

# INSTITUTIONAL CASTE DISCRIMINATION INSIDE INDIAN PRISONS: A LEGAL STUDY OF ‘SUKANYA SHANCHA CASE (2024)’

*Krishna Murari Yadav\**

## I. INTRODUCTION

Justice is another name for equality, liberty, and fraternity. Where there is inequality and slavery, there is no justice. Caste is a form which has established inequality and slavery. Caste is decided by birth rather than merit. Casteism is a blot on humanity created by selfish, high-minded people. Varna is a parent of the caste, and Manu, who might not be the author of the caste, is the progenitor of the caste<sup>1</sup>. Manu, in his work *Manusmriti*, addressed the origin of human beings from Lord Brahma<sup>2</sup> wherein Shudra is the lowest category. The caste system is based on vertical, with Brahmin at the top and Shudra at the lowest.<sup>3</sup> It is totally non-scientific and against humanity and equality. He did not favour making even intellectual Shudras expounders of a law and was against equality.<sup>4</sup> He was a strong supporter of untouchability and slavery.<sup>5</sup> This was the most prominent conspiracy to separate one human from another human. Gradually, caste became an integral part of religion. Persons of the Scheduled Castes (SCs) and the Scheduled Tribes (STs) were deprived of education and many basic amenities. Several persons, including Jyotiba Phule, Periyar, and Ambedkar, fought against caste discrimination. Several Articles of the Indian Constitution, including articles 14, 15, 17, 21 and 23, directly or indirectly prohibit discrimination and forced labour based on caste. Also, Parliament and State Legislatures made laws to prohibit discrimination based on it.

It is deplorable that many manuals made after the commencement of the Indian Constitution by using the power conferred by section 59 of the Prisons Act, 1894, enforced today, are based on caste discrimination. For example, rule 636 of the Punjab Jail Manual, 1996 says that the work of a sweeper is mandatory for *Mehtar* or similar caste (Dalit) and for another caste (other than Dalit), such work is voluntary.

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\* Assistant Professor, Law Centre-I, Faculty of Law, University of Delhi, Delhi, India.

<sup>1</sup> Hari Narake, III Dr. Babasaheb Ambedkar: *Writings and Speeches* 25 (Dr. Ambedkar Foundation, Ministry of Social Justice & Empowerment, Govt. of India, 2014), available at: [https://www.mea.gov.in/images/attach/amb/volume\\_03.pdf](https://www.mea.gov.in/images/attach/amb/volume_03.pdf) (last visited on Oct. 12, 2024).

<sup>2</sup> *Manusmriti*, Chapter 1, Shloka 31.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Id.*, ch. 8, Shlokas 21 and 22 (Even meritorious Shudras should not be made justice); ch. 8, Shloka 281 (If Shudra tries to sit on cot behind Brahmin, it is the duty of the king to exile him; ch. 8, Shlokas 269 and 270 (Offence is same, but punishment is different); and ch. 10, Shloka 121 (He prohibited Shudra from collection of money).

<sup>5</sup> Manu recognizes seven kinds of slaves (ch. 8, Shloka 415). Narada recognizes fifteen kinds of slaves (V-25). Manu in his Shloka 413 of Chapter 8 put the shudras into the category of slaves. [Pt. Jwala Prasad Chaturvedi (trs), *Manusmriti* (Randhir Publication, Haridwar, 2020)] Ch. 8, Shlok 413. शूद्रं तु कारयैदास्यं क्रीतमक्रीतमेव वा। दासायैव हि सृष्टोऽसौ ब्राह्मणस्य स्वयंभुवा ॥ ४१३ ॥ न स्वामिना निसृष्टोऽपि शूद्रो दास्याद्विमुच्यते । निसर्गं हि तत्स्य कस्तस्मातदपाहति ॥ ४१४ ॥ Whether a Shudra is bought or not, make him work as a servant, because Brahma has created him to serve a Brahmin. Even if his master asks him, a Shudra cannot get rid of his servitude. Because this is his natural instinct, no one can separate him from it.

The All-India Committee on Jail Reforms<sup>6</sup> (1983), which is popularly known as the Mulla Committee, suggested banning the management of kitchen or cooking food on the basis of caste or religion. But it was silent on the distribution of degrading or menial work. On the direction of the Apex Court in *in Ramamurthy v. State of Karnataka*<sup>7</sup>, the Central Government made the Model Prison Manual, 2003, which prohibited the management of cooking and kitchen on the basis of caste and religion, and it is expressly prohibited in prisons for women. The Supreme Court in *Re: Inhuman Condition Prevailing in 1382 prisons in India*<sup>8</sup> [WP (Civil) 406/2013] issued direction for reform of jail manual. As a consequence of this, the Central Government made the Model Prison Manual, 2016<sup>9</sup> (hereinafter referred as to the MPM, 2016). This Manual also follows the pattern of the Model Prison Manual, 2003, on the point of distribution of work. The draft of the Model Prison and Correctional Services Act, 2023<sup>10</sup> (hereinafter referred as MP&CS, 2023) is an effort to replace the Prisons Act, 1894 and the Prisoners Act, 1900. The draft is also silent on the allocation of work on the basis of caste. The Mulla Committee and the Government knew management of kitchen and cooking on the basis of caste, hence prohibited it. Were these bodies not aware of the distribution of degrading and menial work on the basis of caste inside prisons supported by express provisions of States' Manuals? This is a relevant question for inquiry which has been posed recently in writ petition before Supreme Court of India.

