“PRISONERS RIGHTS WITH SPECIAL REFERENCE TO HUMAN RIGHT IN INDIA”

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LIST OF ABBREVATION

A.I.R.	:	All India Reporter
SCC	:	Supreme court cases
H.C.C	:	High court cases
HC.	:	High court
SC	:	Supreme court
CAPT.	:	Captain
e.g.	:	Example
I.P.C.	:	Indian Penal Code
Prof.	:	Professor
S.	:	Section
U.S.A.	:	United States of America
V.	:	Versus
i.e,	:	That is
ART	:	Article
Cjs	:	Criminal Justice System
D.o.	:	Discipline Officer
Ncl	:	Non-Criminal Lanatic
Ngo	:	Non Governmental Organisation
Nhrc	:	National Human Rights Commission

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Chapter 1

Introduction

Imprisonment is one of the common modes of punishment available to the courts to deal with the persons who commit criminal offences. Prisons are places to keep the offenders in confinement with a view to restrict their personal liberty. The period of confinement varies with the gravity of offence committed. A prisoner, however, does not cease to be a human being after being confined to the four walls of the prison. Prisoners lose only those rights which are abridged or proscribed by law. Though, they get deprived of their right to personal liberty, yet they remain entitled to some basic human rights, which are sacrosanct despite imprisonment. Right to life with a minimum standard of living, right to health care, right to human dignity, right to humane treatment, protection against torture, protection against discrimination on grounds of race or caste, right to education, right to reformation, right to expeditious trial, right to legal aid, right to protection of motherhood and childhood, right to culture and right to information are the basic minimum rights that a prisoner is not supposed to forego even when in captivity.

National Human Rights Commission of India has also observed that when an individual is in custody, it means that he is in the custody of the State. Therefore, it is the direct concern and responsibility of the State to ensure that his human rights are protected.[1] Places of incarceration are largely impenetrable to the outside world. Inaccessibility and lack of accountability and transparency coupled with indifference of people outside towards prisoners lead to gross infringement of their basic human rights.

Historical evolution of prison administration tells that punitive imprisonment was extensively used in India, China, Egypt, Assyria, Babylon and Rome from times immemorial. Death, mutilation and fine were common forms of punishment. Gradually

[1] National Human Rights Commission of India, D.O. No. 10/19/2005-PRP&P, 5 December 2006

it came to be realised that the process of imprisonment involving detention in isolation from family and community could itself be considered as punishment in place of old corporal punishment.[2]

In the ancient times, we have references of Mamertine Prison in Rome which was constructed around 640-616 BC by Ancus Marcius. It is an ancient prison at the foot of the Capitoline Hill. The Mamertine Prison consists of two gloomy underground cells where Rome's vanquished enemies were imprisoned and where they usually died, either of starvation or strangulation. The lower room of the remaining part is known as the Tullianum after its builder Servius Tullius (6th century BC). This part served as a place not for punishment but for detention and execution of condemned criminals. The ancient historian Sallust said it was 12 feet below the ground and 'neglect, darkness and stench make it hideous and fearsome to behold.[3]

In the United Kingdom, by the 16th and 17th Centuries, prison tended to be a place, where people were held before their trial or while awaiting punishment. Imprisonment with hard labour was beginning to be seen as a suitable sanction for petty offenders by the mid-18th century. Transportation was a much-used method for disposing of convicted people. Convicts were shipped to the British colonies like America (until the end of the American War of Independence in 1776), Australia and Tasmania. Transportation was curtailed at the end of the 18th century. Later on, prison hulks were made as an alternate mode of punishment. Prison hulks were ships which were anchored in the Thames, Portsmouth and Plymouth. Those sent to them were employed in hard labour during the day and then loaded, in chains, onto the ship at night. The life on the hulks was in appalling conditions, especially the lack of control and poor physical conditions.

In 1777, John Howard condemned the prison system as disorganised, barbaric and filthy. He called for wide-ranging reforms including the installation of paid staff,

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[2]Mohanty, et al.: Indian Prison Systems, APH Publishing, Delhi, 1990, p. iv

[3]www.sacred-destinations.com/italy/rome-mamertime-prison.htm

outside inspection, a proper diet and other necessities for prisoners. In 1791, Bentham designed the panopticon. This prison design allowed a centrally placed observer to survey all the inmates, as prison wings radiated out from this central position. The 19th century saw the birth of the state prison. The first national penitentiary was completed at Millbank in London in 1816. It held 860 prisoners, kept in separate cells, although association with other prisoners was allowed during the day. In 1842, Pentonville prison was built using the panopticon design. This prison is used till today. In 1877, prisons were brought under the control of the Prison Commission. The Criminal Justice Act, 1948 abolished penal servitude, hard labour and flogging. It also presented a comprehensive system for the punishment and treatment of offenders. In April 1993, the Prison Service became an Agency of the government. This new status allows for greater autonomy in operational matters, while the government retains overall policy direction.[4]

In the ancient India, Kautilya, Jatakas, Harsacharita, Hiuen-Tsang make a mention of prison life. The prison system in medieval India resembled that of ancient India. Imprisonment as a form of punishment was introduced in India by the British Government in 1773. The Prison Reform Committees were formed in 1836, 1864, 1877, 1888, 1892 and 1920. The Prison Act of 1894 is based on the recommendation of the Prison Reforms Committee of 1892. This was followed by the Prisoners Act of 1900. In the post independence period, in 1952, Dr. W. C. Reckless, the United Nations expert submitted his report on Prison Administration in India. In 1983, A. N. Mulla Committee submitted its report on Indian Jail Reforms.

We have references from the Mahabharata[5] , where Kansa threw his sister Devaki and her husband Vasudeva into jail. Kautilya[6]refers to the Chamberlain (sannidhátá) who was responsible for construction of the armoury and the jail (bandhanâgâra), besides treasuryhouse, trading-house, store-house of grains and other important storehouses. Arthasastra further describes that the jail should be well guarded with many compartments provided with separate accommodation for men and women.

During the period of the Sultanate, there were no regular prisons. Only old forts and castles were used as prisons. During the time of Emperor Akbar, there were two kinds of prisons; one for criminals who had committed serious offences and the other for ordinary criminals. Important nobles and princes guilty of treason and rebellions were imprisoned in fortresses situated in different parts of the country.

The Cellular Jail in the Andaman Islands is a live example of blatant violation of basic human rights of the prisoners. Port Blair became a penal colony at the end of the nineteenth century. From 1896, the construction of Cellular Jail was started and it was completed in 1906, with 698 tiny solitary cells. The Jail was constructed with seven wings, spreading out like a seven-petal flower. In its centre, it had a tower with a turret. Connected to this were the three-storey high seven wings with 698 isolated cells. This is why it is called the Cellular Jail. The Cellular Jail initially housed thieves and smugglers, but later on freedom fighters and political activists were sentenced to two decades of imprisonment on these islands, which came to be known as 'Kala Pani' or Black Water.[4]

The first modern prison in India, Central Jail, was constructed in 1846 in Agra on the recommendations of Macaulay Committee constituted by the British Government. This was followed by construction of Central Prisons at Bareilly and Allahabad in 1848, at Lahore (now in Pakistan) in 1852, at Chennai in 1857, at Bombay, Varanasi in 1864 and at Lucknow in 1867.[5]

Model Prison Manual, 2003 and Draft National Policy on Prison Reforms, 2007 prepared by the Bureau of Police Research and Development of India (BPRD) have provided benchmarks for reforms in the prisons and protection of the rights of the prisoners.

[4] History of Andaman Cellular Jail: [www.andamancellularjail.org/History.htm]

[5]Sastry, G.U.G.: Criminology, S.V.P. National Police Academy, Hyderabad, 1999, p. 184

Human Rights of Undertrial Prisoners

The number of undertrials in the jails outnumbers the convicts. Due to the excessive delay in the trials, many persons have to undergo a considerable period of confinement under judicial custody. Unnecessary detention of the undertrials amounts to violation of human rights. Only those undertrials should be detained, who are desperate criminals and are in a position to influence the judicial process and are in a position to influence or induce the witnesses and the complainants. Unchecked and undeterred arrests by the police aggravate the situation. A prisoner detained in judicial custody is entitled to be tried within a reasonable period of time. Speedy trial is the basic right of the accused. It is an old saying that justice delayed is justice denied. Dr. A. P. J. Abdul Kalam, former President of India, also expressed his concern over the time taken by courts in deciding cases and suggested to speed up the judicial process with minimum adjournments.[6]

All the persons arrested under law are entitled to be provided free legal aid. Everybody has a right to consult a legal advisor of his or her choice. In case a person is not capable of hiring the services of a lawyer, it is the responsibility of the state to provide a lawyer at the cost of the state. The Legal Services Authorities Act, 1987 has been enacted to give this facility a statutory base. For this purpose, Legal Services Authorities have been constituted at the district and state levels, besides National Legal Services Authority at the centre. However, poor and needy persons are still languishing in the jails devoid of the legal benefits under these provisions.

On several occasions, the undertrials are not produced before the courts by the police on the grounds of their engagements with the VVIP duty or under the pretext of some other law and order duty. As a result of this, the trial gets delayed. The procedure of production of undertrials in the courts needs re examination to ensure justice.

[6] The Tribune, Chandigarh, 27 March 2006.

There are instances where poor persons are involved in minor and petty offences and are languishing in the jails because they are not in a position to arrange for the lawyers and sureties due to poverty. There are many persons in the jail against whom charge-sheets have not been filed by the police despite expiry of the stipulated 60 or 90 days as per the Code of Criminal Procedure, 1973. However, they continue to rot in the jail only because of their poverty. To keep a person in judicial custody, without chargesheeting, amounts to serious violations of the human rights.

There are instances where many persons are acquitted by the trial court. However, they have already undergone a considerable period of imprisonment while pending trials. It is a serious violation of basic rights of a person who suffers for no fault of his own. If a court of law declares a person innocent and the person has already undergone 2-3 years or even more in the judicial custody, the person after release finds himself nowhere in the society and thus law and justice are meaningless for him.

OBJECTIVES

The proposed study aims to examine the basic human rights issues of prisoners in Indian jails, with particular reference to Amritsar Central Jail. The main objectives of this study are:

i. To examine the existing living conditions in the jails

ii. To evaluate the problems faced by the undertrial prisoners due to delay in the disposal of cases iii. To learn the problems faced by the foreign inmates in the jails iv. To appraise the basic rights of the women prisoners and their children

v. To examine and evaluate the human rights issues of the prisoners

vi. To propose a proactive action plan to ensure protection of human rights of the prisoners

While looking at the rights of undertrial prisoners, this research study will also evaluate the average time duration and average number of adjournments in the trials of the cases in the courts. This area is required to be studied in detail to ensure proper justice.

The present research aims to examine the prevailing conditions in the jails from human rights perspective in particular.

HYPOTHESIS

The following are the important hypotheses formulated to carry out the research:

- To enforce and protect the human rights of the prisoners, which is constitutional guarantee and involves an obligation on the part of the state for protecting these human rights.
- Various judgments have been passed by Indian Supreme Court recognizing the rights of the prisoners, which have resulted in amendments for the existing legislations for protection of prisoners.
- Though various rights were granted to prisoners, in reality, they do not reach the prisoners as many of them do not know their rights.
- The measures have been taken by the state to protect the human rights of prisoners by guaranteeing them certain basic rights.
- Prolonged detention of undertrail prisoners, unsatisfactory living conditions, lack of treatment programmes and many more incidents in prisons resulted in violation of human rights of prisoners.

RESEARCH METHODOLOGY

The present study is mainly doctrinal. Doctrinal research has been done by the researcher using descriptive, analytical and critical methods of research. Sources of analytical studies are books of both national as well as international authors, national and international journals, articles magazines, reports of certain committee's commissions. Besides the above mentioned sources, various judicial pronouncements on the subject are thoroughly surveyed and critically analysed.

To make the findings of the study to reach a meaningful conclusion an attempt is made to discus and critically evaluate different provisions of Prison Act 1894, Model prison manual, Jail manuals, Indian Penal Code 1860, code of criminal procedure 1973,etc.

Chapter 2

REVIEW OF LITERATURE

Human Rights of Prisoners is comparatively a new and perceptive area of study from research point of view. Though, we find literature in the shape of guidelines on the rights of prisoners by the United Nations Organisation, National Human Rights Commission, Jail Manuals and Judgments of Supreme Court of India and High Courts, we do not find much literature on the rights of prisoners in the form of empirical studies particularly on various aspects of problems of prisoners. The present study is purely empirical in nature as it is based on practical orientation of the rights of prisoners.

Therefore, it becomes a humble attempt to fill the gap of the practical aspects of the literature.

For the convenience and clarity of the present study, review of the literature is divided into four parts:

1. Guidelines given by the United Nations and other National & International Human Rights Organisations
2. Various Acts, Rules, Jail Manuals and Committee Reports
3. Guidelines given by the Supreme Court of India and High Courts
4. Books, Journals, Research Studies and Reports

Guidelines given by the United Nations and other National and International

Human Rights Organisations

(a) Standard Minimum Rules for the Treatment of Prisoners[7] is the first major United Nations document which advocates the rights of the prisoners. As per these rules, the purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect the society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to the society the offender is not only willing but able to lead a law-abiding and self supporting life.

Putting stress on the basic human needs of the prisoners like food, drinking water, health and hygiene, the Rules say that every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served. Drinking water shall be available to every prisoner whenever he needs it.[8] The sanitary installations shall be adequate to enable every prisoner to comply with the calls of nature when necessary and in a clean and decent manner.[9] Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.

Further, the Rules say that where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room.

Where dormitories are used, these shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. There shall be regular

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[7] Standard Minimum Rules for the Treatment of Prisoners (1955) adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

[8] Ibid., Rule 20

[9] Ibid. ,Rule 12

supervision by night, in keeping with the nature of the institution. All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

Advocating the right of communication, the Standard Minimum Rules say that Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.

Regarding right to education, Rule 77 says, "Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. The education of illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the administration. So far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty."

As per Rule 84 the undertrial prisoners are presumed to be innocent and shall be treated as such. Rule 85 says that the undertrial prisoners shall be kept separate from convicted prisoners and young undertrial prisoners shall be kept separate from adults and shall in principle be detained in separate institutions.

(b) The second most important document on basic rights of prisoners is Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.[10] It advocates the basic human rights and dignity of the prisoners and says, 'All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.' Principle 6 of this Resolution prohibits any kind of torture, cruel behaviour, inhuman or degrading treatment of prisoners.

[10] Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by UN General Assembly Resolution 43/173 of 9 December 1988

As per Principle 17 of this Resolution, "A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it. If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay."

Principle 19 of this Resolution is related with the right of prisoner to correspond with the members of his family and friends. A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.

Principle 38 of this Resolution lays stress on quick trial and provision of bail. A person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial. Principle 39 of this Resolution further says that "Except in special cases provided for by law, a person detained on a criminal charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law".

Principle 16 of this Resolution is related with the 'foreigner prisoners' which makes provision for immediate consular access or correspondence with the diplomatic mission of the Country of which he is a national.

(c) The third UN document related with the rights of prisoners is Basic Principles for the Treatment of Prisoners.[11] It provides for the treatment of prisoners with respect due to their inherent dignity and value as human beings. It prohibits any kind of discrimination on the grounds of race, colour, sex, language, religion, political or other

[11] Basic Principles for the Treatment of Prisoners, adopted and proclaimed by UN General Assembly Resolution 45/111 of 14 December 1990 of the UNO

opinion, national or social origin, property, birth or other status. It also advocates for protecting the basic rights set out in the International Covenant on Civil and Political Rights. It also describes the right of prisoners to take part in cultural activities and education aimed at the full development of the human personality. It further lays stress on the rehabilitation of the prisoners in the society after release through community participation and support from social institutions.

(d) Commonwealth Human Rights Initiative in the “Recommendations on Prisoners Rights" (1995) advocates to adopt measures to ensure freedom of communication between the prisoner and members of his or her family who should be permitted periodic visits under conditions which while safeguarding security do not impair privacy of communication. Legal aid should be given to an accused at the first point of contact with the police. The right of a prisoner to see a lawyer of his/her choice should be ensured. Meetings with the lawyer may be subject to reasonable regulation as to time and place but not held within the hearing of prison officials. Urgent steps should be initiated to reduce the delays in bringing prisoners to trial. While prisoners serve their terms, their inner creativity should be developed so that when they are released, they can be more easily integrated into the society. It was stressed that with a view to affording greater access to and interaction with the family, the criteria for giving parole should be relaxed.

(e) National Human Rights Commission of India (NHRC) speaks on the problems of undertrial prisoners which have now assumed an alarming dimension. Almost 80 percent of prisoners in Indian jails are undertrials. The majority of undertrial prisoners are people coming from poorer and underprivileged sections of the society with rural background. Indeed in most of the jails, there is predominance of undertrials. Many of them who have committed petty offences are languishing in jails because their cases are not being decided early for reasons which need not reiterated. On the general living conditions of the prisoners the Commission says, “It is an unfortunate reality that the living conditions of prisoners in most of the jails in the various States and Union Territories leave much to be desired. Overcrowding is the main reason for this a

principal reason being the presence of undertrial prisoners who languish in jail for long periods because of the slowness of the judicial process." [12]

For the overall mental and physical growth and development of the prisoners the National Human Rights Commission of India says:

i) "As prisoners have a right to a life with dignity even while in custody, they should be assisted to improve and nurture their skills with a view to promoting their rehabilitation in society and becoming productive citizens. Any restrictions imposed on a prisoner in respect of reading materials must therefore be reasonable.

ii) In the light of the foregoing, all prisoners should have access to such reading materials which are essential for their recreation or the nurturing of their skills and personality, including their capacity to pursue their education while in prison

(iii) Every prison should, accordingly, have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books and prisoners should be encouraged to make full use of it. The materials in the library should be commensurate with the size and nature of the prison population.

(iv) Further, diversified programmes should be organized by the prison authorities for different groups of inmates, special attention being paid to the development of suitable recreational and educational materials for women prisoners or for those who may be young or illiterate. The educational and cultural background of the inmates should also be kept in mind while developing such programmes."[13]

[12] Annual Report 2002-03, National Human Rights Commission of India, New Delhi

[13] National Human Rights Commission, Guideline No. 68/5/97-98, 1 March 2000

Chapter 3

3.1. PRISONER'S RIGHTS IN INDIA

It highlights the constitutional protection of prisoners in India and the growing dimensions of their rights recognised by the judicial articulation. This entire work is aimed at identifying the Human Rights of Prisoner. The focus is mainly limited to Indian cases and Indian social scenario. The researcher has tried to analyze various Supreme Court cases which could be termed as pioneers in recognition of Prisoner's Rights as Human Rights.

The fundamental rights guaranteed under the Constitution are not absolute and many restrictions have been imposed on their enjoyment. Right to freedom of person is one of the most important rights among the fundamental rights. When a person is convicted or put in prison his status is different from that of an ordinary person. A prisoner cannot claim all the fundamental rights that are available to an ordinary person. The Supreme Court of India and various High Courts in India have discussed the scope in various decisions. In this backdrop, the researcher cited in various case laws for which prisoner's rights were recognised and upheld by the Indian judiciary viz., in Charles Shobraj v. Superintendent[1415] , the Court held that 'Like you and me, prisoners are also human beings. Hence, all such rights except those that are taken away in the legitimate process of incarceration still remain with the prisoner. These include rights that are related to the protection of basic human dignity as well as those for the development of the prisoner into a better human being'.

