work assignments, vocational training programmes, skill development courses and educational facilities within the prison. Discrimination in the allocation of these opportunities must be treated as a disciplinary violation.

C. Judicial Reform

Sensitive bail decisions: courts must be particularly attentive to bail applications of transgender persons, recognizing that incarceration exposes them to acute risks of violence. Where possible, alternative measures to pre-trial detention; regular reporting, supervision orders, should be prioritized for transgender accused.

Training of judges and prosecutors: in accordance with Yogyakarta Principle 8, judges, prosecutors and defense lawyers must receive training in the rights of transgender persons and in anti-discrimination principles applicable to criminal proceedings and detention. The NALSA framework must be actively applied.

Suo Motu Oversight: High Courts in all States should periodically exercise their supervisory jurisdiction under Article 226 to examine conditions for transgender prisoners, similar to the monitoring exercises conducted for women and juvenile prisoners.

D. Civil Society and Community Recommendations

Transgender-led Prison Monitoring: Non-governmental organizations led by and working with transgender persons must be granted regular, independent access to monitor conditions for transgender prisoners in all States. Their reports must be provided to courts and parliamentary committees.

Legal Aid Clinics: NALSA and State Legal Services Authorities must establish specialized legal aid clinics staffed by lawyers trained in transgender rights to provide legal assistance to transgender persons at every stage from arrest, through trial to incarceration and release.

Post-Release support: release from prison without support for reintegration perpetuates the cycle of marginalization and offending. Structured post-release programmes, holding support, employment facilitation, health continuity, community reconnection, must be developed specifically for transgender ex-prisoners.

XVI. CONCLUSION

The condition of a transgender person in an Indian prison represents the convergence of virtually every institutional failure that India's democracy must confront. It is the failure of a criminal justice system that presumes guilt before conviction, incarcerates the poor and the marginalized in numbers that dwarf the convicted and treats detention as an administrative convenience rather than a constitutional exception. It is a failure of a prison system that has not substantially reformed in 130 years that operates at 130 percent capacity and that cannot guarantee the safety, dignity or basic rights of any of its inmates, let alone those who fail outside its rigidly binary classification system. It is the failure of the legislative framework that has enacted protections without ensuring implementation, that has declared rights without providing remedies and that continues to treat transgender persons as an afterthought in the design of institutions that exercise life-altering power over them yet the tools for change exist.

The constitution of India, interpreted by the supreme court in judgment after landmark judgment, provides a robust framework of rights that if enforced would transform the conditions of transgender prisoners overnight. The NALSA judgment of 2014 recognized the constitutional status of transgender identity. The D.K Basu guidelines addressed custodial torture. Hussainara Khatoon addressed that undertrial crisis. Sunil Batra addressed solitary confinement. What is missing is not law but will, the political will to implement constitutional mandates, the administrative will to train prison staff and revise prison manuals and the judicial will to insist through consistent supervision that constitutional rights are real rights, not aspirational declarations.

Yogyakarta principles remind us that sexual orientation and gender identity are integral to each person's dignity. A person that strips a person of their dignity not as an incidental consequence of detention but as a deliberate institutional practice violates not only international human rights law but the most fundamental commitment of our constitution that every person, in every circumstance retains their humanity. It is time for India's prison system to be held that commitment.