## II. WRIT PETITION TO SUPREME COURT

Sukanya Shantha, an Indian journalist, read *Manusmriti*, prison manuals and visited many Indian prisons. She wrote stories of many prisoners in her article '*From Segregation to Labour, Manu's Caste Law Governs the Indian Prison System*', published by the Wire on December 10, 2020.<sup>11</sup> Some of these stories were related to Ajay, 18 years, and Sadhvi Pragya. Due to casteism in Bihar, father of Ajay with family left Bihar for Delhi in 1980. Ajay had never worked as a washerman. He started work as an electrician in Alwar. Ajay's employer lodged a FIR for allegedly stealing a switchboard. Alwar Police arrested Ajay and sent him to Alwar District prison. Jailer asked his caste, and he replied 'Rajak'. He was compelled to do menial work in jail on the basis of his caste. One day, the Jail Authority forced him to clean the septic tank without safety equipment. Everything was going on according to the caste of prisoners by ignoring his talent as an electrician. Another story was related to the allotment of three female prisoners to Sadhvi Pragya to give service. Thakur woman prisoner was allotted to cook and serve food. Jat, a woman prisoner, was allowed to support physical work. The Dalit woman was forced to clean Sadhvi Pragya's toilet. Dalit women in her interview to Sukanya told that she was forced only due to belonging of lower community.

<sup>6</sup> Report of All India Committee on Jail Reforms (1980 – 1983), vol. 1, para. 6.8.7; available at: [https://xn--i1b5bzbybhfo5c8b4bxh.xn--11b7cb3a6a.xn--h2brj9c/MHA1/PrisonReforms/NewPDF/PRV1\\_71to110.pdf](https://xn--i1b5bzbybhfo5c8b4bxh.xn--11b7cb3a6a.xn--h2brj9c/MHA1/PrisonReforms/NewPDF/PRV1_71to110.pdf) (last visited on Oct. 13, 2024).

<sup>7</sup> AIR 1997 SC 1739.

<sup>8</sup> AIR 2016 SC 993.

<sup>9</sup> Model Prison Manual (Ministry of Home Affairs, 2016), available at: [https://www.mha.gov.in/sites/default/files/2024-12/PrisonManualA2016\\_20122024.pdf](https://www.mha.gov.in/sites/default/files/2024-12/PrisonManualA2016_20122024.pdf) (last visited on Dec. 21, 2024).

<sup>10</sup> Draft of MP&CS Act, 2023, available at: [https://www.mha.gov.in/sites/default/files/advisory\\_10112023.pdf](https://www.mha.gov.in/sites/default/files/advisory_10112023.pdf) (last visited on Oct. 31, 2024).

<sup>11</sup> Sukanya Shanta, "From Segregation to Labour, Manu's Caste Law Governs the Indian Prison System", *The Wire*, Dec. 10, 2020. It was last updated on Oct. 03, 2024. Available at: <https://thewire.in/rights/india-prisons-caste-labour-segregation> (last visited on Oct. 17, 2024).

Sukanya Shantha filed a writ petition to the Supreme Court in 2020 challenging Model Prison Manuals prepared by Central and State Governments for violating articles 14, 15, 17, 21 and 23 of the Indian Constitution and the ratio of many judgments. These prison manuals supported caste segregation and allotment of work based on the caste system developed by *Manusmriti*. The Court accepted the petition. The full Bench of the Supreme Court consisting of DY Chandrachud, JB Pardiwala and Manoj Misra, JJ., decided *Sukanya Shanta v. Union of India*<sup>12</sup> this case on October 03, 2024. There were the following issues in this case; first, whether the MPM, 2016 and the draft MP&CS Act, 2023 made by Central Government were based on caste discrimination inside prisons in allocating work, especially menial work, was the defective definition of 'habitual offender'; second, whether State Jail Manuals and Rules were based on caste discrimination and contained defective definitions of 'habitual offender'? With a unanimous opinion, the full Bench of the Supreme Court replied to these issues positively. The Court discussed in the light of discrimination in the colonial era based on caste, constitutional provisions to combat discrimination, jail manuals, the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter, the PoA, 1989), the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 (hereinafter, PEMS&RA, 2013), the MPM, 2016 and the MP&CS Act, 2023 and other related Acts and cases.

### III. CONSTITUTIONAL VALIDITY OF THE MPM, 2016 & THE DRAFT MP&CS ACT, 2023

The first issue was related to the constitutional validity of the MPM, 2016 & MP&CS, 2023. The petitioner challenged the MPM, 2016, for discriminating on the grounds of caste, which was unconstitutional on the basis of violation of articles 14, 15, 17, 21 and 23 of the Indian Constitution. The arguments of the petitioner were the following -

- i **Definition of habitual offender:** Para 13 of the MPM, 2016 says that a habitual offender is a prisoner who is declared a habitual offender under the law or rules for the time being in force. This means that the defective definition of habitual offenders in the State Manuals will result in a defective MPM, 2016. The definition of habitual offender under the prison manuals covers people from denotified or wandering tribes without previous conviction or without breach of bond, etc. For example, paragraph 411 of the Madhya Pradesh Prisons Rules, 1968 (Reprinted in 1987) says that State Government has discretionary power to declare denotified tribes as a habitual offender. There is a previous conviction or some other criteria for the other people. The definition of habitual offender given under section 2(12)<sup>13</sup> of the MP&CS Act, 2023, is vague, and there is a lot of chance of misuse of this provision.
- ii **Caste-based segregation:** The MPM, 2016 expressly prohibits caste-based segregation of prisons for women.<sup>14</sup> But it is silent on the point of segregation of prisons for male prisoners. Many States manuals, including paragraph 225 of the Tamil Nadu Prisoner Manual, 1983,<sup>15</sup> deal with the classification of prisoners on of social status, accustomed to

<sup>12</sup> 2024 SCC OnLine SC 2694.

