RIGHTS OF PRISONERS: AN EVOLVING JURISPRUDENCE

A DISSERTATION TO BE SUBMITTED IN THE PARTIAL FULFILLMENT FOR THE DEGREE OF MASTER OF LAW'S

SUBMITTED BY:
Anupam Awasthi
Roll No. -1200997011
LL.M
School of Legal Studies

UNDER SUPERVISION OF:
DR. GITU SINGH
(Department of Law)
School of Legal Studies
BBDU, LUCKNOW

SESSION: 2020-21

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ABBREVIATIONS

ALAI	Association Littéraire et Artistique Internationale
APNIC	Asia Pacific Network Information Centre
ARIN	American Registry for Internet
ARPANET	Advanced Research Projects Agency Network
BIRPI	United International Bureaux for the Protection ofIntellectual Property
BSA	Business Software Alliance
CBD	Convention of Biological Diversity
CBD	Conventional Bio- Diversity
CD	Compact Disc
CDROM	Compact Disc Read-only memory
CSIR	Council of Scientific and Industrial Research
DARPA	Defence Advanced Research Projects Agency of the United States
DBMS	Database Management Systems
DNS	Domain Name System
DSB	Dispute Settlement Body
DVD	Digital Versatile Disc
EC	European Council
EMR	Exclusive Marketing Right
EPO	European Patent Office
EU	European Union
FICCI	Federation ofIndian Chambers ofCommerce and Industry

GATS	General Agreement on Trade in Services
GATT	General Agreements on Tariffs and Trade
GDP	Gross Domestic Product
GI	Geographical Indication
GPS	Global Protection Services
IANA	Internet Assigned Number Authority
ICANN	Internet Corporation for Assigned Names and Numbers
ICT	Information and Communication Technology
IFPI	International Federation ofPhotographic Industry
IP	Intellectual Property
IP	Internet Protocol
IPA	Indian Patent Act
IPIC	Intellectual Property ofIntegrated Circuits
IPR	Intellectual Property Rights
IRDA	Insurance Regulatory Development Authority
ISP	Internet Service Providers
IT	Information Technology
LD	Laser Discs
MNCs	Multinational Companies
MPA	Motion Pictures Association ofAmerica
NCE	New Chemical Entity
NIAPC	National Initiative against Piracy and Counterfeiting
NSF	National Science Foundation

LIST OF CASES

Amrit Bhushan Gupta v. Union of India	A.I.R. 1977 S.C. 608
A.K. Gopalan v. State of Madras	A.I.R. 1950 S.C. 27
Charles Shobraj v. Superintendent	1978 AIR 1514, 1979 SCR (1) 512
D. B. M. Patnaik v. State of Andhra Pradesh	A.I.R. 1974 S.C 2093
Francis Coralie Mullin v. The Administrator, Union Territory of Delhi.	A.I.R. 1981 S.C. 74
Hiralal Mallick v. State of Bihar	A.I.R. 1977 SC 2236
L. Vijayakumar v. Public Prosecutor	A.I.R. 1978 S.C. 1485
Madhukar Bhagwan Jambale v. State of Maharashtra	1985 Cr.L.J. 78
Naresh Soni v. State of U.P.	1983 Cr.L.J. (NOC) 16
Kharak Singh v. State of UP	AIR 1963 SC1295
Khatri v. State of Bihar	A.I.R. 1981 S.C. 928
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CHAPTER-1

1. 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)

The constitutionally protected fundamental rights are not absolute, and several limitations have been placed on their exercise. The right to personal liberty is one of the most crucial of the fundamental rights. When a person is condemned or imprisoned, he or she has a different status than a regular person. A prisoner does not have access to all of the essential rights that an ordinary person does. In several judgments, the Supreme Court of India and various High Courts in India have examined the scope. In this backdrop, the researcher cited in various case laws for which prisoner's rights were recognised and upheld by the Indian judiciary viz., in *Charles Shobraj v. Superintendent*[1] prisoners, like you and me, are human beings,' the Court declared. As a result, all such rights, with the exception of those taken away during the legal process of detention, remain with the prisoner. These rights include those relating to the safeguarding of basic human dignity as well as those relating to the development of the prisoner as a better human being.'.

