“THE PRISON ADMINISTRATION AND HUMAN RIGHTS”

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DECLARATION

I, Rashmi Shukla, student of LL.M. (Criminal and Security Laws), School of Legal Studies, Babu Banarasi Das University, declare that the work embodied in this LL.M. dissertation is my own bonafide work, carried out by me, under the supervision of Prof. Dr. T.N. Prasad (Head & Dean, School of Legal Studies, BBDU). The matter embodied in this dissertation has not been submitted previously for the award of any degree or diploma in any other University or Institute.

I declare that I have faithfully acknowledged, given credit, and referred to the authors wherever their works have been cited in the dissertation.

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"Any accomplishment requires the effort of many and this work is no different."

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ABBRIVATIONS

S. No.	Abbreviation	Full Form - Meaning
1.	SC	Supreme Court
2.	HC	High Court
3.	AIR	All India Reporter
4.	HCC	High Court Cases
5.	Dr.	Doctor
6.	NCRB	National Crime Records Bureau
7.	UDHR	Universal declaration of Human Rights
8.	UNCAT	United Nations Convention Against Torture
9.	NHRC	National Human Rights Commission
10.	SHRC	State Human Rights Commission
11.	IPC	Indian Penal Code
12.	Crpc	Code of Criminal Procedure
13.	UTs	Union Territories
14.	BC	Before Christ
15.	PIL	Public Interest Litigations

Chapter 1 - Prison Administration & Human Rights: An Introduction

"Convicts are not by mere reason of the conviction denuded of all the fundamental rights which they otherwise possess."

- Justice V.R. Krishna Iyer

(Sunil Batra Vs. Delhi Administration., 1978)

A prison, jail or correctional facility is a place in which individuals are physically confined or detained and usually deprived of a range of personal freedom. These institutions are an integral part of the criminal justice system of a country. There are various types of prisons such as those exclusively for adults, children, female, convicted prisoners, undertrial detainees and separate facilities for mentally ill offenders. In this chapter, "prisons" refer to only adult correctional facilities.

1.1 Introduction:

Prison administration in India is coping up with number of problems since many years i.e. the problems of overcrowding, congestion, increasing proportion of undertrial prisoners, inadequacy of prison staff, lack of proper care and treatment of prisoners, lack of health and hygienic facilities, insufficient food and clothing, lack of classification and correctional methods, inefficient vocational training, indifference attitude of jail staff, torture and ill-treatment, insufficient communication etc. Hence, the state of prisons and lockups is a known cause for grave concern.

The concept of Human Rights has arisen from that of natural rights of all human beings. The belief that every person by virtue of his humanity is entitled to certain

natural rights throughout the history of mankind. It can be traced back some thousands of years back from the Hammurabi Code to the Magna Carta, the French Declaration of Human Rights and the American Bill of Rights. The underlying idea of such rights are that fundamental principles should be respected in the treatment of all men, women and children as it exists in some form in all cultures and societies.[1] The contemporary International statement of those rights is the Universal Declaration of Human Rights. The responsibility of governments is to protect the human rights proclaimed by this declaration. Under the provisions of Civil and Political Rights, all governments are to protect the life, liberty and security of their citizens. They should guarantee that no-one is enslaved and that no-one is subjected to arbitrary arrest and detention or to torture. The rights such as freedom of thought, conscience, religion, and freedom of expression are to be considered as Human Rights. Since the declaration does not have the necessary legal power, not being an International treaty does not determine de jure obligations for the states. Actually, its provisions have been included in the constitutions and internal laws of states and therefore it gained special importance.

Human rights have developed in a dialectical process of various revolutions and "generations". It began with the bourgeois revolutions against absolutism, feudalism and the power of the Roman Catholic Church, legitimated by the ideas of the Enlightenment, rationalistic natural law, the social contract, constitutionalism and liberalism in Europe and North America. These culminated in the establishment of civil and political rights to life, liberty, property and democratic participation in the

[1]http://en.wikipedia.org/wiki/history of human rights".

constitutions of the nation-states of the 18th and 19th centuries. In the twentieth century, the protection of human rights had begun to develop as an issue of concern to the international community.

The League of Nations was established at the conclusion of First World War and attempts were made to develop an international legal frame work to protect minorities, along with international monitoring mechanisms. The horrors perpetrated during the second world war motivated the international community to ensure that such atrocities would never be repeated and to provide the impetus for the modern movement and to establish an International system of binding human rights protection. Thus, International protection of human rights came into existence. The Magna Carta, 1215, is the most significant constitutional document of human history. The main theme of it was protection against the arbitrary acts by the king. The 63 clauses of the Charter guaranteed basic civil and legal rights to citizens, and protected the barons from unjust taxes. The English Church too gained freedom from royal interferences. King John of England granted the Magna Carta to the English barons on 15th June 1215. The king was compelled to grant the Charter, because the barons refused to pay heavy taxes unless the king signed the Charter.[2]

Imprisonment or incarceration is a legal punishment that may be imposed by the state for the commission of a crime or disobeying its rule. The objective of imprisonment varies in different countries and may be: a) punitive and for incapacitation, b) deterrence, and c) rehabilitative and reformative (Scott CL & Gerbasi JB., 2005). In

[2]http://en.wikipedia.org/wiki/history of human rights"

general, these objectives have evolved over time as shown in the accompanying figure. The primary purpose and justification of imprisonment is to protect society against crime and retribution. In current thinking, punitive methods of treatment of prisoners alone are neither relevant nor desirable to achieve the goal of reformation and rehabilitation of prison inmates. The concept of Correction, Reformation and Rehabilitation has come to the foreground and the prison administration is now expected to function in a curative and correctional manner. Human rights approaches and human rights legislations have facilitated a change in the approaches of correctional systems, and they have evolved from being reactive to proactively safeguarding prisoners‟ rights. The United Nations has also provided several standards and guidelines, through minimal rules or basic principles in the treatment of prisoners (United Nations 1977).[3]

The American and French Revolution gave further impetus to the struggle of human rights. The next source and avenue for the development of the philosophy of human rights is the English Bill of Rights, enacted on December 16, 1689, by the British Parliament. The British Parliament declared its supremacy over the Crown in clearterms. The English Bill of Rights declared that the king has no overriding authority. The Bill of Rights codified the customary laws, and clarified the rights and liberties of the citizens. The first colonies to revolt against England were the thirteen States of America. These states declared their independence from their mother country on 4th July 1776, American Declaration of Independence, 1776. The declaration changed the king colonies. The declaration of independence has great significance in the history of

[3]Prof.N.V. Paranjape, Criminology and Penology, Central Law Publications, Allahabad, 12th Edition, 2006, p.218

mankind as it justified the right to revolt against a government that no longer guaranteed the man's natural and inalienable rights. After that the U.S. Bill of Rights, came into force in 1791. The Constitution was enacted on 17th September 1787. The most prominent defect of the original constitution was the omission of Bill of Rights concerning private rights and personal liberties. Madison therefore proposed as many as twelve amendments in the form of Bill of Rights. Ten of these were ratified by the State legislatures. These ten constitutional amendments came to be known as the Bill of Rights. The overall theme of the Bill of Rights is that the citizen be protected against the abuse of power by the officials of the States. The French Declaration of the Rights of Citizens in 1789, the fall of Bastille and the abolition of feudalism, serfdom and class privileges by the National Assembly ushered France into a new era. On 4th August 1789, the National Assembly proclaimed the Rights of Man and of the Citizens. The Rights were formulated in 17 Articles. The Declaration of the Rights of Man and of the Citizen has far reaching importance not only in the history of France but also in the history of Europe and mankind. The declaration served as the death warrant for the old regime and introduced a new social and political order, founded on the noble and impressive principles.[4]

The State is under an obligation for protecting the human rights of its citizens as well as to protect the society at large, and is authorized to do so. To protect the citizens from any possible abuse of this authority, they are given certain basic privileges recognized by the Constitution of India as Rights. Elevation of such claims to the status of Rights, gives the citizens the capacity to evoke the power of the Judiciary to protect

[4]Frank New Sam, "The Home Office" Allen and Unwin, London, 1954, p.144

themselves againstviolation of such rights, as well as to seek redressal for their restitution.

International protection for human rights is governed by the International Bill of Human Rights which consists of the United Nations Declaration of Human Rights (UNDHR, 1948), which defines specific rights and their limitations, the International Covenants on Economic, Social and Cultural Rights (1966) and the International Covenant on Civil and Political Rights (1966), which place on states the obligation to promote and protect human rights. The Covenants are legally binding on those states that have ratified them. The UNDHR, which is the key document, is conceived as "a common standard of achievement for all peoples and all nations": Over the time it has become a yardstick to measure the degree of respect for, and compliance with, International human rights standards. It is a fundamental source of inspiration for national and international efforts to promote and protect human rights and fundamental freedoms. It has set the direction for all subsequent work in the field of human rights. The rights of individuals as part of a community have been addressed throughout the centuries by customs or laws in different parts of the world. Though the combination of the universal commitment to equal dignity and freedom with the political principle of the rule of law arose in the West a few hundred years ago, it is only with the adoption in 1948 of the United Nations Declaration of Human Rights it has been enriched. The Universal Declaration of Human Rights (UDHR), 1948, defines human rights as “rights derived from the inherent dignity of the human person.” Human rights when they are guaranteed by a written constitution are known as

"Fundamental Rights" because a written constitution is the fundamental law of the state.

Though all human beings have human rights as they are inalienable but under certain conditions the protection which is given to human beings are curtailed. This is imposed by rule of law. The attitude of society towards prisoners may vary according to the object of punishment and social reaction to crime in a given community. If the prisons are meant for retribution or deterrence the condition inside them shall be punitive in nature, inflicting greater pain, suffering and imposing severe restrictionson inmates. But if it taken in a modern progressive view the things are different. When, crime is considered as a social disease and favors for treatment of methods through non penal methods, then question of protection of human rights of prisoners will take a significant turn. The prisoner's protection laws were already enacted in India, but in the era of globalization, when crimes are increasing and judiciary has given the punishments so prisoners are also increasing proportionately in prison. Whatever they have done or are accused of doing, these prisoners remain human beings like the rest of us, concerned for their families and children and seeking affection and solace themselves. Kindness and compassion are extremely important in every area of life, whether it involves prisoners, prison guards or victims of crime. While harboring hatred and ill will is futile, fostering cooperation, trust and consideration is far more constructive. That is the reason why a great concern was shown to the prisoners and their human rights protection.[5]

[5]Report of the Indian Jails Committee,p.30,(1919)

The prison is used as an institution to treat the criminal as a deviant; there would be lesser restrictions and control over him inside the institution. The modern progressive view, however, regards crime as a social disease and favors treatment of offenders through non penal methods such as probation, parole, open jail etc. whatever be the reaction of society to crime, the lodging of criminals in prison gives rise to several problems of correction, rehabilitation and reformation which constitute vital aspects of prison administration. Punishment during the Hindu and Mughal period in India was to deter offenders from repeating crime.[6] The recognized modes of punishment were death sentence, hanging, and mutilation, whipping, flogging, branding or starving to death. Particularly, during the Mughal rule in India the condition of prisons was awe fully draconic. The prisoners were ill-treated, tortured and subjected to most inhuman treatment. They were kept under strict surveillance and control. Thus, the prisons were places of terror and torture and prison authoritieswere expected to be tough and rigorous in implementing sentences.[7] Indian prisons clearly reflect the changes in society's reaction to crime from time to time. The system of imprisonment represents a curious combination of different objectives of punishment. Thus, prison may serve to deter the offender or it may be used as a method of retribution or vengeance by making the life of the offender miserable and difficult. The isolated life in prison and incapacity of inmates to repeat crime while in the prison fulfils the prevention purpose of punishment. It also helps in keeping crime under control by elimination of criminals

[6] Ibid

[7]Attar Chand, Politics of Human Rights and Civil Liberties - A Global Survey (Delhi: UDH Publishers, 1985).

from the society. That apart, prison may also serve as an institution for the reformation and rehabilitation of offenders.[8]

The system of imprisonment originated in the first quarter of nineteenth century. The first time in India, Lord Macaulay drew attention of the government of India basing on his suggestions appointed a committee in 1836 to enquire the prison conditions and prison administration. The committee submitted their report after enquired the existing conditions in prisons, but the committee recommendations rejected due to all reforming influences such as moral and religious teaching, Education or any system of rewards for good conduct. 6 In 1862 Jail enquiry committee appointed to study sanitary conditions in Indian prisons, the committee suggested that the need for proper food and clothing for the prisoners and medical treatment for ailing prisoners.7 Later, the third Jail committee appointed in 1877, this committee given suggestions basing on this committee suggestions The Prison Act, 1894 came into existence in India. The Indian Jails reforms committee appointed by the British in 1919-20 for the prisoner's conditions.

Initially, prisons were used as detention houses for undertrials. Persons who were guilty of some political offence or war crime or who failed to pay their debts or fines were lodged in prison cells with a view to extracting confession from them or securing the payment of debts or fines. Subsequently, with the advancement of knowledge and civilization, the conditions of prisons also improved considerably.[9]

[8]Report of the Indian Jails Committee,p.30,(1919).
[9]http://www.legalservicesindia.com

After the Independence to India, the reformative adopted, in 1949 Pakwasa Committee suggestions to accept the prisoners should be used for work and pay reasonable wages to them. The Government of India appointed a committee on All Indian Jail Manual in 1957, this committee recommendations played an important role in Indian Jail system. The jails shifted from central list to state list, used reforming methods like parole and probation for lesser punishment prisoners. After in 1980, All India Jail Reforms Committee appointed, Justice A.N.Mulla appointed as chairmen. This committee recommendations to setup a separate homes for juveniles, mental ill prisoners were to shift to hospitals, to establish National Prison Commission, allow the public and media to visit the prisons, undertrial should be separated from the convicted prisoners and etc., Justice V.R.Krishna Iyer was appointed by the Government of India on National Expert Committee on Women on Custodial Justice for Women in 1987 and different states also appointed the committees in their states for better treatment and proper care for the prisoners, because the states having a constructional obligation towards the prisoners for their protection of rights in prisons.

The present-day penology centers around imprisonment as a measure of rehabilitation of offenders, the prisons are no longer mere detention houses for the offenders but they seek to reform inmates for their future life. The modern techniques of punishment lay greater emphasis or reformation, correction and rehabilitation of criminals. The criminal justice delivery system in India saw more than 0.2 million under trial prisoners being neglected in jail for many years, in many cases it exceeded the maximum sentence for the crime which they had committed. More ever, they did not

have anyone to stand as guarantors nor assets to furnish as bail bonds, the poor continued to suffer in prisons. There have been cases where the amount of bail is disproportionately high. One such case even went to the Supreme Court. In India the judicially enforceable fundamental rights which encompass all civil and political rights and some of the rights of minorities are enshrined in part Ill of the Constitution (Articles 12 to 35). These include the right to equality, the right to freedom, the right againstexploitation, the right to freedom of religion, cultural and educational rights and the right to Constitutional remedies. Article 21 of the Constitution guarantees the right of life and personal liberty and thereby prohibits any inhuman, cruel or degrading treatments to any person, whether he is a national or foreigner.

The Supreme Court of India, by Article 21 of the Constitution, has developed human rights jurisprudence for the preservation and protection of prisoners' right to human dignity.10 There is no specific provision in constitution which deals with prisoners' rights. Hence the Supreme Court played an important role to adopt and interpreted Article 14, 19, 20, 21 and 22 of part III and Article.38,39,39A and 42 in part IV in spell out the various fundamental rights available to the prisoners.9 A prisoner, he be a convict or undertrial or a detune, does not cease to be a human being.[10] They also have all the rights which a free man has but under some restrictions. Just being in prison doesn't deprive them of their fundamental rights. Even when lodged in jail, they continue to enjoy all their fundamental rights. The prisoner's condition is not satisfactory in prisons, even though, the major steps taken by the government but in implementation those are not fulfilled. In the International scenario it is the Geneva

[10]http://www.legalservicesindia.com

Convention which deals with specifically prisoners of war. For the first time the Hague convention of 1907 certain rules relating to the treatment of prisoners of war. Later on, this convention was superseded by the Geneva Convention of 1929 on the prisoners of war. The convention of 1929 in its turn was superseded by Geneva Convention relating to the prisoners of war, 1949. This convention contains exhaustive provisions relating to the treatment of prisoners of war.

1.2 Significance of the Problem:

A society that believes in the worth of the individuals can have the quality of its belief judged, at least in part, by the quality of its prisons and prove services and of recourses made available to them. It's the human life that necessitates human rights.Being in a civilized society organized with law and a system as such, it is essential to ensure for every citizen a reasonably dignified life. Thus, every right is a human right as that helps a human to live like a human being. Even if the person is deprived of some of his rights due to commission of some wrongs, he is entitled to rights unaffected by the punishment for wrongs. Especially when the principles and objectives of criminology and penology are acquiring a human face the enforcement of human rights assume a very great relevance. Simply because a person is "undertrial or convicted, his right cannot be discarded as a whole.

A man on becoming a prisoner, whether convict or under trail, does not cease to be human being. Though the prisoners can't be traced as animals yet the barbarous treatment sometimes given to them in prisons is not qualitatively human compared to the one given to the caged inmates. The grim scenario of prison justice assumes in

human misanthropic fragrance when the intellect of prisoners is blemished. Personhood of prison is fortified and they are forced to lose their integrity and individuality and thereby compelling them to become the right less slaves of the state. It became gruesome indeed and calls for interference of judicial power as constitutional sentinel, when the jurisprudence of prison justice becomes an escalating torture and the violent violation of the human rights is perpetrated by agencies of the state.[11] At present the rights of the prisoners has become a burning topic and so it is very much essential to study about the protection of human rights of prisoners. Hence, the researcher has selected this problem as the protection of human rights by the prisoners, can be claimed only when the prisoners knows about their rights. So, the emphasis is also made by the researcher on the subject of creating awareness of human rights among the prisoners by keeping its growing importance and need in mind. Also, he emphasized about the measures taken in prison for their protection.