In Sunil Batra v. Delhi Administration[16], the court recognized the various rights of prisoners in the most comprehensive manner. The judgement held that: "No prisoner can be personally subjected to deprivation not necessitated by the fact of incarceration and the sentence of the court. All other freedoms belong to him to read and write, to

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15 AIR 1514, 1979 SCR (1) 512

16 (1978) 4 SCC 409

exercise and recreation, to meditation and chant, to comforts like protection from extreme cold and heat, to freedom from indignities such as compulsory nudity, forced sodomy and other such unbearable vulgarity, to movement within the prison campus subject to requirements of discipline and security, to the minimal joys of self-expression, to acquire skills and techniques. A corollary of this ruling is the Right to Basic Minimum Needs necessary for the healthy maintenance of the body and development of the human mind. This umbrella of rights would include: Right to proper Accommodation, Hygienic living conditions, Wholesome diet, Clothing, Bedding, timely Medical Services, Rehabilitative and Treatment programmes.' The Rudal Shah v. State of Bihar[20] is an instance of breakthrough in Human Rights Jurisprudence whereby judiciary recognises the right to compensation in cases of illegal deprivation of personal liberty.

3.1.1. Prisoner Rights: Constitutional Perspective

The fundamental rights guaranteed under the Constitution are not absolute and many restrictions have been imposed on their enjoyment. Right to freedom of person is one of the most important rights among the fundamental rights. When a person is convicted or put in prison his status is different from that of an ordinary person. A prisoner cannot claim all the fundamental rights that are available to an ordinary person. The Supreme Court of India and various High Courts in India have discussed the scope in various decisions. Before discussing these decisions it is necessary to see various constitutional provisions with regard to prisoners' rights.

3.1.2. Statutory Provisions

There is no guarantee of prisoner's right as such in the Constitution of India. However, certain rights which have been enumerated in Part III of the Constitution are available to the prisoners also because a prisoner remains a 'person' inside the prison. The right to personal liberty has now been given very wide interpretation by the Supreme Court. This right is available not only to free people but even to those behind bars. The right to speedy trial, free legal aids, right against torture[21] , right against in human, and degrading treatment accompany a person into the prison also.

One of the important provisions of the Constitution of India which is generally applied by the courts is Article 14 in which the principle of equality is embodied.

The rule that 'like should be treated alike' and the concept of reasonable classification as contained in article 14 has been a very useful guide for the courts to determine the category of prisoners and their basis of classification in different categories.

Article 19 of the Constitution guarantees six freedoms to the citizens of India. Among these certain freedoms like 'freedom of movement', 'freedom to reside and to settle'and freedom of profession, occupation, trade or business" cannot be enjoyed by the prisoners because of the very nature of these freedoms and due to the condition of incarceration.

But other freedoms like "freedom of speech and expression", "freedom to become member of an association" etc. can be enjoyed by the prisoner even behind the bars and his imprisonment or sentence has nothing to do with these freedoms. But these will be subjected to the limitations of prison laws.

Article 21 of the Constitution has been a major centre of litigation so far as the prisoners' rights are concerned. It embodies the principle of liberty. This provision has been used by the Supreme Court of India to protect certain important rights of prisoners. After Maneka Gandhi case[17] , this article has been used against arbitrary actions of the executive especially the prison authorities. After that decision it has been established that there must be fair and reasonable procedure for the deprivation of the life and personal liberty of the individuals. The history of judicial involvement in prison administration shows that whenever the prison officials have subjected the inmates to brutal treatment the courts have intervened to protect their rights. The issue of prison conditions and environment has emerged as one of the predominant themes of correctional philosophy raising questions concerning inmate's rights and fate of prison life.

[17] A.I.R. 1978 S.C. 597

Originally the treatment of prisoners inside the prisons was cruel and barbarous. ‘When a person was convicted, it was thought that he lost all his rights. The prison community was treated as a closed system and there was no access to outsiders in the affairs of the prisoners. The authorities under the guise of discipline were able to inflict any injury upon the inmates. The scope of judicial review against the acts of prison authorities was very restricted. The courts were reluctant to interfere in the affairs of the prisoners: it was completely left to the discretion of the executive. But gradually a change was visible.

3.1.3. Right to Fair Procedure

When we trace the origin of the prisoner's right in India, the embryo we can find in the celebrated decision of A.K. Gopalan v. State of Madras[18] . One of the main contentions raised by the petitioner was that the phrase "procedure established by law" as contained in article 21 of the Constitution includes a ‘fair and reasonable‘ procedure and not a mere semblance of procedure prescribed by the State for the deprivation of life or personal liberty of individuals.

The majority view in Gopalan was that when a person is totally deprived of his personal liberty under a procedure established by law, the fundamental rights including the right to freedom of movement are not available. It was held:

There cannot be any such thing as absolute or uncontrolled liberty wholly freed from restraint, for that would lead to anarchy and disorder....In some cases, restrictions has to be placed upon free exercise of individual rights to safeguard the interests of the society: on the other hand, social control which exists for public good has got to be restrained, lest it should be misused to the detriment of individual rights and liberties.

Another important decision was State of Maharashtra v. Prabhakar Pandurang. In Pandurang [19] the court held that conditions of detention cannot be extended to deprivation of other fundamental rights consistent with the fact of detention. The respondent was detained by the government in the district prison of Bombay in order to

[18] A.I.R. 1950 S.C. 27

[19] A.I.R. 1966 S.C. 424

prevent him from acting in a manner prejudicial to the defence of India, public safety and maintenance of public order. While he was inside the jail he wrote with the permission of- the government a book in Marathi under the title 'Anucha Antarangaat' which means inside the atom. The book was purely of scientific interest and it did not cause any prejudice to the defence of India, public safety or public order. The detenue applied to the government and the Superintendent for the permission to send the manuscript out of the jail for publication: but both were rejected. On approaching the High Court, it held that there were no rules prohibiting a detenue from sending a book outside the jail with a view to get it published. The High Court held that the civil rights and liberties of a citizen were in no way curbed by the order of detention and that it was always open to the detenue to carry on his activities within the conditions governing his detention. It further held that there were no rules prohibiting a detenue from sending a book outside the jail with a view to get it published. Supreme Court also affirmed the decision of the High Court and held that the said conditions regulating the restrictions on the personal liberty of a detenue are not privileges conferred on him, but are the conditions subject to which his liberty can be restricted.

In D. B. M. Patnaik v. State of Andhra Pradesh[20] , the Supreme Court categorically asserted that convicts are not by the mere reason of their detention, denuded of all the fundamental rights they possess. In Patnaik the petitioners were undergoing their sentences in the central jail, Visakapatnam. They were also at the same time prisoners under trial in what is known as the Parvathipuram Naxelite Conspiracy Case. The petition was filed for the removal of the armed police guards posted around the jail and for dismantling live wires electrical mechanism fixed on the top of the jail-wall.l8 The Supreme Court held that the right of personal liberty and some of other fundamental freedoms are not to be totally denied to a convict during the period of incarceration. Here there was no deprivation of any of their fundamental rights by the posting of the police guards immediately outside the jail. The policemen who live on the vacant jail land are not shown to have any access to the jail which is enclosed by high walls. But

[20] A.I.R. 1974 S.C 2093

the court laid down some important aspects regarding prisoners' rights. Chandrachud J. held: [21] The security of one's person against an arbitrary encroachment by the police is basic to a free society and prisoners cannot be thrown at the mercy of policemen as if it were a part of an unwritten law of crimes. Such intrusions are against the very essence of a scheme of ordered liberty.

The petitioners also questioned the installation of high-voltage wires installed on the top of the compound wall. Regarding this the court held that the prisoners cannot complain of the installation of the live-wire mechanism with which they are likely to come into contact only if they attempt to escape from the prison. According to the court, there was no possibility of the petitioners coming" into contact with the electrical device in the normal pursuit of their daily chores. Whatever be the nature and extent of the petitioner's fundamental rights to life and personal liberty, they have no fundamental freedom to escape from lawful custody.

Here the court has found that the rights claimed by the petitioners as fundamental may not readily fit in the classical mould of fundamental freedoms. Thus there was ea movement away from Gopalan in 1966 and 1974 concerning the availability of fundamental rights to prisoners. Even though in Gopalan, the courts did not interfere in the matters of detention there was a gradual change visible. But in reality, the courts did not in their actual decisions provide much relief to the prisoners. Even the violation of procedure established by the law in the Prisons Act or Jail Manuals did not entitle prisoners to any relief.

In Patnaik the court was unable to find, from the affidavit and counter affidavits, satisfactory proof that the conditions in Visakhapatnam Jail were such, that would involve violation of right to life and liberty guaranteed by Article 21 marathon hunger strikes was judicially noticed; the idyllic description of jail conditions by the authorities was not taken at face value.

The court notices that there were subtle forms of punishment to which convicts and under-trial prisoners are sometimes subjected to. These barbarous relics of a bygone

[21] A.I.R. 1974 S.C. 2092

era offended the letter and spirit of the Constitution.[27]The matters complained of did not amount to deprivation of the right to life and liberty in Patnaik and the plea of the prisoners were dismissed

3.1.4. Personal Liberty

The Supreme Court had to consider the relationship of Articles l9 and 21 with the prisoners' rights in Kharak Singh v. State of UP[22]. The Supreme Court contrasted Article 21 of the Constitution with the Fourth and Fourteenth Amendments to the United States Constitution. The word 'liberty' in Article 21 is qualified by the word 'personal'. The word 'personal' liberty in Article 21 is used as a compendious term to include within itself all varieties of right which go to make the personal liberties of men other than those within several classes of Article 19(1).

According to Subba Rao, J. who dissented in Kharak Singh, it is not correct to say that the expression 'personal liberty' in Article 21 excludes the attributes of freedom specified in Article 19.[23] He brought out the relationship between Articles 19 and 21 by observing that the fundamental right of life and liberty have many attributes and some of them alone are found in Article l9. A person's fundamental rights under Article 21 may be infringed only by law; such that law should satisfy the test laid down in Article l9. It is true that in Article 21 the word 'liberty' is qualified by the word 'personal' but this qualification is employed in order to avoid overlapping between those incidents of liberty which are mentioned in Article 21. An unauthorised intrusion into a person's home and the disturbance caused to him is the violation of the personal liberty of the individual.

Maneka Gandhi v. Union of India [24] was the turning point in the human rights Jurisprudence especially in personal liberty. Maneka Gandhi accepted the dissenting view of Justice Subba Rao in Kharak Singh. The expression 'personal liberty' in

[22] IR 1963 SC1295

[23] A.I.R. 1963 S.C. 1295

[24] A.I.R. 1978 S.C. 597

Article 21 is of the widest amplitude and covers every one of the rights which constitutes personal liberty of man. The personal liberties have been raised to the status of distinct fundamental right and given additional protection under Article 19.

3.1.4.(1). Extent of Judicial Interference

There may arise occasions which compel the prisoners to approach the courts for the redressal of their grievances. Whether a court can interfere with the treatment of prisoners by jail authorities and prescribe fair procedure? What is the remedy available to the convicted persons if their fundamental rights are encroached upon by the acts of prison authorities? The Supreme Court in Charles Sobraj v. Superintendent, Central Jail, Tihar[25] analysed in detail the extent of judicial interference. The Supreme Court not only reiterated the power of courts to issue writs but also highlighted their duty and authority to see that the judicial warrant was not misused. The prisoners should get the protection of the fundamental rights guaranteed to the citizens under the Indian Constitution against any arbitrary and discriminatory treatment by the prison authorities.

In Charles Sobraj the Supreme Court held that the prison authorities are justified in classifying between dangerous prisoners and ordinary' prisoners. While dismissing the petition the court held that in the present case the petitioner is not under solitary confinement. A distinction between ‘under trial’ and convict is reasonable and the petitioner is now a convict. A lazy relaxation on security is a professional risk inside a prison.

Though the plea of the petitioner was not allowed the court made some noteworthy observations regarding the role of Articles 19 and 21 in a prison setting. Krishna Iyer, J. of the Supreme Court observed.

Confronted with cruel conditions of confinement, the court has an expanded role. True, the right to life is more than mere animal existence, or vegetable subsistence. ‘True, the worth of the human person and dignity and divinity of every individual inform articles 19 and 21 even in a prison setting. True constitutional provisions and municipal laws

[25] A.I.R. 1978 S.C. 1594

must be interpreted in the light of the normative laws of nations, wherever possible and a prisoner does not forfeit his Part III rights.

Considering the question of the rights available to the prisoner, the Supreme Court has rightly affirmed that imprisonment does run: spell farewell to fundamental rights, though the courts may refuse to allow in full the fundamental rights enjoyed by free citizens. The court made it clear that the claims of prisoners' against cruel and unusual punishments need not necessarily depend for their soundness upon specific constitutional provisions prohibiting such treatment.[26]

Thus it is evident that Charles Sobraj is a landmark decision in the 'prisoner rights jurisprudence'. Through this case the court widened the scope of judicial interference in the administration of prisons.

Another opportunity for advancing human rights in the field of criminal jurisprudence came up before the Supreme Court in Francis Coralie Mullin v. The Administrator, Union Territory of Delhi.[27]

The right to life protected under Article 21 is not confined merely to the right of physical existence but it also includes within its broad matrix the right to the use of every faculty or limb through which life is enjoyed as also the right to live with basic human dignity.

The Supreme Court observed that as a necessary component of the right to life, the prisoner or detenue would be entitled to have interviews with the members of his family and friends and no prison regulation or procedure laid down by prison regulation regulating the right to have interviews with the members of the family and friends can be upheld as constitutionally valid under Articles 14 and 21, unless it is reasonable, fair and just. Justice Bhagwati further pointed:

"The same consequence would follow even if this problem is considered from the point of view of the right to personal liberty enshrined in Article 21, for the right to have interviews with members of the family and friends is clearly part of personal liberty'

[26] A.I.R. 1978 S.C. 1594

[27] A.I.R. 1981 S.C. 74

guaranteed 'under' that Article. The expression ‘personal liberty’ occurring in Article 21 is of the widest amplitude and it includes the right to socialise with members of the family and friends subject, of course, to any valid prison regulations and under Articles 14 and 21, such prison regulations must be reasonable and non arbitrary.”

If any prison regulation or procedure laid down by it regulating the right to have interviews with members of the family and friends is arbitrary or unreasonable, invalid as being violative of Articles 14 and 21.

The State cannot, by law or otherwise deprives any person of the right to live with basic human dignity. Torture or cruel, inhuman or degrading treatment or punishment which trenches upon human dignity would be impermissible under the Constitution. Thus the Supreme Court elevated immunity against torture or degrading treatment to the status of a fundamental right under Article 21, though it is not specifically enumerated as a fundamental right in the Constitution.[28]

The Supreme Court was not prejudiced by the fact that the petition was not a citizen of India. Human rights are universal: and the Supreme Court's endorsement of this propositions its much in evidence in this decision. The extension of the understanding of ‘life’ to include human dignity is an unmistakable reflection of the court's sensitivity to the pervasive aspect of human rights. The depth of understanding went beyond the words to the substance, and is now an inalienable part of Indian constitutional law.

Sunil Batra Cases

Awareness about prisoners’ rights was created among the people by the above mentioned decisions. But no substantial reforms have been made by the Central Government or the State Governments except the appointment of some Prison Reforms Committees. In spite of this the Supreme Court has taken initiative in order to humanise jail administration to some extent. The two Sunil Batra cases are significant decisions in this direction.[29]

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[28] P. N. Bhagwathi, ‘Human Rights in the Criminal Justice System, 27 JILI (1985) l at p.25.

[29]Sunii Batra (I) v. Delhi Administration AIR 1978 SC 1675; Sunii Batra (II) v. Delhi Administration AIR 1980 SC 1579

The petition in Sunil Batra(I) [30] was filed by two inmates confined in Tihar Jail challenging the legality of Sections 30[3132] and 56[38] of the Prisons Act. Sunil Batra, a convict under sentence of death challenged his solitary confinement. Charles Sobraj, a French national and then an undertrial prisoner challenged the action of the superintendent of jail putting him in bar felters for an unusually long period commencing from the date of incarceration. Such a gruesome and hair raising picture was pointed out that at some stage of hearing, Chief Justice M.H. Beg, V.R. Krishna Iyer, J. and P.S.Kailasam, J. who were the judges hearing the cases visited the Tihar Central Jail.

The petition was dismissed by the court. But through various interim orders the court has guaranteed a fair treatment to the petitioner inside the prison. The Supreme Court said[33]:

Convicts are not wholly denuded of their fundamental rights. No iron curtain can be drawn between the prisoner and the Constitution. Prisoners are entitled to all Constitutional rights unless their liberty' has been constitutionally curtailed. However, a prisoner's liberty is in the very nature of things circumscribed by the very fact of his confinement. His interest in the limited liberty left to him is then all the more substantial. Conviction for a crime does not reduce the person into a non-person whose rights are subject to the whim of the prison administration, and, therefore, the imposition of any major punishment within the prison system is conditional upon the observance of procedural safeguards. By the very fact of the incarceration prisoners are not in a position to enjoy the full panoply of fundamental rights because their very rights are subject to restrictions imposed by the nature of the regime to which they have been lawfully committed.

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[30] Sunii Batra (I) v. Delhi Administration AIR 1978 SC 1675

[31] Prisons Act 1894, Section 30 reads: - 'l. Every prisoner under sentence of death shall, immediately on his arrival in the prison after sentence, be searched by, or by order of, the jail and all articles shall be taken from him which the jailor deems it dangerous or inexpedient to leave in his possession.

[32] 1 Id. , Section 56 reads:"Whenever the Superintendent considers it necessary (with reference either to the state of the prison or the character of prisoners) for the safe custody of any prisoners that they should be confined in irons, he may, subject to such rules and instructions as may be laid down by the Inspector General with the sanction of the State Government, so confine him.

[33] A.I.R. 1978 S.C. 1675 at p.l727 per Desai, J.

Here the Supreme Court established that convicts are not merely by reason of conviction denuded of all the fundamental rights which they otherwise possess. The conviction deprives the prisoner the fundamental freedoms like the right to move freely throughout the territory of India and the right to practice a profession.

In Sunil Batra (II)[34] arising out of a letter written by Sunil Batra to one of the judges of the Supreme Court alleging that a warden in Tihar Jail had caused bleeding injury to a convict by name Prem Chand by forcing a stick into his anus, the court liberalised the procedural rigidities of tine writ of habeas corpus and employed the writ, following the American cases for the oversight of state penal machinery and for the condemnation of the brutalities and tortures inflicted on the prisoners.

On the basis of this, the Supreme Court treated Batra's letter as a petition for habeas corpus and issued the writ to the Lieutenant Governor of Delhi and the Superintendent of Central Jail ordering that Prem Chand should not be subjected to torture and the wound on his person should receive proper medical attention.

In this case Justice Krishna Iyer openly acknowledged the activist policymaking role of the judicial process, particularly in view of the legislative laxity, in the humanisation of the prison system and observed thus:

Of course, new legislation is the best solution, but when law-makers take far too long for social patience to suffer, as in this very case of prison reform, courts have to make-do with interpretation and carve on wood and sculpt on stone ready at hand not wait for far away marble structure.

