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## Upendra Baxi and the Evolution of Prisoners' Rights in India: A Jurisprudential and Humanitarian Analysis

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*This article examines the influential contributions of Upendra Baxi to the evolution of prisoners' rights in India, emphasising his humanitarian and jurisprudential perspectives. Baxi's work advocates for a transformative legal approach that goes beyond punitive measures, focusing on rehabilitation, reform, and the protection of human dignity for prisoners. The paper maps the historical and present situations of Indian prisons, which range from overcrowding to inhuman treatment, along with the absence of minimum facilities. It delves into Baxi's criticisms of mainstream legal thought, his advocacy of Public Interest Litigation (PIL), and his promotion of bringing Indian prison policy into consonance with international human rights principles. By analysing landmark legal cases and Baxi's theoretical underpinnings, the article underscores the significance of his philosophy in advancing the rights of prisoners and promoting social justice. It further calls for a paradigm shift in Indian jurisprudence, from retribution to rehabilitation, and emphasises the need for judicial activism in addressing prisoners' rights. Baxi's enduring influence remains central to the ongoing discourse on reforming the criminal justice system in India.*

**Keywords:** Upendra Baxi, prisoners' rights, public interest litigation, judicial activism, rehabilitation over retribution.

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## INTRODUCTION

The idea of a prison is not new. Despite not being a popular topic for human rights advocacy, prisons are essential to the operation of traditional Indian society. Inmates have never lived in reasonable conditions in prisons, which have always been high-walled, dim spaces. Deprivation of basic liberties has been the punishment for inmates. With the advancement of prison management, reform, and better facilities, correctional homes, as opposed to prisons, jails, or jails as specified by the Prison Act, 1870, with the primary objective of preventing offenders from committing crimes again. Prison has been defined under the Prisons Act, 1894, as 'any jail or place used permanently or temporarily under the general or special orders of a State Government for the detention of prisoners and includes all lands and buildings appurtenant thereto...' Prison is where a person is temporarily or permanently imprisoned during a trial or after conviction. Prisons also gave rise to the concept of prisoners' rights, which has significantly evolved and been shaped through constitutional provisions, judicial pronouncements, and the efforts of legal scholars and activists like Upendra Baxi. His research interests include comparative constitutionalism, social theory of human rights, human rights responsibilities in corporate governance and business conduct, and materiality of globalisation. He has supported social movements and struggles for justice for the victims of the 1984 Bhopal gas disaster for the past three decades. His lifework has been filled with his interest towards enormity, complexity and perplexity. He has a lifelong history towards activism, which is often seen in his works and cases. The perplexity arises from the combination of his lifelong history of activism and belief in the necessity of complex theoretical analysis; his commitment to the global South, combined with a deep engagement with Northern thinking, and his critique of human rights and law, together with the assertion of the importance of human rights and the rule of law. This perplexity is resolved through his commitment to alleviating the plight of the impoverished, the disempowered, the suffering, and the rightless in his native India and elsewhere.<sup>1</sup> Baxi's most recognised work in human rights critiques traditional Western perspectives, arguing for a more grounded, materialist conception of rights that centres the struggles of marginalised groups, such as the rightless and subaltern populations. His book 'The Future of Human Rights' is a key text in this area, offering insights into the global evolution of human rights and the role of states

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<sup>1</sup> Upendra Baxi, 'Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India' (1985) 4 Third World Legal Studies 107 <<https://scholar.valpo.edu/twls/vol4/iss1/6/>> accessed 20 June 2025

in ensuring justice and accountability. He considers constitutionalism as a dynamic process, which not only addresses historical injustices but also the potential for creating better and just social orders. His insights into the postcolonial struggles of countries like India, South Africa, and Brazil show how constitutions can be both instruments of oppression and vehicles for emancipatory politics.

## **PRISONS IN MODERN DEMOCRACY**

Modern democracies have envisioned prisons as organisations that provide reformatory care. But the truth about prisons is that there is overcrowding, inhumane living conditions, a lack of necessities like food, medical care, and cleanliness, a lack of accountability and transparency in the administration, targeting and surveillance, torture, and even death, and very few opportunities for leisure or skill development. What causes this? The dread of crime control and the growing targeting and otherisation of people from particular sociopolitical connections are two factors that significantly impact society's perception of how inmates should be treated. Using the harshest penalties to combat crime has become the new norm for effective government. Prisoners are a marginalised, isolated, and rarely discussed segment of society. The situation is exacerbated by the fact that no document specifies mandatory rights for inmates, leaving it up to shifting societal attitudes and administrations. The Model Prison Manual 2016, the most recent policy on jail management released by the Government of India, contains a chapter titled 'Perspective'. It states: *"India shares the universally held view that a sentence of imprisonment would be justifiable only if it ultimately leads to the protection of society against crime. Such a goal could be achieved only if incarceration motivates and prepares the offender for a law-abiding and self-supporting life after his release. It further accepts that, as imprisonment deprives the offender of his liberty and self-determination, the prison system should not be allowed to aggravate the suffering already inherent in the process of incarceration."*

**Theoretical Underpinnings of Upendra Baxi's Philosophy:** Upendra Baxi's jurisprudence places a strong emphasis on human rights and social justice, particularly for marginalised communities. He argues that the legal system must actively protect the rights of those who are often excluded from mainstream legal protections. Baxi contends that traditional legal frameworks frequently fail to address the needs of marginalised groups, including Dalits, women, indigenous peoples, and the poor.