1.3 Scope and Limitation of the Study:

As the subject remained largely unexplored, I found it difficult to obtain data to serve as source reference material. The scope of the subject is wide andcoverage is extensive. The conclusions tend to be somewhat general and therefore, must be viewed with caution. I mainly concentrated on the socio-legal aspects of the problem, and the study therefore may not purport to be whole and a complete study. However,

[11]http://www.shodhganga.com

I left no stone unturned in his effort to gather facts and information necessary for the study.

The present study is aimed to collect information through both primary and secondary sources with regard to protection of human rights of prisoners and creating awareness among them. Hence, I have selected the area of the study limiting to central jails.

1.4 Objectives of the Study:

- To study how the human rights legislations have facilitated a change in the approaches of correctional systems in Indian prisons.
- To trace out the instruments for the protection of human rights of prisoners in National and International perspective.
- To make a comparative study of protection of human rights of prisoners in U.S.A, England and other countries.
- To make a brief study of constitutional provisions dealing with protection of human rights of prisoners in India.
- To know the judicial sensitivity and activism regarding the protection of rights of prisoners, and Supreme Court cases relating to prisoners' protection.
- To study deficiencies in implementation of their existing rights in prisons, and discuss the problems of prisoners and the procedure for implementation of their rights in the Central Jails of Uttar Pradesh.
- To suggest suitable suggestions that may adopt for protecting human rights of the prisoners.

1.5 Hypothesis:

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

- To enforce and protect the human rights of the prisoners under prison administration, 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 under trail prisoners, unsatisfactory living conditions, lack of treatment programmed and many more incidents in prisons resulted in violation of human rights of prisoners.

1.6 Methodology:

The data for the study is collected both from the primary sources as well as secondary sources. The researcher has selected the relevant data from various vertical and horizontal sources like law books, journals, periodicals and other books relevant to the study. To conduct the primary study, the researcher has operated various online portals. Visited to libraries and collect the important documents in our research. The doubts which raised in the mind are further checked by various doctrinal resource

which I have collected. I mainly concentrated on the administration & rights of the prisoners and implementations of their rights, and the study therefore may not purport to be whole and a complete study. However, I left no stone unturned in his effort to gather facts and information necessary for the study.

The present study is aimed to collect the information through primary and secondary sources with regard to implementation of prisoner's rights in general and human rights of prisoners, awareness of their rights among prisoners and to collect the relevant statistical data for the purpose of the study. Hence, I haveanalyzed online data of the central jails of Uttar Pradesh. The collected data was analyzed and mentioned in appropriate chapters.

1.7 Review of Literature:

Literature in connection with the present problem is reviewed from the earlier studies; published books and Internet are the main sources which are covered for the purpose to ascertain the views and conclusion of earlier works regarding the study of "Human rights of Prisoners in U.P. – A study".

- **Micheline R. Ishay**, The History of Human Rights form Ancient times to the Globalization Era, orient longman pvt ltd, New Delhi, 2008 deals with the development of a liberal and secular perspective on human rights.
- **Ruzbeh N. Bharucha**, "Shadows in cages mother and child in Indian prisons", fushion books, New Delhi, 2005, deals with imprisoned mothers and children and the conditions in prisons.

- **Prof. SR Bhansali**, in his book titled “Constitutional Law - D. D. Basu's Human Rights in Constitutional Law”, 3rd Edition, 2008, deals with constitutional provisions relating to Human rights of prisoners.
- **Model Prison Manual**, “Bureau of Police Research and Development, New Delhi, 2003, deals with Institutional framework of the prisons in India.
- **R.K. Singh**, Director General of NCRB, Prison statistics India 2011, National central records bureau, ministry of home affairs, New Delhi, 2011, deals with statistical information about the jail system and prisoners.
- **Prof.N.V.Paranjape**, in his book titled “Criminology and Penology”, 2005, Allahabad, Central Law Publications, deals with Prisons History and various Prison committees’ regards to prisoners in India.
- **Report of the Indian Jails Committee**, (1919), dealt with Prison conditions and prisoners’ rights before Independence in India.
- **Justice A.N.Mulla**, in his Report of the All India Jails Reforms Committee, 1980-83, has given certain recommendations for the prison administration and protection of the prisoners and implementing their rights.
- **Dr. S. Mahartai Begum**, “Human Rights in India: Issues and Perspectives”, Ashish Publishing House (2000), deals with Human Rights, being human-centric, are universal in character but caught in the diametrically opposing forces of globalization and fragmentation.
- **Chiranjivi J. Nirmal**, “Human Rights in India: Historical, Social and Political Perspectives” (Law in India), OUP India (1999), deals with the complex issue of Human rights from many different perspectives, and cover such diverse issues

as the rights of prisoners and refugees, the constitutional context of human rights, organizational bases of human rights and the NHRC.

- **Ramesh Thakur**, in his book “Human Rights of Prisoners and Prison Justice”, Raj Publications, 2013, dealt with rights of the prisoners and prison administration in India.
- **Susan Easton**, “Prisoners' Rights: Principles and Practice”, Willan, 2011, deals with Principles and Practice considers prisoners’ rights from socio-legal and philosophical perspectives, and assesses the advantages and problems of a rights-based approach to imprisonment.
- **Nitya Ramakrishanan**, “In Custody: Law, Impunity and Prisoner Abuse in South Asia”, (SAGE Law), In Custody examines the professed and actual commitment to custodial justice on the part of six South Asian countries. India, Pakistan, Bangladesh, Nepal, Sri Lanka andAfghanistan have all been affected by the geopolitics of colonialism. Nineteenth century Europe is often simplistically seen as the ideological source of the rights discourse in South Asia.
- **Jagmohan Singh**, in his book “Right to Speedy Justice for Under Trial Prisoners”, Deep & Deep Publications, 1997, deals with the undertrial prisoners having right to speedy trail of their cases, the constitutional guarantee for the implementation of their rights.
- **Aftab Alam**, in his book “Human Rights in India: Issues and Challenges”, Raj Publications, 2002, deals with Human Rights Development in India and administration of human rights.
- **R.K.Barman**, A. Razak, in his book “Human Rights in India: Problems and Prospects”, New Academic Publishers; 1st edition (2013), deals with the

volume emphasizes on the protection of human rights at all levels. Human rights violation in the society is a crime and the volume focus on the role of the UNO which adopts the Universal Declaration of the Rights of man on December, 1948 in order to protect human rights.

During the research various sites are used to collect the data that should be analyzed for the research to find out the proper results. Some of the popular and well-known sites are mentioned below:

- www.legalserviceindia.com
- www.shodhganga.ac.in
- www.livelaw.com
- www.upcop.gov
- www.lexusnexus.com
- www.usenews.com
- En.m.wikipedia.org

In this research scenario I used the Internet and all other available resources to collecting the data for the research and due to lockdown against the spreading of Corona Virus “COVID-19” all efforts are not succeeded that is truly admitted and apologized.

1.8 Scheme of Study:

The entire study is divided into five chapters.

Chapter I title introduction deals with General Introduction. Significance of the study, Objectives, Hypotheses formulated, Methodology followed, Review of Literature and Scheme of the study.

Second Chapter prisoner rights in India – Human Rights perspective is deals with Prisoners' Rights in a Human Rights Perspective, The Historical background, Meaning and Definition of Right, Human Rights and Prisoners' Rights, Development of Human Rights Jurisprudence of Prisoners in India, Comparative Study in the area of Protection of Human Rights of Prisoners in U.S.A, England.

Chapter III dealing with is Human rights of prisoners – International perspective instruments for Protection of Prisoners Human Rights in International & National Perspective. Prisoners' Rights and their Protection in International Scenario and International Conventions, relating to it on National perspective Protection Measures of Prisoners in India, Role of prison Administration in Protecting Human Rights of Prisoners in India and the procedure adopted by prison administration to protect these rights.

Chapter IV Protection of Human Rights of prisoners – constitution and judicial perspective is which deals with Constitutional Provisions and Judicial intervention in Protection of Human Rights of Prisoners in India. In this chapter Constitutional Provisions in India, Directive Principles of state Policy, the related Legislations, Human Rights Legislations and Prisoners Legislations are discussed, the intervention of Apex court, when Prisoners Human Rights are being violated and Analysis of the cases.

Chapter V is the final chapter which gives conclusion to the work. It lists outvarious suggestions for protecting rights of the prisoners in general and human rights in specific also recommendation has been put forth by the researcher regarding the conditions of the prisons in India and how to improve them when a man on becoming a prisoner, whether convict or undertrial as he does not cease to be human being after he being a prisoner.

Chapter 2 -Prisoners' Rights in India- Human Rights Perspective

2.1 Introduction:

During the lockdown due to COVID-19, I'll proceed over the second chapter of the research work on "Prison Administration & Human Rights". This chapter contains particularly the rights of the prisoners during their jail (time of imprisonment) under which they are confined and supervised by the Officer and subordinate authorities of the jail administration. So, some regulations are necessary and compulsory to protect the rights of prisoners as they are also the human being and we cannot treat them as animals.

The penal reforms in India during the past few decades have brought about a remarkable change in the attitude of people towards the offenders. The old concept about crime, criminal and convicts have radically changed. The emphasis has now shifted from deterrence to reformative of the criminal. The age old discriminatory and draconian punishments no longer find place in the modern penal system. Indian penologists are greatly impressed by the recent Anglo-American penal reforms and have adopted many of them in the indigenous system.[12] A prison today serves three purposes which may be described as custody, care and correctional. Though the last of these which concerns the use of imprisonment as a form of legal punishment, now takes the primary place, it is in historical perspective a comparatively a new

[12]Prof.N.V. Paranjape, Criminology and Penology, Central Law Publications, Allahabad, 12th Edition, 2006, p.218

conception, not all the implications of which have yet been worked out. In its origin prison served only the custodial functions; it was a place in which an alleged offender could be kept in lawful custody until he could be tried, and if found guilty punished.[13]

In India, the Central Government constituted a number of committees on prison reforms and introduced the reformation and rehabilitation methods for the prisoners, providing rights to them. A person being a prisoner, cannot seized of all his rights by the authority, even though he is convicted as he is having fundamental rights guaranteed by the Art.21 of the Constitution and protected by the Supreme Court and High Courts under Art.32 and Art.226 of the Constitution. In this back ground the rights of the prisoners gained importance and has become the study of this research work.

2.2 Rights:

Rights are legal, social, or ethical principles of freedom or entitlement, rights are the fundamental normative rules is allowed of people, according to some legal system, social convention, or ethical theory.[14] The rights of man have been the concern of all civilizations from time immemorial. The concept of the rights of man and other fundamental rights was not unknown to the people of earlier periods.[15]

In the jurisprudence and the law, a right is the legal or moral entitlement to do or refrain from doing something, or to obtain or refrain from obtaining an action, thing or recognition in civil society. Rights serve as rules of interaction between people and

[13]Frank New Sam, "The Home Office" Allen and Unwin, London, 1954, p.144
[14]www.rightsof people/wekipedia.com
[15]Attar Chand, Politics of Human Rights and Civil Liberties - A Global Survey, UDH Publishers, Delhi 1985,p. 45.

as such, they place constraints and obligations upon the actions of individuals or groups. Most modern conceptions of rights are Universalistic and egalitarian rights are granted to all people. There are two main modern conceptions of rights, on the one hand, the idea of natural rights holds that there is a certain list of rights enshrined in nature that cannot be legitimately modified by any human power. The idea of legal rights holds that rights are human constructs, created by society, enforced by governments and subject to change. It is not generally considered necessary that a right should be understood by the holder of that right, thus rights may be recognized on behalf of another, such as children's rights or the rights of people declared mentallyincompetent to understand their rights. However, rights must be understood by someone in order to have legal existence, so the understanding of rights is a social prerequisite for the existence of rights. Therefore, educational opportunities within society have a close bearing upon the people's ability to erect adequate rights structures.[16] Rights are Social, Political, economic, legal and ethical, natural rights by society and enforced by the governments, without right a human being cannot survive. Every human being is having certain basic rights, equally to man and women and with regard to the rights, it is the state obligation to implement the rights and if there is any violation, the courts are vigilant over its violations.

The human rights may be regarded as the fundamental and inalienable rights are essential for life as human being. Human rights are the rights possessed by every human being, irrespective of nationality, race, religion, and sex, simple because of a

[16]https://answers.yahoo.com

human being. Human rights are thus those rights which are inherent in our nature and without which cannot live as human being. Human rights are fundamental freedoms.[17]

Human rights may be categorized as the fundamental rights to every man or women living in any part of the world are entitled by virtue of having been born as a human being, the rights are required for the full and complete development of human personality. Human rights are derived from the dignity and worth inherent in human person. The courts in India have been recognizing and enforcing the human rights as natural rights of mankind or as Constitutional mandates or as rights of an Indian in an independent polity. The human rights are not created by any legislation; rights resemble very much the natural rights. Civilized country like the United Nations must recognize them. They cannot be subjected to the process of amendment. The legal duty to protect human rights includes the legal duty to respect them. Members of U.N. committedthemselves to promote respect for and observance of human rights and fundamental freedoms. Human rights represent claims which individuals or groups make on the society. They include the right to freedom from torture, the rights to life, inhuman treatment, freedom from slavery and forced labor, the right to liberty and security, freedom of movement and choice of residence, right to fair trail, right to privacy, freedom of thought, conscience and religion, freedom of opinion and expression, the right to marry and from freely elected representatives, the right to nationality and equality before the law. These rights cannot be compromised universally. These rights are natural because they were derived from nature and could not be legally alienated by the ruler. Human Rights are inalienable rights or natural

[17]Albert Einstein. Ideas and Opinions, New York: Random House (1954).

rights or basic rights. Part III of the Indian Constitution provides fundamental rights nothing but human rights which are to every citizen in India. Human rights are two types one natural and other one created and protected by legislations. The Human Rights are protected by Judiciary by enforcing Constitutional Provisions in India.

2.3 Historical Evolution of Prisons:

According to the Gita, he who has no ill will to any being, who is friendly and compassionate, who is free from egoism and self-sense and who is even minded in pain and pleasure and patient is dear to God. It also says that divinity in humans is represented by the virtues of non-violence, truth, freedom from anger, renunciation and aversion to fault finding, compassion to living being, freedom from covetousness, gentleness, modesty and steadiness the qualities that a good human being ought to have.[18] The historical account of ancient Bharat proves beyond doubt that human rights were manifest in the ancient Hindu and Islamic Civilizations as in the European Christian civilizations. Ashoka, prophet Mohammed and Akbar cannot be excluded from the genealogy of human rights.[19]

The social environments and the stages of societal developments helped to shape the penal institutions for a systematic description of jails, the indirect reference to the judicial aspect of state craft will help to know something about the prison system and its evolution.[20] Prisons in the shape of dungeons had existed from time immemorial in

[18]S. Radhakrishnan (trans.) The Bhagavadgita, George Allen and Unwin, London: 1958.p 276.
[19]Yogesh K. Tyagi, "Third World Response to Human Rights," Indian Journal of International Law, Vo .21, No.1 (January - March 1981).
[20]M.B. Mahaworkar, Prison Management, Problems and solutions, Kalpaz Publications, Delhi. 2006, p.43

all the old countries of the world. The punitive imprisonment used extensively in Rome, Egypt, China, India, Assyria and Babylon and firmly established in Renaissance Europe. In India, prisons are even today are deemed to be created merely to maintain law and order. Bu it has to be viewed as an essential means of preserving and raising the quality of human life. Investment on prisons is still considered as non-developmental. Indian's attitude is greatly ambivalent. As most of the prisoners in India are themselves a victim of stark deprivation and of forced induction into criminogenic culture, they hardly have an advocacy of their own or on their behalf. Rationalization of prison reformation is not in India. As a consequence, prisons received the lowest priority within the criminal justice system in India.[21] The Prison conditions under various dynasty's is barbaric and inhuman methods were prevailed, the man became prisoner, all his rights are curtailed and he became slave. In those periods, different types of punishments were there. After independence, the prison conditions were changed from barbaric to reformation and rehabilitation methods.

2.3.1 Ancient Period:

The ancient Indian society exhibited all the characteristics of a scriptive social system. Many crimes and wrongs were sins and entailed secular punishments and also religious sanction. A well-organized system of prisons is known to have existed in India from the earliest times. It is on record that Brahaspathi laid greater stress on imprisonment of convicts in closed prisons. In Vedic period, administration of justice did not form a part of the state duties. Offences like murder, theft and adultery

[21]Narayankar B.D, The New Indian Express, 2nd April 2001, p.9,

arementioned but there is nothing to indicate that the king or an authorized officer as a judge, either in civil or criminal cases, passed any judicial judgment. Some critics have suggested that Sabhapati of the later Vedic period may have been a judge.[22]

Kautilya stated in his Arthashastra, that the prison should be constructed in a capital and provide separate accommodation for men and women. He was personally of the view that as far as possible the prisons should be constructed road side so that monotony of prison life can be reduced to a considerable extent, the problems of prisoner's life and their welfare. He is of the opinion that every fifth day some prisoners should be made free who pay some money as fine or undergo some other mild corporal punishment or promise to work for social uplift. He has also suggested that general amnesty on the birth of a prince or coronation of a royal heir. Kautilya was of the view that social festivals were proper occasion for amnesty as that would draw the attention of others. The third occasion for making prisoners as free citizens was the birth day of the ruling monarch who inspects prison, old prisoners, sick persons in the jail or orphans undergoing imprisonment. They were allowed to go out of the jail boundary and lead a life of free law-abiding citizens. Kautilya has said that, the duties of the jailor who always keeps eyes on the movement of the prisoner's and the proper functioning of the prison authorities. If a prisoner by chance moves out of his cell, he is fined twenty-four rupees and the warden who is in league with the prisoner is fined the double amount. In case the warden disturbs the prison life, the higher authority imposes a fine of five hundred rupees. Sometimes the prisoner is put to death by the warder so the penalty in this case is the highest, i.e., one thousand

[22]M.B. Mahaworkar, Prison Management, Problems and solutions, Kalpaz Publications, Delhi. 2006, p.43

rupees. Kautilya has gone deep to jail life and opines that the prisoner escaping after breaking the prison walls, must be put to death. This shows that the jail authority called Bandhanagaradhyaksa was always vigilant and alert and no evil action could escape his eyes. Kautilya stated that in his Arthasastha, the duties of the jailer are to provide facilities to prisoners and imposed fines for misconduct in their duties. He further explains the condition of prisoners' stringent fines are imposed when theprisoners tried to escape.