1.1. Prisoners Rights

Rights are the fundamental normative standards that people are authorised to follow, according to some legal system, social convention, or ethical philosophy. Rights are legal, social, or ethical principles of freedom or entitlement.[2] From the dawn of time, all civilizations have been concerned with human rights. People from former eras were familiar with the concept of human rights and other essential rights.[3]

[1] 1978 AIR 1514, 1979 SCR (1) 512
[2] www.rights of people/wekipedia.com.
[3] Attar Chand, Politics of Human Rights and Civil Liberties - A Global Survey , UDH Publishers, Delhi 1985,p. 45.

A right is the legal or moral entitlement to do or refrain from doing something, or to obtain or refrain from receiving an action, thing, or acknowledgment in civil society, according to jurisprudence and law. Rights serve as ground principles for human interaction, imposing limitations and obligations on the acts of individuals and communities. The majority of modern notions of rights are that all humans are provided universalistic and egalitarian rights. On the one hand, the notion of natural rights continues that there is a set of rights entrenched in nature that can't be legally amended via human power. The concept of felony rights holds that rights are human constructs, created through society, enforced through governments and subject to change. It is not typically regarded critical that a right must be understood by using the holder of that right, consequently rights may also be identified on behalf of another, such as kid's rights or the rights of human beings declared mentally incompetent to recognize their rights. However, rights have to be understood by way of any person in order to have criminal existence, so the perception of rights is a social prerequisite for the existence of rights. Therefore, instructional possibilities within society have a shut bearing upon the people's capacity to erect enough rights structures. Social, political, economic, legal, and moral rights are natural rights granted by using society and enforced via governments; a human character can't live on without them. Every human man or woman has certain fundamental rights, which follow equally to guys and women, and it is the state's responsibility to enforce these rights, with the courts preserving a shut eye on any abuses.

When a person is imprisoned, they do not lose all of their rights. They only lose a portion of their rights as a result of the confinement, while the remainder of their rights are retained.[4] A prisoner is someone who has their liberty taken away from them against their will. Confinement, captivity, or forcible restraint are all options for the prisoner. The word refers to people who are on trial or are serving a prison sentence.[5] Both national and international law control the rights of civil and military detainees. The International Covenant on Civil and Political Rights, the United Nations Minimum Rules for the Treatment of Prisoners, and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment are examples of international agreements[6] as well as the International Covenant on Civil

[4] A.K.Roy Vs Union of India and others, AIR 1982 SC 710

[5] www. Merriam-webster.com, Retrieved 2012-04-19

[6] . Howard Davis (2003),"Prisoners' rights", Human rights and civil liberties, Taylor & Francis, p. 157, ISBN 978-1-84392-008-3

and Political Rights of Persons with Disabilities. The rights of inmates are guaranteed by international conventions and the Indian Constitution, which have been adopted by legislatures such as The Prisons Act, 1894, and The Prisoners Act, 1900. The rights of inmates are also safeguarded and interpreted by the judiciary, such as the fact that they are still considered human beings and cannot be treated as slaves or subjected to confined labour, even when they are in prison.

1.2. Historical Evolution of Prisons

According to the Gita, God favours those who have no ill intent toward others, are friendly and compassionate, are free of egoism and self-sense, and are even minded in pain and pleasure and patient. It also claims that the virtues of nonviolence, truth, freedom from anger, renunciation and aversion to fault finding, compassion for living beings, freedom from covetousness, gentleness, modesty, and steadiness, which are all qualities that a good human being should possess, represent divinity in humans.Human rights were present in ancient Hindu and Islamic civilizations, just as they were in European Christian civilizations, according to the historical record of ancient Bharat. The names of Ashoka, the prophet Mohammed, and Akbar are inextricably linked to the history of human rights.