In his seminal work, *Human Rights in a Posthuman World: Critical Essays* (2009)<sup>2</sup>, Baxi explores how human rights can be reinterpreted and expanded to include the needs of the oppressed. He argues that human rights should not be confined to abstract principles but should be actively implemented through judicial and legislative means to ensure justice for all.<sup>3</sup> Baxi's focus on marginalised communities reflects his belief that human rights discourse must be inclusive and responsive to real-world inequalities. Baxi's advocacy for Public Interest Litigation (PIL)<sup>4</sup> has been instrumental in expanding access to justice in India. PILs allow individuals and organisations to bring issues of public concern before the courts, especially on behalf of those who cannot afford legal representation. Baxi's support for PILs aligns with his broader commitment to social justice and democratising access to legal remedies. His influence on PIL is evident in landmark cases such as *Maneka Gandhi v Union of India* (1978)<sup>5</sup> and *Vishaka v State of Rajasthan* (1997),<sup>6</sup> where the Supreme Court of India expanded the scope of fundamental rights and addressed issues related to marginalised groups.

**Need for New Jurisprudence:** Baxi believes that traditional legal systems failed to address the struggles of the marginalised and oppressed, which generates the need for new jurisprudence in society. For this, he not only welcomes views as diverse as B. R. Ambedkar, Hannah Arendt, Karl Marx, Friedrich Hegel, Giorgio Agamben, Judith Butler, Wendy Brown, and Jacques Rancière. Baxi's work also emphasises the importance of incorporating subaltern perspectives into legal discourse. He argues that the law should not only reflect the interests of the elite but should also consider the experiences and needs of marginalised groups. This focus on subaltern perspectives is evident in his article, "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India,"<sup>7</sup> where Baxi advocates for a legal system that includes the voices of the oppressed. His work aligns with the subaltern studies movement, which seeks to highlight the agency and experiences of marginalised communities. His engagement with these thinkers underpins his innovative distinction between modern and contemporary paradigms of human rights.<sup>8</sup> He further explains that the law, as a formal institution, just upholds power structures and is unable to properly look into the sufferings of humans. He believes that the law should

<sup>2</sup> Upendra Baxi, *Human Rights in a Posthuman World: Critical Essays* (1st edn, Oxford University Press 2009)

<sup>3</sup> *Ibid*

<sup>4</sup> *Ibid*

<sup>5</sup> *Maneka Gandhi v Union of India* (1978) 1 SCC 248

<sup>6</sup> *Vishaka v State of Rajasthan* AIR 1997 SC 3011

<sup>7</sup> Baxi (n 1)

<sup>8</sup> *Ibid*

evolve through the active resistance of oppressed communities, which is currently not being done, just to make sure that justice is not abstract but grounded in the struggles of real people. Baxi discusses the various ways in which constitutions may provide a bridge during postcolonial transitions when post-liberal constitutions are brought within an ‘ethics of transformation’ through a process of ‘constitutional insurgency’ by the multitudes described by Antonio Negri.<sup>9</sup>

### **A REALITY CHECK TO PRISONERS’ RIGHTS IN CONTEMPORARY TIMES**

The laws dealing with prisoners’ rights have been continuously evolving in India; every new case opens the domain for another new law in this field. It brings negative thoughts to India to admit that India still doesn’t have codified laws regarding the rights of prisoners. It’s only through the previous precedents that not only guide but also bind all the present courts in India when it comes to the rights of the prisoners.

Several popular cases, such as *DBM Patnaik v State of Andhra Pradesh*<sup>10</sup> and *Sunil Batra v Delhi Administration*,<sup>11</sup> have stated that prisoners are also natural and legal entities who must be treated diligently, considering reasonable restrictions put upon them by law (because they cannot be equated to those of free citizens at any cost, though). The Supreme Court of India has been deliberating with the central and state governments for a long time to improve the deteriorating condition of the prisoners, which is fundamental because of the overcrowding of prisons, lack of training facilities, poor infrastructure, etc.