2.3.2 British Period

Under the British rule, human rights and democracy was suspect and socialism was an anathema. The British colonial period remains the Indian equivalent of the Dark Ages. Lord Macaulay rejected the ancient Indian legal political system as dotages of Brahminical superstition, and condemned ancient legal heritage and its inner care as an immense apparatus of cruel absurdities. The Britishers passed Laws like The Regulating Act which was passed in 1773, established the Supreme Court at Calcutta to exercise all civil, criminal, admiralty and ecclesiastical jurisdiction and indicated the intention of the British Government to introduce English Rule of laws and English superintendence of law and justice.[23] The British colonial rule in India marked the beginning of penal reforms in the country. The British prison authorities made strenuous efforts to improve the condition of Indian prisons and prisoners. They introduced radical changes in the then existing prison system keeping in view the sentiments of the indigenous people.[24]

[23]Vidya Bhushan, Prison Administration in Utter Pradesh, 1953, P.12
[24]Prof. N.V.Paranjape, Criminology and Penology, Central Law Publications, 12th Edition, 2006, p. 359

In 1835, Under East India Company Rule, 143 civil jails, 75 criminal jails and 68 mixed jails, with a total accommodation for 75, 100 had been built in Bengal, North-Western Provinces, Madras and Bombay.42 Reforms in prison administration came to occupy public attention; the British Parliament passed an enactment in 1824 in regard to the essentials of prison administration. 43 In 1836, the East India Company constituted committee for modern administrative structure of prisons. Lord Macalay is the member of that committee. The committee criticized that the corruption of prison staff and laxity of discipline. The main recommendation of the committee was Central Jails should be built to accommodate not more than 1000 prisoners each. Inspector General of Prisons should be appointed in all provinces.Sufficient buildings should be provided in all jails to accommodate prisoners comfortably. The First committee which has been setup on prisons conditions in India constituted by the East India Company. Basing on that committee recommendation, the first central prison was constructed in Agra in 1846. The recommendations of the first Committee could not be implemented, the East India Company rule ended in 1858 and the rule of British Crown started in India. During this period, The Indian penal code, 1860 and code of criminal procedure came into force. The Indian Prison System changed from barbaric to modern but not fully equipped to meet the prisoner's needs. The British rulers were sent as prisoners to the Andaman Islands. In 1858 to 1860 up to 2000 to 4000 prisoners were sent to Andaman Celluer Jail and many of them died. A second committee was constituted in 1864 to consider the deaths in prison and prison management. The committee came to the conclusion and submitted a report that due to overcrowding, bad conservancy, bad drainage, insufficient food, and insufficient medical facility. In

1877, the third jail committee was constituted entirely officials; it reviewed conditions of prisons and general administration.

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In 1888, the Fourth Committee was appointed on an all India basis. This Committee was expressly directed towards the routine working of the prisons. Thereport covered nearly the whole field of internal management of jails and laid down elaborate rules for prison management. The Committee recommended the separation of under trial prisoners and the classification of prisoners into casuals and habitual. Most of the recommendations of the Committee were incorporated in the jail manuals of various provinces. In 1892, the fifth all India jail committee was appointed and it reviewed total prison administration in India and recommended that the punishments of prison offences and separate under trails from the other prisoners and classification of prisoners like offenders and habitual. Britishers accepted the committee report and passed The Prisons Act, 1894. The act provided classification of prisoners and

important aspect to be considered is the sentence of whipping was abolished. The medical facilities made available to the prisoners in 1866 were further improved and better amenities were provided to women inmates to protect them against contagious disease. Despite those changes, the prison policy as reflected through the Act In 1897, the Reformatory School Act was passed, that was the landmark in the history of prison reforms in India. The court directed to the prison authorities, to separate the youth offenders from the other prisoners. The Prisoners Act was passed in the year 1900, incorporated prisoner's rights and duties in prisons.

After the First World War, the revolutionary changes came in to Indian prison system. The sixth Jail Committee was appointed in 1919 under the chairmanship of Sir Alexander G Cadrew. The process of review of prison problems in India continued the enactment of Prisons Act, 1894. The first ever comprehensive study was launched on this subject with the appointment of All India Jail Committee (1919-1920). Landmark in the history of prison reforms in India and is appropriately called the corner stone of modern prison reforms. The prison administration, reformation and rehabilitation of offenders were identified as one of the objectives of prison administration. The care of prisoners should be entrusted to adequately trained staff drawing sufficient salary to render faithful service. The separations of executive/ custodial, ministerial and technical staff are in prison service. The diversification of the prison institutions i.e. separate jail for various categories of prisoners and a minimum area of 675 Sq. Feet (75 Sq. Yards) per prisoner was prescribed within the enclosed walls of the prison. It is ironical that therecommendations made by this Committee could not be implemented due to disadvantageous political environment.

The All India Jail Committee (1919-1920) played a significant role in the prison reforms under British rule and that the committee was introduced reformation and rehabilitation methods for the prisoners to deter them after release from prisons and also suggested that to classify the prisoners under various categories and provide minimum facilities to them. The categories are classified into habitual offenders, offenders, under trial, convicted and women prisoners. The provincial governments of India appointed number of committees on prison reforms after the All India Jail Committee (1919-1920). The committees which are appointed are Punjab Reforms Committee (1919 and 1948), Uttar Pradesh Jail committees (1929, 1938 and 1946), Bombay (1939 and 1946), Mysore (1941), Bihar (1948), Madras (1950), Orissa (1952) and Travancore Cochin (now Kerala) (1953).

2.3.3 Post Independence Era:

The first decade after independence was marked by strenuous efforts for improvements in living conditions in prisons.[25] A number of Jail Reforms Committees were humanization of prison conditions and to put the treatment of offenders on a scientific footing. The East Punjab Jail Reforms Committee, 1948-49, the Madras Jail Reforms Committee, 1950-51, The Jail Reforms Committee of Orissa, 1952-55, The Jail Reforms Committee of Travancore and Cochin, 1953-55, The U.P. Jail Industries Inquiry Committee, 1955-56.

In Nijam's state of Hyderabad, having imprisoned an estimated 17,550 people who entered the territory, the Government of India left all the prisoners rounded up in the

[25]Draft National Policy on Prison Reform and Correctional Administration, Historical Review of Prison Reforms in India

upheaval, and to relieve the problem of overcrowded jails.47In Hyderabad, Britishrulers inherited a criminal justice system that had been paralyzed by the conflict, and could not process any significant number of cases. As in British India, politics came to determine was subjected to formal punishment, and escaped. Nehru government was different from those of the British: they were not spending money could otherwise be used for development projects, on expensive legal proceedings; and they were sensitive to the importance of political parties in a democratic. Many members of the public, contain in their insistence that, the government punished participants in communal violence, these only worsened relations between those communities were perceived to be at loggerheads with one another though thousands were originally detained; only a few exemplary persons remained in jail by 1953. The constraints of governance in a democratic state had an impact in three rather contradictory ways on the decisions which the government made about these prisoners. They had been detained for several months without trial, the International Committee for the Red Cross was pressing Nehru to see that those detained were either prosecuted or released. Nehru had long since realized that the eyes of the world were on Hyderabad, and wished to prove that the new Indian government could be balanced in its approach to both Hindus and Muslims. it was the widely held opinion amongst the new rulers of the state that the communist and 'communalist' parties in the state remained popular because the state Congress Party was weak. Chaudhuri, therefore, hoped that the release of prisoners would 'rehabilitate the prestige of the Hyderabad State Congress' Party in the eyes of the public in Hyderabad, and improve

relations between the state and national sections of the party.[26] There could be no general amnesty because the Military Governor still wished to prosecute prominent Razakars such as Kasim Razvi. In Major-General Chaudhuri's words, 'in political physics, Razakar action and Hindu reaction have been almost equal and opposite'. Thus, when it was decided to free all Hindus and to institute a program for the review of Muslim cases with an aim to gradually letting many out of jail, the government preferred that the policy be given no publicity. Releases were staggered and former prisoners made to reportperiodically to the police. The Indian authorities ordered the release of all Congressmen who had landed in Hyderabad's jails during their campaign of satyagraha and sabotage before the police action. Before the release, there was some debate as to whether those who had committed crimes of violence should be freed. In the event, Congressmen accused of violent crimes were let out, while communists were kept in jail, whether their crimes involved violence. the Government of India released 1,222 out of 1,736 detenus, and 7,893 out of 9,218 political prisoners. The Govt. of India invited Dr. W.C.Reckless, United Nations Technical Experts on Crime prevention and treatment of offenders, to make recommendations on prison reforms in 1951. Later on, a committee was appointed to prepare an All Indian Jail Manual in 1957 on the basis of the suggestions made by Dr.W.C.Reckless. An All India Conference of Inspector General of Prisons of the Provinces was also convened. Consequent of these efforts, the following major policy guidelines regarding reformation and rehabilitation of prisoners were unanimously accepted. The correctional services should form an integral part of the Home Department of each state and a Central

[26]Indian Economic Social History Review 2007; 44;

Bureau of Correctional Services should be established at the Centre. The reformative methods of probation and parole should be used to lessen the burden on prisons. State run after-care units should be set up in each state. Solitary confinement as mode of punishment should be abolished. Classification of prisoners for the purpose of their treatment was necessary. The State jails manuals should be revised periodically.[27]

On the recommendations of the Pakwasa committee a Model Prison was constructed at Lucknow in 1949. In 1951, Dr.W.C.Reckless was appointed by the Govt. of India for the recommendations of the prison reforms in India. He made several recommendations to relate juveniles, undertrial prisoners, convicted prisoners and their facilities, suggested to enact statutes relating to probation and after care schemes for the welfare of the prisoners. In 1961, The Govt. of India developed Central Bureau of Correctional Services and that was the first Central Agency toundertake research, training, education and documentation on the matters relating to Social Defense. The Government of India constituted Working Group on Prisons in 1972, which submitted its report in 1973. The committee made a number of recommendations and the State Governments were asked by Central Government to implement such recommendations. It recommended for the establishment of a Research Unit at the headquarters of the Inspector General of Prisons in each State. The setting up of a training institute in each State as well as of Regional Training Institute, diversification of the Institutions, accommodation and other connected matters, etc., formed the contents of its report.[28]

[27]Prof. N.V.Paranjape, Criminology and Penology, Central Law Publications, 12th Edition, 2006, p. 361
[28]C.S.Malliah, Development of Prison Administration in India, Social Defence, Vol. XVII, No.67, Ministry of Social Welfare, Government of India, Jan. 1982.p.40

In 1979, a Conference of Chief Secretaries made a number of recommendations to reduce the overcrowding in Jails. This included the establishment of an effective system of regular review of cases of undertrials, appointment of part-time or whole-time law officers in jails to enable the undertrials to contest their cases in courts, setting up of new Courts and amendment of the law relating to the transfer of prisoners. The other recommendations made by this conference were; creation of separate facilities for the care, treatment and rehabilitation of women offenders, segregation of juveniles, improving the system of inspection and supervision in jails so as to avoid indiscipline and malpractices, strengthening of training facilities for jail staff, work program for all able bodied persons, setting up of State and national boards of visitors and revision of State Jail Manuals on the lines of the Model Prison Manual.50 This conference accepted various rights to the prisoners, their protection measures and development of prison conditions. The Govt. of India requested to the State Governments and Union Territory Administrations for the protection of prisons and prisoners and which is considered as on important document for prisoners regulating and prison reforms, to revise their prison manuals on the lines of the Model Prison Manual by the end of the year, to appoint Review Committees for the under trial prisoners at the district and state levels, to provide legal aid to indigent prisoners and to appoint whole time or part-time law officers in prisons, to enforce existingprovisions with respect to grant of bail and to liberalize bail system after considering all its aspects, to strictly adhere to the provisions of the Code of Criminal Procedure, 1973, with regard to the limitations on time for investigation and inquiry, to ensure that no child in conflict with law be sent to the prison for want of specialized services under the Central Children Act, 1960, to have at least one Borstal School set

up under the Borstal Schools Act, 1929 for youthful offenders in each State, to create separate facilities for the care, treatment and rehabilitation of women offenders, to arrange for the treatment of lunatics in specialized institutions, to provide special camp accommodation under conditions of minimum security to political agitators coming to prisons, to prepare a time bound program for improvement in the living conditions of prisoners with priority attention to sanitary facilities, water supply, electrification and to send it to the Ministry of Home Affairs for approval, to develop systematically the programs of education, training and work in prisons, to strengthen the machinery for inspection, supervision and monitoring of prison development program and to ensure that the financial provisions made for up gradation of prison administration by the Seventh Finance Commission are properly utilized, to organize a systematic program of prison personnel training on State and Regional level, to abolish the system of convict officers in a phased manner; to mobilize additional resources for modernization of prisons and development of correctional services in prison; to set up a State Board of Visitors to visit prisons at regular periodicity and to report on conditions prevailing in the prisons for consideration of the State Government; to examine and furnish views to Government of India on proposal for setting up of the National Board of Visitors.[29]

The Committee had, therefore, formulated the draft of a National Policy on Prisons and recommended for its adoption by the Government of India in consultation with the State Government and Union Territory Administrations. The goals and objectives of prisons in India, according to the proposed National Policy on Prisons,were to

[29]Draft national policy on prison reform and correctional administration, Historical Review of Prison Reforms in India.

protect society and to reform and re assimilate offenders in the social milieu by giving them appropriate correctional treatment. The Committee strongly recommended that the protection and caring of prisoners is the duty of the states and also to create a regular plan aiming at creating a rehabilitation culture towards prisoners. Among the important suggestions made by the Committee are Directive Principle of National Policy on Prisons had to be formulated and embodied in Part 4 of the Indian Constitution. The subject of Prisons and allied institutions were to be included in the Concurrent List of Seventh Schedule of the Constitution. A Provision of an uniform framework for correctional administration by a consolidated, new and uniform comprehensive legislation to be enacted by the Parliament for the entire country was also recommended Revision of Jail Manuals was to be given top priority and suitable amendments in IPC. The follow up action on the report had been initiated by the Ministry of Home Affairs in consultation with concerned ministries and department of the Central and State Governments.52 The committee suggested that the national prison policy was necessary for uniform rules and regulations to the prisoners though out India, to review existing laws and Manuals relating to the prisoners and amendment to the Indian Penal code.

In 1980, the Central Government of India appointed committee under the chairmanship of Justice A.N.Mulla on All India Jail Reforms, his recommendations has great impact on prison reforms in India as that committee examined all areas of the prison and prisoners, suggested to amend legislations relating to prisoners, to enact separate statutes for the protection of prisoners, facilities for the women prisoners, free legal aid to the undertrial prisoners, to construct separate jails for women and

also for the improvements of prison conditions like sanitation, diet and medical care in prisons. A total of 658 recommendations made by this committee on various issues on prison management were circulated to all States and UTs for its implementation, because the responsibility of managing the prisons is that of the State Governments as 'Prisons' is a 'State' subject under the List II State List of the Seventh Scheduleof the Constitution of India. The Committee has suggested thatthere is an immediate need to have a national policy on prisons.

Seventh Schedule to the Constitution of India. Enactment of uniform and comprehensive legislation is embodying modern principles and procedures regarding reformation and rehabilitation of offenders. There shall be in each State and Union Territory a Department of Prisons and Correctional Services dealing with adult and young offenders their institutional care, treatment, aftercare, probation and other non- institutional services. The State shall endeavor to evolve proper mechanism to ensure that no undertrial prisoner is unnecessarily detained and achieved by speeding up trials, simplification of bail procedures and periodic review of cases of undertrial prisoners. Undertrial prisoners shall, as far as possible, be confined in separate institutions. Imprisonment is not always the best way to the punishments the government shall endeavor to provide in law new alternatives to imprisonment such as community service, forfeiture of property, payment of compensation to victims, public censure, specially ensure that the Probation of Offenders Act, 1958, is effectively implemented throughout the country. 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 such as accommodation, hygiene,

sanitation, food, clothing, and medical facilities.[30] All factors responsible for vitiating the atmosphere of these institutions shall be identified and dealt with effectively. In consonance with the goals and objectives of prisons, the State shall provide appropriate facilities and professional personnel for the classification of prisoners on a scientific basis. Diversified institutions shall be provided for the segregation of different categories of inmates for proper treatment.

The State shall endeavor to develop the field of criminology and penology and promote research on the typology of crime in the context of emerging patterns of crime in the country, Proper classification of offenders and in devising appropriate treatment for them. A system of graded custody ranging from special security institutions toopen institutions shall be provided to offer proper opportunities for the reformation of offenders according to the progress. Programs for the treatment of offenders shall be individualized and shall aim at providing them with opportunities for diversified education, development of work habits and skills, change in attitude, modification of behavior and implantation of social and moral values. The State shall endeavor to develop vocational training and work programs in prisons for all inmates eligible to work. The aim of such training and work programs shall be to equip inmates with better skills and work habits for their rehabilitation. Payment of fair wages and other incentives shall be associated with work programs to encourage inmate participation in such programs. The incentives of leave, remission and premature release to convicts shall also be utilized for improvement of their behavior, strengthening, of family ties and their early return to society. Custody being the basic

[30]Bansal . V.K. Right to Life and Personal Liberty in India, Deep and Deep Publications, New Delhi, ed I (1987)

function of prisons, appropriate security arrangements shall be made in accordance with the need for graded custody in different types of institutions. The management of prisons shall be characterized by firm and positive discipline, with due regard, however, to the maintenance of human rights of prisoners. The State recognizes that a prisoner loses his right to liberty but maintains his residuary rights. It shall be the endeavor of the State to protect these residuary rights of the prisoners. The State shall provide free legal aid to all needy prisoners. Prisons are not the places for confinement of children. Children (under 18 years of age) shall in no case be sent to prisons. All children confined in prisons shall be transferred forthwith to appropriate institutions, meant exclusively for children with facilities for their care, education, training and rehabilitation. Benefit of non-institutional facilities shall, whenever possible, be extended to such children.[31]

Young offenders (between 18 to 21 years) shall not be confined in prisons meant for adult offenders. There shall be separate institutions for them where, in view of their young and impressionable age, they shall be given treatment and training suited to their special needs of rehabilitation. Women offenders shall, as far aspossible, be confined in separate institutions specially meant for them. Wherever such arrangements are not possible they shall be kept in separate annexes of prisons with proper arrangements. The staff for these institutions and annexes shall comprise of women employees only. Women prisoners shall be protected against all exploitation.