<sup>13</sup> Habitual Offender means a prisoner who is committed to prison repeatedly for a crime.

<sup>14</sup> *Supra* note 9, para. 26.04, Notes (ii).

<sup>15</sup> The Tamil Nadu Prison Manual, vol. 2 (Govt. of Tamil Nadu, 1985), available at: [http://prisons.tn.gov.in/TAMIL%20NADU%20PRISON%20MANUAL\\_updated.pdf](http://prisons.tn.gov.in/TAMIL%20NADU%20PRISON%20MANUAL_updated.pdf) (last visited on Oct. 17, 2024).

a superior mode of living, etc. The Model Prison Manual, 2016, should have adopted an express provision prohibiting segregation on the basis of caste.

- iii **Menial work:** The MPM, 2016 expressly prohibits caste discrimination in the management of the kitchen and cooking of food.<sup>16</sup> However, it does not prohibit discrimination on the basis of caste for menial and degrading work, while many State Manuals expressly allot menial work on the basis of caste.<sup>17</sup> The Model should make express provisions prohibiting the allocation of work only on the basis of caste and religion.
- iv **Discretionary power of Jail Superintendent:** Jail Superintendents have been given wider power under the MPM, 2016 & MP&CS Act 2023, and there is no mechanism to curtail the arbitrary power of jail superintendents when they allot menial work on basis of caste.
- v **Application of the EMS & R Act, 2013** - The MPM, 2016 does not refer to the application of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 (hereinafter referred to as the EMS&R Act, 2013). Sections 5 & 7 of the Act prohibit employment and engagement of manual scavenger and for hazardous cleaning of sewer and septic tank. The Act must be expressly applied inside prisons.

The Central Government contended that para 2.12.4<sup>18</sup>, para 17.22<sup>19</sup>, para 24.01<sup>20</sup>, and para 26.45<sup>21</sup> of the MPM, 2016 prohibited discrimination on the basis of caste. Further argument was that Ministry of Home Affairs issued advisory to all States and Union Territories to prohibit caste-based discrimination inside prisons on February 26, 2024.<sup>22</sup> The Supreme Court found some provisions of the MPM, 2016 & MP&CS, 2023 were discriminating on the basis of caste inside prisons. The Court accepted the petitioner's arguments.

The Court replied to the following points:

*Definition of Habitual Offender:* The Criminal Tribes Act, 1871 declared many tribes as criminal tribes and imposed many arbitrary restrictions on them. The Criminal Tribes Act, 1911 and the Criminal Tribes Act, 1924 were successors. Mr. H.J. Khandekar, in the Constituent Assembly, said that at the time of independence, more than ten million persons had been declared criminal tribes<sup>23</sup> and requested that these tribes be de-notified. The Ministry of Home Affairs constituted the Criminal Tribes Act Inquiry Committee, 1949-50 and appointed Shri Ananthasayanam Ayyanger its chairperson. The Committee submitted its Report in 1951 and said that criminality is not hereditary.<sup>24</sup> On the basis of this recommendation, the Criminal Tribes Act, 1924 was repealed, whereby the criminal tribes were declared de-notified tribes. The Court objected to the definition

<sup>16</sup> *Supra* note 9, paras. 2.12.4, 6.30, 6.31, and 26.45.

<sup>17</sup> The West Bengal Jail Code 1967, rule 793; The Madhya Pradesh Prisons Rules, 1968 (Reprinted in 1987), rule 36; The Punjab Jail Manual, 1996, rule 636, provides compulsion for so called lower caste to do menial work.

<sup>18</sup> Management of the kitchen or cooking of food on caste or religious places will be prohibited in prisons.

<sup>19</sup> Any special treatment to a group of prisoners belonging to a particular caste or religion is strictly prohibited.

<sup>20</sup> No classification of prisoners shall be allowed on grounds of social status.

<sup>21</sup> Management of kitchen or cooking of food on caste or religious places will be strictly banned in prisons for women.

<sup>22</sup> Ministry of Home Affairs, Advisory, available at: [https://www.mha.gov.in/sites/default/files/AdvisoryWS\\_28022024.pdf](https://www.mha.gov.in/sites/default/files/AdvisoryWS_28022024.pdf) (last visited on Oct. 20, 2024).

<sup>23</sup> II, *Constituent Assembly Debates*, 299 (Jan. 11, 1947), available at: [https://eparlib.nic.in/bitstream/123456789/762980/1/cad\\_21-01-1947.pdf](https://eparlib.nic.in/bitstream/123456789/762980/1/cad_21-01-1947.pdf) (last visited on Oct. 20, 2024).

<sup>24</sup> The Criminal Tribes Act Inquiry Committee, 1949-50, p. 82, available at: <https://ia902807.us.archive.org/11/items/dli.csl.944/944.pdf> (last visited on Oct. 20, 2024).

of 'habitual offender' as defined under chapter 1, para 13 of the Manual, 2016. The Court said that the definition of habitual offender in many manuals and laws covers denotified or wandering tribes without any reasonable basis and those definitions became part of chapter 1, para 13 of the MPM, 2016. It affects segregation<sup>25</sup> and allotment of work in prisons, among others. So, there is a need to define 'habitual offender' based on reasonable grounds. Authority can misuse Section 2(12)<sup>26</sup> of the MP&CS Act, 2023 to declare any person as a habitual offender even he had not been previously convicted for committing any offence. This definition should be amended. Chief Justice D.Y. Chandrachud said that terms and phrases used in section 2(12) of the Act, 2023 are not based on intelligible differentia and can be misused against marginalized castes and denotified tribes.