The judge gave a number of guidelines on the humanist reforms of the penal process and the prison administration.

The Supreme Court has directed that the treatment of prisoners must be commensurate with his sentence and satisfy the tests of Articles 14, 19 and 21 of the Constitution. It expanded the scope of the writ of habeas corpus by recognising the right of a prisoner

[34] Sunil Batra (II) v. Delhi Administration, A.I.R. 1980 S.C.l579

to invoke the writ against prison excesses inflicted on him or on a co-prisoner. Further, the court gave many directions to improve the prison administration.

Judicial interference into the prison administration is not a prohibited thing at present: on the other hand the interference is necessary and welcome to check arbitrary actions of jail authorities. Habeas corpus powers and administrative measures are the pillars of prisoners' rights.[35] The prisoners can invoke the attention of the courts at appropriate times. For instance, where a person sentenced to simple imprisonment with 'B' class treatment is put by the jail authorities under rigorous improvement with 'C' class treatment, or where a prisoner is subjected to brutal treatment, prisoners are able to approach the court for the redressal of their grievance.

The post conviction visits by the judges to the prison will bear many beneficial results. They reduce the possibility of the vindictive attitude of the jail authorities and help the prisoner to get suitable treatment. The visits give an opportunity to the judges to observe the impact of a particular punishment on the criminal, to learn directly whether or not it helps to reform the criminal and to understand how they should act in future to make the penal system functionally effective. Highlighting the responsibility of the sentencing court to visit prisons and to guardian their sentences, Justice Krishna Iyer gave a new dimension to the sentencing power of courts. The popular prejudice that attaches itself to convicts did not deter the court in its attempt to eliminate prison injustice. The court expressly' stated that conviction, however heinous an offence, did not make a non-person of a person. While imprisonment would deprive the convict of his personal liberty, his fundamental right did not otherwise stand automatically abrogated.

[35] A.I.R. 1980 S.C. 1579 at p.l599

3.2. New Dimensions of Reformative Jurisprudence

The objectives of punishment justify the restrictions imposed upon the prisoner's right to move freely within the jail. But since prisoners are entitled to the fundamental rights, the restrictions should have a rational relationship with the working of the correctional system.

Judiciary can prescribe standards of treatment by jail administration if the convict is likely to become more sociopathic than what he was prior to the sentence. Justice Krishna Iyer, in L. Vijayakumar v. Public Prosecutor[36] stressed the need to keep first offenders who were young away from the hardened criminals in jail, so as to provide the former with opportunities of reforming themselves into better citizens.

In Vijayakumar, all the accused persons who were around seventeen years were sentenced two years imprisonment by the session court for robbing a bank with nonviolent use of crude pistols and country bombs. The High Court enhanced the sentence to seven years rigorous imprisonment. Even though the full bench of the Supreme Court did not interfere in the sentence passed, Justice Krishna Iyer gave various guidelines with regard to the treatment of prisoners to reduce their criminal tendencies. Justice Krishna Iyer pointed out that the court has responsibility to see that punishment serves social defence.

A hospital setting and a humanitarian ethos must pervade our prisons if the retributive theory, which is but vengeance in disguise, is to disappear and deterrence as a punitive objective gain success not through the hardening practice of inhumanity inflicted on a prisoners but by reformation and healing whereby the creative potential of the prisoner is unfolded. These values have their roots in Article 19 of the Constitution which sanctions deprivation of freedoms provided they render a reasonable service to social defence, public order and security of the state.

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[36] A.I.R. 1978 S.C. 1485.

The purpose of confinement is not to pass a person to the jail authorities to be punished vindictively. Confinement is the punishment and it has to be administered according to law. The responsibility of a judge is not over by rendering a decision on the guilt of the accused and by passing a sentence of punishment. The judge has a greater role to play. In Sunil Batra(I) Justice Krishna Iyer canvassed for positive experiments in rehumanisation including meditation, music, arts of self expression, games, useful work with wages, prison festivals, visits by and to families, even participative prison projects and controlled community life.

He observed:

The roots of our Constitution lie deep in the finer spiritual sources of social justice, beyond the melting pot of bad politicking, feudal cruelties and sublimated sadism, sustaining itself by profound faith in man and his latent divinity and the confidence that 'you can accomplish by kindness what you cannot do by force' and so that it is that the Prison Act provisions and the Jail Manual itself must be revised to reflect their deeper meaning in the behavioural norms, correctional attitudes and human orientation for the prison staff and prisoners alike.

In Sunil Batra, the judges were unanimous in expressing their opinion in favour of a change in law. It was emphasised that there is a need for making the Jail Manual available to the prisoners. According to the court the decision on the necessity to put a prisoner in bar fetters under the power of Section 56 of the Prisons Act 1894 has to be made after application of mind of the peculiar and special characteristic of each case. The nature and length of each sentence or the magnitude of the crime committed by the prisoner do not seem to be relevant for the purpose. Putting prisoners in bar fetters continuously for a long period is a cruel and unusual punishment which is anathema to the spirit of the Constitution.

Prison is not only a place of confinement and deterrence but also an abode of rehabilitation and refinement.[37] It is a revolutionary suggestion that the sentencing court has duty to visit prisons at intervals and to see that the convicts are treated according to law and in conformity with the norms of modern penological and correctional systems.

There must be a procedure in the sentencing court itself for receiving complaints from convicted persons if their rights are infringed in jail. The present system of sentencing ea person and forgetting him forever should change. Effective improvement in prison justice administration is possible if the judiciary has a say in the treatment of offenders in jail.

There is a well known saying in law that 'justice delayed is justice denied. It is implicit in the content of Article 21 because no procedure can be reasonable, fair and just which denies speedy trial to the accused. The Supreme Court in Hussainara Khatoon[38] pointed out that speedy trial, though not a specifically enumerated fundamental right can be claimed by prisoners. The state is under a constitutional obligation to take all steps necessary for ensuring the constitutional right to speedy trial to the accused and the state cannot be permitted to deny this right on the ground that it has no adequate financial resources to incur the necessary expenditure needed for improving the administrative and judicial apparatus with a view to ensuring speedy trial. The court in its anxiety to protect and enforce this right of speedy trial did not remain content with mere formulation and recognition of right but proceeded further to add that the court is entitled to enforce this right by issuing necessary directives to the state which may include taking of positive action calculated to ensure speedy trial. The court thus adopted an activist approach and took positive steps.

[37]Edgar do Rotman, 'Do Criminal Offenders have a Constitutional Right to Rehabilitation?' 77 The Journal of Criminal Law and Criminology, (1986) p.l023.

[38] A.I.R. 1979 S.C. 13607 A.I.R. 1969 S.C. 1369; A.I.R. 1979 S.C. 1377

The right to approach the judicial forum for the redressal of the grievances is an important right of all persons. If that right is denied it will be a denial of fair procedure envisaged under Article 21 of the Constitution.

The important question in M. H Hoskot v. State of Maharashtra[39] was whether the right of appeal is an integral part of the fair procedure as envisaged in Article 21 of the Constitution. In Hoskot, a Reader in the Saurashtra University was convicted for offences of attempting to issue counterfeit University degrees. The session court sentenced the person till rising of 'the court. High Court found tine sentence too lenient and awarded 3 years rigorous imprisonment. Against this heavy sentence the accused approached the Supreme Court by special leave. The High Court judgment was pronounced in 1973 and the special leave petition was filed only after four years. The petitioner has undergone his full term of imprisonment during this period. A thorough probe by the Supreme Court has revealed that a free copy of the judgment has been sent promptly by the High Court, meant for the applicant, to the Superintendent, Yervada Central Prison, Pune. The petitioner contented that he did not get the copy. There was nothing on record which bears his signature in token of receipt of the High Court's judgment. The Court did not allow the special leave petition. The Supreme Court vehemently criticised the Sessions Court judgment awarding a nominal punishment to the prisoner under the corrective aspect of the punishment. The court observed[40]:

Social defence is the criminological foundation of punishment. The trial judge- has confused between correctional approaches to prison treatment and nominal punishment verging on decriminalisation of serious social offences.

The Supreme Court was critical about the silent deprivation of liberty caused by unreasonableness, arbitrariness and unfair procedures inside the jails. The Supreme

[39] A.I.R. 1978 S.C. 1548

[40] A.I.R. 1978 S.C. 154

Court made it clear that in the light of Article 2l such practices should be stopped. Procedure established by law are words of deep meaning for all lovers of liberty and judicial sentinels. Procedure means 'fair and reasonable procedure which comforts with civilized norms like natural justice rooted firm in community consciousness.[41]

Justice Krishna Iyer has followed this and held that the procedure which deals with the modalities of regulating, restricting or even, rejecting ea fundamental right falling within Article 21 has to be fair, not foolish, carefully designed to effectuate, not to subvert, the substantive right itself. Procedure must be rule out anything arbitrary, freakish or bizarre. Procedural safeguards are the indispensible essence of liberty. The history of personal liberty is largely the history of procedural safeguards and right to a hearing has a human right ring. Procedure in Article 21 means fair, not normal procedure law is reasonable law, not any enacted piece.[42]

Natural justice is an essential part of fair procedure as envisaged in Article 21. So the right of appeal if it is provided by law, becomes an integral part of the fair procedure. In Hoskot, the Supreme Court laid down that the constitutional mandate under Article 21 read with Article l9(l)(d) prescribes certain rights to the prisoner undergoing sentence inside the jail. The 'rights established in this case can be laid down in the following manner.

The most important duty is upon the court. The court has to furnish a free copy of the judgment when it is sentencing a person to a prison term. In the event of any such copy being sent to the jail authorities for delivery mo the prisoner by the appellate, revisional

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[41] In the landmark case Maneka Gandhi v. Union of India, Bhagawathi, J. has explained this. "Does" article 2l merely require that there must be some semblance of procedure, howsoever arbitrary or fanciful, prescribed by law before a person can be deprived of his personal liberty or that, procedure must satisfy certain requisites in the sense that it must be fair and reasonable? Article 21 occurs in Part III of the constitution which confers certain fundamental rights. Is the prescription of some sort of procedure enough or must be procedure comply with any particular requirement? Obviously, the procedure cannot be arbitrary, unfair or unreasonable. A.I.R. 1978 S.C. 597 at p.622

[42] M H Hoskot v. State of Maharashtra AIR 1978 SC 1548

or other court, the official concerned has to see that it is delivered to the sentence and after that must obtain a written acknowledgement thereof from him.

Circumstances are common where the prisoner wants to file appeal from the jail. Where the prisoner seeks to file an appeal or revision every facility for exercise of that right has to be made available by the jail administration.

There are various circumstances 'where the prisoner is disabled from engaging a lawyer due to various reasons such as indigence or difficulty in communication with outsiders. In such cases the court has to assign competent counsel for the prisoner's defence provided the party does not object to that lawyer.

These guidelines are applicable from the lowest to the highest court where a deprivation of life and personal liberty is in substantial peril.

Of the rights mentioned two have got special significance in Hoskot. the first requirement is service of a copy of the judgment to the prisoner in time to file an appeal and the second requirement is the provision of free legal service to a prisoner who is indigent or otherwise disabled from securing legal assistance where the ends of justice call for such service. Both these are state responsibilities if we give a wider interpretation to Article 21.

There is something dubious about the delivery of the copy of the judgment by the Jailor to the prisoner in Hoskot. A simple proof of such delivery is the latter's written acknowledgement. Any jailor who by indifference or vendetta withholds the copy thwarts the court process and violates Article 21. To give effect to the idea contained in Article 21, Section 363 has been incorporated in the Criminal Procedure Code.32 Jail Manuals will have to be updated to include these principles also.

One of the ingredients of 'fair procedure' to a prisoner, who has to seek his liberation through court process, is lawyer's service. Free legal services to the needy are a constitutional mandate under Articles 21, 22 and 39A of the Constitution.[43] Article

[43] Article 39A reads:"The state shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation

39A is an imperative tool to Article 21. Through section 304 of the Criminal Procedure Code[4445] the legislature has adopted some of the principles given in Article 39A of the Constitution.

In Maneka Gandhi[51], it has been established that personal liberty cannot be cut out or cut down without fair procedure. Enough has been set out to establish that a prisoner, deprived of his freedom by court sentence but entitled to appeal against such verdict, can claim as part of his protection under Article 21 and as implied in his statutory right to appeal, the 'necessary' concomitant of right to counsel to prepare and argue his appeal.

In Hoskot, The Supreme Court widened the scope of Article 21 with regard to the rights of prisoners. The court made it a government duty to provide free legal aid to the accused under state expense. The Court held[46]:

The state is under a constitutional mandate to provide free legal aid to an accused person who is unable to secure legal services on account of indigence and whatever is necessary for this purpose has to be done by the State.

Another question raised in Khatri v. State of Bihar[47] was whether the state was liable to pay compensation to the blinded prisoners for violation of their fundamental rights under Article 21 of the Constitution.

It was contended that the blinded prisoners were deprived of their eyesight by the police officers who were government servants acting on behalf of the state and since this constituted a violation of the Constitutional right under Article 21; the state was liable to pay compensation to the blinded prisoners. The liability to compensate a person deprived of his life or personal liberty otherwise than in accordance with

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or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities".

[44] Criminal Procedure Code 1973, section 304 provides for legal aid to the accused at state expense in certain cases.

[45] 5 AIR 1978 SC 597

[46] AIR 1975 SC 1548

[47] A.I.R. 1981 S.C. 928

procedure established by law was implicit in Article 21. The court was reluctant to grant relief in the form of compensation. The court held:

It is obvious that the petitioners cannot succeed in claiming relief under Article 32 unless they establish that their fundamental right under Article 21 was violated and in order to establish such violation, they must show that they were blinded by the police officials at the time of arrest or whilst in police custody.

Some of the pronouncements by the Indian Supreme Court, which emphasize the rights of convicts and the need for treating them in conformity with those rights, are notable milestones in the path towards finding new penological goals of a correctional and reformative prison justice administration. They do not let the prison gates remain closed for ever against a system of humane treatment of prisoners and against effective judicial supervision of such a system. It was Prabhakar Pandurang which inspired and showed the way in the spate of cases on condition of detention in the late seventies and early eighties. Hoskot, the two Sunil Batra case and the decision in Francis Coralie Mullin were but extensions of the principle first enunciated in Prabhakar Pandurang. The present trend is that even after conviction; the judiciary has an effective supervising role with regard to the treatment of prisoners inside the jail. When, a person is put in prison he loses some of the fundamental rights like the freedom of movement, freedom to form association etc. The prisoners are entitled to claim the residuary fundamental rights even inside the prisons. The State is under a constitutional obligation to honour and protect their rights including the right to life and human dignity.

3.3. CLASSIFICATION OF PRISONERS: PROBLEMS AND PERSPECTIVES

One of the objectives of prison administration is to wean the offender away from wrong doing in future and make him return to society safe and useful. To achieve this end the classification of prisoners on scientific lines is of utmost importance. Without such classification, the individualized treatment through which prisons now seek to attain their basic objectives is impossible. Classification will enable the prison

administration to provide different types of treatment to different categories of prisoners according to their individual capacities and needs for reform and rehabilitation. Experience of even the early prison reforms reveals that worst psychological troubles are bound to arise if prisoners are huddled together irrespective of their crime peculiarities.38 Any attempt to eliminate or regulate criminal propensities cannot succeed without the requisite knowledge of the history of a crime i.e., the family background, mode of living, education, culture and various other aspects of the life of the criminal. These objective aspects serve as the basis for different types of treatment in the matter of food, lodging, work-assignments, recreation, intellectual and reformatory courses etc. for different categories of prisoners.

There are various objectives for the classification of prisoners. It enables the prison authorities to study the offender as an individual and to organise an overall, balanced, integrated and individualized training and treatment programme. It ensures maximum utilization of resources and treatment facilities available in the institution as well as the community. Scientific classification is thus the basis of individualized correctional treatment, which includes proper custody, discipline and work assignment.

The advantages of classification have also to be looked into. It provides more adequate custodial supervision and control. Proper classification provides for better discipline and increased productivity. More effective organisation of all training and treatment is another advantage.

The classification in prison should be based on certain principles, viz., age, sex, physical and mental condition, educational and vocational training needs and potentialities for reformation and rehabilitation. Besides, factors like nature of crimes, motives, provocations, previous history of the offender, his ‘social processing’, his ‘sophistication in crime’ should be taken into account to determine his gradation in custody and appropriate treatment. A broad classification as such was done on the basis of the nature and number of offences by the court itself. In practice the classification has become a mere routine and a mechanical exercise.

Some modern criminologists are of the opinion that nature of crimes need not be taken into consideration while classifying prisoners on the plea that the nature of a person's offence is not a measure of his potentiality for rehabilitation. As Barnes and Teeters put it[48]:

The function of classification is to differentiate the various inmates...in terms of their potentialities for rehabilitation regardless of the offence on the sentence.

It cannot be denied that the nature of a person's offence is not a measure of his potentiality for rehabilitation. Even so, in order to avoid the evil effects of an overoptimistic assessment of the criminal and also of uncontrolled mixing and consequent contamination, the nature of crime should reasonably be taken into account for the purpose of classification of offenders in prison. If a prisoner convicted for an organised crime is kept with the first offenders, the possibility of contamination and worsening of community life would remain very great.

While classifying prisoners the nature of crimes should, therefore, receive due attention. The observation of an eminent criminologist Austin Mc Cormick is very significant in this context, when he says[4950]: Scientific classification and programme planning on the basis of complete case histories, examinations, tests and studies of the individual prisoners will promote a high degree of morale and efficiency. For that psychiatry and psychological services can be utilized. Scientific classification of prisoners has been accepted as sum essential element of modern prison system throughout the world. It should be adopted in the administration of prisons in India.41 However, it is often argued that scientific classification involves. Huge expenditure as it requires a large number of professional personnel in prison administration.

The existing Jail Codes of various States and Union Territories provide for segregation of prisoners more or less on the basis of their age, sex, criminal antecedents, nature and terms of imprisonment, physical and mental conditions etc. These minimum statutory

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[48] Harry Elmer Barnes and Negle K. Teeters, New Horizons in Criminology (1966), p. 467

[49]Austin Mc Cormick, "The Prison‘s Role in Crime Prevention", 41 Journal of Criminal Law and Criminology

[50] : at p. 54

requirements, though insufficient for the purpose of scientific classification, are more in breach than in observance. This aspect is lucidly highlighted by the latest All India Committee on Jail Reforms (1980- 83) in the following words:

Under trial prisoners, prisoners sentenced to short medium and long terms of imprisonment, prisoners sentenced to simple imprisonment, habitual offenders, lifers, hardened and dangerous prisoners, children, young offenders, women offenders, civil prisoners, prisoners sentenced by court martial, criminal and non-criminal lunatics, detenus under the National Security Act, persons detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, smugglers etc. were all kept in the same institutions and the arrangements for their segregation even in different wards were not effective.[51]

The Committee further observed that factors like overcrowding and periodic large turnover of prisoners override all principles and requirements of segregation and that in reality segregation has become a provision only on paper.

3.3.1. Adoption of Classification

Today more and more people are coming to believe that it is the task of the prison to help bring about the reformation of the inmate. If nothing has been done in prison to help them, many of them would become more dangerous to life and property after release than they were before. The treatment inside the prison must help the prisoner to change his ways to thinking and attitudes, and equip him for useful work. Classification of prisoners should facilitate to achieve these objectives.