[31]N.Ravi, Human rights scenario in India -an overview, Lap Lambert Academic publishing,2013

Work and treatment programs shall be devised for them in consonance with their special needs. Mentally ill prisoners shall not be confined in prisons.

2.4 Development of Human Rights Jurisprudence in India

A man on becoming a prisoner, whether convict or under trial, does not cease to be human being. Though the prisoners can't be treated as animals yet the barbarous treatment sometimes given to them in prisons is not qualitatively human compared to the one given to the caged inmates. The grim scenario of prison justice assumes in human misanthropic fragrance when the intellect of prisoners is blemished, personhood of prison is fortified and they are forced to lose their integrity and individuality and thereby compelling them to become the right less slaves of the of the state It become gruesome indeed and calls for interference of judicial power as constitutional sentinel, when the jurisprudence of prison justice becomes an escalating torture and the violent violation of the human rights is perpetrated by agencies of the state. The mandates of preamble, fundamental rights and Directive Principles Provisions of the Indian Constitution seem to be outlawed from the security bound prohibited areas of high walled jails.[32] A man whether undertrial or convicted prisoner is having all fundamental rights like human being residing in society except some restrictions imposed by his incarceration. The Constitution of India in its preamble clearly states that, justice social, economic and political should be given to the people. The prisoners also cannot be deprived of those rights basing on the fact that he is undertrial or prisoner. India is a secular country. The concept of the

[32]Bansal. V.K. Right to Life and Personal Liberty in India, Deep and Deep Publications, New Delhi, ed I (1987).

administrationof justice in India had been influenced for centuries by different age-old religious beliefs. For instance, under the Hindu Jurisprudence, the administration of criminal justice was carried out in accordance with the socio-religious doctrines coming from Vedic revelations like the Srutis, Smritis, Puranas, Nibandh and Granthas. The judicial functions were conducted by the village assemblies (assemblies of seniors and leaders of villages), or the Kings themselves. The Hindu doctrine of criminal justice administration, both in the Vedic and post-Vedic communities and kingdoms paid little or no attention on the right of the accused because the accused was not recognized as an individual who could claim to have any right. In other words, once an individual was accused of committing a crime, he lost all the rights he could claim before the accusation. Another instance comes from the Muslim concept of the administration of justice, based upon the scriptures and principles of the Quoran. The Muslim philosophy of the administration of justice looked upon the accused as a sinner; consequently, the sinner had to be subjected to social deprivation (Mehraj-Ud- Din, 1985).[33] In pre- Vedic period, there was no judge for administration of judiciary but the village heads solve the problems by group assembling. There was no accusation and what village head says is final. The kings imprisoned only the war victims and who committed heinous crimes. The prisoners lose all his rights and live like a slave or bonded labor is accused of a crime. The modern version of human rights jurisprudence may be said to have taken birth in India at tile time of the British rule. When the British ruled India, resistance to foreign rule manifested itself in the form of demand for fundamental freedoms and the civil and political rights of the people; Indians were

[33]Sudipto Roy, violations of the rights of the accused and the convicted in India I, Department of Criminology, Indiana State University, Terre Haute, IN 47809

humiliated and discriminated against by the Britishers. The freedom movement and the harsh repressive measures of the British rulers encouraged the fight for civil liberties and fundamental freedoms.[34] Prison is a place where the criminal justice system put its entire hopes. The correctional mechanism, if fails will make the whole criminal procedure in vain. The doctrine behind punishment for a crime has been changed a lot by the evolution of new human rights jurisprudence.The concept of reformation has become the watchword for prison administration. Human rights jurisprudence advocates that no crime should be punished in a cruel, degrading or in an inhuman manner. The punishment amounting to cruel, degrading or inhuman should be treated as an offence by itself. The transition caused to the criminal justice system and its correctional mechanism has been adopted worldwide. The inquiry is made to know the extent of inclusion of these human rights of prisoners into Indian legislations. Judicially non- enforceable rights in Part IV of the Constitution are chiefly those of economic and social character. However, Article 37 makes it clear that their judicial non- enforceability does not weaken the duty of the State to apply them in making laws, since they are nevertheless fundamental in the governance of the county. Additionally, the innovative jurisprudence of the Supreme Court has now read into Article 21 (the right to life and personal liberty) many of these principles and made them enforceable. According to Human rights jurisprudence no prisoners should be punished in a cruel, degrading or in an inhuman manner, this type of punishment should be treated as an offence by itself. The correctional systems and criminal justice system have been adopted worldwide.

[34]N.Ravi, Human rights scenario in India -an overview, Lap Lambert Academic publishing,2013

The judiciary must therefore adopt a creative and purposive approach in the interpretation of Fundamental Rights and Directive Principles of State Policy embodied in the Constitution with a view to advancing Human Rights jurisprudence. The promotion and protection of Human Rights depends upon the strong and independent judiciary. The Apex judiciary in India has achieved success in discharging the heavy responsibility of safeguarding Human Rights in the light of our Constitutional mandate. The major contributions of the judiciary to the Human Rights jurisprudence have been twofold: the substantive expansion of the concept of Human Rights under Article 21 of the Constitution, and the procedural innovation of Public Interest Litigation. The Supreme Court of India is taking more steps to prevent the violations on human rights of prisoners and for the protection of prisoners is done through Public Interest Litigation almost all the basic rights are identified to come under Art 21 of the Constitution. The three organs of Government, the judiciary hasbecome a vanguard of human rights in India. It performs this function mainly by innovative interpretation and application of the human rights provisions of the Constitution. The Supreme Court of India has in the case Ajay Hasia v. Khalid mujibe69 declared that it has a special responsibility, to enlarge the range and meaning of the fundamental rights and to advance the human rights jurisprudence. The judgment given in the Chairman, Railway Board and others v. Mrs. Chandrima das70, the Supreme Court observed that the Declaration has the international recognition as the Moral Code of Conduct having been adopted by the General Assembly of the United Nations. The applicability of the Universal Declaration of Human Rights and principles thereof may have to be read, if need be, into the domestic jurisprudence. In a number of cases the Declaration has been referred to in the decisions of the Supreme Court

and State High Courts. The Indian Judiciary identified certain rights of Part IV of the constitution and implemented those rights under Part III of the Constitution of India and has given several directions to the Central as well as State Governments. This can be attributed as a success to Indian Apex Court.

Chapter 3 -Human Rights of Prisoners: International Perspective

In India, the idea of rights of prisoners was long suppressed under the colonial rule and has only recently emerged in public discourse. The Constitution of India confers a number of fundamental rights upon citizens. The Indian State is also a signatory to various international instruments of human rights, like the Universal Declaration of Human Rights which states that:

"No one shall be subject to torture or cruel, inhuman or degrading treatment of punishment" (UDHR, 1948)

"All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person". (UNICCPR, 1966

Human Rights are those irreducible minima which belong to every member of the human race when pitted against the State or other public authority groups and gangs and other oppressive communities. Being a member of human family, he has the right to be treated as human once he takes birth or his alive in the womb with a potential title to personhood. When legal ideas were not clear-cut but blurred, ancient pundits thought of the doctrine of natural rights founded on natural law, not because it is enacted but because it inalienably belongs to each of us as conceived in civilized political societies. When the priestly order denies this right using religious sanction and authority, the independent mind of man expresses dissatisfaction and defies. When Kings and Queens and other diadems and despotisms sought to suppress the

individual freedom an appeal to natural law was made on the assumption that beyond religious superiors and crowned heads, there was a system of natural law whichembodied reason, justice and universal ethics.[35] Though the concept of Human Rights is as old as the ancient doctrine of 'natural rights' founded on natural law, the expression 'Human Rights' is of recent origin, emerging from (post Second World War) international Charters and Conventions. Start with the concept of natural rights, eventfully led to the formulation of Human Rights. The concept of a higher law binding on human authorities was evolved it came to be asserted that there were certain rights anterior to society, which too were superior to rights created by the human authorities, were of universal application to men of all ages and in all claims, and were supposed to have existed even before the birth of political society. These rights could not, therefore be violated by the State. The deficiencies of this doctrine of natural right, from the legal standpoint, however, were that it was a mere ideology and there was no agreed catalogue of such rights and no machinery for their enforcement, until they were codified into national Constitutions, as a judicially enforceable Bill of Rights, International Covenants, Conventions European Court of Human Rights and remedies provided under Human Rights Act, 1998.[36]

3.1 International Perspective of Human Rights of Prisoners

The Roots of human rights were traced back in the Babylonian's Period, Babylonian king Hammurabi (1792-1750 B.C) provided for fair wages, protection of property and for charges to be proved as trail for his people. It was called Hammurabi's code, they

[35]V.R. Krishna Iyer, The Dialectics and Dynamics of Human Rights in India
[36]Durga Das Basu, Human Rights in Constitutional Law, 2nd Edn, p. 8.

provided by which Babylonians could order their lives and treat one another. In ancient Greece, Human rights were recognized as natural rights of men. In a Greek play it was displayed (Antigone) that Antigone's brother, while rebelling against the king was killed and his burial was prohibited by the king crown. In Defiance of king's order, Antigone buried her brother and when she was arrestedfor violating the order. She pleaded that she acted in accordance with immutable unwritten laws of heaven which even the king could not override. Stoicism had its origin in the views of Socrates (469-399 B.C.E.) and Plato (428-347 B.C.E.). Socrates had already imagined, according to Plato's Republic, the possibility that a person could be rendered invisible by wearing the mythical ring of Gyges. Then a long argument, Socrates maintained first that people have a general comprehension of what constitutes the good, and second, that coupled with that understanding, the need to seek internal and external harmony led most to pursue an altruistic path. Because goodness is not a particular characteristic but can be found in every topic of inquiry, he concluded that goodness is universal. It was in the process of deepening their understanding of the common element of goodness that Plato and Socrates showed their allegiance to a universal view of human goodness and, in a sense, human rights, and refuted the Sophists' claim that goodness and justice are relative to the customs of each society a view that they believed was often offered to disguise the interests of the stronger. In the presentation of this argument more than two thousand years ago, Socrates and Plato highlighted key controversies of the human rights debate that continue even today to divide advocates of cultural relativism, on the one hand, and defenders of a universalist

agenda, on the other.[37] The Plato, Aristotle (384-322 B.C.E.) held that virtue needed to be a central characteristic of human life, which should aim at the common good. At the same time, he rejected Plato's theory of an essential universal goodness. Adding a tangible character to Plato's teachings, he explained that the form of goodness had to match its empirical content. In other words, virtue was not innate, but a capacity that needed to be developed. For instance, we become just by performing good actions, and courageous by performing acts of courage. Continuing to act in a certain way inculcates habits. The virtuous individual thus deserved respect for good habit formation and his or her search for a balanced life. In the same vein as the Buddha's middle path between self-indulgence and self- renunciation, Aristotle called for a Golden Mean between extreme forms of emotion.By urging people to consult their inner motivations while promoting the common good, Aristotle, with Plato and the Buddha, provided important insight into the psychological prerequisites for effective ethical action. However, Aristotle's notion of prudence called for a more "engaged" attitude toward the world than did those of his predecessors. Prudence, the keystone of all virtues, Aristotle maintained, was manifested in acting so that the idea of right could take its concrete form.

Greece-Plato (427-348 B.C) was one of the earliest writers to advocate a universal slandered of ethical conduct. Aristotle wrote in politics that justice, virtue and rights change in accordance with different kinds of constitutions and circumstances. In Greece city states, the citizens enjoyed some basic rights even before formulation of natural law theory by the Stove Philosophers. After the break down of the Greece city

[37]Micheline R. Ishay, The History of Human Rights, From Ancient times to The Globalization Era, Orient Longman, 2008

states, the stove philosophers developed the natural law theory and explained that the human rights are rights which every human being possesses by virtue of being human. They emphasized that the principles of natural law were universal in their nature. Natural law applies to everybody and everywhere in the world. Plato's and Aristotle's views gradually gained influence, resonating, for example, in the writings of Epictetus (ca. 55-135) and the Roman statesman and legal scholar Marcus Tullius Cicero (106-43 B.C.). Epictetus advanced the idea of Stoicism, which stressed the importance of regulating passions and physical desires through reason. Challenging the common assumption of freedom, Epictetus maintained that neither kings, nor their friends, nor slaves were truly free. Only those who were not enslaved by their bodily desires, passions, and emotions and who could overcome the fear of death could be truly free. Diogenes and Socrates were Epictetus's heroes, for they (like the Buddha and Confucius) called for a detached love of the common good, of the gods, and of their real country: the universe.[38]The concept of human rights has existed under different names in world, The Magna Carta was the first human rights document in the human rights history, in 1215 king John issued to certain rights to the citizens of England. Under this charter honoring certain legal proceedings andallowing against unlawful imprisonment is provided,[39] which enumerates a number of rights; latterly they came to be the human rights. The rights of all free citizens to own and inherent property and are free from excessive taxes. The Petition of right (1628) The movement continued through the repeated confirmation of the Magna Carta and the Petition of Right, 1628, and culminated in the Bill of Rights, which was enacted in a parliamentary

[38]Epictetus, The Discourses, in The Discourses and De legibus, book, 4, chap.7, 29-34.
[39]http://www.humanrights.com/what-are-human-rights/brief-history/cyrus-cylinder.html

statute the declaration which the people the Prince and Princess of Orange to subscribe at their accession in 1688. The Contribution of instrument is towards the development of Fundamental rights may be declared and enacted, singular the rights liberties asserted and claimed in the said declaration are the true, and indubitable rights and liberties of the people of kingdom.

The Bill of Rights adopted in the State Constitution of Virginia in 1776 was the first declaration of rights in a written Constitution as the basis and foundation of government. The impress of the doctrine of 'natural rights' is to be found in the Preamble of this Declaration which states that, All men are by nature equally free and independent and have certain inherent natural rights of which when they enter society, they cannot by any compact deprive or divest their posterity. As Ritchie points out that, this Bill of Rights served as the model for many similar declarations adopted after American independence had been secured. That it inspired the makers of the Bill of Rights appended to the national Constitution by the first Ten Amendments would be evident if one find that amongst the rights asserted by the Virginia Bill of Rights are equality of men; freedom of the press; freedom of religion; right not to be taxed without consent or not to be deprived of liberty except by the law of the land; right against general warrants, cruel punishments, self-incrimination etc.

In the late 1700's two revolutions occurred which drew heavily on this concept. In 1700 most of the British colonies in North America proclaimed their independence from the British Empire. The Human Rights word is used in United States Declaration

of Independence, 1776.[40] The theory of natural rights entered into the realm ofConstitutional realism with two revolutionary documents, namely the American Declaration of Independence and the French Declaration of Rights of Man, which asserted that there were certain inalienable rights, and it was the duty of the State and its organs to maintain these rights. The aggression of the omnipotent British Parliament against the American Colonists could be met only by holding up the shield of the inviolable natural rights of man, which constituted a limitation on any form of government, monarchical or parliamentary. The Declaration of American Independence hold these truths to be self-evident; that all men are created equal; that they are endowed by their creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness.[41] Though it was not a part of written Constitution, it asserted certain able rights, as against any Government in power, adding that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed.

The International Covenant on Civil and Political Rights (ICCPR) remains the core international treaty on the protection of the rights of prisoners. In modern times one can see how brutal regimes considered that torture would remind dissidents and the general population who was in charge and was determined to remain in charge. In the 1980s, an anti-torture campaign, led by groups such as Amnesty International, was successful in advocating a set of binding international prohibitions on torture. Torture was already criminalized as a war crime when committed against certain prisoners, and was considered an international crime in the context of genocide and crimes

[40]Developing Humangfiights Jurisprudence (1988), p.172
[41]Necoletti Parisi the Prisoners Pressures and responses in Necoletti Parisi, (1982), p.9-17.

against humanity. But the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment criminalized torture even outside these contexts, and prescribed individual criminal responsibility for a single act of torture.113 The International Conventions against torture, inhuman treatment and cruel was framed, the states ratified and also implemented the convention in their local laws, particularly on prisoners the human right organizations condemned the atrocities. In 1946, The United Nations was declared that Genocide is a crime underInternational law, contrary to the spirit and aim of the United Nations. The Convention of 1929 in its turn was superseded by the Geneva Convention relating to the Prisoners of War, 1949.

3.2 International Conventions relating to Prisoners' Rights

After the United Nation formation, the U.N constituted several international conventions relating to human rights of prisoners along with Universal Declaration of Human Rights. There are various international legally binding conventions on human rights in different fields. These conventions can be divided into two broad categories- Conventions relating to inhuman, Cruel and Degrading Acts is main aspect.[42] The Declaration of Human Rights was prepared by the Commission on Human Rights in 1947 and 1948 and was adopted by the General Assemble on December 10, 1948. When the Universal Declaration of Human Rights was adopted, it was a most eloquent expression of hope by a world emerging from the most devastating war in the history of human race. The boldness of this document, destined for a world of peace where

[42]Suresh Bada Math, Pratima Murthy, Rajani Parthasarthy, C Naveen Kumar, S Madhusudhan (2011). Mental Health and Substance Use Problems in Prisons: Local Lessons for National Action. Publication, National Institute of Mental Health Neuro Sciences, Bangalore.

the rights to live in peace has become a reality for all.117 The large scale violations of human rights during two world wars, especially the Second World War, including the Nazi atrocities were fresh in the minds of the framers of the U.N. Charter. The United Nation General Assembly proclaims Universal Declaration of Human Rights as a common standard of achievement for all people, and of all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect of these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of members states themselves and among the peoples of territories under theirjurisdiction. The Universal Declaration of Human Rights, 1948 was framed after two World Wars, the aim of the Declaration is to provide peace World Wide and free from war fear, to protect the rights of individual.