The author is also apprehensive of the misuse of this definition. The Police often arrest poor and suppressed class people arbitrarily. For example, police arrested Rahim three times, and at all times, he was released without framing charges. Next time, he was arrested, and he will be kept under the category of habitual offender.<sup>27</sup> Nothing has been mentioned in the definition of how many times persons must be arrested and whether arrest must be lawful or not. The Central Government amended definition of habitual offender under the MPM, 2016 & the MP & CS Act, 2023 on December 30, 2024. The author has proposed a definition of habitual offender for the substitution of Chapter 1, para 13 of the Model Prison Manual, 2016 and Section 2(12) of the MP&CS Act, 2023. The author found a suitable definition under the Uttar Pradesh Habitual Offender's Restriction Act, 1952<sup>28</sup> and para 4(xi)<sup>29</sup> of the Bihar Prison Manual, 2012. Annexures 1 & 2 of this research paper contain proposed amendments in MPM, 2016 & MP&CS Act, 2023.

*Caste-based Segregation:* The Supreme Court rejected the ratio of *C. Arul v. The Secretary to Government*<sup>30</sup> and said that the principle of 'separate but equal' is not acceptable in this country. In this way, the Supreme Court rejected the concept laid down in *Plessy v. Ferguson*<sup>31</sup> and accepted the philosophy laid down in *Brown v. Board of Education*<sup>32</sup>, which did not allow

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<sup>25</sup> *Supra* note 9, para. 26.04(ii) states, "habitual offenders shall be separated from casual prisoners". Para 26.04(iii) states, "habitual offenders, prostitutes and brothel keepers must also be confined separately".

<sup>26</sup> The Model Prisons and Correctional Services Act, 2023, s. 2(12), "Habitual Offender means a prisoner who is committed to prison repeatedly for a crime".

<sup>27</sup> *Ankush Maruti Shinde v. State of Maharashtra*, 2019 INSC 305. This case is glaring example of failure of state machinery. Innocent nomadic tribes were not only arrested for rape and murder, but also awarded death sentence by all courts including supreme court. After 10 years, the Supreme court realized that and acquitted all of them.

<sup>28</sup> The Uttar Pradesh Habitual Offender's Restriction Act, 1952 (U. P. Act No. XXXVIII of 1952), s. 2(c) states: "habitual offender" means a person who before or after the commencement of this Act, has been sentenced to a substantive term of imprisonment, such sentence not having been set aside in appeal or revision, on not less than three different occasions for one or another of the offences set forth in the Schedule; *available at*: <https://www.indiacode.nic.in/bitstream/123456789/9802/1/habitual.pdf> (last visited on Oct. 21, 2024).

<sup>29</sup> "Habitual offender" means a prisoner who has been convicted in a particular offence for more than one occasion or is under-trial for a particular offence in more than 3 different cases.

<sup>30</sup> W.P.(MD) No. 6587 of 2012 (Madras High Court, Order dated 28 October 2014).

<sup>31</sup> Date of the Judgment: May 18, 1896. 1896 SCC OnLine US SC 164, 163 US 537 (1896) : 16 S.Ct. 1138 : 41 L.Ed. 256.

<sup>32</sup> *Brown v. Board of Education of Topeka Shawnee County Kan Briggs*, 1954 SCC OnLine US SC 44. Date of the judgment: May 17, 1954. This case was related to racial segregation in school. The US Supreme by unanimous decision of nine judges held that segregation in schools on the basis of race was unconstitutional. The public school denied admission of local black girl and said to go segregated black schools farther away. The Court allowed her admission in white public school. This decision was vehemently criticized in white dominated Southern United States.

segregation based on race. The Court applauded the prohibition of segregation of women prisoners on the basis of caste<sup>33</sup> and suggested to make express provisions prohibiting segregation of male prisoners on the basis of caste. At the end of this paper, the author has proposed amendment in Annexure 1.

*Compulsion for menial and degrading work:* Compulsion for doing menial work only on the basis of caste is a violation of articles 14, 15, 17 and 21 of the Constitution of India. Justice Krishna Iyer in *Sunil Batra (II) v. Delhi Administration*<sup>34</sup> said that prisoners are not animals in the eyes of law. They have all fundamental rights like other persons except those rights, which are an essential part of confinement. A compulsion for doing menial work only on the basis of the caste of prisoners without any reasonable classification will amount to an offence under the PoA Act, 1989. Many state manuals expressly stated that Mehter, Hari, and Chandal, who are accustomed to such work and so on, will do menial work. The MPM, 2016 prohibits caste discrimination but is silent regarding degrading and menial work. In this circumstance, the MPM, 2016 should be amended, and express provisions should be inserted at a suitable place regarding the prohibition of caste discrimination at the time of allocating menial work.<sup>35</sup> The Government of India in compliance of ratio of Sukanya case amended the MPM, 2016 & the MP&CS Act, 2023 on December 30, 2024 and prohibited menial work.

*Discretionary power of Jail Superintendent:* Jail Superintendent has been conferred very wider discretionary power for implementation of manual regarding the implementation of labour of prisoners.<sup>36</sup> Voluntary non-compliance of the order of the jail superintendent is an offence under para 21.09(xxxv), the MPM, 2016. Any prisoner may not deny any work allotted on the basis of caste. Denial of work, even allotted on the basis of caste, will amount to an offence under para 21.09(xxxv) of the Manual. It is a violation of articles 21, 23 and the ratio of *Sunil Batra Case (II)*<sup>37</sup> of the Constitution. In the absence of any express provision prohibiting caste-based discrimination, these provisions may be used for targeting prisoners from the marginalized class. Arbitrariness is the antithesis of equality. Law is not against any person or class. However, the Constitution requires equality among all, regardless of caste, religion, race, etc. So, there is a need to provide express provisions regarding the prohibition of caste discrimination by jail superintendents at the time of allocating work.