The purposes of classification programme are the following under Prisons Manual.

(i) the study of the offender as an individual, to understand the sequence of his criminal behaviour and the problems presented by him;

[51] Report of All India Committee on Jail Reforms (1980-83), Vol. I, p.108

(ii) to segregate prisoners into homogeneous groups for the purpose of treatment;

(iii)to organise- individualized training and treatment programme;

(iv) to co-ordinate and integrate all institutional activities and develop a system of constructive institutional discipline;

(v) to ensure maximum utilization of resources and facilities available in the institution;

(vi) to review inmates response to institutional activities for treatment and to adjust the programme to suit his needs.

In India, there is a classification committee and the process of classification and reclassification work should be phased through different stages. Here prisoners should be classified on the basis of age, physical and mental health, length of sentence, degree of criminality and character. Sequence of offender's criminal behaviour, his sophistication of crime and urban rural backgrounds, requirements of gradations in custody, vocational and educational needs also has to be considered. So first offenders should not be put along with hardened criminals. If they are not separately treated it will spoil the deviants and the prisons will become breeding ground for new criminals. In India, the prisoners have several complaints against non-categorization under certain heads like habitual offenders, first offenders etc.

3.3.2 Classification in England In England prisoners are classified into different groups along the following lines[52]:

(i) Male and Female Prisoners:

(ii) Civil and Criminal Prisoners;

[52] J.E. Hall Williams, The English Penal System in Transition (1970), p.95

(iii)Remand and Sentenced Prisoners;

(iv) Adult and Young Prisoners;

(v) Stars and Ordinaries

But in England also classification procedure is not strictly followed due to various reasons. The fact is that classification of prisoners and the use to which prisoners are put fall victim to the demands of expediency, and pressure on the system, which forces the adoption of solutions which are convenient rather than ideal. Law also provides for treatment of persons while they are detained in prison pursuant to a court order. Unconvicted prisoners are as far as possible kept out of contact with convicted prisoners. [53] Proper classification of offenders for the purpose of treatment is a prerequisite of an ideal penal programme. The introduction of modern classification methods in prisons is essentially directed to meet this end.

3.3.3 Judicial Attitude in India

Different criteria are adopted for the classification of prisoners in India. It is made on the basis of sex, age and the nature of the sentence awarded to prisoners. In India, prisoners are classified mainly as A Class, B Class and ordinary prisoners, female prisoners, youthful prisoners, lunatics, civil prisoners, under trial prisoners and prisoners sentenced to death. If a prisoner is having a contagious disease he should not be put along with other prisoners. The female prisoners are classified and separated, not only the unconvicted from convicted but also adolescent from older prisoners, habitual from nonhabitual and prostitutes from respectable women. There are various safeguards provided for female prisoners. They are not permitted to leave the enclosure set apart for females, except for release, transfer or attendance at court or under the order of the Superintendent. Prisoners Act 1900 also stipulates such a classification of female prisoners. If a male prisoner is below twenty one ‘years rue has to be treated differently from other prisoners. As seen earlier civil and criminal prisoners and

[53] J D. Mc Clean and J.C. Wood, Criminal Justice and Treatment of Offenders (1969), p.100

convicted and under trial prisoners are also treated differently. Among the convicted prisoners, if circumstances warrant, further classification can be made, convicted criminal prisoners may be confined either in association or individually in cells or partly in one way and partly in the other. Thus, Section 28 of the Prisoners Act empower the jail Superintendent to segregate the convicted prisoners keeping them in separate cells and restrict their movements for the purpose of maintaining discipline within the prisons.

The constitutional validity of Section 28 of the Prisoners Act which empowers such classification was questioned in K.Valambal v. State of Tamil Nadu[59]. It is a landmark decision with regard to classification of prisoners. Justice Gokulakrishnan and Justice Venugopal of the Madras High Court found that the classification of prisoners is not against Article l4 of the Constitution.

In Valambal, the petitioners were found indulging in activities in jail like indoctrinating the other co-prisoners by preaching the policy of violence and annihilation of moneyed class and planning to escape from the jail. The court held that the petitioners formed a class by themselves. Their separate classification in the matters of security measures was not arbitrary. So the action of the prison authorities did not violate article 14 of the Constitution. Disciplinary segregation taken by the jail superintendent cannot be characterised as solitary confinement as contemplated under Section 73 of the Penal Code, nor can it be characterised as cellular confinement or separate confinement which are intended as punishment for prison offences under Sections 46(8) and 46(10) of the Prisons Act.

In Madhukar Bhagwan Jambale v. State of Maharashtra[60], along with other grounds the prisoner questioned the classification of convicts as class I and class II prisoners on the basis of higher status, better education and higher standard of living in the state of Maharashtra. According to the petitioner it was discriminatory and violative of Article 14 of the Constitution. While rejecting the contention, the court held that the grievance

about classification of convicts as class I and class II prisoners do not survive since the classification has been already abolished in that state.

Various reasons can be attributed for the classification of prisoners. The security of the prison and the safety of the prisoners have to be kept in the forefront. But at the same time, the court has a paramount obligation to protect the rights of the convicted prisoners and to ensure that no inhuman or debasing treatment is meted out to them under the grab of enforcing internal order and discipline in jail. At the same time, the prison authorities' discretion in segregating the convicted prisoners as a measure of preserving internal order and discipline in jail cannot also be lightly interfered with.

In Naresh Soni v. State of U.P.[61], the accused who were being prosecuted under Section 107 I.P.C. and Section 25 of the Arms Act were made to live in solitary cells with ironbar batters on their body, day and night ever since they were lodged inside the jail. In justification of the action taken against the accused it was stated by the authorities that the accused belonged to a proclaimed gang which had created havoc in different states. So, different types of classification can be followed by authorities for the proper treatment of prisoners inside the prison. But the classification must be reasonable according to the guidelines given in the statutes. knowledge of the authorities he has to be removed to a lunatic asylum. The state government may, by a warrant setting forth the grounds of belief that the person is of unsound mind, order his removal to a lunatic asylum, or other place of safe custody within the state there to be kept and treated as the state government directs during the remainder of the term for which he has been ordered or sentenced to be detained or imprisoned.[62] If on the expiry of that term it is certified by a medical officer that it is necessary for the safety of the prisoner or others that he should be further detained under medical care or treatment, then until he is discharged he has to be kept in custody according to law. Subsequently on becoming a normal person he is remanded to the prison from which he was removed. If the prisoner is no longer to be kept in custody then he can be discharged.

The maximum period for which any person alleged to be a lunatic can be detained for observation by order of a magistrate under Section 16 of the Indian Lunacy Act IV of 1912 is 30 days from the date on which he was first brought before the magistrate, but each order given by the magistrate for such detention can only cover ten days and has to be renewed as soon as that period expires. If any convict becomes insane after admission to jail a report of his case has to be immediately be submitted to the Inspector-general with a view to government being moved to order his removal to the mental hospital. Thus, it can be seen that there are various safeguards provided for the treatment of lunatic criminals. But the prison authorities usually did not strictly follow these statutory provisions. There are numerous instances where the insane prisoners have approached the courts for the redressal of their grievances.

In Veena Sethi v. State of Bihar [63] , the letter of the Free Legal Aid Committee, Hazaribagh brought the plight of l6 prisoners in Hazaribagh Central Jail before the Supreme Court. These prisoners were insane or of unsound mind at the date when they were received in the jail. Some prisoners were detained in prison for the period ranging from 37 years to 19 years. These prisoners were declared insane at the time of their trial and were put in central jail with directions to submit half yearly medical reports. When the court examined the records relating to six prisoners, it found that they were still to be of unsound mind. The court did not order their release ‘because having regard to the mental condition of these prisoners, it would not be in the interest of the society as also in their own interest to set them free’. The court also pointed out that the practice of sending lunatics or persons of unsound mind to the jail for safe custody is not at all healthy' or desirable practice, because jail is hardly a place for treating those who are mentally sick. The Supreme Court ordered at the same time, the release of some other prisoners. The necessity of giving compensation by the State Government for the illegal detention of the prisoners was also pointed out by the Court.

In Sant Bir v. State of Bihar[54], a Person was kept in jail as a criminal lunatic, for sixteen years even after a medical report that he was fit for discharge. While releasing the person from jail, the Supreme Court asked the State Government to provide the

[54] A.I.R. 1982 S.C. 1470

necessary funds for the purpose of meeting the expenses of his journey to his native place. The facts narrated in this case make very sad and distressing reading. It seems that we have lost all respect for the dignity of the individual and the worth of human person so nobly enshrined in our constitution. It also shows that we are prepared to forget a person once he is sent to jail and we do not care to enquire whether he is continued to be detained in the jail according to law or not. It is a matter of shame for the society as well as the administration to detain a person in jail for over l6 years without authority of law.

In Amrit Bhushan Gupta v. Union of India[55], the Supreme Court was reluctant to grant excess rights to the prisoners sentenced to death on the ground of insanity. A petition under Article 226 of the Constitution was filed in the High Court of Delhi, seeking a writ of mandamus to restrain the respondents from carrying out the sentence of death passed against the petitioner, a person condemned to death for having committed culpable homicide amounting to murder. While dismissing the appeal the Supreme Court held that the courts have no power to prohibit the carrying out of a sentence of death legally passed upon an accused person on the ground either that there is some rule in the common law of England against the execution of an insane person sentenced to death or some theological, religious or moral objections to it. In this decision, the Supreme Court has not given due regard to the objectives of punishment. One of the purposes of punishment is that the offender should know that because of his sinful act he is punished. If a person is insane at the time of executing the sentence he is unable to suffer the feeling. So there is no meaning in awarding punishment to such a person.

The unlawful delay caused in the case of insane persons has been revealed in Cheruman Velan's case. The Kerala High Court ordered the release of the detenue who has been imprisoned in three mental hospitals in Tamil Nadu and Kerala for a long period of forty years. Mr. Justice Krishna Iyer has brought this case to the notice of the Kerala High Court through a letter. The division bench comprising Justice V.S. Malimath and Justice V. Bhaskaran Nambiar, after treating it as a writ petition ordered

[55] A.I.R. 1977 S.C. 608

to release him immediately from the mental hospital and directed the State Government not to prosecute him for the alleged murder.

Velan's case is a new trend in Kerala where judiciary has looked into the fate of insane prisoners. The role played by the former judge of the Supreme Court Justice Krishna Iyer is also worthy to be noted because of him only that the case was brought before the High Court. Some voluntary organisations were also ready to help the victim. It is a welcome trend. Studies reveal that there is a substantial overlap between the populations of prisons and mental asylums and many inmates of jails deserve to be beyond penal premises.[56] They need a separate treatment, putting them along with other prisoners make the condition worse.

That is why Justice Krishna Iyer has said:

...the treatment of partially disordered persons in the same cells as others, lugging them together without bothering about their mental handicaps and often handling them more severely confusing between derangement and delinquency, is a practice where the prison system is the criminal.

So the insane persons inside the persons should be treated medically. Putting them along with ordinary prisoners will aggravate their problem. They will be a burden to the prison authorities also as the various security measures cannot be strictly enforced on them. Even though there are some statutory provisions regarding their treatment, it is not properly implemented.

3.4. Youth inside the Prisons

A child is a national asset if properly brought up. So it is the duty of the state to look after the child with a view to ensuring full development of his personality. That is why all the statutes dealing with children provide that a child shall not be kept in jail. When we analyse the history we can see that before legislations were effective, there were philanthropic bodies and social organisations which had brought into existence special

[56] V.R. Krishna Iyer, A Constitutional Miscellany (1986), p.145

institutions for children, minors, insane persons etc.[57] These institutions proved to be of help to the state which afterwards resorted to legislation. Prior to such legislation; apart from the help rendered by the philanthropic institutions, the treatment afforded to juvenile delinquents was undesirable. Juveniles were tried by the ordinary courts, and if found guilty sentenced to imprisonment or treated in the same way as adults.

They were lodged in prisons with adults who often taught them bad ways. The child offender was often imprisoned even for trivial offences and was given the same treatment as the adult offender.

Later legislations have incorporated various provisions giving special protection to youthful prisoners: Prisons Act 1894 provides that in a prison where male prisoners under the age of twenty one are confined, means has to be provided for separating them altogether from other prisoners and for separating those who have arrived at the age of puberty from those who have not.

So long as male prisoner under the age of twenty one is detained in age jail, measures have to be taken to prevent any communication between him and any prisoner of another class. But this provision should not be a disadvantage to the prisoner. That is why it has been provided that if there is only one such prisoner in the jail and it is considered inadvisable to keep him in solitude; the Superintendent has to apply for his transfer to a jail was prisoners of the same class are confined. It is an offence if a youthful prisoner refuses or neglects to learn the lessons assigned to him. But reduction of diet has to be avoided in such cases. Timely notice of the date of release of every youthful prisoner has to be intimated to his parents, relatives or friends, to enable them to attend at the jail to receive him.

In most of the state's juvenile offenders sentenced to imprisonment are detained in a reformatory school. Detention in these schools is not considered as or equated in punishment in the sense in which the word is used in Section 53 of I.P.C, though it is punishment in a narrow sense because there is a restraint on personal liberty. The objects of detention is to reclaim erring young person's lost or likely to be lost to

[57] J.M.J. Sethna, Society and the Criminal (1980), p.3

society by reason of environment or bad upbringing or companionship and to make good citizens of them.[58] Strictly speaking a borstal school is a correctional institution and not a prison. That object is frustrated if the child or young person is to be sent to prison from the borstal school.55 It would be anomalous to retransfer the persons into prisons, where they would be allowed to mingle with hardened, incorrigible and habitual offenders thereby [59]nullifying the reformation, brought about during borstal detention.

Even though there are provisions in the statutes giving special treatment to youthful offenders it is not properly implemented. On a number of occasions the Supreme Court has intervened to protect the interests of children. In Sanjay Suri v. Delhi Administration[69], the Supreme Court even went to the extent of warning home secretaries of some state governments that they will be committing contempt of court if appropriate affidavits regarding the status and number of children in jails are not furnished, The Supreme Court has called upon the authorities in the jails throughout India not to accept any warrant of detention as a valid one unless the age of detenu is shown therein. The Supreme Court issued orders to release and rehabilitate children housed in jails along with common criminals.

Earlier in Hiralal Mallick v. State of Bihar[60], Justice Krishna Iyer with Justice Goswami of the Supreme Court developed the theme of humane jail conditions in the case of a twelve year old boy convicted of homicide. The Court directed that reformatory type of work should be prescribed for the appellant in consultation with the medical officer in the jail. It directed the visiting team of central prison to ensure that this was implemented Periodic parole was also prescribed. The Court was even more elaborate in stressing the regenerative and reformative potential of transcendental meditation and urged the prison authorities to arrange with the consent of the prisoner and under medical supervision; initiation into courses which will refine his behaviour

[58] Ratanlal and Dhirajlal, Law of Crimes, Vol.1 (1988) , p.143

[59] 1988 Cr.L.J. 705

[60] A.I.R. 1977 SC 2236

and develop his potential. Kadra Pehadia v. State of Bihar[61] illustrates the fate of four young undertrial prisoners who was inside the prison for eight years without a trial. They were compelled to work outside the jail walls. They were put in leg irons to avoid their escape and even in the lock up leg irons were not taken off. Condemning it as unconstitutional, Bhagawathi J. remarked that it discloses a sense of callousness and disregard of civilized norms. The under trials should not be kept in leg irons in violation of the decisions of the court nor they could be asked to work outside the jail. It seems that once a person accused of an offence is lodged in the jail everyone forgets about him and no one bothers to care what happening to him.

In Sheela Barse seri[62]es of cases Supreme Court has tried to give full effect to constitutional obligations towards children while they inside the prisons.[72] In this case the Supreme Court has given effect to the directive principles of state policy guaranteed under Article 39(f) according to which the state has to direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. Here the petitioner has undertaken a real social service in bringing this matter before the courts. She offered to personally visit different parts of the country to gather information and verify correctness of statements of facts. Here the petitioner volunteered to perform the functions which state should have done.

3.5. Female Prisoners

The most striking fact about female offenders is that there are so few of them in comparison with the number of male offenders. This is a fact which may be observed in all countries, but the proportion of female offenders varies according to the degree of feminine emancipation and the extent of social protection afforded to women in

[61] A.I.R. 1981 S.C. 939

[62] 9 Sheela Barse I v. Union of India (1986) 3 S.C.C. 596; Sheela Barse II v. Union of India (1986) 3 S.C.C. 632

different cultures.[63] So we can see there is some truth in the assertion that males are the delinquent sex. Various accounts of the experiences of women in prison have been written by former prisoners and prison visitors. A full scale academic study was carried out by Ann D. Smith and published in 1962.[64]In India the National Expert Committee on women prisoners headed by Justice V.R. Krishna Iyer has made a detailed study of female offenders in India.

Until the beginning of the nineteenth century, even the most enlightened writers and statesmen seldom considered that the needs of 'women prisoners might be different from those of men. Generally it was considered that if women were adequately segregated from men in prison they presented no further special problem. Women are seldom mentioned in books on penal reform, and the sufferings of women prisoners-if noted at all-were not pitied by the more fortunate of their sex.

Even with regard to the method of execution of capital punishment discrimination was there among male and female prisoners. In England, burning was the punishment for women convicted of treason during that time. By the middle of the eighteenth century hanging had become the accepted punishment for women convicted of capital crimes. With the abolition of the earlier elaborations to simple ranging-such as mutilation and exposure of the corpse of the person executed-it was felt that the 'decency due to the sex' would no longer be offended by extending the punishment of hanging to women. In England Elizabeth Fry had made substantial contribution for the alleviation of the miseries of women prisoners. She prompted women prisoners to act as school mistresses that will be set up inside the prisons. She realised that if care and comfort were to be brought regularly to the prisoners, and employment provided for them, an association must be formed to organise this welfare work. The task of providing work for the women over the years was, however, not easy. Mrs. Fry was sure that it was better for women prisoners to be paid little for their work than not to be paid at all. She was equally sure that it was better to have any form of productive work, rather than to

[63] J.E. Hall Williams, The English Penal System in Transition (1970), p.246

[64] Ann D. Smith, Women in Prison, A Study in Penal Methods, (1962), p.324.

have no occupation at all. She considered that women prisoners should be classified according to their general character and degree of criminality rather than according to the nature of the offence they had committed.

There are various difficulties faced by women prisoners on their release from prison. One advantage in providing work for prisoners was so that they might acquire skills and be able to maintain themselves when they are discharged. Those prisoners who had no means of livelihood on release would inevitably return to their former ways of life. Women prisoners without a home to go should be provided with somewhere to stay until they could find employment.