The Universal Declaration of Human Rights represents a great step forward taken by the international community in 1948. Its persuasive moral character and political authority derive from the fact that it is agreed to be a statement of generally accepted international principles. This outline of human rights objectives is drafted in broad and general terms, and its principles have inspired more than 140 human rights instruments which, taken together, constitute international human rights standards. Moreover, the Universal Declaration has spelled out the fundamental rights proclaimed in the Charter of the United Nations, recognizing that the inherent dignity of all members of the human family is the foundation of freedom, justice and peace in the world. While the Universal Declaration is not, in itself, a binding instrument,

certain provisions of the Declaration are considered to have the character of customary international law.[43]

Undertrials is one of the categories of jail inmates that has been found responsible as one of the important factors behind overcrowding in the jails. They form a major portion of prison inmates among various types of prisoners. These voiceless people remain in prison pending trial which may or may not lead to conviction. The purpose of keeping undertrials in the custody is to ensure fair trial so that they cannot be in a position to influence or induce the witnesses. Long detention of the undertrials amounts to violation of human rights. Further this unnecessary detention of undertrials causes a number of problems to the other prisoners and to the prison organization as well as discussed above.

Prisoners of war are entitled in all circumstances to respect for their persons and their honor. Women shall be treated with all the regard due to their sex and shall in all cases benefit by treatment as favorable as that granted to men. Prisoners of warshall retain the full civil capacity which they enjoyed at the time of their capture. The Detaining Power may not restrict the exercise, either within or without its own territory, of the rights such capacity confers except in so far as the captivity requires. Each Party to a conflict is required to furnish the persons under its jurisdiction who are liable to become prisoners of war, with an identity card showing the owner's surname, first names, rank, army, regimental, personal or serial number or equivalent information, and date of birth. The identity card may, furthermore, bear the signature or the

[43]U.N.Chroncle, Vol.XXX, No.1, March 1998, p.46

fingerprints, or both, of the owner, and may bear, as well, any other information the Party to the conflict may wish to add concerning persons belonging to its armed forces. As far as possible the card shall measure 6.5 x 10 cm. and shall be issued in duplicate. The identity card shall be shown by the prisoner of war upon demand, but may in no case be taken away from him. No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind.[44] Prisoners of war who, owing to their physical or mental condition, are unable to state their identity, shall be handed over to the medical service. The identity of such prisoners shall be established by all possible means, subject to the provisions of the preceding paragraph. No prisoner of war may at any time be sent to or detained in areas where he may be exposed to the fire of the combat zone, nor may his presence be used to render certain points or areas immune from military operations. Prisoners of war shall have shelters against air bombardment and other hazards of war, to the same extent as the local civilian population. With the exception of those engaged in the protection of their quarters against the aforesaid hazards, they may enter such shelters as soon as possible after the giving of the alarm. Any other protective measure taken in favor of the population shall also apply to them.[45]

Medical inspections of prisoners of war shall be held at least once a month.They shall include the checking and the recording of the weight of each prisoner of war. Their

[44]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 its resolution 663 C (XXJV) of 31 July, 1957 and 2076

[45]M.B. Mahaworker, Prison Management, Problems and Solutions, Kalpaz Publications, 2006

purpose shall be, in particular, to supervise the general state of health, nutrition and cleanliness of prisoners and to detect contagious diseases, especially tuberculosis, malaria and venereal disease. For this purpose, the most efficient methods available shall be employed, e.g. periodic mass miniature radiography for the early detection of tuberculosis. Prisoners of war shall enjoy complete latitude in the exercise of their religious duties, including attendance at the service of their faith, on condition that they comply with the disciplinary routine prescribed by the military authorities. Adequate premises shall be provided where religious services may be held. The transfer of prisoners of war shall always be affected humanely and in conditions not less favorable than those under which the forces of the Detaining Power are transferred. Account shall always be taken of the climatic conditions to which the prisoners of war are accustomed and the conditions of transfer shall in no case be prejudicial to their health.[46] The Detaining Power shall supply prisoners of war during transfer with sufficient food and drinking water to keep them in good health, likewise with the necessary clothing, shelter and medical attention. The Detaining Power shall take adequate precautions especially in case of transport by sea or by air, to ensure their safety during transfer, and shall draw up a complete list of all transferred prisoners before their departure. The Detaining Power may utilize the labor of prisoners of war who are physically fit, taking into account their age, sex, rank and physical aptitude, and with a view particularly to maintaining them in a good state of physical and mental health. Non-commissioned officers who are prisoners of war shall only be required to do supervisory work. Those not so required may ask for other

[46]Dr.Gurubax Singh, Law Relating to Protection of Human Rights and Human Values, Vinod Publications (P).Ltd, 2008,

suitable work which shall, so far as possible, be found for them. In all places where there are prisoners of war, except in those where there are officers, the prisoners shall freely elect by secret ballot, every six months, and also in case of vacancies, prisoners' representatives entrusted with representing them before the military authorities, the Protecting Powers, the International Committee of the RedCross and any other organization which may assist them. These prisoners' representatives shall be eligible for re-election. In camps for officers and persons of equivalent status or in mixed camps, the senior officer among the prisoners of war shall be recognized as the camp prisoners' representative. In camps for officers, he shall be assisted by one or more advisers chosen by the officers; in mixed camps, his assistants shall be chosen from among the prisoners of war who are not officers and shall be elected by them. Prisoners of war shall be released and repatriated without delay after the cessation of active hostilities. In the absence of stipulations to the above effect in any agreement concluded between the Parties to the conflict with a view to the cessation of hostilities, or failing any such agreement, each of the Detaining Powers shall itself establish and execute without delay a plan of repatriation in conformity with the principle laid down in the foregoing paragraph.[47]

Basic Principles for the Treatment of Prisoners, 1990, 68t Plenary Meeting of the General Assembly of United Nations, held on 14t December, 1990, had passed a Resolution A/RES/45/111, bearing in mind the long-standing concern of the United Nations for the humanization of criminal justice and the protection of human rights

[47]Suresh Bada Math, Pratima Murthy, Rajani Parthasarthy, C Naveen Kumar, S Madhusudhan (2011). Mental Health and Substance Use Problems in Prisons: Local Lessons for National Action. Publication, National Institute of Mental Health Neuro Sciences, Bangalore

and also that sour policies of crime prevention and control; viable planning for economic and social development, recognizing that Standard Minimum Rules for the Treatment of Prisoners, adopted by First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, are of great value and influence in the development of penal policy and practice, considering the concern of previous United Nations Congresses on the Prevention of Crime and the Treatment of Offenders, regarding the obstacles of various kinds that prevent the implementation of the Standard Minimum Rules, and believing that the implementation of the Standard Minimum Rules would be facilitated by articulation of the basic principles underlying them.[48] Amnesty International is Non-Governmental Organization playing a Vitol role in the protection of human rights in World and working for the welfare of prisoners. The idea for establishment, Amnesty International was born when British law; PeterBenenson and other political activists launched an appeal for Amensty, in 1961, a one year worldwide campaign calling for the release of prisoners. Benenson started the campaign in response to the imprisonment of two students in Portugal who had made a toast to freedom in a public restaurant. The toast was considered to be a form of political opposition by Portugal's dictator Antonio Salazar, and both the students received seven-year prison sentences in 1960. Benenson also published an article titled "Forgotten Prisoners" in the London Observer in May, 1961, urging people to write letters to Government officials around the world to protest against the imprisonment all prisoners of conscience. The campaign gained much attention and the article was reprinted in numerous newspapers in many countries. By the id of

[48]Maheswara Swamy, Criminology and Criminal Justice System, 2014, Asia Law House, Hyd

1961, more than 1,000 people had pledged their support to the campaign. Amnesty International was established at the end of that year.

In 1972, Amnesty International mounted a worldwide campaign to abolish all torture (including sexual abuse and rape) committed by law enforcement officials. The organization put together a 12-step program hat outlined the ways to eradicate torture in prisons. It included inter alia, recommendations to outlaw secret detentions to ensure that prisoners are held in "publicly recognized places", conducting of immediate investigations of any prisoner's allegations of torture, and enactment of legislation to make any abuse committed by law officials punishable under criminal laws. In 1974, the Organization started the Urgent Action Network to make phone calls and send letters on behalf of prisoners, who need immediate medical or legal help. Also, in 1977, the Organization launched a global campaign to abolish all court-ordered death sentences. Amnesty International claimed that the death penalty would never be proven as a deterrent.[49] In 1990, Amnesty International had investigated more than 40,000 cases involving prisoners of conscience. In the same year, the organization developed numerous task forces to pay attention on specific human rights violations. Amnesty International Medical Network consisting doctors and volunteers undertake investigation of medical-related misdeeds in more than 30countries. The group found that doctors and nurses were sometimes forced by government officials to give false medical evaluations of prisoners in order to conceal the acts of torture. Other reports of the Network concluded that some health officials voluntarily assisted Government leaders in covering up human rights abuses. In 1996,

[49]Ref: http://www,apcca2010.com/index.aspx?id=519, last visited on 24.12.2010

the group published its first annual report, with the title "Prescription for Change". Among the nations facing most serious allegations of medical abuse were Brazil, Israel, Kenya, and Turkey. The organization has also campaigned to protect human rights of women, refugees, and children.

In 1996, Amnesty International campaigned for establishment of a permanent International Criminal Court. As a result, the Rome Statute of the International Criminal Court was adopted in July, 1998. In 2000, Amnesty International launched its third Campaign against Torture. In 2001, in its 40th anniversary year, Amnesty International changed its Statute to incorporate, into its mission, work for economic, social and cultural rights thus committing itself to advance both the universality and indivisibility of all human rights enshrined in the Universal Declaration. Amnesty International's "Stop Torture" website won a Revolution Award, which is recognized as the best in digital marketing. In 2004, Amnesty International launched the Stop Violence Against Women Campaign, By, 2007, Amnesty International had more than 2.2 million members, supporters and subscribers in over 150 countries and territories in every region of the world.[50]

The several International Conventions relating to prisoner rights are Convention against Torture (UNCAT, 1984), Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. (Principles of Detention, 1988), Basic Principles for the Treatment of Prisoners (UNPTP, 1990), United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules, 1990), Declaration on

[50]Maheswara Swamy, Criminology and Criminal Justice System, 2014, Asia Law House, Hyd

the Protection of all Persons from Enforced Disappearance. General Assembly Resolution 47/133 (UNDPPED, 1992), United Nations Standard Minimum Rules forthe Administration of Juvenile Justice (The Beijing Rules, 1985), Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, (UNVCAP, 1985)

3.3 Role of Prison Administration in Protection of Prisoners Human Rights in India

Prisonizationsymbolizes a system of punishment and also a sort of institutional placement of under trails and suspects are during the period of trail. The history of prisons in India and elsewhere clearly reflects the changes in society's reaction to crime time to time. The prison is used as an institution to treat the criminal as a deviant; there would be lesser restrictions and control over him inside the institution. The modern progressive view, however, regards crime as a social decease and favors treatment of offenders through non penal methods such as probation, parole and open jails etc., whatever be the reaction of society to crime, the lodging of criminals in prison gives rise to several problems of correction, rehabilitation and reformation which constitute vital aspects of prison administration.[51]

In the prison administration in Independent India, the Government of India took some interest in the matters of changes in the prison system. The Government of India passed the Exchange of Prisoners Act, 1948. In 1950, the Transfer of Prisoners Act was passed by the central government. This act made provision for the removal of prisoners from one state to another. In the Constitution of India, prison administration

[51]Sharma P.D, Police and Criminal Justice Administration in India, 1985, p. 145

has been included in the State List. As prison rules and regulation vary from one state to another, the much-needed co-ordination was lacking. Pre-Independence there is no uniformity in prison laws, after the independence the states appointed several prison reform committees. The responsibility of prisons for the custody of prisoners and for the protection of society against crime shall be discharged in keeping with a State's other social objectives and its fundamental responsibilities for promoting the well- being and development of all members of society.

The modern prison in India originated with the Minute by TB Macaulay in 1835. A committee namely Prison Discipline Committee, was appointed, which submitted its report on 1838. The committee recommended increased rigorousness of treatment while rejecting all humanitarian needs and reforms for the prisoners. Following the recommendations of the Macaulay Committee between 1836-1838, Central Prisons were constructed from 1846. The contemporary Prison administration in India is thus a legacy of British rule. It is based on the notion that the best criminal code can be of little use to a community unless there is good machinery for the infliction of punishments. In 1864, the Second Commission of Inquiry into Jail Management and Discipline made similar recommendations as the 1836 Committee. In addition, this Commission made some specific suggestions regarding accommodation for prisoners, improvement in diet, and clothing, bedding and medical care. In 1877, a Conference of Experts met to inquire into prison administration. The conference proposed the enactment of a prison law and a draft bill was prepared. In 1888, the Fourth Jail Commission was appointed. On the basis of its recommendation, a consolidated prison bill was formulated. Provisions regarding the jail offences and punishment were

specially examined by a conference of experts on Jail Management. In 1894, the draft bill became law with the assent of the Governor General of India.

Prison Administration in Independent India was towards the reformation of the prison administration and the Government of India took some interest in the matters of changes in the prison system. The Government of India passed the Exchange of Prisoners Act, 1948.[52] In 1950, the Transfer of Prisoners Act, was passed by the Government of India. This Act made provision for the removal of prisoners from one State to another. The leaders of the movement of the Indian independence and internationalism specially UNO repeatedly suffered incarceration at the hands of imperial rulers. Prison under foreign rulers was "The Goal a place of dread". It was, therefore, legitimately assumed that the leaders of movement of Indian independence and upholders of internationalism and the UNO who became rulers of independentIndia would accord highest priority to prison reforms by converting them from institution of horror to modern reclamation and correctional centers. As prison rules and regulations vary from one State to another, the much-needed co-ordination was lacking. However, it was realized soon after independence that the Jail Manuals of the States of the Union Territories based on the antediluvian Prisons Act of 1894, could not cope with the changing times. It was felt very strongly that some broad guidelines should be given from the Centre with a view to coordinating the prison reform programs of the different State Governments. The decade 1951-60 in India was a decade of enthusiasm for prison reforms. Local committees were appointed by some

[52]Encyclopaedia of India and Her States, Vol.11, ed. by Verinder Graver & Ranjana Arora, Deep & Deep Publications, New Delhi, 1996, p. 447.

State Governments (viz., Madras, Orissa, Uttar Pradesh and Maharashtra) to suggest prison reforms.

In 1951, the Government of India invited the United Nations expert on correctional work, Dr. W.C. Reckless, to undertake a study on prison administration and to suggest policy reform. His report titled 'Jail Administration in India' made a plea for transforming jails into reformation centers. He also recommended the revision of outdated jail manuals. In 1952, the Eighth Conference of the Inspector Generals of Prisons also supported the recommendations of doctor. Reckless regarding prison reform.148 Prison jurisprudence since the late ‘60s recognizes that prisoners do not lose all their rights because of imprisonment. Yet, there is a loss of rights within custodial institutions which continue to occur. For instance, it was found that the HIV status of all the women in the Agra Protective Home was public knowledge, and there was no confidentiality attaching to this information. There was segregation within the institutions of those found to be HIV positive, and, for a while, the Supreme Court too endorsed this. The rules governing women in these institutions uncannily resemble prison rules, such as those concerning visitors, letters, and even punishment for conduct within the institutions.

The Government of India appointed the All India Jail Manual Committee in 1957 to prepare a model prison manual. The committee submitted its report in 1960. The report made forceful pleas for formulating a uniform policy and latest methodsrelating to jail administration, probation, after-care, juvenile and remand homes, certified and reformatory school, borstals and protective homes, suppression of immoral traffic etc. The report also suggested amendments in the Prison Act 1894

to provide a legal base for correctional work. In 1955, the Government of India passed Prisoners (Attendance in Courts) Act and whipping was also abolished in 1955 and the Probation of Offenders Act was enacted in 1958 by the Govt. of India. The Committee prepared among the various recommendations of the Committee, the following are the important ones: The Correctional Services, i.e. the prisons, probation, after-care and institutional services for children should be integrated under a Director or Commissioner of Correctional Administration and be under the control of the Home Department.