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This decision was tried to be overruled. But the US Court again after four years in *Cooper v. Aaron* (Sep. 11, 1958) affirmed the ratio of *Brown Case*.

<sup>33</sup> *Supra* note 14. ‘No classification of prisoners shall be allowed on grounds of socio-economic status, caste or class’.

<sup>34</sup> (1980) 3 SCC 488.

<sup>35</sup> *Sukanya Shantha v. Union of India*, 2024 SCC OnLine SC 2694, para 204. Available at: [https://api.sci.gov.in/supremecourt/2023/51059/51059\\_2023\\_1\\_1502\\_56228\\_Judgement\\_03-Oct-2024.pdf](https://api.sci.gov.in/supremecourt/2023/51059/51059_2023_1_1502_56228_Judgement_03-Oct-2024.pdf) (last visited on Oct. 13, 2024).

<sup>36</sup> *Supra* note 9, para 4.08.

<sup>37</sup> 1979 INSC 271.

*Application of the EMS&R Act, 2013:* Para 2.10.2 & para 6.79 of the Model deal with the cleaning of latrines. The Manual does not refer to the application of the EMS&R Act, 2013. Manual scavenging or hazardous cleaning of a sewer or a septic tank inside prisons is an offence under sections 5 & 7 of the EMS&R Act, 2013 and cannot be legalized only on the ground that the works are being done inside prisons. The Model should be amended, and the Act should be applied expressly works inside prisons.

#### **IV. CONSTITUTIONAL VALIDITY OF STATE JAIL MANUALS**

Prison is the subject matter of the State<sup>38</sup>. Several States made their prison/ jail manual by using power given under section 59 of the Prison Act, 1894 which contain discriminatory provisions. Segregation of blocks & distribution of menial work on the basis of caste are the best examples of this. Whatever caste discrimination was going on in society, that discrimination was applied inside prisons. The question before the Supreme Court was: whether such provisions contained in manuals were violating the fundamental rights of the prisoners? The Court replied positively as discussed below.

##### ***A. Definition of Habitual Offender***

Under these manuals and rules, segregation between habitual offenders & casual / non-habitual offenders was allowed. Unfortunately, the definition of a habitual offender under these manuals & rules includes denotified tribes, even if there was no previous conviction. The Madhya Pradesh Prisons Rules, 1968 (Reprinted in 1987), Rule 411 and the Kerala Prison Rules, 1958, Rule 201(4) include members of denotified tribes/ criminal tribes under the definition of habitual offender subject to the discretion of the State Government concerned. Andhra Pradesh Prison Rules, 1979, rule 217 includes by habit a member of a gang of dacoit under the definition of habitual offender even though there is no previous conviction. Words like the natural tendency to escape, etc., were used to cover denotified tribes. Members of denotified tribes or nomadic tribes were prohibited from many works. They were confined only to mural works.<sup>39</sup> They were being compelled to do menial work. The author also discussed above that the definition of habitual offender under section 2(12) of the draft of the Model Prison and Correctional Services, 2023 is defective. The Supreme Court in the *Sukanya Shantha case*<sup>40</sup> declared the definition of 'habitual offender' used in the Manuals & Rules unconstitutional. The Court said that the definition of habitual offender is vague & indeterminate and must be amended as per constitutional norms. Section 2(c) of the Uttar Pradesh Habitual Offender's Restriction Act, 1952 and para 4(xi) of the Bihar Prison Manual, 2012 contains a rational definition of habitual offender. Annexure 3 contains the proposed amendment.

##### ***B. Segregated Blocks***

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<sup>38</sup> The Constitution of India, List II, State List, Entry 4.

<sup>39</sup> Odisha Model Jail Manual Rules for the Superintendence and Management of Jails, 2020, rule 784 (25) and Rajasthan Prisons Rules, 2022, para. 681, rule 22, provide that member of wandering or criminal tribes shall not be employed on extra-mural work. West Bengal Jail Code / Rules for Superintendence and Management of Jail in West Bengal, 1967, Rule 404(b) disqualifies man of wandering tribes to be a night guard.

<sup>40</sup> *Supra* note 12.

Para 225<sup>41</sup> of the Tamil Nadu Prisoner Manual, 1983<sup>42</sup> deals with the classification of prisoners. The Para says that social status, being accustomed to a superior mode of living, etc., may be considered when deciding whether prisoners would be kept in class A or class B. The separation of Thevar, Nadar, and Pallar communities, who are allotted different sections in Palayamkottai Central Jail in Tamil Nadu, provides a glaring instance of caste-based segregation of barracks. This segregation of prisoners based on caste was challenged before the Madras High Court. The High Court in *C. Arul v. The Secretary to Government*<sup>43</sup> accepted the segregation of blocks on the basis of caste. The Court was satisfied that it was necessary to prevent violence and maintain peace in the prison. In this way, the Court accepted the ‘Separate but Equal’ philosophy as laid down in *Plessy v. Ferguson*<sup>44</sup>. The Supreme Court in the *Sukanya Shantha case*<sup>45</sup> overruled the ratio of *C. Arul Case*<sup>46</sup> and said that the division of blocks based on caste is not allowed in this country. ‘Separate but Equal’ indirectly promotes discrimination. The Court rejected the concept of the ‘Separate but Equal’. The author’s opinion is that the Court rejected the concept laid down in *Plessy v. Ferguson*<sup>47</sup> and accepted the philosophy laid down in *Brown v. Board of Education*<sup>48</sup> which did not allow segregation based on race.