The social surroundings and stages of societal development influenced the formation of penal facilities, and the indirect reference to the judicial side of statecraft will aid in understanding the prison system and its evolution. Prisons in the shape of dungeons had existed in all the old kingdoms of the world since time immemorial. The punitive imprisonment was used extensively in Rome, Egypt, China, India, Assyria and Babylon and firmly established in Renaissance Europe. Even now, in India, jails are thought to be built solely to maintain law and order. However, it must be considered as a necessary tool of protecting and improving human life quality. Prison spending is still regarded as non-developmental. Indians have a complicated relationship with the United States because the majority of Indian prisoners have been subjected to severe hardship and forced recruitment into a criminogenic culture, they have few advocates on their own or on their behalf. In India, there is no rationalisation of prison reform. As a result, prisons were given the lowest priority in India's criminal justice system..[7] Under many dynasties, the prison circumstances were cruel and inhumane, the man

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

became a prisoner, his rights were reduced, and he became a slave. Various forms of punishment were used during ancient times. Prison conditions were altered from barbarous to reform and rehabilitation methods when the country gained independence.

1.2.1. Ancient Period

All of the traits of a scriptive social structure were present in ancient Indian culture. Many crimes and wrongdoings were considered sins, and they were punished both secularly and religiously. From the beginning of recorded history, India has had a well-organized prison system. Brahaspathi is known to have placed a larger emphasis on the confinement of criminals in closed prisons. The administration of justice was now not a factor of the state's obligations at some stage in the Vedic period. Murder, theft, and adultery are mentioned, however there is no proof that the monarch or an accepted officer performing as a choose rendered any judicial judgments in civil or crook matters. Some critics have cautioned that Sabhapati of the later Vedic duration may additionally have been a judge. [8]

The Dharma Sutras and Dharma Shastras (the earliest of which is Manu's, and other major Dharma Shastras include those of Yagnavalkya, Vishnu, and Narada) reveal a more or less fully evolved judiciary. In Ancient India, law or dharma was not a legislative measure; it was founded on Shrutis (hearings) and Smritis (scriptures) (remembrance). It was not imposed by the state, but by social acceptability or the fear of hell. The King was in charge, and it was his moral duty to punish the wrongdoers; if he failed to do so, he would be damned. We rarely come across the words prison or jailor in Sutras and Shastras. Early jails were just places of detention where an offender may be held until his or her trial, verdict, and execution. The concepts enunciated by Manu and elucidated by Yiijnu Valkya, Kautilya, and others formed the foundation of society in Ancient India. 30 Among the different sorts of corporal penalties, such as branding, hanging, mutilation, and death, the mildest type of sentence recognised in ancient Indian penology was imprisonment. Imprisonment was a common form of punitive punishment, and the Hindu texts urged that corporal