Another major post-Independence development in the Indian prison administration took place, i.e., in pursuance of the recommendations of the All India Jail Manual Committee, the Government of India set up a Central Bureau of Correctional Services in 1961 as a central technical advisory body. Its main functions are to coordinate and develop uniform policy, to standardize the collection of statistics on a national basis, to exchange information with foreign government and the UN agencies and to promote research, training and studies and surveys in the field of prevention of crime and treatment of offences. The Bureau functioned under the Government of India's Ministry of Home Affairs until 1964, when it was transferred to the newly created Department of Social Security, now known as the Ministry of Social Welfare. It was reconstituted in 1975 as the National Institute of Social Defense. Its functions were enlarged to include preventive, correctional and rehabilitative aspects of social defense, viz., welfare of prisoners, prison reforms, prison administration, juvenile vagrancy, probation, beggary, social and moral hygiene, alcoholism, gambling, drug

addiction etc. The Institute continues to work under the Ministry of Social Welfare and has been playing "a useful role" in its enlarged field of social defense.[53]

3.4 National Human Rights Commission in Prison Administration

The Central Government enacted the Protection of Human Rights Act, 1993, according to the National Human Rights Commission (NHRC) has been established. Since its inception, the NHRC has been playing an important role in prison administration. The "Commission shall visit, under intimation to the State Government, any jail or institution under the control of State Government where persons are detained or lodged for purpose of treatment, reformation or protection to study the living conditions of the inmates and make recommendation there on. Accordingly, the NHRC in a letter to chief secretaries of all States and administration of Union Territories, in 1997 urged them to help NHRC investigating teams to undertake visits to police lock-ups in the country to eliminate incidents of custodial violence.[54]

The NHRC in its annual report of 1994-95, had recommended that the Indian Prisons Act of 1894 revised to reform the prison system and a new all-India jail manual be prepared to serve as a model. It concluded that the prison system is "seriously in need of reform, nationwide. It is mired in attitudes and practices that are antiquated at best, but that often border on the intolerable." The report of the NHRC on the state of jails in the country may not add much to the information on the matter but its selves as yet another reminder of the urgent need to improve the country's prison system and

[53]Roy, J.G.: Prisons and Society—A Study of the Indian Jail System, Gyan Publishing House, New Delhi 1989, p. 18.
[54]Section 12(c) of the Protection of Human Rights Act, 1993

the conditions in the prisons. Most of the ills and problems in the jails have been well documented in the past and suggestions for improvement had also not been lacking. However, the situation has only progressively deteriorated and every ill of the jail system had in the past only became worse or grew bigger in spread and magnitude. The Human Rights Commission's report also detailed them andproposed changes in laws and altitudes, adoption of measures by the Government and creation of public awareness to rectify the situation. What was needed was the willingness and wherewithal to translate the proposals and decisions that emerge out of such meeting into concrete measures. The conditions in our jails help only to perpetuate criminal conduct and to make inmate a life-long outlaw. The situation will not change as long as jails continue to be centers for punishment as opposed to these for reforming errant individuals.[55] The NHRC had recommended systematic reforms of police and prisons and far reaching measures for protection of civil liberties in areas hit by terrorism and in surgency. In its annual report for 1994-95, the Commission recommended to the Government that in States where security forces were called to assist the civil authorities, local magistrates or police officers should be associated, particularly with cordon-and-search operations. Further a suggestion was made to celebrate December 10 as Human Rights Day in all schools, colleges and universities. The National Human Rights Commission, in March 1999, has reiterated that the State Human Rights Commission (SHRC) should be set up in States as expeditiously as possible. The reiteration comes in the wake of the delay on part of the States in setting up the commissions. Only eight States in the country have set up SHRCs, while Kerala,

[55]Deccun Herald., 29th August 1995, Bangalore.

Gujarat, Rajasthan, Andhra Pradesh, Karnataka and Sikkim are yet to take action, despite expressing their intention to set up the Commission.[56]

The Indian prison system followed reformative method for release of prisoners, the judiciary and prison authorities and legislatures also highlighting the reformation and rehabilitation methods; it will help the prisoners after their release to lead normal life in society. For this, early release who is good character in prison, first time offenders, old age persons, women prisoners, insane prisoners etc., some of instruments for early release of prisoners them are like., Probation (under the Probation of Offenders Act, 1958), Parole and Remission. Probation System in India: - seen to reform the criminals. Probation, as a mode of reform of offenders teen introduced for the first time under Section 562 of the old Code Criminal Procedure,1898 and it was reincorporated under Sections 360, 361 of the new Code of Criminal Procedure, 1973. According to section 562 of the old Code the benefit of probation was extended to the offenders convicted for the offences of theft, dishonest misappropriation other offences under the Indian Penal Code punishable with not more two years imprisonment. Section 562 of the old Code of 1898 was dead on the recommendation of the Committee appointed by the Central Government in 1916, providing the benefit of probation in other cases also, benefit depends upon the good conduct of the offenders and the creation of the Court. Later on, the Children Act of 1908 and of 1960, h were repealed consequent upon the passing of the Juvenile Justice 1986, which Act was again substituted by the Juvenile Justice (Care Protection of Children)

[56]The Hindu, 6th March 1999, Bangalore, p. 5.

Act, 2000 also empowered the Court to release offenders on probation of good conduct.

Undertrials is one of the categories of jail inmates that has been found responsible as one of the important factors behind overcrowding in the jails. They form a major portion of prison inmates among various types of prisoners. These voiceless people remain in prison pending trial which may or may not lead to conviction. The purpose of keeping undertrials in the custody is to ensure fair trial so that they cannot be in a position to influence or induce the witnesses. Long detention of the undertrials amounts to violation of human rights. Further this unnecessary detention of undertrials causes a number of problems to the other prisoners and to the prison organization as well as discussed above.

The Indian Jail Reforms Committee in its report of 1919-1920 intended that the first offenders were to be treated more liberally and even be released unconditionally after admonition. It had classified the offenders under two categories namely, male adults over twenty-one years of age and young male adults under twenty-one years of age female offenders of any age. The benefit of probation was also fed to offences falling under special enactments. The number of remand rescue homes, certified schools and industrial schools were established Bombay, Madras and Calcutta being the then Presidency Towns.

In British Government was asked the local Governments to enact suitable forthe prisoners in draft Bill of 1931 prepared by the Government of as a result some of the Provincial Governments enacted probation hut there was no uniformity among them.

In 1952, a Probation was held in Bombay on the advice of Dr. Walter Reckless, technical expert of the UNO, (an American) on correctional services. The All India Jail Manual Committee in its report of 1957 recommended Probation, Parole, Remission and Commutation of Sentence in India, the objective of the punishment is to reform the criminals. Probation was incorporated under section of 360 and 361 of code of criminal procedure, 1973, the accused persons who is first time offender is convicted by magistrate court and also who is below the age of 21 years. The advantages of this, the offender under supervision of probation officer, it will reduce financial burden of government and also social security. Parole is a release from prison after part of sentence has been served, the prisoner still remaining in custody and under the stated conditions until discharged and he is liable to return to his institution for violation of any of these conditions. The parole is a method of temper very release after completion of sum of his sentence and also based on his good behavior in prison. This granted by parole board constituted by the state government with all jail officers. The Remission and Commutation of Sentence means the period of sentence was being reduced by the period spent by a prisoner. It is in the nature of grace and not a right and depends upon the good character of the prisoner and other circumstances and seriousness of the grounds provided in the application. The prison administration is maintained well but the conditions are not satisfactory, because of overcrowding, inadequate food, prisoners are suffering with sexual diseases, Health problems in prisons, Abuse of prisoners and Lack of legal aid.

Classification of Offenders for Correctional Treatment modern correctional methods adopted for treatment of offenders classified into the following seven categories,

innocent; insane; accidental; occasional; habitual; white collar; and political. In Indian Prison system, the early release of prisoner is there, the prison authorities recommend to the government and the State Government issued certain guidelines for the release of prisoners on the occasions of Independence Day andRepublic day. Release on probation and premature release are based on the principles of license, clemency and pardon. The word Release' has not been defined anywhere in the Code or the Act and, therefore, it has to be assigned the meaning as given in dictionaries and used in common parlance.[57] 'Release' means "discharge of an existing obligation". It implies that the person so released is not in prison after such release and he is set at liberty with absolute freedom without conditions and once a person is released absolutely, he cannot be taken back in prison again. Each State has its own guidelines for release of prisoners prematurely and judged by the guidelines. In one State a prisoner who may earn premature release in that State may not earn premature release in another State at that time.[58] The aim of the premature release is reformation of offenders and their rehabilitation and integration into the society, while at the same time ensuring the protection of society from criminal activities. These two aspects are closely interlinked. Incidental to the same is the conduct, behavior and performance of prisoners while in prison. These have a bearing on their rehabilitative potential and the possibility of their being released by virtue of remission earned by them, or by an order granting them premature release. The most important consideration for premature release of prisoners is that they have become harmless and useful member of a civilized society.172 The prisoner conduct is a matter which cannot be lightly

[57]Peoples' union of Civil Liberties, Allahabad and another V. State of U.P. and another, 1983 CR.L. J 1166
[58]Law Lexicon 1987th Edition page 1101 Col. I.

viewed and when the matter concerns exercise of clemency and premature release it is not possible to overlook that factor. The overstay of a prisoner after expiry of the period of his parole period would amount to a gross abuse of the license given to the detenu and it may certainly weigh as an adverse factor, while considering the matter of exercise of clemency or pardon.173 The opinion regarding release on license has to be formed by the State Government. That can be done by the State Government only on a consideration of facts relevant to formation of opinion and not on the basis of mere certificate or opinion of other authorities which do not disclose facts.174

Humanitarian approach to be adopted for Each authority involved in theprocess of consideration of premature release, are expected to adopt a humanitarian approach. They are required to be sensitized, in discharge of their duty of dispensation of justice.175 It should be considered liberally with reformatory zeal: The premature release on license under the Probation Act and the Probation Rules should be considered rather liberally with a reformative zeal. The concerned authorities and the State Government need not take technical view of the matter but must apply their mind keeping in view the broad objects of such premature release. If, for example, a person has conducted himself satisfactorily in jail and there is nothing adverse, by way of tangible fact, against his antecedents, apart from the offence for which he has been convicted, if he is considered to be fit enough to be sent to the model jail or to the open farms or on home leave without any adverse report against him and family members of the deceased state no objection to such release, it would do violence to common-sense if a report were to come from the superintendent of Police or the District Magistrate that, if released, he may create law and order problem or his

release on license will not be in the interest of the habitants of the village or that, if released he may wreck vengeance or vengeance may be wrecked against him.176 Principles of natural justice need not be followed by the prison authorities.

The Supreme Court of India, by interpreting Article 21 of the Constitution, has developed human rights jurisprudence for the preservation and protection of prisoners‟ rights to maintain human dignity. Although it is clearly mentioned that deprivation of Article 21 is justifiable according to procedure established by law, this procedure cannot be arbitrary, unfair or unreasonable. In a celebrity case (Maneka Gandhi Vs. Union of India., 1978), the Apex Court opened up a new dimension and laid down that the procedure cannot be arbitrary, unfair or unreasonable. Article 21 imposed a restriction upon the state where it prescribed a procedure for depriving a person of his life or personal liberty. This was further upheld (Francis Coralie Mullin v. The Administrator, 1981) “Article 21 requires that no one shall be deprived of his life or personal liberty except by procedure established by law and this procedure must be reasonable, fair and just and not arbitrary, whimsical or fanciful”.

Prison administration in India is coping up with number of problems since many years i.e. the problems of overcrowding, congestion, increasing proportion of undertrial prisoners, inadequacy of prison staff, lack of proper care and treatment of prisoners, lack of health and hygienic facilities, insufficient food and clothing, lack of classification and correctional methods, inefficient vocational training, indifference attitude of jail staff, torture and ill-treatment, insufficient communication etc. Hence, the state of prisons and lockups is a known cause for grave concern.

Undertrials is one of the categories of jail inmates that has been found responsible as one of the important factors behind overcrowding in the jails. They form a major portion of prison inmates among various types of prisoners. These voiceless people remain in prison pending trial which may or may not lead to conviction. The purpose of keeping undertrials in the custody is to ensure fair trial so that they cannot be in a position to influence or induce the witnesses. Long detention of the undertrials amounts to violation of human rights. Further this unnecessary detention of undertrials causes a number of problems to the other prisoners and to the prison organization as well as discussed above.

Chapter 4 - Judicial Response Towards PrisonAdministrationand the Prisoners

Objectives of the punishment are wholly or predominantly reformative and preventive. The basic principle of punishment that "guilty must pay for his crime" should not be extended to the extent that punishment becomes brutal. The matter is required to be examined keeping in view modem reformative concept of punishment. The concept of "Savage Justice" is not to be applied at all. The sentence softening schemes have to be viewed from a more human and social science-oriented approach. Punishment should not be regarded as the end but as only the means to an end. The object of punishment must not be to wreak vengeance but to reform and rehabilitate the criminal. More so, relevancy of the circumstances of the offence and the state of mind of the convict, when the offence was committed, are the factors, to be taken note of.[59]

"Convicts, prisoners or undertrials are not denuded of their fundamental rights under Article 21 and only such restrictions as are permitted by law, which can be imposed on the enjoyment of the fundamental rights by such persons. Therefore, it is an obligation upon the State to ensure that there is no infringement of the indefeasible rights of a citizen to life, while the citizen is in custody."[60]

[59]State of Haryana v. Jagdish Chand, AIR 2010 SC 1690
[60]Neelabati Behara v. State of Orissa, (1993) 2 SCC 746.

The expressions 'prison' and 'imprisonment' must receive a wider connotation and include any place notified as such for detention purposes. 'Stone-walls and iron bars do not make a prison' nor are 'stone walls and iron bars' sine qua non to make a jail. Open jails arecapital instances. Any life under the control of the State whether within high-walled or not may be a prison if the law regards it as such. House detentions, for example, palaces, where Gandhiji was detained were prisons. Restraint on freedom under the prison law is the test. Licensed releases where instant recapture is sanctioned by the law and likewise parole, where the parole is no free agent and other categories under the invisible fetters of the prison law may legitimately be regarded as imprisonment."[61]

Apart from the Legislation authority, other three are the main functioning agencies for executing the Criminal Justice System in the society. While the police may be organizationally separated from courts and corrections, all other components of criminal justice administration are functionally inter-related. The criminal justice system deals with police, bar, bench and correctional services and hence in aggregative form; all the four sub-systems got a nomenclature of criminal justice administration. However, the success of the Criminal justice system depends on co-ordination among these three wings with one another.

An Indian Penal Code (IPC) defines crime, prescribing appropriate punishments and was adopted in 1860. As a sequel to the IPC, a Code of Criminal Procedure (Cr.p.c) was enacted in 1861 and established the rules to be followed in all stages of investigation,

[61]Ashok Kumar alia Gollu v. Union of India and others, AIR 1991 SC 1792

trial and sentencing. This code was repeated and a new code came into effect in 1974. These two codes, along with parts of the Indian Evidence Act, of 1872, form the essence of India's criminal law.

In the case of **Mahadeo and others v. State of U. P.** the court raised objectives of punishment. As per court, the four main objects which punishment of an offender by the State is intended to achieve are deterrence, prevention, retribution and reformation is well recognized and does not appear to be open to dissent. In its deterrent phase, punishment is calculated to act as a warning to others against indulgence in the anti-social act for which it is visited. It acts as a preventive because the incarceration of the offender, while it lasts, makes it impossible for him to repeat the offending act. His transformation into a law-abiding citizen is to course another object of penal legislation but so is retribution which is also described as a symbol of social condemnation and a vindication of the law. The question onwhich a divergence of opinion has been expressed at the bar is the emphasis which the legislature is expected to place on each of the said four objects. It has been contended on behalf of the petitioners that the main object of every punishment must be reformation of the offender and that the other objects above mentioned must be relegated to the background and be brought into play only incidentally, if at all.

As a protector and guardian of fundamental rights, from the very beginning, the judiciary particularly the Supreme Court had adopted the stance that it acts as the 'sentinel on the qui vive vis-a-vis fundamental rights and has stressed this role in

several cases. Commenting on the role entrusted to itself, the court in the case of **Daryao v. State of Uttar Pradesh**,[62] observed that:

"The fundamental rights are intended not only to protect individual's rights but they are based on high public policy. Liberty of the individual and the protection of his fundamental rights are the very essence of the democratic way of life adopted by the Constitution and it is the privilege and duty of this court to uphold those rights. The court would naturally refuse to circumscribe them or to curtail them except as provided by the Constitution itself."

It is perhaps with this objective in mind the courts in India have been endeavoring to shield the cause against the plight conditions of prisoners, destitute women, rights of an accused, custodial violence, custodial rape, illegal detention,' torture, etc. Thus, relaxing the doctrine of locus standi and using Public Interest Litigation strategy in showing signs of warming up and shaping the legal jurisprudence in consequence with the philosophy of human rights.

4.1 Article 21 of the Constitution: Right to Life and Personal Liberty

Today, the judiciary, by its art of interpretation, has discovered a variety of rights of suspects, accused persons and prisoners, who are in police custody. The fundamental right of'life and personal liberty' have been interpreted by the Supreme Court of India in a broad spirit and various rights have been included in the ambit of Article 21 of the Constitution. The invention of these, now, impliedly guaranteed rights by the Indian

[62]AIR 1961 SC 1457

judiciary has helped the victims of custodial violence to have an abiding faith in the judiciary for upholding the cherished right to life and personal liberty. The court has not allowed the police and jail officials and other agencies to make undue encroachments upon this basic right. Torture in police lock-up, rapes and deaths in police custody, illegal detention, arrest and other police excesses, are not characterized as official duty assigned to police officers by delegation of sovereign power of the State. The human rights savior Supreme Court has made several attempts to protect the detainees from all type of custodial violence. It has cemented the people's faith in the constitutional system of our country.

The entitlement of the convict to the precious right guaranteed by Article 21 of the Constitution of India was the main issue in **Sunil Batra v. Delhi Administration**[63] It was contended that a person in jail is already subject to enormous curtailment of his liberties. The protection of whatever liberties are left inside the jail demand that they cannot be taken away arbitrarily and without the procedure established by laws. The greater the restriction, stricter should be the security of the Court, so that the prisoner is not subjected to unnecessary and arbitrary loss of his remaining liberties. Only a court has the authority to inflict a punishment. The jail authorities do not have a right to inflict any punishment except as a matter of jail discipline. As Section 30 of the Prison Act empowers the jail authorities to impose an additional punishment of solitary confinement, it is submitted that it is violative of Art. 20(1) of the Constitution.

[63]AIR 1978 SC 1675

Jail custody is something different from custody of a convict suffering simple or rigorous imprisonment. The purpose behind enacting section 366(2) of the Code of Criminal Procedure is to make the prisoner available when the sentence is required to be executed. Unless special circumstances exist, even in cases where a person is kept in a cell apart from other prisoners with day and night watch, he must be within the sight and sound of other prisoners and be able to take food in their company.

Sections 73 and 74 of the Indian Penal Code leave no room for doubt that solitary confinement is by itself a substantive punishment which can be imposed by a court of law. It cannot be left to the whim and caprice of prison authorities. The limit of solitary confinement that can be imposed under Court's order is strictly prescribed by the Penal Code.