Women's prisons are not materially different from men's prisons in its working everywhere. Compared to men; women offenders are considerably less and therefore no special programmes are drafted for them. Female prisoners are not permitted to leave from the enclosure set apart for female except for release, transfer or attendance at court or under the orders of the Superintendent for any special purpose. Male prisoners are excluded from the female ward. A man is not permitted to enter the female ward of the jail by day unless he has a legitimate duty to attend, and is accompanied by female warder while he remains therein. The objectives of all these provisions are to give protective discrimination to the women even though they are inside the prison. Taking into consideration the special care needed for female body various special protections are provided for it. For example, provisions are there for the treatment of hair of female prisoners inside the prisons. The hair of a female prisoner cannot be cut without her consent, except on account of vermin or dirt or when the medical officer does it requisite on the ground of health and cleanliness. There are provisions for supplying them oil, comb and looking glass. Facilities for pre-natal and post-natal treatment for women are available in all prisons where females are kept. Handcuffs can be used as a means of restraint under the same conditions as male prisoners but using fetters are completely excluded in the case of female prisoners. In the state when a female prisoner is released from prison she is given special treatment. Before a female prisoner is released, timely notice has to be sent to her relations or

friends to enable them to attend at the jail and receive her. Women prisoners who are released from jails has to be provided with conveyances where the distance to be travelled by them exceeds 1.6 K.M. The child up to five years of age of a female prisoner will be admitted to jail with its mother if it cannot be placed with relations or otherwise properly provided for. Children born in jail will be allowed to remain with their mother upto five years of age if there is nobody to look after it outside. A recent study has revealed that most of the women are anxious about their children. They also feel that if adequate vocational training is given to them it would help them in the process of rehabilitation and resocialisation.

Women prisoner's rights are specially protected under the Indian Penal Code against offences like rape, intercourse by Superintendent of jail, remand home etc. A women prisoner under the special circumstances inside the prison may subject herself to have intercourse with the authorities of the prison by the inducement from the authorities. Such intercourse even if it did not amount to the offence of rape, will be punished under Section 376C of the Indian Penal Code. So this section of the Indian Penal Code can be said to be protective shield of the women prisoners in India, but how these offences are brought to the attention of criminal courts. The procedure and measures suggested at present are not adequate. Therefore most of such offences go unnoticed. The offences will bring to light only after the release of the prisoner.

The National Expert Committee on women prisoners headed by Justice V.R. Krishna Iyer in its report submitted to the government in February 1988 has recommended that beneficial correctional approaches are owed to all prisoners, men and women, irrespective of their number. According to the committee the numerical argument cannot be held to be a limiting factor in creating suitable custodial conditions for women. Moreover, non-custodial institution can allow itself to cause further damage to a prisoner through the risk of contamination. The Committee therefore recommended that custodial facilities should be set up in every state separately for convicted and undertrial women, and adequate mobility must be provided to the prisoner and the law enforcement authorities to facilitate such concentrated intake speedily. Separate prisons for women and completely separated custodial facilities for convicted and undertrial

women were suggested by the committee. The same suggestion was made by another committee also and the Kerala government has acted on the basis of that.

There are various guidelines evolved with regard to the treatment of women prisoners especially after the suggestion made by Elizabeth Fry in England. But in India there is no statutory recognition to these innovative social and rehabilitative methods. Steps should be taken for that. Women, insane and young person's inside the prison are classes which require 'protective discrimination' for their rehabilitation. Individualisation of the offender as a method of his or her rehabilitation has now become the cardinal principle of modern penology. It can be seen that the modern penologists have worked out an objective classification of prisoners according to differential treatment. The prisoners should be classified according to the treatment to which they are likely to respond most favourably.

Chapter 4

4.1. Prison Overcrowding and Human Rights

This chapter deals with prison overcrowding and general living conditions of prisoners. When prison population goes beyond its authorised capacity of accommodation, it is known as Overcrowding. Overcrowding in the Prisons is an important human rights issue as it results in deterioration of the general living conditions of the prisoners. It also creates hindrances in the reformation process.

Prison officers find it difficult to initiate and continue correctional measures. This chapter discusses the nature and extent of overcrowding with special reference to Amritsar Central Jail. It also looks at causes and consequences of overcrowding and suggests remedial measures.

The world-wide prison population as per the International Centre for Prison Studies, Kings College, London (2006) is 94.5 lakhs as against the total world population of 665 crores. This amounts to 0.14 percent of the total population being lodged in the prisons. The total estimated prison population in India for the year 2006 is 3, 58,368 as against total population of 1,12,98,66,154. It amounts to 0.03 percent of the total Indian population being confined in the jails [BPRD, 2008][65] . The percentage figure is much below the world average. However it is because of population explosion in India. The number of prisoners is very high keeping in view the prison capacity in India.

Overcrowding is prevalent in almost every country in one form or the other.

Besides developing and under-developed countries of Africa and Asia, developed countries like United States of America, Japan and United Kingdom are also facing this problem. ‘One of America's biggest problems today is the overcrowding of prisons. This began when the population of inmates started to soar in the 1980's. With the increase of rapists, murderers, and drug dealers skyrocketing, there are obvious reasons

[65]Bureau of Police Research & Development, India: Agenda Points, All India Conference of Ministers, Secretaries and Director/Inspectors General In-charge of Prisons, April 2008 (p.7)

to this overpopulation. The nation responds to this by building more prisons at a fast pace. But the construction has not kept pace with the soaring population of inmates'. [66] We can see examples of overcrowded prisons all over the U.S.A. and even out of the U.S.A. California's prison system, originally designed for 100,000 inmates houses 173,000 (December 2006). And thus percentage of overcrowding is 173.

According to the Justice Ministry of Japan, there were 70,737 detainees in prisons and detention houses till July 2006, the highest in more than 50 years. However, existing facilities could hold only 60,794 and were operating at 116.4 percent capacity (News Nerve, 2006) 3 . At the end of August 2005, 81 of the 142 prisons in England and Wales were overcrowded. Nearly two-thirds of Britain's prisoners are being held in overcrowded jails, according to the findings of a new study. The Howard League for Penal Reform says that 52,500 people are in jails running above capacity. In some instances, prisons are holding almost double the number of recommended inmates. Worst is HMP Preston (185 percent) with 661 prisoners as against the capacity of 356 as reported by the BBC .

4.1.1 Prison Overcrowding:

Indian Perspective As on 1.1.2006, the total prison population in all the 1328 prisons in India was 3,58,368 against the authorised capacity of 2,46,497 prisoners. The growth rate of prison population in Indian prisons during 2005 over 2001 is found to be 14.26 percent which shows an average annual growth rate of 3.56 percent. In absolute number it translates into 11,183 additional prisoners per year. The overcrowding in Indian prisons as on 1.1.2006 is found to be 145. percent which is much higher than in the UK (112.2 percent) and USA (107.9 percent). However, it is certainly lower than the one prevailing in the neighbouring countries like Bangladesh (188.5 percent) and Pakistan (147 percent).[67]

[66] www.term-papers.us/ts/hc/svn278.shtml

[67] Supra Note 1

Reformation and correctional measures have not gathered momentum in India due to immense pressure of overcrowding.

According to Upneet Lalli (2000), an important aspect in prison administration is the population that the authorities have to handle in the prisons. A major problem being faced in most of the Indian prisons is overcrowding of prisoners which leads to inadequate infrastructural facilities and lack of essential services to the prison inmates. Inflation of the Prison Population poses a challenge to policymakers and governments in many parts of the country. As per Prison Snapshot 20047 , Jharkhand reported the highest overcrowding of prisons (300.9 percent) followed by Delhi (249.7 percent) while the least occupancy was reported from Daman & Diu (22.5 percent). Other most affected states are Bihar, Chhattisgarh, Gujarat, Madhya Pradesh, Maharashtra, Orissa, Sikkim, Uttar Pradesh, Tripura, Haryana and Punjab.

The extent of overcrowding in India is highlighted in Table 3.1 and Figure 3.1. At the end of the year 2005, the highest number of 56,7 inmates was reported from Uttar Pradesh followed by Bihar 45,818. Jharkhand reported the highest overcrowding of prisons (318.2 percent) followed by Gujarat (200.5 percent) and Delhi (197.1 percent) while the least occupancy was reported from Lakshadweep (10.0 percent)

Percentage of Overcrowding along with Authorised Capacity and Actual Prison Population in India from 2001 to 2006

Table 3.1

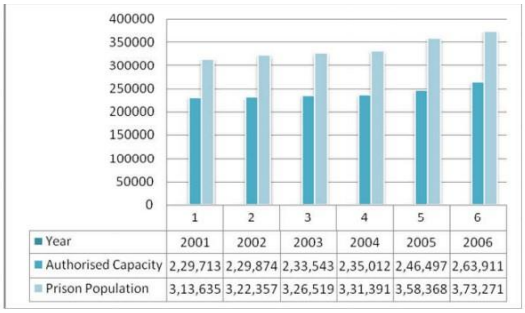
Year	Authorised Capacity	Prison Population	Percentage of Overcrowding
2001	2,29,713	3,13,635	136.50 percent
2002	2,29,874	3,22,357	140.20 percent
2003	2,33,543	3,26,519	139.80 percent
2004	2, 35,012	3,31,391	141.00 percent
2005	2,46497	3,58,368	145.38 percent
2006	2,63,911	3,73,271	141.43 percent

Source: NCRB, New Delhi

The highest number of 66,669 inmates were reported from Uttar Pradesh (17.9 percent) followed by Bihar 44,281 at the end of the year 2006. Delhi reported the highest overcrowding of prisons (214.4 percent) followed by Gujarat (206.9 percent) and Chhattisgarh (195.5 percent).10 It shows that Jharkhand maintained highest percentage of overcrowding in 2004 and 2005 while Delhi topped the list again in 2006.

Figure 3.1

Overcrowding situation in India from 2001 to 2006



	1	2	3	4	5	6
Year	2001	2002	2003	2004	2005	2006
Authorised Capacity	2,29,713	2,29,874	2,33,543	2,35,012	2,46,497	2,63,911
Prison Population	3,13,635	3,22,357	3,26,519	3,31,391	3,58,368	3,73,271

In Tihar Jail, New Delhi, 13772 inmates were lodged against total capacity of 6250 in October 2006. And thus the percentage of overcrowding comes as 220 percent.

4.1.2. Overcrowding in Amritsar Central Jail

The problem of overcrowding is prevalent in almost all the jails of Punjab more or less corresponding to Indian pattern. The total population of prisoners was 14073 as against authorized accommodation of 9854 as on 31 March 2005. Thus the rate of overcrowding in Punjab is 142 percent. At the end of 2006, the jails of Punjab accommodated 15581 inmates against total capacity of 10854 having percentage overcrowding 143.55 percent.

It implies that overcrowding percentage increased in comparison with 2005 despite increase in the total capacity by 1000.

Thus we can see that the problem of overcrowding in Punjab is almost at par with the national percentage. Of all the seven Central Jails in Punjab, Amritsar is the most

important and sensitive one. Data have been collected from Amritsar Central Jail in terms of total capacity and actual population from 2003 to 2008. For 2008, data have been collected twice-- January and September. This has been tabulated and percentage overcrowding has been calculated as given in Table 3.2

Table 3.2

Year-wise Overcrowding Percentage in Amritsar Central Jail from 2003 to 2008

78 Office of IG Prisons, Punjab,
Chandigarh

Year*	Capacity	Population	overcrowding percentage
2003	1000	1793	179.3
2004	1000	2005	200.5
2005	1000	2027	202.7
2006	1000	2136	213.6
2007	1000	2134	213.4
2008	1000	2316	231.6
2008**	1000	2550	255.0

Indicates average data of January each year

It is evident from the data mentioned in the Table 3.2 that the authorised capacity of Amritsar Central Jail is 1000. However, the number of inmates in January 2003 is 1793 which went upto 2316 in January 2008. It further increased upto 2550 in September 2008. Thus we see a steep increase in the prison population over the time. From 2004 onwards, overcrowding remains more than 200 percent which becomes an alarming situation. In September 2008 it went up to 255 percent which is all time high not in Amritsar but in the entire Punjab. It is far more than the average Punjab percentage. Prison Authorities here find it very difficult to manage the day-to-day affairs of the Prison as a result of this problem. Shortage of staff and prisoner-staff ratio results in mismanagement of the prison leading to various other problems like inadequate provision of basic amenities and sanitation.

4.1.3 Barrack-wise Scenario of Overcrowding

Amritsar Central Jail has two types of accommodation – Barracks as well as Cells. Both are highly crowded when we analyse the situation Barrack-wise or Cellwise. Central Jail Amritsar has only eight barracks including one for female inmates. Every barrack has four rooms and each room has accommodation for 25 inmates. Thus, every barrack can accommodate 100 inmates. Besides, there are some cells which can accommodate not more than 200 inmates. Though all the barracks and cells are overcrowded, the situation of overcrowding is not equally prevalent in all the barracks and cells. There are some barracks and cells which are very overcrowded. To assess the exact position, some of the barracks were visited and data were collected. Room-wise detail of barrack no.

4.2 Causes of Overcrowding

The overcrowding in the prisons can partly be attributed to delay in the disposal of undertrial cases in the courts and partly to inadequate capacity of prisons in India to accommodate all the persons required to be sent to prisons. Further the policy of granting Probation, Parole, Remission and Commutation of sentence has not been implemented in letter and spirit.14 Lalli (2000) has treated the increasing number of undertrial prisoners as a major cause of overcrowding in the Indian Prisons especially in the context of Punjab and Haryana. She further observed that undertrial prisoners mostly belong to the weaker section of society.[68]

National Human Rights Commission of India states that unnecessary and unjustified arrests made by the Police and slow judicial process causing congestion of undertrial prisoners are the main causes of overcrowding in jails16 . However if we rely on the data analysed by the BPR&D, Indian Courts are very liberal to grant bail and only 2.87 percent of total arrestees were lodged as undertrials in 2004. A total of 75,66,500 persons were arrested in India during 2004 in both Bailable and NonBailable offences. Out of this large number of arrestees, only 2,17,130 were lodged in the prisons.

[68] Supra Note 6

Similarly in the year 2005, the percentage of imprisoned undertrials to the total arrests was found to be 3.6 percent. Thus over 96 percent of the persons arrested in connection with their involvement in committing crime are able to get bail, signifying 'Bail not Jail' as the underlying guiding factor in the Indian Criminal Justice System.[69]

On the basis of above-mentioned facts, the following major factors are responsible for overcrowding in the Prisons:

1. Shortage of adequate accommodation;
2. Increasing number of undertrial prisoners; and
3. Lack of uniform and adequate policy of probation, parole, remission and commutation of sentence.

4.2.1. Shortage of Adequate Accommodation

Shortage of barracks and cells is a major factor leading to overcrowding in the prisons. The population of India is increasing day by day and thus coupled with rise in the crime; the number of prisoners is also increasing fast. In 2006, Indian prisons had the capacity to accommodate only 2,63,911 inmates. However total prison population was 3,73,271 in that year. Thus a shortage of 1,09,360 was noticed. The trend in Indian prisons during the period 2001 to 2005 shows an increase in overcrowding in spite of addition of fresh capacity under the Modernisation of Prison Scheme launched by the Ministry of Home Affairs, India jointly with the States from the financial year 2002-2003.

In the context of Amritsar Central Jail, there has been no addition of accommodation during the period 2003 to 2008. The capacity of the prison remains 1000. The only addition noticed was one barrack for the women inmates having two rooms. Out of this, one room is utilised for vocational training of women inmates and the other room has been assigned for living accommodation, in which 25 wooden cots have been provided with community support.

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[69] Supra Note 1, p.7

The number of prisoners increased from 1793 in January 2003 to 2550 in September 2008 against the total capacity of 1000 resulting in an urgent need to construct new barracks and cells to accommodate the inmates. At least 15 new barracks having capacity of 100 each are required to be constructed to provide accommodation to all the inmates.

4.2.2 Increasing Number of Undertrial Prisoners

Undertrials form a major part of prison population in Indian Jails. However, the percentage of undertrials is more than the convicts. Around 65 percent undertrials are lodged in various jails of India. Increasing number of undertrials is one of the major factors responsible for overcrowding of jails.

Chapter 5

5.1. General Living Conditions of Prisoners and Human Rights

General living conditions include basic human needs like accommodation, food, drinking water, sanitation and medical facilities. A person in any kind of detention cannot be deprived of basic human needs. In this chapter, general living conditions of prisoners especially in the context of Amritsar Central Jail have been dealt with. 'Standard Minimum Rules for the Treatment of Prisoners' adopted by the United Nations laid down certain guidelines for accommodation, food, water, sanitation and medical facilities. Similar criteria have been mentioned in the Model Prison Manual (2003) in detail: "Living conditions in every prison and allied institution meant for the custody, care, treatment and rehabilitation of offenders shall be compatible with human dignity in all aspects such as accommodation, hygiene, sanitation, food, clothing, medical facilities, etc. All factors responsible for vitiating the atmosphere of these institutions shall be identified and dealt with effectively."[70]

This chapter has been divided into five parts: Accommodation, Food, Drinking Water, Sanitation and Medical Facilities. Article 10 of the 'International Covenant on Civil and Political Rights 1966' says that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Kerala High Court[71] has issued a number of directions regarding Prisoner's Right to basic human needs.

Punjab State Policy on Prisons[72] has laid emphasis on the living conditions of the prisoners. It says that the living conditions in every prison and allied institutions meant for the custody, care, treatment and rehabilitation of offenders shall be compatible with

[70] Bureau of Police Research and Development of India, Model Prison Manual, 2003

[71] Thiruvananthapuram Vs State of Kerala 1993 Cr. L.J. 3242

[72] Manual for the Superintendence and Management of the Prisons in Punjab, 1996, Para 5

human dignity in all aspects such as accommodation, food, sanitation, clothing and medical facilities. It further lays stress upon identifying the factors responsible for vitiating the atmosphere of the prisons and dealing with them effectively.

5.1.1. Accommodation

Accommodation is a basic need of a human being and a prisoner is also entitled to a minimum space of accommodation during incarceration. The quality of accommodation being provided to the prisoners in India with special reference to Amritsar Central Jail forms the focus of this section. In countries like USA and UK, overcrowding is calculated on the basis of number of cots available in the prisons. In these countries cots or bunker beds are provided to the inmates. However in India prisoners are provided masonry sleeping berths.

5.1.2. Theoretical Framework

The Standard Minimum Rules (UNO, 1955)[73] says that dormitories should be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. It further describes that all accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation. It suggests that in all places where prisoners are required to live or work,

(a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;

(b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.

[73] The Standard Minimum Rules for the Treatment of Prisoners 1955 adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955 (Rule 9, 10 and 11

The Supreme Court of India [74] has laid down certain conditions for general living including accommodation and other basic conditions of prisonization and basic amenities of prisoners. Model Prison Manual (BPRD, 2003) has also recommended various measures to provide adequate and hygienic accommodation for the prisoners. Bureau of Police Research and Development of India has also suggested a layout plan of a model barrack. 'Draft National Policy on Prison Reforms' has stressed upon the need of accommodation having basic human amenities. It says that all accommodation provided for use of prisoners, particularly for sleeping, will meet basic requirements of healthy living.

5.1.3. Actual Scenario

As per Jail Manual, each berth should be six and a half feet long, two and a quarter feet broad and eighteen inches high and shall be constructed with a slight slope down from the head7 . However, the actual situation is that the berths have been broken to give space to the inmates because of overcrowding which shows the poor quality of life in the prisons. Recently, prison authorities have provided wooden cots in Barrack no. 4 and 5 of Amritsar Central Jail with community support. But in other barracks, the situation is very alarming. This adversely affects conditions like food, hygiene and sanitation such as health and drinking water.

5.1.4. Suggested Layout of a Model Barrack

On the basis of observations made by the researcher as well as discussions with the inmates and prison officers, a layout of a model barrack has been prepared as shown in Figure 4.2.

The enlarged view of the same has been shown as Figure 4.3.