In the case of *State of Andhra Pradesh v Challa Ramkrishna Reddy*,<sup>12</sup> it was openly stated that prisoners have the right to fundamental rights until the Constitution has curtailed them. In the case of *State of Maharashtra v Prabhakar Pandurang Sanzgir*,<sup>13</sup> the Bombay High Court held that the fundamental rights of any prisoner can’t be curtailed merely because that individual is detained. The Court further ruled that every prisoner retains all such rights that are enjoyed by free citizens except those that are lost necessarily as an incident of confinement.

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<sup>9</sup> Antonio Negri, *Insurgencies: Constituent Power and the Modern State* (University of Minnesota Press 2009)

<sup>10</sup> *D.B.M. Patnaik v State of Andhra Pradesh* (1974) 6 SCC 397

<sup>11</sup> *Sunil Batra v Delhi Administration* (1980) 3 SCC 488

<sup>12</sup> *State of Andhra Pradesh v Challa Ramkrishna Reddy* AIR 2000 SC 2083

<sup>13</sup> *State of Maharashtra v Prabhakar Pandurang Sanzgir* 1986 (1) Bom. CR 272

In *Francis Corahe Mullin v The Administrator, UT Delhi*,<sup>14</sup> Justice Bhagwati observed the rules laid down by Justice Douglas and Justice Marshall: Mr Justice Douglas reiterated his thesis when he asserted: Every prisoner's liberty is, of course, circumscribed by the very fact of his confinement, but his interest in the limited liberty left to him is only the more substantial. Conviction of a crime does not render one a non-person whose rights are subject to the whim of the prison administration, and therefore, the imposition of any serious punishment within the prison system requires procedural safeguards. Mr Justice Marshall also expressed himself clearly and explicitly in the same terms: 'I have previously stated my views that a prisoner does not shed his basic constitutional rights at the prison gate, and I fully support the court's holding that the interest of the inmate.'<sup>15</sup>

In the case of *Sunil Batra v Delhi Administration*,<sup>16</sup> the Supreme Court held that the imposition of 'solitary confinement' in the case of prisoners should only be imposed in exceptional cases where the prisoner is of such a violent or dangerous nature that his segregation becomes an utmost necessity. The court also observed that keeping prisoners in bar fetters day and night reduces them to the level of an animal and deteriorates their mental health. The courts, therefore, have presented strong resentment against solitary confinement and stated that its confinement is highly dehumanising and derogatory. They have also held such confinements to be against the spirit of the Constitution of India.

In the well-known cases of *Kharak Singh v State of UP*,<sup>17</sup> *Maneka Gandhi v Union of India*,<sup>18</sup> the court ruled that the term 'life' connotes more than mere existence like that of an animal. It connotes something more than just the physical survival of a being. Thereafter, the apex court in *Pandit Parmanand v Union of India*<sup>19</sup> expanded the concept of 'life' and ruled that the word 'life' is not just limited to the period of death, but even after that. Therefore, when a person was executed with the death penalty (as in this case) but the dead body was not lowered even after half an hour, although the doctor had already given the death certificate, the court held that it amounted to a violation of the Right to life under Article 21. It can be concluded that the Right

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<sup>14</sup> *Francis Corahe Mullin v The Administrator, UT Delhi* 1981 SCR (2) 516

<sup>15</sup> *Ibid*

<sup>16</sup> Upendra Baxi, *Human Rights in a Posthuman World: Critical Essays* (OUP 2009)

<sup>17</sup> *Kharak Singh v State of U.P.* AIR 1963 SC 1295

<sup>18</sup> *Maneka Gandhi v Union of India* AIR 1978 SC 597

<sup>19</sup> *Pandit Parmanand v Union of India* (1989) 4 SCC 286

to life continues even after death and includes in its ambit the right to proper handling of the dead body or the right to a decent burial

## **UNDERSTANDING THE MARGINALISED: BAXI'S PERSPECTIVE ON PRISONERS**

The great gift of classical and contemporary human thought to culture and civilisation is the notion of human rights. The struggle to preserve, protect and promote basic human rights continues in every generation in each society. New rights arise from the womb of the old; today, we widen the sphere of human rights thought and action to new arenas and constituencies, as the essays in this volume demonstrate. Without at all wishing to detract from this magnificent achievement, I explore in this essay three problems with classical and contemporary human rights thinking, all of which have poignant relevance to the experience of the impoverished masses in the so-called Third World.<sup>20</sup>

Upendra Baxi emphasises the critical nature of recognising the human rights of prisoners as essential to upholding justice in a democratic society.<sup>21</sup> Baxi critiques the punitive nature of prison systems, highlighting how prisoners' rights are often violated under the guise of law and order. He argues for a humanised approach to prisoner treatment, asserting that prisoners, despite their offences, retain fundamental human rights that must be respected.