Segregation on the basis of caste is not allowed in this country. The Tamil Nadu Government should amend those provisions which were allowing segregation on the basis of caste. Another method must be found to prevent violence in prisons. Para 734<sup>49</sup> of the Uttar Pradesh Jail Manual, 2022 may be an example for other States on this point which prohibits segregation on the basis of caste. Bihar Prison Manual, 2012 is silent on this point. It would be better for the State of Bihar to make express provisions prohibiting segregation on the basis of caste.

### ***C. Menial & Cooking Work***

The Indian society is based on vertical caste society. It is a hierarchical system. The Britishers accepted caste-based Indian society, and the practice became law. Many jail manuals accepted this. It is very unfortunate that caste-based discrimination has continued for many years. Allocation of cooking and cleaning work only on the basis of caste is a violation of many fundamental rights. Assigning cooking work to the upper caste and compelling the lower caste to

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<sup>41</sup> Para 225 Classes of prisoners: (1) As mentioned in rule 217, convicted prisoners are divided into two divisions or classes, A and B. (i) prisoners shall be eligible for class A, if they by social status, education or habit of life have been accustomed to a superior mode of living, Habitual prisoners may at the discretion of the classifying authority, be included under this class on grounds of character and antecedents. (ii) Class B shall consist of prisoners who are not classified in Class A.

<sup>42</sup> *Supra* note 15.

<sup>43</sup> W.P.(MD) No. 6587 of 2012 (Madras High Court, Order dated 28 October 2014).

<sup>44</sup> *Supra* note 31. In this case, controversy of racial segregation regarding sitting in train car was involved. There was separate car for the black & the white. The Court allowed this segregation subject to equal protection. In this way, concept of ‘separate but equal’ was laid down. In this case, the Separate Car Act, 1890 was declared constitutional by majority of the US Supreme Court. Justice John Marshall Harlan in his minority opinion said that it would be pernicious in future.

<sup>45</sup> *Supra* note 12.

<sup>46</sup> *Supra* note 43.

<sup>47</sup> *Supra* note 31.

<sup>48</sup> *Supra* note 32.

<sup>49</sup> As far as possible the prisoners should be indiscriminately mixed together in barracks without consideration of religion, race, caste and place of residence.

do menial work is nothing except the application of *Manusmriti*. Some of these impugned manuals are the following:

#### **(i) West Bengal**

Rule 793<sup>50</sup> of the West Bengal Jail Code, 1967, provides that sweepers should be chosen from Mether, Hari or Chandal communities. For other communities, it is voluntary. As per Rule 741, cooking shall be done by the suitable caste. The requirement of a suitable caste for cooking was supporting the caste system. Indirectly, cooking by the lower caste was prohibited. The effect of the combined reading of both paras is that the upper caste was allowed to cook, and the suppressed class was compelled to clean excreta and do menial work. The author clarifies this point with the help of an example. For example, a Brahmin & a Mether committed murder. Both were convicted and imprisoned. Both have the same working capacity. But in case of need, Brahmin would be assigned cooking, and Mether would be assigned sweeper work. The only criteria for this are the caste of both. The discrimination only based on caste and ignoring Mether's merit & expertise was against humanity. The State of West Bengal must amend and should bring reasonable criteria.

#### **(ii) Madhya Pradesh**

The Madhya Pradesh Prisons Rules, 1968 (Reprinted in 1987)<sup>51</sup>, Rule 36<sup>52</sup> suggests that only Mehtars shall clean receptacles filled with excreta. This is a scheduled caste community in the State of Madhya Pradesh that was kept in the Shudra category and faced a problem of untouchability and did not get an opportunity to grow up.

#### **(iii) Punjab**

Punjab Jail Manual, 1996, Rule 636 creates high-level discrimination. As per the Manual, for the Mehtar or similar caste, i.e. lower caste, work of sweeper is mandatory, while for the other caste, it is voluntary. The ground reality is that no one will choose the work of a sweeper voluntarily.

#### **(iv) Uttar Pradesh**

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<sup>50</sup> Sweepers should be chosen from the Mether or Hari caste, also from the Chandal or other castes, if by the custom of the district they perform similar work when free, or from any caste if the prisoner volunteers to do the work. Available at: <http://wbcorrectionalservices.gov.in/pdf/jcr.pdf> (last visited on Dec. 28, 2024).

<sup>51</sup> Jail Manual, vol. 1 (Govt. of Madhya Pradesh, 1987), available at: [https://jail.mp.gov.in/sites/default/files/Part%201\\_2.pdf](https://jail.mp.gov.in/sites/default/files/Part%201_2.pdf) (last visited on Oct. 18, 2024).

<sup>52</sup> The Mehtars shall empty the contents of the small receptacles into large iron drums and replace the receptacles in the latrine after having cleaned them.

By interpretation of Rule 289(g)<sup>53</sup> of the Uttar Pradesh Jail Manual 2022<sup>54</sup> accused of simple imprisonment for menial work, can be divided into two categories. The accused of upper caste shall not be engaged in performing duties of menial or degrading character. Only accused of lower class, i.e. members of the community accustomed to perform will be engaged to perform such duties.

The Supreme Court in the *Sukanya Shantha case*<sup>55</sup> discussed the above discrimination and held that such discrimination is unconstitutional on the basis of articles 14, 15, 17, 21 and 23 of the Indian Constitution. In this regard, the author has proposed amendments to the manual in Annexure 3.