The Supreme Court while pointing out major problems which needs immediate attention in **Ram Murthy v. State of Karantaka**[64] remarked that the literature on prison justice and prison reform shows that there are nine major problems which afflict the system and which need immediate attention. These are : (1) overcrowding; (2) delay in trial; (3) torture and ill-treatment ; (4) neglect of health and hygiene; (5) insubstantial food and inadequate clothing; (6) prison vices; (7) deficiency in communication; (8) streamlining of Jail visits; and (9) management of open air prisons.

It is apparent that delay in trial finds an undertrial prisoner in jail for a longer period while awaiting the decision of the case. To take care of the hardship which is caused to a undertrial prisoner because of the delay in disposal of his case the judiciary has

[64]AIR 1997 SC 1739

played an important role in streamlining the process and held in catena of cases that speedy trial of undertrial prisoners is undoubtedly the right of the person.

Art. 21 confers fundamental right on every person not to be deprived of his life or liberty except in accordance with the procedure prescribed by law and it is not enough to constitute compliance with the requirement of that Article that some semblance of a procedure should be prescribed by law, but that the procedure should be "reasonable, fair and just". If a person is deprived of his liberty under a procedure which is not "reasonable, fair or just", such deprivation would be violative of his fundamental right under Art 21 and he would be entitled to enforce such fundamental right and secure his release. Any procedure prescribed by law for depriving a person of his liberty cannot be "reasonable, fair or just" unless that procedure ensures a speedy trial for determination of the guilt of such person.

The court further observed that "expeditious trial and freedom from detention are part of human rights and basic freedoms. The judicial system which permits incarceration of men and women for long periods of time without trial is denying human rights to such under trials and withholding basic freedoms from them. Law has become for them an instrument of injustice and they are helpless and despairing victims of the callousness of the legal and judicial system.[65]

The Court made the following observations in **Sheela Barse V. Union of India**:

The profession of law is a noble profession. A lawyer owes a duty to the society to help people in distress more so when those in distress are women 2nd in jail. Lawyers must

[65]Hussainara Khatoon and other v. Home Secretary, State of Bihar, AIR 1979 SC 1360

positively reach up to those sections of humanity who are poor, illiterate and ignorant and who, when they are placed in a crisis such as an accusation of crime or arrest or imprisonment, do not know what to do or where to go or to whom to turn. If lawyers, instead of coming to the rescue of persons in distress, exploit and prey upon them, the legal profession will come into disrepute and the large masses of people in the country would lose faith in lawyers and that would be destructive of democracy and the rule of law.

Stressing upon the need for setting up a machinery for providing legal assistance to prisoners in jails the Supreme Court issued following guidelines:

- To provide facilities to the lawyers nominated by the concerned District Legal Aid Committee to enter the jail and to interview the prisoners who have expressed their desire to have their assistance.
- To furnish to the lawyers nominated by the concerned District Legal Aid Committee whatever information is required by them in regard to the prisoners in jail.
- to put up notices at prominent places in the jail that lawyers nominated by the concerned District Legal Aid Committee would be visiting the jail on particular days and that any prisoner who desires to have their assistance can meet them and avail of their counselling services, and
- to allow any prisoner who desires to, meet the lawyers nominated by the concerned District Legal Aid Committee to interview and meet such lawyers regarding any matter for which he requires legal assistance and such interview should be within sight but out of hearing of any jail official.

In spite of the constitutional and statutory provisions aimed at safeguarding the personal liberty and life of a citizen, growing incidence of torture and deaths in police custody has been a disturbing factor. Experience shows that worst violations of human rights take place during the course of investigation, when the police with a view to secure evidence or confession often resorts to third-degree methods including torture and adopts techniques of screening arrest by either not recording the arrest or describing the deprivation of liberty merely as a prolonged interrogation. A reading of the morning newspapers almost every day carrying reports of dehumanizing torture, assault, rape and death in custody of police or other governmental agencies is indeed depressing. The increasing incidence of torture and death in custody has assumed such alarming proportions that it is affecting the credibility of the rule of law and the administration of criminal justice system. The community rightly feels perturbed. Society's cry for justice becomes louder.

The court further observed that "this system of bails operates very harshly against the poor and it is only the non-poor who are able to take advantage of it by getting themselves released on bail. The poor find it difficult to furnish bail even without sureties because very often the amount of the bail fixed by the Court is so unrealistically excessive that in a majority of cases the poor are unable to satisfy the police or the Magistrate about their solvency for the amount of the bail and where the bail is with sureties, as is usually the case, it becomes an almost impossible task for the poor to find persons sufficiently solvent to stand as sureties.[66]

[66]Hussainara Khatoon and other v. Home Secretary, State of Bihar AIR 1979 SC 1360.

The bail system, as it operates today, is thus a source of great hardship to the poor and if the civil effects of poverty are to be eliminated and a fair and just treatment assured to thepoor in the administration of justice, it is imperative that the bail system should be thoroughly reformed so that it should be possible for the poor, as easily as the rich, to obtain pre-trial release without jeopardizing the interest of justice.

The Apex Court also observed that Medical care should be also provided to the prisoners when it was found that there were some prisoners suffering from any mental disease. The jail system is basically for rehabilitation not always for cruelty.[67]

The court further observed that since these prisoners have already been in jail for, a period of over 25 years and it is now provided by Section 428 of the Code of Criminal Procedure, 1973 that the period during which an accused has been in jail as an under trial prisoner should be taken into account for the purpose of computing the period of the sentence and the maximum imprisonment which an accused is ordinarily required to undergo even in case of-sentence of life imprisonment is not more than 14 years, we would direct the State Government to drop the cases which are pending against these prisoners as it would be purely academic to pursue these cases.

While in jail, communication with outside world gets snapped with a result that the inmate does not know what is happening even to his near and dear ones. This causes additional trauma. A liberalized view relating to communication with kith and kin specially is desirable. It is hoped that the model All India Jail Manual, about the need of which we have already adverted, would make necessary provision in this regard. It

[67]Veena Setahi v. State of Bihar AIR 1983SC 339

may be pointed out that though there may be some rationale for restricting visits to which aspect the court shall presently address, but as communication by post is concerned, there does not seem to be any plausible reason to deny easy facility to an inmate."[68]

The judiciary in India, continues to remain the best friend of the victims of custodial violence. It is the only agency, on which the victims of custodial violence can bank upon.They feel concerned and appear alarmed over some findings of the court only because they look at the judiciary as their savior. Any change in the attitude of the court gives severe jerks because it shatters their confidence.

Rights are a matter of concern for all. These must be made available to all without distinction. In fact, right cannot be the exclusive domain of any particular segment of society. The judicial system of a country playing a very vital role in protecting the rights of the prisoners, against the infringement of human rights. The close examination of judicial process in action reveals that the Supreme Court as a protector of human rights of the people has shown deep concern and has made praiseworthy efforts in securing and promoting the rights of undertrials, suspects, prisoners and accused persons, taking initiative in protecting the fundamental rights of the prisoners to achieve the object of rehabilitation of a prisoner so that they do not remain will-of-the wisp.

The credibility of judiciary depends upon the delivery of justice to the common man in a speedy, impartially and in an economy manner. The main function of

[68]Ram Murthy v. State of Karnataka, AIR 1997 SC 1739

Administration of Criminal Justice is performed by the criminal law courts comprising of magistracy and the Court of Session. The Supreme Court and the High Courts have only appellate jurisdiction in criminal cases. The basic defect of our Criminal justice administration including judiciary seems to be that it is heavily loaded against poor.

The judiciary in India, at present, is over-burdened due to work pressure. Huge backlog of cases in Indian courts is a „rising trend", though either due to the high rate of institution of new cases or due to the highest rate of pendency of old cases in these courts. With the high courts "fixing minimum disposal rate for trial court judges in view of the huge pendency, judicial officers in district courts are under a lot of pressure given the inadequate infrastructure to decide the minimum required disposals. "As of end 2013, 4.4 million cases were pending in various High Courts. Subordinate courts had nearly five times that numberof cases in pendency".[69]

The Criminal Justice System begins with the police station. The role of police in criminal justice administration in any society is significant because the policeman is the first to arrive on the scene. He applies law in a specific given situation and frames a legal scene on the basis of which the later legal battles are fought by the learned counsels. As an investigating officer, he collects facts, evidence and witnesses and all other materials which materially influence the process of „truth searching" in the establishment of crime as per the Code of Criminal Procedure, as it exists today.

Under the code of Criminal Procedure, as it exists today, the investigation of all criminal offenses is by the police. "As per latest figures of National Crime Record

[69]National Crime Record Bureau, "Prison Statistics 2013", Ministry of Home Affairs, Government of India, New Delhi, retrieved from www.prisonstudies.org, last visited on 08/12/2014.

Bureau 2013, the sanctioned strength of police force in India is 17.3 lakh against the sanctioned strength of 22.4 lakh of total police force (civil and armed combined), rendering 22.8% posts as vacant. The State of Maharashtra has highest strength of women civil police (20,568 out of 1,00,756) among the States & UTs followed by Tamil Nadu (14,773), Uttar Pradesh (7,404), Rajasthan (5,791) and Punjab (5,020). Nine States and six UTs had strength of less than one thousand".[70]

[70]National Crime Record Bureau, "Crime in India 2013", Ministry of Home Affairs, Government of India, New Delhi, p.167, retrieved from http://ncrb.gov.in/, 30/06/2013, last visited on 8/12/2014.

Chapter 5 - Conclusions and Suggestions

A prison, jail or correctional facility is a place in which individuals are physically confined or detained and usually deprived of a range of personal freedom. These institutions are an integral part of the criminal justice system of a country. There are various types of prisons such as those exclusively for adults, children, female, convicted prisoners, undertrial detainees and separate facilities for mentally ill offenders. In this chapter, “prisons” refer to only adult correctional facilities.

The State is under an obligation for protecting the human rights of its citizens as well as to protect the society at large, and is authorized to do so. To protect the citizens from any possible abuse of this authority, they are given certain basic privileges recognized by the Constitution of India as Rights. Elevation of such claims to the status of Rights, gives the citizens the capacity to evoke the power of the Judiciary to protect themselves against violation of such rights, as well as to seek redressal for their restitution.

Even criminals, back in 1953, seemed to be soaking in the warm, hope filled glow that suffused the newly free India. From a peak of 654,019 in 1949, the number of crimes had declined year-on-year to 601,964. Murderers ad dacoits; house breakers and robbers all were showing declining enthusiasm for crime. Large scale communal violence, which had torn apart the nation at the moment of its birth, appeared to be a fading memory. Bar a Calcutta tram workers strike, which had paralyzed the city for three weeks, there was no large-scale violence at all. The sun wasn't shining in the

stone clad corridors of New Delhi's North Block, though, where police officials hadjust completed the country's first national crime survey the National Crime Records Bureau's now annual Crime in India. India, they concluded, faced a crisis of criminal justice. For one, India faced a crippling shortage of police officers. Then, poor training standards meant "there had been no improvement in the methods of investigation". "No facilities exist in any of the rural police stations and even in most of the urban police stations for scientific investigation," the report went on, "there had been a fall in the standard of work". The result, Crime in India, 1953 recorded, was plain: intelligence capacities had diminished: cases were failing; criminals walking free.

The Roots of human rights were traced back in the Babylonian's Period, Babylonian king Hammurabi (1792-1750 B.C) provided for fair wages, protection of property and for charges to be proved as trail for his people. It was called Hammurabi's code, they provided standers by which Babylonians could order their lives and treat one another. In ancient Greece, Human rights were recognized as natural rights of men. Stoicism had its origin in the views of Socrates (469-399 B.C.E.) and Plato (428-347 B.C.E.). Socrates had already imagined, according to Plato's Republic, the possibility that a person could be rendered invisible by wearing the mythical ring of Gyges. The Plato, Aristotle (384-322 B.C.E..) held that virtue needed to be a central characteristic of human life, which should aim at the common good. At the same time, he rejected Plato's theory of an essential universal goodness. Adding a tangible character to Plato's teachings, he explained that the form of goodness had to match its empirical content. Greece-Plato (427-348 B.C) was one of the earliest writers to advocate a universal slandered of ethical conduct. Aristotle wrote in politics that justice, virtue

and rights change in accordance with different kinds of constitutions and circumstances. It can be traced back thousands of years from the Hammurabi Code to the Magna Carta, the French Declaration of Human Rights and the American Bill of Rights. The underlying idea of such rights - fundamental principles that should be respected in the treatment of all men, women and children - exists in some form in all cultures and societies. The contemporary International statement of those rights is the Universal Declaration of Human Rights. The responsibility of governments is to protect the human rightsproclaimed by the declaration. Under the provisions of Civil and Political Rights, all governments are to protect the life, liberty and security of their citizens. They should guarantee that no- one is enslaved and that no-one is subjected to arbitrary arrest and detention or to torture. The rights such as freedom of thought, conscience, religion, and to freedom of expression are to be considered as Human Rights. Since the declaration does not have the necessary legal power, not being an International treaty does not determine de jure obligations for the states. Actually, its provisions have been included in the constitutions and internal laws of states and therefore it gained special importance.

The Magna Carta, 1215, is the most significant constitutional document of all human history. The main theme of it was protection against the arbitrary acts by the king. The Charter guaranteed basic civic and legal rights to citizens, and protected the barons from unjust taxes. The English Church too gained freedom from royal interferences. The king was compelled to grant the Charter, because the barons refused to pay heavy taxes unless the king signed the Charter. The English Bill of Rights declared that the king has no overriding authority. The Bill of Rights codified the customary laws, and

clarified the rights and liberties of the citizens. The first colonies to revolt against England were the thirteen States of America. These states declared their independence from their mother country on 4th July 1776, American Declaration of Independence, 1776. The declaration charges the king colonies. The declaration of independence has great significance in the history of mankind as it justified the right to revolt against a government that no longer guaranteed the man's natural and inalienable rights. After that the U.S. Bill of Rights, 1791. The Constitution was enacted on 17th September 1787. The most prominent defect of the original constitution was the omission of a Bill of Rights concerning private rights and personal liberties. The French Declaration of the Rights of Citizens in 1789, the fall of Bastille and the abolition of feudalism, serfdom and class privileges by the National Assembly ushered France into a new era. On 4th August 1789, the National Assembly proclaimed the Rights of Man and of the Citizens. The Rights were formulated in 17 Articles. The Declaration of the Rights of Man and of the Citizen hasfar reaching importance not only in the history of France but also in the history of Europe and mankind. The declaration served as the death warrant for the old regime and introduced a new social and political order, founded on the noble and impressive principles. United Nations Declaration of Human Rights (UNDHR, 1948), which defines specific rights and their limitations, the International Covenants on Economic, Social and Cultural Rights (1966) and the International Covenant on Civil and Political Rights (1966), which place on states the obligation to promote and protect human rights. The Covenants are legally binding on those states that have ratified them. The UNDHR, which is the key document, is conceived as "a common standard of achievement for all peoples and all nations":

The prison is used as an institution to treat the criminal as a deviant and so there would be lesser restrictions and control over him inside the institution. The modern progressive view, however, regards crime as a social disease and favors treatment of offenders through non -penal methods such as probation, parole, open jail etc. It is on record that Brahaspathi laid greater stress on imprisonment of convicts in closed prisons. In Vedic period, administration of justice did not form a part of the state duties. Offences like murder, theft and adultery are mentioned but there is nothing to indicate that the king or an authorized officer as a judge, either in civil or criminal cases, passed any judicial judgment. Some critics have suggested that Sabhapati of the later Vedic period may have been a judge. The Dharma Sutras and the Dharma Shastras (the earliest is that of Manu and other important Dharma Shastras are those of Yagnavalkya, Vishnu and Narada), reveal a more or less full- fledged and well-developed judiciary. Law or dharma was not a measure passed by legislature in Ancient India, it was based upon Shrutis (hearings) and Smritis (remembrance). It was enforced by social approval or the dread of hell and not by the force of the state. King was at its head and it was his pious duty to punish the wrong doers, if he fails from discharging it, he would go to hell. Kautilya stated in his Arthashastra, that the prison should be constructed in a capital and provide separate accommodation for men and women. He was personally of the view that as far aspossible the prisons should be constructed road side so that monotony of prison life is reduced to a considerable extent, the problems of prisoners' life and their welfare. He is of the opinion that every fifth day some prisoners should be made free who pay some money as fine or undergo some other mild corporal punishment or promise to work for social uplift. Kautilya has said that, the duties of the jailor who always keeps eyes on the movement of the

prisoners and the proper functioning of the prison authorities. If a prisoner by chance moves out of his cell, he is fined twenty-four rupees and the warder who is in league with the prisoner is fined the double amount. In case the warder disturbs the prison life, the higher authority imposes a fine of five hundred rupees. Sometimes the prisoner is put to death by the warder so the penalty in this case is the highest, i.e., one thousand rupees. Kautilya has gone deep to jail life and opines that the prisoner escaping after breaking the prison walls, must be put to death. This shows that the jail authority called Bandhanagaradhyaksa was always vigilant and alert and no evil action could escape his eyes. Ashoka was familiar with the Arthashastra, for Ashoka speaks of as much as twenty-five jail deliveries effected by him in the course of twenty-six years since his appointment to the throne. The Brhat Samhita adds that release of prisoners could even be ordered when the king took the pusyasnana (as auspicious bath).

Apart from the Legislation authority, other three are the main functioning agencies for executing the Criminal Justice System in the society. While the police may be organizationally separated from courts and corrections, all other components of criminal justice administration are functionally inter-related. The criminal justice system deals with police, bar, bench and correctional services and hence in aggregative form; all the four sub-systems got a nomenclature of criminal justice administration. However, the success of the Criminal justice system depends on co-ordination among these three wings with one another.

An Indian Penal Code (IPC) defines crime, prescribing appropriate punishments and was adopted in 1860. As a sequel to the IPC, a Code of Criminal Procedure (Cr.p.c) was

enacted in 1861 and established the rules to be followed in all stages of investigation,trial and sentencing. This code was repeated and a new code came into effect in 1974. These two codes, along with parts of the Indian Evidence Act, of 1872, form the essence of India's criminal law.