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

punishment be used. The evildoer was imprisoned in order to keep him out of society. The primary goal of jail was to keep wrongdoers apart from members of society so that they would not pollute them. These jails were pitch-black dungeons that were chilly and wet, unlit, and unheated. There were no basic sanitary arrangements in place, and there were no facilities for human habitation. Maintaining law and order in society, removing criminals or wrongdoers by force, and punishing the accused in public areas would instil fear in society's members. At the period, the penalty was particularly harsh and inhumane, such as forced labour and slavery. In his Arthashastra, Kautilya recommended that the prison be built in the capital and that men and women be housed separately. He was of the opinion that prisons should be built as close to the road as feasible so that the monotony of prison life, as well as the difficulties of prisoner life and wellbeing, could be greatly alleviated. He believes that every fifth day, certain prisoners should be released after paying a fine or receiving some other form of minor physical punishment, or promising to work for social betterment. He's also proposed a nationwide amnesty when a prince is born or a royal heir is crowned. Kautilya believed that social festivities were important. Kautilya believed that amnesty was appropriate at social festivals since it would attract others' attention. The birth day of the governing monarch, who inspects prison, aged inmates, sick people in the jail, or orphans experiencing imprisonment, was the third occasion for declaring prisoners free citizens. They were allowed to leave the prison grounds and live as free, law-abiding people. The tasks of the jailor, in accordance with Kautilya, are to preserve a watch on the movement of the prisoners and the correct functioning of the prison authority. If a prisoner by using danger 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.The higher authority might levy a fine of 500 rupees if the warden disrupts the prison life. The penalty in this state of affairs is the highest, i.e. one thousand rupees, because the prisoner is every now and then put to loss of life by means of the warder. Kautilya has studied jail life in depth and believes that a prisoner who escapes after bursting the prison walls has to be executed. This demonstrates that the detention center chief, Bandhanagaradhyaksa, used to be usually cautious and observant, and that no foul deed escaped his notice. In his Arthashastra, Kautilya claimed that the jailer's duties include providing facilities for convicts and imposing fines for failure to do so. He goes on to describe the state of the prisoner's string.

He goes on to explain that when convicts attempt to flee, they are subjected to harsh penalties. The inmates of the pre-Buddhist era were truly horrible. The inmates were confined in perilous conditions, with chains and heavy burdens, and were whipped on the smallest pretext. Whipping was a common punishment in ancient Europe and India, and even in the Middle Ages, criminals were mercilessly shackled and whipped from time to time. There was an unreformed prison in Ashoka's early years, where most of the conventional wicked tortures were applied and no prisoner survived. However, his moral edicts, which date from his final years. However, Buddhism affected his moral edicts, which were issued during his later reign. Many reform measures appear to have been implemented. Professor Ram Chandra Dikhitar suggests that Ashoka was familiar with the Arthashastra in his work 'Mauryan Polity,' because Ashoka mentions as many as twenty-five jail deliveries in the twenty-six years following his accession to the throne.[9]

1.2.2. Medieval Period

Medieval India's legal system was similar to that of ancient India. Modern Muslim rulers rarely interfere with the administration of justice on a day-to-day basis. During the Mughal Empire, the law's sources and character were mostly Quranic. The fact that the sole law recognised by the emperor and his court was Quaranic law, which had originated and matured outside India, added to the crudeness and inadequacy of the judicial institutions. Emperor Akbar survived the Brahmanic Courts and the Genetic Code, a loose collection of Sanskrit legal laws and religious injunctions. During the Mughal Empire, the sources of law and their character remained largely Quranic. Crimes were split into three categories: crimes against God, crimes against the state, and crimes against private individuals. Hadd, tazir, quisas, and tashir were the punishments for these offences.[10]

1.2.3. British Period

Under the British rule, human rights and democracy were suspect and socialism was an anathema. The British colonial period remains the Indian equal of the Dark Ages. Lord Macaulay rejected the historical Indian criminal political device as a dotage of

[9] V.R.Ramachandra Dikhistar, The Mauryan polity, Madras University Historical Series, No.21, 1953, pp. 173-176

[10] Sarkar Jadunath; Mughal Administration in India, Calcutta, 1935, pp. 114-117

brahminical superstition, and condemned historical criminal heritage and its internal care as a big apparatus of cruel absurdities. The Britishers passed Laws like The Regulating Act which used to be surpassed in 1773, Calcutta's Supreme Court used to be set up to deal with all civil, criminal, admiralty and ecclesiastical jurisdiction and indicated the intention of the British Government to introduce English Rule of legal guidelines and English superintendence of regulation and justice.The British colonial reign in India heralded the start of the country's crook reforms. The British penitentiary authorities labored to improve the prerequisites of Indian prisons and inmates. They made significant adjustments to the current jail system, taking into account the feelings of the indigenous people.[11]