#### ***D. Criminal / Denotified Tribes***

The Madhya Pradesh Prisons Rules, 1968 (Reprinted in 1987), Rule 411<sup>56</sup> and the Kerala Prison Rules, 1958, Rule 201(4) give discretionary power to State Governments to include members of denotified tribes/ criminal tribes under the definition of habitual offender. Andhra Pradesh Prison Rules, 1979, rule 217 includes by habit a member of a gang of dacoit under the definition of habitual offender even though there is no previous conviction. De-notified tribes or wandering communities are considered suspicious without any basis. The Odisha Model Jail Manual Rules for the Superintendence and Management of Jails, 2020 Rule 784 (25) and Rajasthan Prisons Rules, 2022, Para 681, Rule 22 prohibits denotified tribes and wandering tribes from being employed for any work except mural work. West Bengal Jail Code, 1967, Rule 404(b) disqualifies men of wandering tribes from being a night guard. The SC, in the *Sukanya Case*<sup>57</sup>, declared these rules unconstitutional.

#### **V. DIRECTIONS OF THE SUPREME COURT**

The Supreme Court issued nine directions in this *Sukanya Shantha case*. These directions can be clubbed into four categories such as: (1) Central Government, (2) State Government, (3) Other authorities, and (4) Suo-motu cognizance. The directions could be analyzed respectively as:

i     **Central Government:** The Court directed the Union Government to amend the MPM, 2016 and the MP&CS Act, 2023 to prevent caste discrimination in the allocation of works inside prisons. The Court found the definition of habitual offenders under section 2(12) of the MP&CS Act, 2023 arbitrary and vague. The Court directed the change of the definition of habitual offender according to the norms of the Constitution. The Court imposed the

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<sup>53</sup> The Uttar Pradesh Jail Manual 2022, para. 289. A convict sentenced to simple imprisonment,... (g) shall not be called upon to perform duties of a degrading or menial character unless he belongs to a class or community accustomed to perform such duties; but may be required to carry water for his own use provided he belongs to the class of society the members of which are accustomed to perform such duties in their own homes. Available at: [https://www.indiacode.nic.in/bitstream/123456789/20121/1/uttar\\_pradesh\\_jail\\_manual.pdf](https://www.indiacode.nic.in/bitstream/123456789/20121/1/uttar_pradesh_jail_manual.pdf) (last visited on Dec. 28, 2024).

<sup>54</sup> Available at: [https://www.indiacode.nic.in/bitstream/123456789/20121/1/uttar\\_pradesh\\_jail\\_manual.pdf](https://www.indiacode.nic.in/bitstream/123456789/20121/1/uttar_pradesh_jail_manual.pdf) (last visited on Dec. 28, 2024).

<sup>55</sup> *Supra* note 12.

<sup>56</sup> Available at: [https://jail.mp.gov.in/sites/default/files/Part%202\\_2.pdf](https://jail.mp.gov.in/sites/default/files/Part%202_2.pdf) (last visited on Dec. 29, 2024).

<sup>57</sup> *Supra* note 12.

duty on the Central Government to circulate the judgment to all Union Territories and States within a period of three weeks from the date of the judgment.

ii **State Government:** The Supreme Court declared the impugned provisions as unconstitutional on the basis of articles 14, 15, 17, 21 and 23. The Supreme Court directed the Government of the State to amend their jail manuals and rules within three months. It was the duty of the Governments of Uttar Pradesh, Madhya Pradesh, West Bengal, Punjab, Tamil Nadu, Orissa, etc., to amend their manuals and prevent caste discrimination and discrimination with denotified tribes by redefining the definition of habitual offender. Many registers contain a column of caste to maintain the caste of undertrial and/or convicts' prisoners. These columns must be deleted. The author found the Bihar Prison Manual to be the best example of this, as it contains such columns. For example, Annexures 1, 2, 3, 7, 8, & 9 of the Bihar Prison Manual, 2012 contain a column for caste. The State of Bihar was bound to remove these columns within three months. However, the State of Bihar had not taken any action even after three months.

iii **Other authorities:** Arbitrary arrest of denotified tribes is not permissible. The Court said that guidelines laid down in *Arnesh Kumar case*<sup>58</sup> & *Amanatullah Khan case*<sup>59</sup> must also be followed at the time of arresting de-notified tribes. District Legal Services Authorities and the Board of Visitors will jointly conduct regular inspections whether discrimination inside prisons on the basis of caste, religion and other discriminatory practices. Both of them will submit a joint report to State Legal Services Authorities. State Legal Services Authorities will submit the report to the National Legal Services Authority. The NLSA, in turn, will submit the report to the Supreme Court during the hearing of *In Re: Discrimination Inside the Prisons in India*.

iv **Suo Motu:** The Court took *suo motu* cognizance of the discrimination inside prisons on the basis of caste, disability and gender. The Court directed the Registry to list the case as *In Re: Discrimination Inside the Prisons in India* after three months of the judgment. On the first day of the hearing, all states and the union governments will submit the judgment's Compliance Report.

## VI. CONCLUSION AND SUGGESTION

The Supreme Court, in this *Sukanya* case, discussed problems of discrimination inside the prisons and declared certain provisions of the MPM, 2016, the MP&CS Act, 2023, along with several States Prisons Manuals as unconstitutional. The Court directed the Central and State Governments to amend jail manuals and other related laws. It is time to amend these manuals in the light of the Indian Constitution. Everyone is equal in the Indian Constitution. So, there should be objective criteria for allocating the menial and other works. Manual cleaning of excreta inside prisons must be done by machine. To do such work, vacancies must be advertised, and persons must be selected through exams. If there is a need to take work from the prisoners, prisoners must be assigned on the basis of objective tests. The author suggests that to bring objectivity, menial work must be assigned according to the gravity of the offence. Priority must be given to offenders convicted of serious offences. For example, if the death sentence or life imprisonment convicted are available, they must be assigned such work. If there are many such convicted persons available, work must be assigned routinely. If such convicted persons are not available, those convicted

<sup>58</sup> 2014 INSC 463.