The suggested basic features of the model barrack are as follows:

[74] Rama Murthy vs. State of Karnataka (1997) 2 SCC 642

1. Each barrack should have independent enclosure having all essential facilities including kitchen and dining.

2. It will be in the area of 160 feet length and equal breadth.

3. Dormitory: This model barrack will have two dormitories and every dormitory (21'x65') having capacity to accommodate 25 inmates Beds: Wooden beds should be provided in the barracks for sleeping rather than cemented berths.

4. Toilets: Attached toilet having 4 WCs besides 4 bathrooms (21'x12') should be provided in every room/dormitory.

5. Kitchen: Kitchen (22'x20'), pantry (14'x16') and dining room (38'x20') should be constructed in every barrack. Committees of prisoners should be set up to supervise the preparation and distribution of food.

6. Drinking water: Every barrack should have one water cooler.

7. Games: Adequate space should be provided for badminton and volleyball courts for evening games.

8. Recreation facilities should also be provided in every barrack.

5.2. Suggestions to Improve the Quality of Food

Prison authorities while accepting the poor quality and mismanagement in preparation and distribution of food, however, attribute this to the poor infrastructure and overcrowding. They also suggest barrack-wise preparation and distribution of food besides proper kitchen and dining hall.

Some suggestions offered by the prisoners and prison officers to improve the quality of food are:

1. Menu should be prepared in consultation with inmates and it should be properly displayed in every barrack.
2. There should be separate kitchen and dining hall for every barrack. Mess should be provided with tables and chairs for dining.
3. Hot and fresh cooked food should be served. Milk, Vegetables, Fruits, Salad and Eggs should be provided. Food should be given in proper and entitled quantity.
4. Breakfast should be provided in the morning and lunch in the afternoon, besides dinner in the evening.
5. Food should be clean, fresh and hygienic. Healthy and balanced food should be provided containing vegetables, butter, curd porridge, pickles, salad, milk etc.
6. Balanced and nutritious food should be provided thrice a day. Milk should also be provided. Proper arrangement should be made in the barracks with halls containing tables, chairs and fans.
7. Three Meals should be provided consisting of chapattis, dal and vegetables.

There should be provision for non-vegetarian food also. Good quality food, fruit, salad and balanced diet should be provided.

5.2.1 Drinking Water

Drinking water is one of the basic human needs. A person under incarceration requires to be given clean and hygienic water to drink.

5.2.2 Theoretical Framework

Standard Minimum Rules14 (UNO, 1955) says that Drinking water shall be available to every prisoner whenever he needs it. In the chapter six of the Model Prison Manual(2003), it has been emphasised to provide clean water for the purpose of drinking. The relevant provisions of the manual are:

"6.83. Wherever corporation, municipal, panchayat, township or cantonment water supply exists, arrangements shall be made to connect the prison with it

6.85. The mouth of every drinking water well shall be completely closed and the water shall be raised by a pump. The surface surrounding the well at its mouth shall be covered with a sloping cement platform with a drain around it to carry spilt water, and the well shall be lined to a sufficient depth to render the tube impermeable.

6.86. Every well shall be cleaned out once a year, and the date on which it is done shall be recorded.

6.87. Once a week, the depth of water in each drinking water well shall be tested and a record of the results maintained.

6.88. Drinking water may be filtered as per the directions of the Inspector General, on the advice of medical and municipal authorities.

6.91. Suitable arrangements shall be made to supply every inmate of a ward and cell with sufficient quantity of fresh drinking water through taps during day and night. It shall be the responsibility of the warder on duty to see that sufficient drinking water is available before the prisoners are locked-in.

6.92. Prisoners at work shall be supplied with an adequate quantity of drinking water. If water is to be stored, it shall be done in covered receptacles which must be thoroughly cleaned every day."

5.2.3. Suggestions to Improve the Quality of Drinking Water

Here are some suggestions to improve the drinking water facilities given by the inmates:

1. "There should be proper arrangement for drinking water particularly at night.

Cold water should be provided during summer.

2. Water cooler should be installed for filter and cold water.
3. Clean and hygienic water should be provided. Water coolers should be installed in every barrack.
4. Separate toilet and bathrooms be constructed. Separate drinking water facilities should be arranged.
5. Clean and hygienic water that is separate from toilet should be provided. Cold water should be provided in summer.
6. Water supply of pure drinking water must be ensured. Drinking water and toilet water must be in separate pipes.
7. Water pipes should be properly cleaned.

5.2.4. Sanitation

Sanitation is one of the most basic human rights issues of the prisoners. As per Draft National Policy on Prison Reforms, hygienic conditions in prisons are adversely affected by shortage of latrines, urinals and bathrooms due to overcrowding, improper construction of urinals and night latrines inside barracks, general non availability of flush system in latrines and no sewer lines in prison campus, leading to choking of sewerage system. Sock pits are choked due to entry of other water than meant for, improper and obsolete drainage system, no rain water harvesting system and no system to recharge ground water by rain water.[75]

The Standard Minimum Rules[76] say that the sanitary installations shall be adequate to enable every prisoner to comply with the calls of nature when necessary and in a clean and decent manner. Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower at a temperature suitable to the climate as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.

[75] Supra Note 6, p.136

[76] Supra Note 4, Rule 12-13

Each Barrack used for sleeping should have sufficient number of attached WCs, urinals and wash places. The ratio of such WCs will be one unit per 10 prisoners. The ratio of the WCs which can be used during day time will be one unit per six prisoners. Latrines will be of the sanitary type with arrangements for flushing and privacy. Each cell should be provided with a flush type latrine. Every prison should be provided covered cubicles for bathing at the rate of one for every 10 prisoners with proper arrangement to ensure privacy. Taking into consideration that daily requirement of water of an individual is about 135 liters, there will be an arrangement for the adequate supply of water in every prison. Each prison will have an independent standby arrangement of water supply. A summation of the views and discussions with prison officers and prisoners to improve the sanitary conditions is given below:

1. There should be three or four toilets in every room. There should be three to four separate bathrooms in every room. The toilets and bathrooms should be neat and clean.

Water supply should be provided round the clock.

2. New Toilets should be constructed in every barrack with flushing system.
3. For bathing purpose, a big water tank with taps and covered bath room should be constructed in each barrack.
4. The sewerage and drainage system should be laid underground.
5. Replace old model and broken toilet seats, to prevent cockroaches from coming out of the seats and roaming on the body of prisoners at night."
6. Every ward and barrack in the jail should be a self-contained unit for sanitation and hygiene needs.
7.

5.2.5 Medical Facilities

Every incarcerated human being is entitled to adequate medical facilities as per need. It is another grey area in the prison conditions which affect the life of the inmates badly. Lack of adequate medical staff and other healthcare facilities are main area of

concern in the jails resulting in deteriorating health conditions of the inmates. Many of the inmates died in the jails because of lack of timely medical care. As reported by WHO[77] , a special commission of inquiry, appointed after the 1995 death of a prominent businessman in India's high-security Tihar Central Jail, reported in 1997 that 10000 inmates held in that institution endured serious health hazards, including overcrowding, appalling sanitary facilities and a shortage of medical staff.

Expressing concern over poor medical facilities, Health Minister Professor Laxmi Kanta Chawla, promised to construct a new hospital in Amritsar Central Jail and also to improve other facilities related with health of the prisoners. The Minister visited the jail in April 2007 to preside over an AIDS awareness camp organised by the prison authorities in collaboration with Punjab unit of the Red Cross Society.[78]

Advocating the need for proper medical check up and other facilities, Standard Minimum Rules for Treatment of Prisoners elaborates, "at every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry". It further describes that the medical services should be organized in close relationship to the general health administration of the community or nation. These shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality. Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers. The services of a qualified dental officer shall be available to every prisoner.

It further lays stress on routine check-up of prisoners. The medical officer shall have the care of the physical and mental health of the prisoners and should daily check all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially required. The medical officer shall report to the director whenever he

[77] Ibid

[78] The Tribune, Chandigarh, 15 April 2007

considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.

Body of Principles (UNO, 1988) has also given due consideration to health of the prisoners. It says, "A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge."

The Supreme Court of India[79] in a historic judgement has laid down principles to implement the recommendations of the Mulla Committee[80] made in Chapter 29 on the subject of giving proper medical facilities and maintaining appropriate hygienic conditions and to take required steps. Kerala High Court27 in a significant judgment has stressed upon the Prisoner's Right to Basic Human Needs and advocated that basic items for healthcare and hygiene should be provided to both male and female prisoners.

5.3. Right to Communication

Communication means contact of prisoners with the outside world. Every prisoner either convicted or undertrial is entitled to communicate with his or her family members, relatives and friends on regular basis within the frames of rules and guidelines. This chapter describes various ways and means of communication with Prison inmates and their contact with outside world. A prisoner is permitted to know the affairs and happenings in the society outside the walls of the prisons through newspapers and other media as prescribed in the rules. The provisions made in various manuals/guidelines regarding contact with outside world and their practical applicability have been analysed in this chapter. Also further suggestions for improvement in terms of the following points have been made: Communication with relatives in the form of letters, Interviews (Visits), Availability of newspapers and other media of communication and Communication with legal advisor. Prisoners' views have also been obtained in this regard through interview schedule.

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[79] Rama Murthy Vs State of Karnataka(1997) 2SCC 642

[80] All India Committee on Prison Reforms (1980-83)

The relevant provisions of Standard Minimum Rules suggest that prisoners should be allowed to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits. It further elaborates the need of contact with daily affairs and happenings. It says that prisoners shall be kept informed regularly of the more important items of news by the reading of newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lectures or by any similar means as authorized or controlled by the administration.[81] Body of Principles lays stress upon entitlement of prisoners to communicate and consult with his or her legal counsel. A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel. The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted. [82]

The Model Prison Manual has suggested broad guidelines for making the process of communication simple and trouble-free. Chapter 8 of the Manual citing detailed procedures says that every prisoner shall be allowed reasonable facilities for seeing or communicating with his/her family members, relatives, friends and legal advisers for the preparation of an appeal or for procuring bail or for arranging the management of his/her property and family affairs.

Punjab Jail Manual (1996) makes elaborate arrangements for communication of prisoners with family, friends and outside world including religious preachers. Para 468-494 of chapter 15 of the Manual deals with general and specific rules regarding interviews and communications. Salient provisions of Punjab Jail Manual regarding communication of prisoners are given below:

1. "Every newly convicted prisoner shall be allowed reasonable facilities for seeing or communicating with his relatives or friends with a view to the preparation of

[81] Standard Minimum Rules for the Treatment of Prisoners, UNO, 1955, Rule 37 and 39

[82] Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,
UNO, 1988, Para 16

an appeal or to the procuring of bail, and shall also be allowed to have interviews or write letters to his friends once or twice, or often if the Superintendent considers it necessary, to enable him to arrange for the management of his property or other family affairs.

2. Every convicted prisoner shall be allowed to have an interview with his relatives or friends and to write a letter once a week during the term of his imprisonment.

3. No convicted prisoner shall be allowed to have an interview or to receive or write a letter except with the permission of the Superintendent, which shall be recorded in writing.

4. Application for interviews with prisoners may be oral or in writing at the discretion of the Superintendent. If the prisoner is not entitled to an interview, the applicant shall be informed at once.

5. The Superintendent shall fix the days and hours at which all interviews shall be allowed and no interviews shall be allowed at any other time except with the special permission of the Superintendent. A notice of the hours of interviews shall be pasted outside the jail.

6. Every interview shall take place in a special part of the jail appointed for the purpose, if possible at or near the main gate. Provided that if a prisoner is seriously ill, the Superintendent may permit the interview to take place in the hospital, and a condemned prisoner shall ordinarily be interviewed in his cell.

7. The time allowed for an interview shall not ordinarily exceed 30 minutes, but may be extended by the Superintendent at his discretion.

8. No Letter shall be delivered to or sent by a convicted prisoner until it has been examined by the Superintendent or by the Deputy Superintendent or other officer under the Superintendent’s orders, but no unnecessary delay should be allowed to occur in delivery or dispatch. If a letter is written in a language unknown to the Superintendent, he shall take steps to procure a translation before forwarding the letter.

No letter written in cipher[83] shall be allowed. The Superintendent may withhold any letter which seems to him to be in any way improper or objectionable, or may erase any improper or objectionable passages.

9. (1) Writing material including service postcard and service stamps shall be supplied to convicts, undertrials and civil prisoners as under

i. Convicted prisoners once a week

ii. Unconvicted and civil prisoners twice a week

(2) Expenses of postage for additional letters, permissible under the rules shall be borne by the prisoners themselves.

10. Unconvicted criminal and civil prisoners shall be granted facilities for writing two letters and holding two interviews each week with their relatives or friends.

11. Every interview between an unconvicted prisoner and his legal adviser shall take place within sight, but out of hearing of a jail official. A similar concession may be allowed by the Superintendent in the case of an interview with any near relative of the unconvicted prisoner."[84]

12.

The above-mentioned provisions have been made in the rule book. Now the applicability of these rules in real sense will be examined.

5.4. Visitor Management System at Tihar Jail, New Delhi

Before the system of interview and other modes of communication in Amritsar Central Jail is analysed, situation of Tihar Jail New Delhi is described in brief. The researcher visited Tihar Jail, New Delhi and collected these details from the Office of DIG Prisons at Tihar.

Delhi prisons receive around 2000 visitors daily for meeting with the prisoners. To manage this large number of visitors, Visitor Management System software has been

[83] Cipher means Code word.

[84] Manual for the Superintendence and Management of the Prisons in Punjab, 1996, Para 468-494

developed which can register the visits of friends and relatives of a prisoner 10 days in advance on centralized telephone numbers 011-25528888 (Tihar) and 011-27291501 (Rohini). The days of interview is fixed on the basis of the first alphabet of the names of the prisoners as shown in the Table 5.1. This system saves the time of visitors as well as informs the prisoners in advance about his meeting. Due to introduction of this system, complete transparency has been obtained.

Model Interview Halls are also being constructed in jails where the prisoners meet their relatives/ friends separated by seeing through toughened glass and in soundproof environment. Each cubical is earmarked for a prisoner where he/she can converse with his/her relatives/friends through a one-to-one microphone system. This system facilitates visitors to see and converse with their relatives undergoing imprisonment in a proper manner.

Every prisoner is entitled to maximum two interviews in a week and the days have been earmarked on the basis of the first alphabet of the names of the prisoners.

Sufficient numbers of computer sets and staff are working to make this system useful and successful. The Visitor management software also keeps all the data of previous interviews of the prisoners.

5.5 Interview System at Central Jail

Central Jail accommodates 25 hundred inmates approximately and it receives 300 to 500 visitors per day. Information regarding interview system was obtained from the office of Superintendent of the jail. Salient features of interview system of Amritsar Central Jail are:

Five days in a week were earmarked for interviews. Monday, Tuesday, Wednesday, Friday, and Saturday were normal interview days. There are separate timings for meeting undertrials and convicts. For undertrials, it is from 10.00 to 12.00 Noon while for convicts it is from 3.00 to 5.00 pm. Each prisoner is allowed to hold two interviews per week with his/her relatives and friends. The duration of each interview is 25 minutes. Each prisoner is permitted maximum three visitors at a time.

Visitors are required to bring a copy of one of the photo identity card, Ration card, or letter from the Sarpanch (village head)/Municipal Councillor for identification. The visitors are also required to fill up a form specially prepared for the purpose. Interviews are arranged on a first come first basis. Interviews are booked on the main gate of the Jail between 9.00 to 10.00 a.m. for undertrials and 2.00 to 3.00 p.m. for convicts on the day of interview. The facility of advance booking of interviews on telephone is also available on all working days for the coming days' interview.

Advocates can meet prisoners between 4.00 p.m. and 5.00 p.m. for legal interviews on any working day except Saturday, Sunday and gazetted holidays. They are required to bring an attested copy of the power of attorney duly signed by the prisoner and attested by a jail gazetted officer or a Magistrate in order to meet prisoners for their legal interviews in the Central Jail.

5.5.1 Actual Scenario

Data was collected from the respondents regarding facility of interview and other modes of contacts of prisoners with outside world. Specific comments were also obtained from the inmates regarding actual implementation as well as suggestions for improvements. Table 5.2 shows that more than two-fifth of the respondents (43.3 percent) receive their relatives or friends once a week in the jail for interview and about onethird (30 percent) meet their relatives twice a week. About one-fourth of them (26.7 percent) either do not receive their relatives or friends or their relatives rarely visit them. They mostly belong to foreign countries or residents of other states in India or they are from poor background.

5.5.2 Improve Communication System

Some of the suggestions given by the inmates to improve the shortcomings are as follows:

1. The interview room should be wide and it should have at least 100 cabins fitted with fans. There should be proper sitting arrangements for the inmates as well as for the visitors.
2. The officials should be courteous to the visitors and the relatives should not be treated like prisoners.
3. Open interview system should be adopted.
4. There should be one waiting room for the visitors outside the prison with toilet facilities. Visitors should not suffer outside the meeting room in summer and in rainy season.
5. PCO facility should be provided to the prisoners. It will reduce mental tension as well it will reduce pressure on meeting and will save time and money of the relatives.

Sometimes Prisoners have to pay the officials Rs. 50/ to send messages to the family.

6. The iron bars between inmates and their relatives should be removed.

Chairs should be provided to the relatives.

Chapter 6

6.1. Human Rights of Undertrial Prisoners

In this chapter, an attempt has been made to study human rights aspects of undertrial prisoners. Undertrial prisoners are those persons who are facing trials in the competent courts. They are technically under judicial custody but for all practical purposes are kept in the same prison especially in India. In many countries there are separate institutions for undertrials. Delay in trial of cases is the main human rights issue of undertrials. The purpose of keeping undertrials in the custody is to ensure fair trail so that they cannot be in a position to influence or induce the witnesses. In the Indian Prisons, undertrials constitute more than 65 percent of the prison population.

As per reports of National Crime Record Bureau, the percentage of undertrials in the Indian Prisons varies from 65 to 70 percent which is a major indicator of gross violation of human rights. This chapter focuses on the causes and consequences of increasing number of undertrials and human rights issues connected with it. It also suggests remedies to reduce the number of undertrial prisoners as well as to protect the rights of undertrials. In the sample of this study, two-third of the respondents (200) belong to undertrial category and part C of the interview schedule comprises specific issues connected with the undertrials.

The National Human Rights Commission has analysed the Prison Population as on 30 June 2003 and expressed dissatisfaction over the increasing number of undertrials. Undertrial prisoners constituted 72.78 percent of the total prison population in the country which shows a marginal drop of 1.28 percent from the figure of 74.06 percent as on 30 June 2002. Eight States/UTs had undertrial prisoners numbering more than 80 percent of the total prison population. These were: Dadar & Nagar Haveli (100 percent), Meghalaya (95.17 percent), Manipur (91.43 percent), J&K (90.99 percent), Bihar (86.11 percent), UP (85.07 percent), Delhi (81.13 percent) and West Bengal (80.72 percent). Chhattisgarh, Sikkim and Andaman and Nicobar had less than 50 percent undertrial prisoners. Among the major States, MP (56.99 percent), Rajasthan

(55.89 percent) and Himachal Pradesh (53.40 percent) are seen to be making efforts to reduce the proportion of undertrials in jails.[85]

Undertrials in the Indian Prisons are kept in the same jail where the convicted prisoners are kept. However, it has been made compulsory for the prison officers to provide separate accommodation for the undertrials. The Model Prison Manual advocates that no convicted prisoner shall be kept in the same area in which undertrial prisoners are kept, or be allowed to have contact with undertrial prisoners. No convicted prisoner shall be allowed to enter the undertrial yard or block.[86]

The then Chief Justice of the Supreme Court of India, Justice YK Sabharwal pointing fingers at the judicial delay said that there are 1.62 crore cases pending across the country of which 1.18 crore are in magisterial courts. While everybody knows that justice delayed is justice denied, no practicable solution has been used to get us back on track, he said. A large number of prisoners lying in the jails without sentence have posed a big challenge to the prison management.