During Mughal period sources of law and its character essentially remained Quranic. Crimes were divided into three groups, namely offences against God, offences against the State, offences against private persons. The punishments for these offences were hadd, tazir, quisas, and tashir. There were three main prisons in Mughal India. One was at Gwaliar, second at Ranthambore and the third was at Rohtas. Criminals condemned to death punishment were usually sent to the fort of Ranthambore. They met their death two months after their survival there. The Gwaliar Fort was reserved for the nobles that offend. To Rohats were sent those nobles who were condemned to perpetual imprisonment, from where very few return homes. Punishment during the Hindu and Mughal period in India was to deter offenders from repeating crime. The recognized modes of punishment were death sentence, hanging, and mutilation, whipping, flogging, branding or starving to death. Particularly, during the Mughal rule in India the condition of prisons was awe fully draconic. The prisoners were ill-treated, tortured and subjected to most inhuman treatment. They were kept under strict surveillance and control. Thus, the prisons were places of terror and torture and prison authorities were expected to be tough and rigorous in implementing sentences. The system of imprisonment originated in the first quarter of nineteenth century. The first time in India, Lord Macaulay drew attention of the government of India basing on his suggestions appointed a committee in 1836 to enquire the prison conditions and

prison administration. The committee submitted their report after enquired the existing conditions in prisons, but the committee recommendations rejected due to all reforming influences such as moral and religious teaching, Education or any system of rewards for good conduct. In 1862 Jail enquiry committee appointed to sanitary conditions in Indian prisons, the committee suggested that the need for proper food and clothing for the prisoners and medical treatment for ailing prisoners. Later, the third Jail committee appointed in 1877, this committee has given suggestions. Basing on this committee suggestions The Prison Act,1894 came into existence in India. The Indian Jails reforms committee appointed by the British in 1919-20 for the prisoners' conditions, basing on this committee recommendation the prisoners should be fixed to every prison. The provincial governments of India appointed number of committees on prison reforms after the All India Jail Committee (1919-1920). The committees which are appointed are Punjab Reforms Committee (1919 and 1948), Uttar Pradesh Jail committees (1929, 1938 and 1946), Bombay (1939 and 1946), Mysore (1941), Bihar (1948), Madras (1950), Orissa (1952) and Travancore Cochin (now Kerala) (1953).

The Indian freedom struggle played a crucial role in initiating the process of identifying certain rights for the prisoners. After independence, the Constitution of India conferred a number of fundamental rights upon citizens. Article 21 of the Constitution guarantees the right of personal liberty and thereby prohibits any inhuman, cruel or degrading treatment to any person whether (s)he is a national or foreigner.

Article 21. Protection of Life and Personal Liberty; *"No person shall be deprived of his life or personal liberty except according to procedure established by law"*.

The Supreme Court of India, by interpreting Article 21 of the Constitution, has developed human rights jurisprudence for the preservation and protection of prisoners‟ rights to maintain human dignity. Although it is clearly mentioned that deprivation of Article 21 is justifiable according to procedure established by law, this procedure cannot be arbitrary, unfair or unreasonable. In a celebrity case (Maneka Gandhi Vs. Union of India., 1978), the Apex Court opened up a new dimension and laid down that the procedure cannot be arbitrary, unfair or unreasonable. Article 21 imposed a restriction upon the state where it prescribed a procedure for depriving a person of his life or personal liberty. This was further upheld (Francis Coralie Mullin v. The Administrator, 1981) "Article 21 requires that no one shall be deprived of his life or personal liberty except by procedure established by law and this procedure must be reasonable, fair and just and not arbitrary, whimsical or fanciful".

The Govt. of India invited Dr. W.C.Reckless, United Nations Technical Experts on Crime prevention and treatment of offenders, to make recommendations on prison reforms in 1951. Later on, a committee was appointed to prepare an All Indian Jail Manual in 1957 on the basis of the suggestions made by Dr.W.C.Reckless. An All India Conference of Inspector General of Prisons of the Provinces was also convened. The correctional services should form an integral part of the Home Department of each state and a Central Bureau of Correctional Services should be established at the Centre. The reformative methods of probation and parole should be used to lessen the burden on prisons. State After-care units should be set up in each state. Solitary confinement as mode of punishment should be abolished. Classification of prisoners for the purpose of their treatment was necessary. The State jails manuals should be revised

periodically. In 1980, the Central Government of India appointed committee under the chairmanship of Justice A.N.Mulla on All India Jail Reforms, his recommendations has great impact on prison reforms in India as that committee examined all areas of the prison and prisoners, suggested to amend legislations relating to prisoners, to enact separate statutes for the protection of prisoners, facilities for the women prisoners, free legal aid to the under trail prisoners, to construct separate jails for women and also for the improvements of prison conditions like sanitation, diet and medical care in prisons. Thereafter, Government of India has constituted another committee on 26th May, 1986, namely, National Expert Committee on Women Prisoners under the chairmanship of Justice V.R. Krishna Iyer who has submitted its report on 18th May, 1987. This report has also been circulated to all States for taking necessary follow-up action. Provision of a national policy are relating to the women prisoners in India and for formation of new rules and regulations relating to their punishment and conduct for Maintenance of proper coordination among the police, law and prison for providing justice to women prisoners. Provisions are legal-aid for women. A recommendation was made for Construction of separate prisons for women prisoners. Proper care of the baby born in jail to a woman prisoner and provision of nutritious diet for the mother and the child is one of the main agenda.

The Government of India also enacted the Human Rights Protection Act passed in 1993, for eradication of human rights violations by the executives and legislatures discretions. Under this, a National Human Rights Commission at National Level and State Human Rights Commissions at state level was constituted. The Juvenile Justice Act was enacted by the central government The Central Government enacted the

Juvenile Justice (Care and Protection) Act, 2000, for the juvenile delinquents. The committee was set up by the Ministry of Home Affairs in the Bureau of Police Research and Development for the new prison policy for all the states and union territories. The jail manual drafted by the committee was accepted by the Central government and circulated to State governments in late December 2003.It is entirely possible that another kind of police bias against women might account for this high level of acquittals; male-chauvinist police officers would, after all, conduct poor investigations. It isn't only alleged rapists, though, who are being acquitted in record numbers. Kidnapping convictions have fallen from 48 per cent in 1953 to 27 per cent in 2011; successful robbery prosecutions from 47 per cent to 29. In 2003, less than a third of completed murder trials ended in a conviction; in 2011, the last year figure remained under 40 percent. When it comes to communal offences High quality empirical studies to establish just how much communal bias influences the criminal justice system are desperately needed and their absence is evidence of the chronic deficits in the policing system as a whole.

The promotion and protection of Human Rights depends upon a strong and independent judiciary. The apex judiciary in India has achieved success in discharging the heavy responsibility of safeguarding Human Rights in the light of our Constitutional mandate. The major contributions of the judiciary to the Human Rights jurisprudence have been twofold: the substantive expansion of the concept of Human Rights under Article 21 of the Constitution, and the procedural innovation of Public Interest Litigation. The Supreme Court of India is taking more steps to prevent the violations on human rights of prisoners and for the protection of prisoners and is done

through Public Interest Litigation. Further almost all the basic rights are identified to come under Act 21 of the Constitution by the judiciary.

The constitution of India guarantees equality, provides right to freedom of speech and expression, peaceful assembly, freedom from arbitrary arrest, protection of life and liberty right against exploitation, freedom of conscience and free profession, practice and propagation of religion and educational and cultural rights. It also provides teeth to those rights by making them enforceable by direct access to the Supreme Court of India. In the comprehension of the Supreme Court the right to life and liberty includes, right to human dignity, right to privacy, right to speedy trail, right to free legal aid, right to be prisoner to be treated with dignity and humanity, right to bail, right to compensate for custodial death, right of workers to fair wage and human conditions of work, right to security, right to education and right to health environment. The Supreme Court of India interpreted Art 21 of the Constitution and shows much interest on prison reforms. The Supreme Court all the time balanced the reformative theory and retributive theory of punishment, i.e., the Apex Court maintaining the severity of punishment wherever necessary and considering the gravity of crime and circumstances when in it is committed. The penological approach of the Indian Judiciary itself inhumane. Prison jurisprudence since the late '60s recognizes that prisoners do not lose all their rights because of imprisonment. But loss of rights within custodial institutions continued. Beginning with the first few instances in the late 1970's, the category of Public Interest Litigation (PIL) has come to be associated with its own people-friendly procedures. The foremost change came in the form of the dilution of the requirement of 'locus standi' for initiating proceedings. Since the intent

was to improve access to justice for those who were otherwise too poor to move the courts or were unaware of their legal entitlements, the Court allowed actions to be brought on their behalf by social activists and lawyers. The primary constitutional and moral concern with undertrial detention is that it violates the normative principle that there should be no punishment before a finding of guilt by due process. So, undertrial detention of those suspected, investigated or accused of an offence effectively detains the "innocent." However, all criminal justice systems across the world authorize limited pretrial incarceration to facilitate investigation and ensure the presence of accused persons during trial. So, the criticalchallenge in this area is to identify the normatively optimal and necessary level of pretrial incarceration and then design a criminal justice system.

Under the Indian Constitution, the subject of prisons is transferred from central list to state list and is mentioned in the Seventh Schedule. Thus, importance is given to the prisoners for their better maintenance and improvements in prisons. 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. Articles 19 to 22 as contained in part III of the Constitution of India also the constitution has guaranteed certain rights to the accused. Art 19 of the Constitution has guaranteed certain freedoms to the citizens only and also the restrictions that may be imposed on them by the State. Art 20 deals with the protection in respect of conviction for offences under certain circumstances. Art 21 specifically deals with the protection of life and personal liberty. Art 22 provides certain safeguards to the persons arrested or detained. The

fundamental right to life, article 21 deals with, is the most precious human right and forms the arc of all other rights. The protection of Article 21 is available even to convict in Jails. A convict has no right, more than anyone else to dictate where guard to be posted to prevent the escape of prisoners. The installation of live wire mechanism does not offend their right. It is a preventive measure intended to act as a deterrent and cause death only a prisoner causes death by scaling the wall while attempting to escape from lawful custody. The installation of live wire does not by itself cause the death of the prisoner. In Charles Shobraj case, 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. 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 life is enjoyed as also the right to live with basic humandignity. The supreme court held that the detenue right to have interview with his lawyer and family members is part of his personal liberty guaranteed by Art 21 of the constitution and cannot be interfered with expect in accordance with reasonable, fair and just procedure established by law.

Whether the right of appeal is an integral part of the fair procedure as envisaged in Article 21 of the Constitution. In Hussainara Khatoon Vs Home. Secretary, State of Bihar the court has observed that, even under our constitution, though speedy trail is not specifically enumerated fundamental right, it is implicit in the board sweep and

content of Article of 21 as interpreted by this court in Maneka Gandhi's case. It is considered as on integral and essential part of the fundamental right to life and personal liberty. Every prisoner is having a right to defend their cases in trail. The speedy trail is an integral part of prisoner right to life and personal liberty guaranteed by the Constitution for them. The decision of Rudal Shah Vs State of Bihar was important in two respects. Firstly, it held that violation of a constitutional right can give rise to a civil liability enforceable in a civil court and secondly, it formulates the bases for a theory of liability under a violation of the right to personal liberty which can give rise to a civil liability. The decision focused on extreme concern to protect and preserve the fundamental right of a citizen. It also calls for compensatory jurisprudence for illegal detention in prison In India. The providing legal assistance is state obligation to the women prisoner and that two prisoners who were foreign nationals complained that a lawyer duped and defrauded them and misappropriated almost half of their belongings and jewellery on the plea that he was retaining them for payment of his fees. The Supreme Court in Sunil Batra vs Delhi Administration held that Lawyers nominated by the District Magistrate, Sessions Judge, High Court or the Supreme Court will be given all facilities for interviews, visits and confidential communication with prisoners subject to discipline and security considerations. To provide Legal assistance to a poor or indigent accused, arrested is a constitution right and not only by Article 39A but also by Articles 14 and 21 of the Constitution. It is a necessary sine qua non of justice and where it is not provided, injustice is likely toresult and undeniably every act of injustice corrodes the foundations of democracy and rule of law. Section 303 of the Criminal Procedure Code, 1973 empowers the prisoners to be defended by the pleader of their choice and Section 304 of this code

provides that in certain cases legal aid is to be provided at state expense. 309 (1) of the criminal procedure code provides that in every inquiry or trial, the proceedings shall be held as expeditiously as possible. Similarly, mere sentence does not restrict the right to freedom of religion. In Prem Shanker vs. Delhi Administration the Supreme Court added another projectile in its armory to be used against the war for prison reform and prisoners' rights. The Supreme Court identified certain rights of prisoners in various cases decided and interpreted Art 21 of the Constitution and those rights are Rights against Hand Cuffing, Rights against Inhuman Treatment of Prisoners, Rights against Solitary Confinement and Bar Fetters, Right to have Interview with Friends, Relatives and Lawyers, Right to Free Legal Aid, Right to Speedy Trial and Children of Women Prisoners, etc.

The supreme aim of punishment is the protection of society through the rehabilitation of offender. The principal goals of the criminal justice system are assimilation of the offender in society and the prevention of crime. Accordingly, the aim of the prison administration was to employee all resources, human and material, to provide scientific treatment to every offender according to his peculiar needs and circumstances. The prison administration in Independent India shows that the Government of India took some interest in the matters of changes in the prison system. The Government of India passed the Exchange of Prisoners Act, 1948. In 1950, the Transfer of Prisoners Act was passed by the central government. This act made provision for the removal of prisoners from one state to another. The modern prison in India originated with the minutes by TB Macaulay in 1835. A committee namely Prison Discipline Committee, was appointed, which submitted its report on 1838. The

committee recommended that increased rigorousness treatment while rejecting all humanitarian needs and reforms for the prisoners. Following the recommendations of the Macaulay Committee between 1836-1838, the Central Prisons were constructed. Thecontemporary Prison administration in India is thus a legacy of British rule. It is based on the notion that the best criminal code can be of little use to a community unless there is good machinery for the infliction of punishments. In 1864, the Second Commission of Inquiry into Jail Management and Discipline made similar recommendations as the 1836 Committee. In addition, this Commission made some specific suggestions regarding accommodation for prisoners, improvement in diet, and clothing, bedding and medical care. In 1877, a Conference of Experts met to inquire into prison administration. The conference proposed the enactment of a prison law and a draft bill was prepared. In 1888, the Fourth Jail Commission was appointed. On the basis of its recommendation, a consolidated prison bill was formulated. Provisions regarding the jail offences and punishment were specially examined by a conference of experts on Jail Management. In 1894, the draft bill became law with the assent of the Governor General of India. The Prison Reforms in India was changed through British ruling, before the colonial rule, there was no uniformity in penal system, accused or prisoners' houses treated as jails and some of them used mostly war prisoners.

Three Wings of Criminal Justice System

As per above Figure, the Criminal Justice System keeping centralizing on the present topic consists of three main parts: (1) Police- whose task is to enforce the laws correctly; (2) Courts- to hold a fair criminal trial where the question of guilt is decidedwith the help of lawyers and witnesses and finally; (3) the Prisons- consisting jails or prisons. In other words, Police department, Courts and Prison administration are the three main pillars on which the Criminal justice system is based upon.

Thus, the first contact of an offender has in the criminal justice system is usually with the police (law enforcement), who investigate a suspected wrongdoing and make an arrest. The courts serve as the venue where disputes are settled and justice is administered. Offenders are then turned forward to the correctional institutions/prisons, from the court system after the accused has been found guilty.

“One of the most neglected aspects of criminal justice system is thedelay caused in the disposal of cases and detention of the undertrials pending trial. The due process model argues that since the criminal justice system rests ultimately upon the decisions

and predilections of human beings, errors are abound. Mistakes are made by witnesses, police, judges, prosecutors, and all other participants in the criminal justice system. Perceptions can be skewed; prejudice and bias can infect the process and evidence can be manufactured or ignored".2 India has been witnessing a consistently decrease in the standards of criminal justice administration in last many years.

In 1980, the Central Government was setup a Committee on Jail Reform, under the chairmanship of Justice A. N. Mulla. The basic objective of the Committee was to review the laws, rules and regulations keeping in view the overall objective of protecting society and rehabilitating offenders. The Mulla Committee submitted its report in 1983 and his recommendations related to prison administration and that the prison staff should be properly trained and organized into different cadres. It would be advisable to constitute an All India Service called the Indian Prisons & Correctional Service for recruitment of Prison officials. After care, rehabilitation and probation should constitute an integral part of the prison system. This committee is corner stone of the Indian prison reforms. Also, various High Courts and Supreme Court upheld the recommendations in their decision relating to the prisoners' rights. The state governments showed much interest to prevent atrocities and to protect the rights of prisoners and for that rules and regulations were framed in their states for theprisoner's reformation. In 1986, the Government of India constituted another committee under chairmanship of Justice Krishna Iyer to undertake a study on women prisoners in India. The committee submitted a report in 1987 and recommended various immunities for women in the police force in view of their special role in tackling women and child offenders. To prepare National policy for the women

prisoners, includes special rules and regulation for them, coordination between police, court and prison authorities, and legal aid to the needy, facilities to the children of imprisoned mothers. It is a deep – seated fear among many sections of Indian men that too many Indian women have taken control of their lives at a much faster pace than expected, show little patience for the structures of the past, and therefore need to be taught a quick lesson and kept in place. What better strategy than to create a fear which will unite a seriously fractured society and bring it back to its familiar, hierarchical whole? The answer is to have best correctional institutions which places the conducts or undertrials in correct places of correction and change them as normal Indians.

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During the research various sites are used to collect the data that should be analyzed for the research to find out the proper results. Some of the popular and well-known sites are mentioned below:

- www.legalserviceindia.com
- www.shodhganga.ac.in
- www.livelaw.com
- www.upcop.gov
- www.lexusnexus.com
- www.usenews.com
- en.m.wikipedia.org