<sup>59</sup> 2024 INSC 383.

persons, for ten years or more imprisonment, must be assigned such work. For this purpose, a schedule must be included in every Manual. The Central Government added new heading i.e. Prohibition of caste-based discrimination in Prisons and Correctional Institutions as points Nos. 5.68, 5.69 & 5.70 in the MPM, 2016. On the same pattern, the Central Government added section 55A(i), (ii) & (iii) to the MP&CS Act, 2023. By these Amendments, the Governments should prohibit discrimination, classification and segregation on the basis of caste and allocation of work or duty on the basis of their caste<sup>60</sup>. The PEMS&RA, 2013 will be applicable to cleaning of a sewer or septic tank inside prisons. Definition of 'habitual offender' given under para 13 of chapter 1 of the MPM, 2016 and section 2(12) of the MP&CS Act, 2023 should be substituted.<sup>61</sup> In this context, the author has framed three annexures. Annexure 1 contains the required amendment in the MPM, 2016. Annexure 2 includes the required amendment in the MP&CS Act, 2023. Annexure 3 contains required amendments in State Prison Manuals.

#### **ANNEXURE 1: THE MODEL PRISON MANUAL (AMENDMENT) 2025**

1. Para 27A of Chapter 1: Prohibited Act [ Ins.] Prohibited act means segregation of prisoners, management of kitchen & cooking, allocation of menial work, compelling manual scavenging and other work on the bases of caste, religion and socioeconomic status among undertrial or convicted prisoners.
2. Para 2.05 [ Ins.] – No classification of prisoner, whether undertrial or convicted male, female or trans-gender prisoners, shall be allowed on the grounds of caste, religion, race, socioeconomic status or other grounds degrading humanity.
3. Para 2.10. 4 [ Ins.] - Menial, degrading or similar work shall not be allotted on the basis of caste or religion.
4. Para 2.10. 5 [ Ins.] The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 shall be applied inside prisons.

#### **ANNEXURE 2: MODEL PRISONS AND CORRECTIONAL SERVICES ACT, 2023**

1. Section 2(28A) - Prohibited Act [Ins.] Prohibited act means segregation of prisoners, management of kitchen & cooking, allocation of menial work, compelling manual scavenging and other work on the basis of caste, religion and socioeconomic status among undertrial or convicted prisoners.
2. Section 39 [Inst.] - Except willful denial of work allotted only on the basis of caste, ....This must be inserted at the start of section 39 of the Act.

#### **ANNEXURE 3: STATE PRISON MANUALS (AMENDMENT)**

##### **(1): The West Bengal Jail Code, 1967**

1. Rule 404(b) – 'man of wandering tribes' must be omitted from Rule 404(b).

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<sup>60</sup> To address the issue of any caste-based discrimination of prisoners in the prisons, the following additions were made in Chapter V titled 'Custodial Management' of the Model Prison Manual, 2016 at p.no. 62, with a new heading 'Prohibition of caste-based discrimination in Prisons and Correctional Institutions' as point nos. 5.68, 5.69 and 5.70 on December 30, 2024. Available at: [https://www.mha.gov.in/sites/default/files/2024-12/PrisonReforms\\_31122024.pdf](https://www.mha.gov.in/sites/default/files/2024-12/PrisonReforms_31122024.pdf) (visited on Dec. 31, 2024).

<sup>61</sup> Habitual offender means a person who during any continuous period of five years, has been convicted and sentenced to imprisonment on more than two occasions on account of any one or more of the offences committed on different occasions and not constituting parts of same transaction, such sentence not having been reversed in appeal or review. Provided that in computing the continuous period of five years referred to above, any period spent in jail either under sentence of imprisonment or under detention shall not be taken into account.

2. Rule 741 – ‘suitable caste’ word must be omitted from Rule 741.
3. Rule 793 – ‘Sweepers should be chosen from the Mether or Hari caste, ..... must be deleted.
4. Rule 793A [ Ins.] - Menial, degrading or similar work shall not be allotted on the basis of caste or religion.

**(2): The Madhya Pradesh Prisons Rules, 1968 (Reprinted in 1987)**

1. Rule 2(ea) [Ins.] Prohibited Act - Prohibited act means segregation of prisoners, management of kitchen & cooking, allocation of menial work, compelling manual scavenging and other work on the basis of caste, religion and socio-economic status among undertrial or convicted prisoners.
2. Rule 36 [delete] – ‘Mehtars shall clean ...cleaned them’ shall be deleted.
3. Rule 36A [Inserted] – No one shall be compelled to do sanitation work only on the ground of his caste.
4. Rule 36B [ Inserted] - The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 shall be applied inside prisons.
5. Rule 411(iv)- [deleted]

**(3): The Uttar Pradesh Jail Manual 2022**

1. Para 22(ua) – [Ins.] Prohibited Act - Prohibited act means segregation of prisoners, management of kitchen & cooking, allocation of menial work, compelling manual scavenging and other work on the basis of caste, religion and socioeconomic status among undertrial or convicted prisoners.
2. Para 27(v) – Caste shall be omitted.
3. Para 223 – Caste shall be omitted.
4. Para 289 (g) – ‘unless he belongs to a class or community accustomed to perform such duties’ shall be omitted.

**(4): Bihar Prison Manual, 2012**

1. Para 2 – The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 shall be inserted.
2. Para 3A – Segregation of prisoners, management of kitchen & cooking, allocation of menial work, compelling manual scavenging, and other work on the basis of caste, religion, and socioeconomic status among undertrial or convicted prisoners shall be prohibited.
3. Para 43 – ‘caste of prisoners’ shall be omitted.
4. Annexures 1,2,3,7,8,9 – Column of caste or caste in columns shall be omitted.  
Other States may change in light of these annexures.