There are following grounds for keeping an undertrial in jail:

a. In case of heinous and grave offences

b. If the accused is likely to interfere with witness or impede the course of justice

c. If the accused is likely to commit the same or other offences

d. If the accused may fail to appear for trial.[87]

Standard Minimum Rules giving special status to the undertrials rule that unconvicted prisoners are presumed to be innocent and shall be treated as such. Body of Principles6 has also laid stress on the treatment of undertrials and says that a detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial. The arrest or

[85] National Human Rights Commission of India, Annual Report 2004-05, Para 4.70

[86] Model Prison Manual (2003), BPR & D, New Delhi, Para 22.45

[87] Lalli, Upneet: Problem of Overcrowding in Indian Prisons – A study of undertrials as one of the factors, Institute of Correctional Administration, Chandigarh, 2000, p.1.

detention of such a person pending investigation and trial shall be carried out only for the purposes of the administration of justice on grounds and under conditions and procedures specified by law. The imposition of restrictions upon such a person which are not strictly required for the purpose of the detention or to prevent hindrance to the process of investigation or the administration of justice, or for the maintenance of security and good order in the place of detention shall be forbidden.

Justice K. Ramaswamy, Member of National Human Rights Commission of India has commented upon the plight of undertrial prisoners in a letter to Chief Justices of High Courts. It is common knowledge that it is the poor, the disadvantaged and the neglected segments of the society who are unable to either furnish the bonds for release or are not aware of the provisions to avail of judicial remedy of seeking a bail and its grant by the court. Needless or prolonged detention not only violates the right to liberty guaranteed to every citizen, but also amounts to blatant denial of human right of freedom of movement to these vulnerable segments of the society who need the protection, care and consideration of law and criminal justice dispensation system.[88]

Prisons has special mention of the undertrials and it says that the State shall endeavour to evolve proper mechanism to ensure that no undertrial prisoner is unnecessarily detained. This object shall be achieved by speeding up trials, simplifying of bail procedures and by periodic review of cases of undertrial prisoners.[89]

However, in practice, it has been realised that the treatment of undertrials in the jails is not satisfactory and their human rights are violated. Human rights issues connected with the undertrials have been analysed in detail. The focus of analysis is upon the following human right aspects:

i) Undertrials are mostly lodged with the convicts in the same institution

[88] National Human Rights Commission of India, copy of letter, 22 December 1999

[89] Manual for the Superintendence and Management of the Prisons in Punjab, 1996, Para 4(iii)

ii) Number of adjournments more than necessary

iii) Delay in the trial of cases

iv) Prolonged detention

v) Actual confinement more than the pronounced sentence

vi) Acquittal after confinement

vii) Vexatious Arrests

Standard Minimum Rules has elaborated the rights of untried (undertrial) prisoners in regard to their treatment. It clearly says that untried prisoners shall be kept separate from convicted prisoners. The other provisions of Standard Minimum Rules regarding undertrials treatment may be summarised as follows:

"Untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate. Within the limits compatible with the good order of the institution, untried prisoners may, if they so desire, have their food procured at their own expense from outside, either through the administration or through their family or friends. Otherwise, the administration shall provide their food. An untried prisoner shall be allowed to wear his own clothing if it is clean and suitable. If he wears prison dress, it shall be different from that supplied to convicted prisoners.

An untried prisoner shall always be offered opportunity to work, but shall not be required to work. If he chooses to work, he shall be paid for it.

An untried prisoner shall be allowed to procure at his own expense or at the expense of a third party such books, newspapers, writing materials and other means of occupation as are compatible with the interests of the administration of justice and the security and good order of the institution.

An untried prisoner shall be allowed to be visited and treated by his own doctor or dentist if there is reasonable ground for his application and he is able to pay any expenses incurred.

An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution."[90]

Similar provisions have been made in the Punjab Jail Manual14 on the lines of Standard Minimum Rules. However, there is a considerable gap between theory and practice. Majority of undertrial respondents (87 percent) have expressed dissatisfaction over treatment and this has surprisingly been endorsed by the Prison officials. The officials find it difficult to manage the prisons and to initiate reformative activities.

6.1.1. Delay in Trial of Cases: a Major Human Rights Issue

Because of delay in the trial of the cases, the undertrials have to spend a considerable period of time in the prisons. Concerned over the time taken by courts in deciding cases, the then President of India Dr. A.P.J. Abdul Kalam suggested that a study be conducted to examine the judicial delays. Inaugurating a two-day seminar on narcotic drugs and psychotropic substances on March 26, 2006, Dr. Kalam stressed upon the need to speed up the judicial process with minimum adjournments. He further told that it may be useful to conduct a case study of hundred cases to examine the number of adjournments and the duration it has taken to settle the case on an average. The study may also throw a light on how to speed up the judicial process.[91]

As informed by the then Minister of Law and Justice Mr. H. R. Bhardwaj to the Parliament (30 November, 2007) unsatisfactory appointment of judges, unsatisfactory selection of government counsels, imperfect legislation, indiscriminate closure of courts, granting of unnecessary adjournments and additional burden on courts due to election petitions were also adding to case backlog in courts besides shortage of judges. There are examples of quick disposal of certain cases by the courts. A court of Rohtas in Bihar, established an astonishing precedent for delivering expeditious justice when it

[90] Supra Note 5, Rules 85-92

[91] The Tribune, 27 March 2006

sentenced two rapists to seven years in jail at the end of a two-day trial. The trial set the record for the shortest judicial proceeding in India. Sessions Judge Arun Kumar Srivastava began the trial on July 25 and sent the accused to jail on July 27 in 2006. In June 2005, a Jodhpur court sentenced the rapists of a German tourist within 20 days of the crime. In April 2006, a Jaipur court sentenced a rapist of a German student within a week.

Hearing and Adjournments After analysing the period of detention in the judicial custody, hearings and adjournments of the cases of the undertrials are being analysed. For this purpose a case study of 100 cases has been conducted with a view to have firsthand knowledge of the problem. These 100 cases were broadly classified in four categories: Murder and other heinous cases (31), NDPS (27), crime against women (20) and Local and Special Acts (22). In all these cases, the accused were in the judicial custody till completion of trial. All these cases are related with inmates lodged in Amritsar Central Jail which were concluded in the year 2006.

Some of the particulars in each case have been collected from prison records. However, most of the details have been collected from the court records with the help of Assistant Attorney in-charge of District Legal Services Authority. The cases have been taken into account on random basis as per convenience because of difficulty to collect all the particulars of the cases. For example, if some particulars are available in the jail in respect of one particular case, relevant details were not available in the courts in desirable manner for the same case. To make the study more representative, average number of adjournments as well as average time period has been calculated category-wise and thereafter overall average has been calculated. The adjournments have been given in the round figures. However average time duration has been given up to one decimal point indicating months. For example, 2.6 years means 2 years and 6 months.

Prisoners' views were obtained in this regard and they were of the opinion that trial should not take more than 6 months to conclude in the cases where accused are in the custody. Investigating officers of Police have also expressed similar views and stated that because of delay in the process of trial, they lose grip on the case and are unable to

follow the same in an efficient manner. However, judicial officers and prosecutors have different opinions and they cite shortage of judges and nonappearance of witnesses as the main reasons behind inordinate delay in the trials.

On the basis of the above facts and circumstances, it is evident that trial takes excessive time in the Indian courts. So undertrials have to remain in custody for long time before their cases are disposed. However, legal provisions demand for speedy justice. Body of Principles (UNO, 1988) emphasises on the right of a person detained on a criminal charge to complete trial within a reasonable time or to be released on bail pending trial. As per Article 125 of Criminal Procedure Law of China, 'A people's court shall pronounce judgment on a case of public prosecution within one month, or one and a half months at the latest, after accepting it for trial' .

In the USA, right of an accused to a speedy trial is fundamental. The presumptive speedy trial time limit for persons held in pre-trial detention should be 90 days from the date of the defendant's first appearance in court after the filing of a charging instrument. The presumptive limit for persons who are on pre-trial release should be 180 days from the date of the defendant's first appearance in court after either the filing of any charging instrument or the issuance of a citation or summons19. As per Speedy Trial Act of 1998 of Philippines, in no case shall the entire trial period exceed one hundred eighty days from the first day of trial (www.philippines.ahrchk.net). Under Scots Law, the 110-day rule prevents people from being detained without trial for more than 110 days. After that period, they must be released.

The Indian Code of Criminal Procedure 1973 while giving the courts power to postpone or adjourn proceedings lays stress upon trial within a reasonable timeframe. Section 309 of the Code says that "in every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined".

Various decisions of Supreme Court of India and High Courts emphasize upon trial in a timeframe. The Supreme Court of India in its landmark judgment in 'Hussainara

Khatoon versus State of Bihar' [92] explicitly held speedy trial as part of Article 21 of the Constitution of India guaranteeing right to life and liberty. It emphasised that speedy trial is of the essence of criminal justice and there can be no doubt that delay in trial by itself constitutes denial of justice. In 'Maneka Gandhi versus Union of India and others'[93], a Constitution Bench of the Supreme Court went into the meaning of the expression "procedure established by law" in Article 21. The court held that the procedure established by law does not mean any procedure but a procedure that is reasonable, just and fair. The court read Articles 19 and 14 into Article 21 of the Constitution for this purpose.

While issuing a slew of directions to improve the disposal rate, Delhi High Court emphasizes to fix a time-frame for each stage of trial (like completion of pleadings, framing of charges, and recording of evidence). It further directs that "Endeavour shall be made to gradually reduce the average trial period of each case (civil and criminal) to 2/3 years.[94]

The Punjab and Haryana High Court, expressing dissatisfaction over the slow pace of justice delivery system, has directed the subordinate judiciary to expeditiously decide rape, dowry death and corruption cases in the larger interest of the society. The High Court has favoured advancing the dates of hearing and "day-to-day proceedings" in such cases. The reasons for seeking adjournments would require explanation.

The issue of the huge number of pending and delayed criminal cases came up before the Supreme Court in a petition filed by a non-governmental organisation. The Supreme Court in the case reported as 'Common Cause versus Union of India & Others' 25 observed: "It is a matter of common experience that in many cases where the persons are accused of minor offences punishable for not more than three years—or even less—with or without fine, the proceedings are kept pending for years together.

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[92]Supreme Court of India, Hussainara Khatoon versus State of Bihar, 1980 (1) SCC 98

[93] Supreme Court of India, Maneka Gandhi versus Union of India and others'1978 (1) SCC 248

[94] Ashok Rao (Monday, 06/15/2009), Delhi High Court Directs Lower Courts To Fix Time Limit For Disposal

Of Cases,[www.topnews.in/delhi-high-court-directs-lower-courts-fix-time-limit-disposalcases-2177816]

If they are poor and helpless, they languish in jails for long periods either because there is no one to bail them out or because there is no one to think of them."

The court further issued detailed guidelines for the release of under-trial prisoners and the ending of proceedings. The court ordered the release of under-trial prisoners on bail in cases involving offences under the IPC or any other law in force at the time if the offences are punishable with imprisonment not exceeding

i. Three years with or without fine and if trials for such offences have been pending for one year or more and the accused concerned have been in jail for a period of six months or more.

ii. Five years, with or without fine, and if the trials for such offences have been pending for two years or more and the accused concerned have been in jail for a period of six months or more.

iii. Seven years, with or without fine, and if the trials for such offences have been pending for two years or more and the accused concerned have not been released on bail but have been in jail for a period of one year or more.

In 'Raj Deo Sharma versus State of Bihar' [95], the Supreme Court issued certain directions for effective enforcement of the right to speedy trial. The Supreme Court laid down, among other things, that if an offence is punishable with imprisonment for a period.

i. Not exceeding seven years, whether the accused is in jail or not, the court shall close the prosecution evidence on completion of a period of two years from the date of recording the plea of the accused on the charges framed, irrespective of whether the prosecution has examined all the witnesses or not and the court can proceed to the next stage of trial. Furthermore, if the accused has been in jail for a period of over half of the maximum period of punishment prescribed for the offence, bail shall be granted.

[95] Supreme Court of India, Raj Deo Sharma versus State of Bihar, 1998 Indlaw SC 1131

ii. Exceeding seven years, whether the accused is in jail or not, the court shall close the prosecution evidence on completion of a period of three years from the date of recording the plea of the accused on the charges framed, whether the prosecution has examined all the witnesses or not.

It is evident from above verdicts and other facts that though Indian legal system does not have any special legislation for trial in a timeframe, yet various rulings and judgements of Supreme Court of India have tried to give it a legal shape. The historical verdicts in the cases of Hussainara Khatoon, Maneka Gandhi and Raj Deo Sharma have reiterated the right to speedy trial as fundamental right. However, delay in trials is a matter of great concern in the Indian legal system. The causes of delay require detailed and logical examination.

6.1.2. Causes of Delay in Trial and Undue Adjournments

To ascertain the actual cause of unnecessary adjournments, a comprehensive study has been conducted. For this purpose, 10 cases of prisoners were taken for this study who were lodged in Amritsar Central Jail. Besides this, various stakeholders of criminal justice system were interviewed which include Investigating Officers of Police, Public Prosecutors, Lawyers, and Judicial Magistrates. On the basis of analysis of causes of adjournments on each date in the respect of all these ten cases and discussion with these stakeholders, the following reasons were identified:

1. Shortage of judges
2. Non-service of summons of witnesses and Non-appearance of Witnesses
3. Non-appearance of Police witnesses on the pretext of VIP duty, transfer to other places, etc.
4. Non-production of accused from the jail because of unavailability of Escort
5. Delay tactics by advocates and the accused
6. Non-production of Case property

7. Undue adjournments
8. Lack of coordination between various organs of Criminal Justice Administration

To understand the problem, the above points are elaborated in detail

6.1.3. Shortage of Judges

Shortage of courts and judges is one of the major reasons for delay in the trials of cases. The judiciary is over-burdened due to work pressure. Over 25.4 million cases are pending in subordinate courts, 3.7 million cases in various high courts while the Supreme Court is stuck with 45,887 cases awaiting justice mainly because of shortage of judges at various levels.[96] As informed to the Parliament by the then Minister of Law and Justice, H R Bhardwaj (30 November, 2007), shortage of judges and delays in filling up vacancies in high courts, among other factors, have led to an increase in pendency of cases across the country. In district and subordinate courts, over 2.7 crore cases were pending. Against a sanctioned strength of 15,399 judges, almost 3,031 vacancies were still to be filled.

In a statement before the Parliament, Indian Law Minister M. Veerappa Moily (09 July 2009) said that there was a shortage of 234 judges in the high courts of India and 4,000,000 cases were pending in various High Courts around the country. As per a June 2009 estimate, the 21 high courts in the country have a total sanctioned strength of 886 judges, but the actual working strength is 652 judges, as accepted by the Minister.

Expressing concern over the tardy pace of resolution of litigation in courts, the Supreme Court of India on 21 March 2002 had directed the Central and State Governments to fill all the existing vacancies in the lower courts latest by March 31, 2003. The Apex court had also asked the government to increase the judges' strength in lower courts from existing 10.5 to 50 judges per one million of population and to recruit the requisite number of judges within five years.

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[96] Neeta Lal, Huge case backlog clogs India's courts, 28 June 2008,

6.1.4. Non-Service of Summons and Non-appearance of Witnesses

Non-service of summons is the second most important reason for delay in trials. It was specially pointed out by the Judicial Magistrates and public prosecutors that timely service of summons and appearance of witnesses on the given time and date can save valuable working hours of the courts. It is the primary responsibility of the investigating agency (which is police) to ensure timely service of summons of the witnesses. Normally every police station has earmarked 3 to 4 officials for the purpose of services of summons. In Punjab they are known as 'Tamili'. However the 'Tamilis' find it difficult to ensure proper services of summons especially in the cases where witnesses belong to far flung areas. Many times tourists are the complainants who belong to other states and also other countries and it is very difficult to serve the summons in these cases. Delay in trial causes further delay as the complainants lose their interest because of excessive delay. Even the formal witnesses like police officials who are part of investigation lose interest in the cases after their transfer from that district to other places and it is also difficult to serve summons upon them.

Even after services of summons, witnesses do not turn up to join trials in the courts on many occasions. There is no hard and fast rule to compel the witnesses to attend the court proceeding. Sometimes courts issue warrants to ensure attendance of witnesses but this is not common to each and every case. In many cases witnesses belong to far flung areas and they do not prefer to come on specified date because of paucity of time and resources. It is a genuine grudge of the witnesses that they are not paid to reimburse their expenditure on travel and stay to attend the court proceeding.

Section 61 of the Code of Criminal Procedure of India poses compulsion on the officer authorised to ensure summons to visit personally to the place of residence of the persons upon whom summons are to be served. However, procedure as laid down in section 69 of the Code can be adopted in such cases where witnesses belong to farther places and summons can be served by registered post addressed to the witness at the

place where he ordinarily resides (Ratanlal and Dhirajlal, 1999). Rules can be amended to authorise the services of summons through telephone and E-mail in the modern era of information technology. Even examination of witnesses can be conducted through Videoconferencing in such cases and the witnesses will find it easy and will not evade from appearance. It will also be beneficial for Police officers who are transferred to other places.

6.1.5. Non-appearance of Police Witnesses

On many occasions formal witnesses like Police Officers do not appear in the courts on the pretext of VIP duty, law and order arrangements and citing other reasons. In the Indian system of Policing, Investigation and Law and Order are dealt with by the same agency and it is difficult for the officers responsible for the maintenance of law and order to investigate the cases and pursue the same in the courts. Non-appearance of police witnesses in the courts delays the trial as cases are constituted by the police officers.

The Supreme Court of India has given verdict in Prakash Singh & Others vs. Union of India and Others[97] to ensure separation of investigation from law and order. Expressing concern on the present system, the Supreme Court has reiterated that "More than 25 years back i.e. in August 1979, the Police Commission Report recommended that the investigation task should be beyond any kind of intervention by the executive or nonexecutive. For separation of investigation work from law and order, even the Law Commission of India in its 154th Report had recommended such separation to ensure speedier investigation, better expertise and improved rapport with the people without any watertight compartmentalization in view of both functions being closely interrelated at the ground level."

Article 36 of Punjab Police Act 2007 makes provisions for separation of investigation from law and order for effective crime investigation. It says that the investigation staff

[97] Supreme Court of India, Writ Petition (civil) 310 of 1996, Date of Judgment: 22 September 2006

shall ordinarily not be diverted for any other duties, except with the permission of the Deputy Inspector General of Police of the Range concerned. Section 15 of the Act gives minimum fixed tenure for the field officers to ensure professionalism and better administration of criminal justice system.

However, the things can only be changed when the verdicts and rules are implemented in letter and spirit.