Baxi stresses the importance of social action litigation as a tool to advance the cause of prisoners' rights.<sup>22</sup> He believes that the judiciary plays a pivotal role<sup>23</sup> in protecting prisoners from inhumane treatment and upholding their constitutional rights, which are frequently overlooked. His work calls for a shift from retribution to rehabilitation,<sup>24</sup> urging the state to recognise the dignity of prisoners and ensure their humane treatment.

Baxi also touches upon the international human rights framework, advocating for its integration into national legal systems to better safeguard the rights of prisoners. He points out the need for reforms that align prison systems with international human rights standards, ensuring that

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<sup>20</sup> Upendra Baxi, 'From Human Rights to the Right to be Human: Some Heresies' (1986) 13(3/4) India International Centre Quarterly <<https://www.jstor.org/stable/23001445>> accessed 20 June 2025

<sup>21</sup> Upendra Baxi, *Inhuman Wrongs and Human Rights* (Har-Anand Publications 1994)

<sup>22</sup> *Ibid*

<sup>23</sup> *Ibid*

<sup>24</sup> Upendra Baxi, *Law and Poverty: Critical Essays* (Oxford University Press 2016)

prisoners are treated fairly and justly, with access to basic rights such as healthcare, legal aid, and protection from torture or degrading treatment.

Baxi also emphasises Human Rights Education (HRE)<sup>25</sup> by suggesting that it should start by understanding the history of everyday moral heroism of diverse peoples asserting the most basic of all basic rights: namely, the Right to be Human, and to remain Human.<sup>26</sup>

**Dr. Upendra Baxi (I) v State of Uttar Pradesh and Anr:**<sup>27</sup> In this landmark case that was present before the division bench of Justice O. Chinnappa Reddy<sup>28</sup> and Justice P.N. Bhagwati,<sup>29</sup> a public interest litigation was filed, which not only broadened the scope of PIL but also considered human rights law in India. The petitioners alleged that the conditions in the Agra Protective Home violated the inmates' fundamental rights under Articles 21<sup>30</sup> and 32<sup>31</sup>. SC was led by P. N. Bhagwati, as she treated it as a PIL.

This included the ill-treatment done by the Superintendent towards the admission of women in the home (herein 'Agra Protective Home'<sup>32</sup>). SC held that a girl/woman should be treated as mentioned in subsection (2) of section 10<sup>33</sup> or Section 17(2)<sup>34</sup> or Section 19(2)<sup>35</sup> Suppression of Immoral Traffic in Women and Girls Act, 1956.

This case had a significant impact on the judiciary, which opened the domain for the inhuman treatment of prisoners, the responsibility of the state while dealing with such issues, and judicial activism increased in society. This case also expanded the jurisprudence of PIL in India, strengthened human rights, increased judicial oversight of state institutions, and created guidance for future cases.

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<sup>25</sup> Francis Fukuyama, *The End of History and the Last Man* (Free Press 1992)

<sup>26</sup> *Ibid*

<sup>27</sup> *Dr. Upendra Baxi (I) v State Of Uttar Pradesh And Anr.* (1983) 2 SCC 308

<sup>28</sup> *Ibid*

<sup>29</sup> *Ibid*

<sup>30</sup> Constitution of India 1950, art 21

<sup>31</sup> Constitution of India 1950, art 32

<sup>32</sup> *Unnikrishnan J.P. v State of Andhra Pradesh* (1993) 1 SCC 645

<sup>33</sup> Suppression of Immoral Traffic in Women and Girls Act 1956, s 10(2)

<sup>34</sup> Suppression of Immoral Traffic in Women and Girls Act 1956, s 17(2)

<sup>35</sup> Suppression of Immoral Traffic in Women and Girls Act 1956, s 19(2)



## CONCLUSION

Overall, the development of prisoners' rights in India has been strongly influenced by the scholarly efforts of commentators such as Upendra Baxi, whose work campaigns for a revolutionary model of legal jurisprudence. Baxi's focus on human dignity, social justice, and human rights protection, including that of marginalised groups such as prisoners, has played a central role in campaigns calling for a departure from retributive models of justice to a rehabilitative system of justice. His critique of mainstream legal systems and his advocacy for Public Interest Litigation (PIL) have assisted in widening access to justice for the traditionally excluded sections of society. Though there have been improvements through seminal judicial interventions, India's prison system continues to be beset by several problems, such as overcrowding and poor infrastructure. Yet, in the enduring impact of Baxi, a recognition grows of the fact that the state does not just need to meet such conditions but further ensure its policy is consistent with global human rights. His contribution continues to form a foundation upon which the battle persists for protecting and promoting prisoners' rights, with a call upon a legal framework that favours reform, rehabilitation, and observance of human dignity. As the law continues to evolve, Baxi's dedication to social transformation and justice for everyone continues to be an essential compass in the development of a more compassionate and equitable society for Indian prisoners.