6.1.6. Non-production of Undertrials from the Jails

It is the primary responsibility of the police to produce the undertrials before the trial courts on each and every date of hearing. Jail officials often blame the police for not sending escort on time. Many times escorts are not sent on the pretext of VVIP duties and Law and Order arrangements. Court proceedings are hampered in the absence of accused and resultantly adjournments are ordered.

To study this problem, details of non-availability of escort were worked out for the year 2005 and 2006 (up to June) as per information available with Amritsar Central Jail. Table 6.9 shows the quarterly details of undertrials who could not be produced before trial courts because of non-availability of Police escort.

6.1.7. Delay Tactics by Advocates and Accused

Many times defence advocates take undue adjournments just to delay the process of trial, as pointed out by the public prosecutors. Sometimes undertrials on bail do not appear on the date of trail on the pretext of illness or some urgent work. Many times they furnish false medical certificates. The situation gets worse where one undertrial is in judicial custody and his accomplice on bail adopts delay tactics in the same case. In many cases, accused adopt delay tactics to kill the time and win over the witnesses with intent to get acquitted.

Public prosecutors and police officers were of the opinion that undue adjournments should not be allowed by the trial courts on filthy grounds. A mutually agreed datesheet should be prepared and followed in spirit to ensure smooth and speedy trial.

6.1.8. Non-production of Case Property

Non-production of case property is also an important reason responsible for delay in trial of cases. Case properties are normally kept in the 'Malkhana'(store) of Police Stations under the supervision and custody of Station Clerk. Case properties are not produced on time on many occasions and trials are delayed.

Sometimes case properties are handed over on 'Superdari' (bond) to the lawful claimants on the orders of the trial courts. It has been seen that they do not produce the same on the date of hearing and trial is delayed.

It is, therefore, suggested that case properties should not be given on superdari till conclusion of the case and Police Station officers should be made responsible to produce the same on each and every date of trial.

6.1.9. Adjournments because of Magistrates on Leave

Sometimes trial magistrates are on leave or on outstation duty and intimation is not given to prosecution, police and witnesses. Because of this, everybody who comes to attend the proceeding of the court gets harassed. It is suggested to intimate all the persons beforehand, if the trial magistrate is on leave or on outstation duty.

6.2. Prisoners' Right to Education

The role of education has been widely recognised in the modern concept of prison reform. From the social point of view also, we cannot deny that prisoners are also a part and parcel of our society and so it is required to enable them to catch up with the rest of the society. Therefore, it is necessary to make them eligible to command respect in the society after release from the jails. Education can play a great role to upgrade their knowledge and enhance their competencies. Confucious (551 - 479 BC), the famous Chinese Philosopher, also believed that everyone should benefit from learning. He said, "Without learning, the wise become foolish, by learning the foolish become wise." Therefore, education has been treated as a right of prisoners which has been

incorporated in the various guidelines given by the United Nations, Supreme Court of India and National Human Rights Commission of India.

Model Prison Manual says that "Education is vital for the overall development of prisoners. Through education their outlook, habits and total perspective of life can be changed. Education of prisoners benefits the society as well as it leads to their rehabilitation and self-sufficiency. Education reduces the tendency to crime. This would mean less crime, fewer victims, fewer prisoners, more socially productive people, and less expenditure on criminal justice and law enforcement. Education is harmonious and all-round development of human faculties—mental as well as physical. It is a tool by which the knowledge, character and behaviour of the inmate can be moulded. It helps a prisoner to adjust to the social environment and his ultimate resettlement in society."[98]

Himachal Pradesh High Court in 'Gurdev Singh and others vs. State of Himachal Pradesh' 3 gives emphasis on the provisions for education and vocational training of the prison inmates to improve their skills and capabilities. Kerala High Court4 has also emphasised the role of educational and recreational facilities as basic human rights of prisoners. National Human Rights Commission of India (NHRC) highlights the role of NGOs to improve the educational and recreational facilities in the Prisons.5 The Commission has issued broad guidelines to supply reading materials and other educational facilities to the prisoners to nurture their skills as well as for overall personality development. The guidelines are reproduced as under:

(i) As prisoners have a right to a life with dignity even while in custody, they should be assisted to improve and nurture their skills with a view to promoting their rehabilitation in society and becoming productive citizens. Any restrictions imposed on a prisoner in respect of reading materials must therefore be reasonable.

[98] Bureau of Police Research and Development of India, Model Prison Manual,2003, Para 13.01

iii) In the light of the foregoing, all prisoners should have access to such reading materials which are essential for their recreation or nurturing of their skills and personality, including their capacity to pursue their education while in prison.

(iii) Every prison should, accordingly, have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books and prisoners should be encouraged to make full use of it. The materials in the library should be commensurate with the size and nature of the prison population.

(iv) Further, diversified programmes should be organized by the prison authorities for different groups of inmates, special attention being paid to the development of suitable recreational and educational materials for women prisoners or for those who may be young or illiterate. The educational and cultural background of the inmates should also be kept in mind while developing such programmes.

(v) Prisoners should, in addition, generally be permitted to receive reading material from outside, provided such material is reasonable in quantity and is not prohibited for reasons of being obscene or tending to create a security risk. Quotas should not be set arbitrarily for reading materials. The quantity and nature of reading material provided to a prisoner should, to the maximum extent possible, take into account the individual needs of the prisoner.

Emphasizing the need of education for the prisoners, Standard Minimum Rules say that provision should be made for the further education of all prisoners capable of profiting thereby, including religious instructions in the countries where this is possible. The education of illiterates and young prisoners should be made compulsory and special attention should be paid to it by the administration. So far as practicable, the education

of prisoners should be integrated with the educational system of the country so that after their release they may continue their education without difficulty.[99]

Basic Principles for the Treatment of Prisoners says that all prisoners should have the right to take part in cultural activities and education aimed at the full development of the human personality.

Model Prison Manual further clarifies that life in prison is extremely monotonous, routinised and regimented. The educational activities offer opportunity to a prisoner to remove from his mind depressing thoughts leading to relaxation and joy. We must accept the reality that to confine offenders behind walls, without trying to change them through education and other activities, is an expensive folly.

6.2.1 Education for the Prisoners and by the Prisoners

The education system in the Jail is unique in nature from the point of view that it is totally a self-reliant system. It is a project for the prisoners and by the prisoners where educated prisoners have been inducted as teachers and faculty members. The Principal of the Centre is also a prisoner having M.Sc. and Ph.D degrees. Faculty members are amongst the educated prisoners, most of them are graduates and postgraduates. The Coordinators and Assistant Coordinators have been nominated amongst the prisoners at each level. The school has more than 50 teachers of various subjects. Most of them are also pursuing various higher courses from the Guru Nanak Dev University and Indira Gandhi National Open University. It provides them a feeling of self-satisfaction and self-esteem. It is also helpful in keeping them occupied in a constructive manner. At the same time, it is the best way to make the best and positive use of their potential.

This project has been started at various levels. Initially five departments were started:

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[99] Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, Rule 77

1. Higher Education: This faculty is organizing preparatory and refresher classes for the students who are pursuing BA, MA, Giani, MBA and Post-graduate Diploma courses.

2. Continuing Education: In this faculty, those prisoners who want to pursue the 10th and 10+2 standard are provided basic guidance and refresher classes.
Examinations are conducted by Punjab School Examination Board and National Open School.

3. School of Languages: In this faculty, basic knowledge of reading and writing of Punjabi, Hindi and English is imparted. English speaking course is also popular among the inmates, where educated prisoners are working as teachers.

The foreign prisoners take keen interest in learning Indian Languages.

4. Computer Education: Computer Education has been started to provide basic knowledge of computer.

5. Total Literacy Campaign: this course has been launched to educate illiterate prisoners.

Study Centre of Indira Gandhi National Open University (IGNOU)

6.2.2 The Indira Gandhi National Open University has set up its Special Study Centre in the jail premises. Some of the popular courses being undertaken by the prisoners are as follows:

1. Certificate in Human Rights (CHR)
2. Certificate in Guidance (CIG)
3. Certificate in Environment Studies (CES)
4. Certificate in Food and Nutrition(CFN)
5. Bachelor Preparatory Programme (BPP)
6. MBA

It is pertinent to mention here that many of the prison officials including the Superintendent and Deputy Superintendent are also pursuing various courses especially Certificate Course in Human Rights.

6.2.3. Computer Courses

Computer education has been started as a part of vocational education and it has high demand in this jail. More than 100 students were willing to undergo computer courses. However, two batches of computer course have been started with 25 students in each batch at the initial stage. This jail has well qualified and willing teachers in the computer science having qualifications like MCA and MSc in Computer Science. Computer courses will be very helpful for the inmates when they will be released from the jail as they will be able to get some good job in the society.

This course will be equated with the Certificate in Computing being conducted by the IGNOU so that the inmates could be able to get some kind of degree to enable them to get jobs. It is pertinent to mention here that computer sets have been provided by the charitable organisations for the computer courses. At present there are more than 20 computers in this centre.

6.2.4. Total Literacy Project

Most of the illiterate prisoners have been associated with literacy project.

Around 300 prisoners were getting basic education in this project at the end of 2006.

The students were divided into 10 batches, each batch comprising 30 inmates. Classes are arranged in the respective barracks with the help of educated prisoners. For each barrack, there is one teacher and one Assistant teacher amongst the prisoners. The course curriculum covers Punjabi Language and Basic Mathematics.

6.2.5. Education and Community Participation

This project is fully supported by the community. People willingly come forward to donate books, stationery and other study material. India Vision Foundation is playing key role in supporting this project. Some of the prisoners are also supporting this project by donating books, computer sets and other materials.

6.2.6. Impact of Education Project

The progress and impact of education can be better analysed on the basis of responses given by the inmates in this regard. All 300 respondents were asked specific questions related with education.

Chapter 7

7.1. Human Rights of Foreigner Prisoners

This chapter deals with human rights of the prisoners who belong to foreign countries. The status of foreigners in Indian jails is not different from native prisoners and there is no discrimination on the basis of nationality, race, colour, language and religion. However, because of being foreigners, they are not in a position to enjoy some of the rights and facilities available to the native prisoners. For example, foreigners cannot avail some of the rights available to the native prisoners like bail, parole, remission etc. They are not in a position to get bail because no body gets ready to furnish surety for such prisoners. They even do not receive meetings with their relatives and friends. There is no body outside the prison to take care of them. They cannot defend themselves during the trial as they do not have their relatives here. The present study attempts to analyze these problems of foreigner prisoners keeping Amritsar Central Jail in focus.

Standard Minimum Rules for the Treatment of Prisoners[100] is the first major document which advocates the rights of the prisoners. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment2 describes the rights of the foreigner prisoners and makes provision for immediate consular access or correspondence with the diplomatic mission of the State of which he is a national. Similarly another important UN document Basic Principles for the Treatment of Prisoners3 provides for the treatment of prisoners with due respect due to their inherent dignity and value as human beings. It prohibits any kind of discrimination on the grounds of nationality, social origin, race, colour, sex, language, religion, political or other opinion, property, birth or other status.

[100] Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977

7.2. Socio-Economic Characteristics of Foreign Inmates

An analysis of socio-economic characteristics of the foreigner prisoners is helpful in understanding the background of these prisoners. The common variables used for this purpose include age, sex, category, nationality, educational background, economic condition, religion, profession and family background.

7.2.1. Nature of offence

Majority of the foreign inmates were charged with the offences under Passport (Entry into India) Act 1920 and Foreigners Act 1946. Some of the inmates were charged under NDPS Act for smuggling of Narcotics drugs. Some of the inmates were also charged under Explosives Substances Act whereas some were charged under the Official Secrets Act for spying. Most of the inmates (69 out of the total 88) made unauthorized entry into Indian Territory whereas 19 came on valid visa but they were arrested because of expiry of visa or entering into undisclosed and unauthorized area. Some inmates who made unauthorized entry into Indian Territory came in search of employment.

7.2.1 Human Rights Issues

The basic human rights issues of foreigner inmates in the Jail are equally grave. Foreigner inmates are venerable in the jails and they cannot enjoy the rights and privileges available to their native counterparts. Right of communication, legal aid and monetary problems are fundamental issues being faced by them. They do not get food and clothes as per their habits and tradition. 7 They are also not in a position to get bail or arrange for sureties. They cannot enjoy the privileges of parole and remission because of foreigner status. The plight of Internees is quite miserable as they are languishing in the jails even after completion of their sentence. Consular access is another important issue in regard to foreigner inmates. According to Kiran Bedi the plight of foreign inmates was no different from that of their Indian counterparts. But their agony was magnified due to problems of communication, food habits, cultural differences, lack of visitors, shortage of money and shabby clothing.

7.2.2. Right to Communication

Every prisoner has basic right to communicate with his relatives and to receive meetings with his relative and friends within prescribed rules and regulations. Foreigner prisoners hardly receive any meeting in the jail as their relatives and friends do not find it convenient to visit just for the sake of meeting. Other means of communication are also restricted for the foreigner inmates. Local prisoners can receive two meetings a week. But their foreigner counterparts do not manage any meeting. As discussed earlier, majority of the inmates come from lower income group and are financially weak. They even cannot think that his relative will visit from their countries to meet them. Their meetings are limited to the members of some charitable institutions who visit the jails for some welfare work.

7.2.3. Monetary Problems

Local inmates are in a position to avail canteen facility or they receive some eatables and other articles of daily need, as they get cash (in the form of coupon) and other things from their relatives. The foreign inmates cannot even think to avail canteen facility because of monetary problem. They are dependant upon the food, cloth and other necessities provided by the prison authorities and charitable institutions like Pingalwara.

7.2.4. Legal Aid

Every person under any kind of detention has the right to be defended by a lawyer of his or her choice. But it is not true at least in the context of foreigner prisoners. Because of monetary problem, a foreign inmate cannot engage a lawyer of his/her choice. They have to be fully dependent upon the advocates provided by the District Legal Services Authorities. Quality and effectiveness of free legal aid provided to the inmates has been discussed in chapter six. When this facility does not fulfill the needs of local inmates, one can understand the problems faced by the foreigners. Majority of

the inmates who were provided free legal aid by the authorities do not remember the names of their advocates. Even the advocates do not have time to visit their clients in the jail as well as to spare quality time to defend their cases in the courts. Low rate of remuneration given by the Legal Services Authority is the major cause of poor service of free legal aid.

7.2.5 Bail

Foreign inmates do not avail the provision of bail as they cannot live in the locality freely. A person who is arrested on the charges of unlawful entry into Indian Territory cannot walk liberally as his or her stay in the society is also an offence. In any case they are not in a position to furnish sureties to be released on bail. They do not have house to stay outside the jail in case they are released on bail. Therefore there are many restraints on the foreigners in terms of provisions of bail.

7.2.6. Parole and Remission

Foreign inmates cannot enjoy parole and remission granted to the local inmates. Parole is temporary release of a convict for a particular period while undergoing imprisonment.

This provision needs many formalities to comply with which a foreign national cannot complete. Remission granted by the government from time to time does not apply to certain category of prisoners. Foreign nationals cannot avail the provision of remission. For example, special remission for one year was granted on the occasion of 400th martyrdom day of Shri Guru Arjun Devji (16 june 2006). Similarly special remission for 3 months to one year was announced on the occasion of Baisakhi 2007 (13 April 2007). But foreign nationals are not entitled to avail of this remission as per information gathered from jail authorities.

Case Study I-A

I-A, is a 48 years old prisoner hailing from Kasur district of Pakistan. He was arrested in 1990 by Ferozepure Police for having committed various offences under NDPS Act, Foreigners Act and Official Secrets Act. He was charged by the competent court and awarded 7 years rigorous imprisonment. He completed his sentence in 1997 in Ferozepure jail and was sent to internee camp in Amritsar Jail. Consular access was provided twice in the year 1998 as well as in 2006. However, even after completion of his sentence, he was languishing in the four walls of the jail. In 2006, he had been residing as an Internee for the last 9 years. As informed by the authorities of Amritsar Central Jail, they are ready to deport him, but Pakistani authorities do not extend due cooperation in finalizing deportation proceeding.

Case Study I-B

I-B, is a 40 years old prisoner residing in the internee camp of Amritsar Central Jail. He belongs to Baluchistan Province of Pakistan. He was caught by the BSF authorities in April 1997 on the charges of illegal entry in the Indian Territory. He was charged by the competent court and was awarded 3 months imprisonment. He completed his sentence in July 1997. Since then he has been languishing in the internee camp of Amritsar Central Jail and in 2006, he completed 9 years as internee. It means he suffered more than 9 years in jail despite the fact that he was awarded imprisonment for only three months. He does not receive any meeting from his relatives or friends. He has no knowledge about his family members. He was provided consular access in July 2006.

CONCLUSION & SUGGESTION

Prison has become a great concern for all recently. In the eighties the judiciary' examined 'the problems of prison administration in several decisions. The subject has been discussed by jurists too. These developments were the result of the new awakening in the field of human rights in the international community. The atrocities in jails, especially the blinding cases in Bihar jails, persuaded the courts to think seriously about the conditions in jails. Questions came before them in more ways than one. Besides formal writ petitions, simple letters from prisoners or other concerned individuals as well as newspaper articles written by social activists moved the courts to take activist stance.

Courts had granted many rights to the prisoners by reading them into Article 21.

In the Constitution of India, there is no specific guarantee of Prisoner's Rights. But there are certain rights given under Part III of the Constitution, which are available to the prisoners because a prisoner remains a 'person' in the prison. A prisoner is a person who is deprived of his personal liberty due to the conviction of a crime and imprisonment is the most common method of punishment provided by all legal systems. Imprisonment makes the prisoner repent about his past conduct. The judiciary protects the rights of prisoners' and recognises their rights.

They are protected from torture and solitary confinement. There are certain statutes in the Constitution which provides that certain rights of the prisoners are enforced, like Prisoners Act, 1900; Prisoners (Attendance in Courts) Act, 1955; Prison Act, 1894 etc. There are also Prison and Police Manuals which have certain rules and safeguards for the prisoners and it is an obligation on the prison authorities to follow these rules. According to the Universal Declaration of Human Rights, 'All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one other in a spirit of brotherhood.....'

Less than 200 years ago, the attitude to prisons, prisoners and punishment was brutal and barbaric. Recognition of the human being in the convicted offender is an idea that has been accepted after a long struggle with the state. The Indian socio-legal system is based on non-violence, mutual respect and human dignity of the individual. If a person commits any crime, it does not mean that by committing a crime, he ceases to be a human being and that he can be deprived of those aspects of life which constitutes human dignity. Even the prisoners have human rights because the prison torture is not the last drug in the Justice Pharmacopoeia but a confession of failure to do justice to living man. For a prisoner all fundamental rights are an enforceable reality, though restricted by the fact of imprisonment.

Article 21 of the Constitution guarantees the right of personal liberty and thereby prohibits any inhuman, cruel or degrading treatments to any person whether he is a national or foreigner. Any violation of this right attracts the provisions of Article 14 of the Constitution which enshrines right to equality and equal protection of law. In addition to this, the question of cruelty to prisoners is also dealt with specifically by the Prison Act, 1894. If any excesses are committed on a prisoner, the prison administration is responsible for that. Any excess committed on a prisoner by the police authorities not only attracts the attention of the legislature but also of the judiciary. The Indian judiciary, particularly the Supreme Court in the recent past has been very vigilant against encroachments upon the human rights of the prisoners.

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