The Fourth Committee was established on a pan-India basis in 1888. This committee was specifically formed to oversee the daily operations of the prisons. The paper addressed practically every aspect of jail internal management and established detailed guidelines for prison administration. The Committee suggested separating pre-trial detainees and categorising inmates into casuals and habituals. The majority of the Committee's suggestions were included into various provinces' jail manuals. The fifth all-India jail committee was created in 1892, and it reviewed the entire prison administration in India, recommending that the punishments for prison offences be separated from other prisoners and that convicts be classified as offenders or habitual. The Prisons Act, 1894, was approved after the British people accepted the committee's report. The statute established prisoner categorization, and an essential point to note is that the whipping sentence was discontinued. In 1866, the medical facilities offered to the convicts were enhanced, and greater amenities were provided to female captives to protect them from contagious sickness. Despite these advancements, prison policing remains the same. Despite these changes, the prison policy was reflected through the Act. The Reformatory School Act, surpassed in 1897, used to be a watershed second in India's prison reform history. The courtroom ordered the prison authorities to separate the juvenile offenders from the rest of the inmates. The Prisoners Act of 1900 hooked up the rights and responsibilities of inmates in prisons.

[11] Prof. N.V.Paranjape, Criminology and Penology, Central Law Publications, 12th Edition, 2006, p. 359

1.2.4. Post Independence Era

The first ten years after independence were defined by persistent efforts to improve jail living conditions. State governments established a number of Jail Reform Committees in order to achieve some level of humanization in jail circumstances and to place the treatment of convicts on a scientific footing. East Punjab Jail Reforms Committee, 1948-49, Madras Jail Reforms Committee, 1950-51, Orissa Jail Reforms Committee, 1952-55, Travancore and Cochin Jail Reforms Committee, 1953-55, and the Uttar Pradesh Jail Industries Inquiry Committee, 1955-56.

1.3. Prisoner Rights: Constitutional Perspective

The constitutionally protected fundamental rights are not absolute, and several limitations have been placed on their exercise. The right to personal liberty is one of the most crucial of the fundamental rights. When a person is condemned or imprisoned, he or she has a different status than a regular person. A prisoner does not have access to all of the essential rights that an ordinary person does. In several judgments, the Supreme Court of India and various High Courts in India have examined the scope. Before delving into these judgements, it's important to review the numerous constitutional provisions concerning prisoners' rights. Provisions of the Law there is no assurance that you will be successful. In statutory provisions there is no guarantee of prisoner's right as such in the Constitution of India. However, because a prisoner remains a ‘person' inside the prison, certain rights specified in Part III of the Constitution are available to them as well. The Supreme Court has now given the right to personal liberty a fairly broad interpretation. This right is available to everyone, including those who are incarcerated. The right to a speedy trial, free legal representation, and protection from torture[12] ,a person's right against inhumane and humiliating treatment follows them into prison. Article 14, which embodies the idea of equality, is one of the most important clauses of the Indian Constitution that is widely enforced by courts. Article 14's rule that "like shall be treated alike" and the idea of reasonable classification have proven to be very effective guides for courts in determining the category of convicts and their foundation for categorization in various categories.

[12] Sunil Batra v. Delhi Administration A.I.R. 1980

The citizens of India are guaranteed six liberties under Article 19 of the Constitution. Certain liberties, such as "freedom of movement," "freedom to stay and settle," and "freedom of profession, occupation, trade, or business," are not available to prisoners due to the nature of these freedoms and their confinement.

Other freedoms, such as "freedom of speech and expression," "freedom to join an association," and so on, can be exercised by a prisoner even while incarcerated, and the prisoner's detention or term has no bearing on these freedoms. However, these will be subject to the restrictions imposed by prison legislation.

In terms of prisoners' rights, Article 21 of the Constitution has been a major source of controversy. It exemplifies the concept of liberty. The Supreme Court of India has invoked this rule to preserve several important rights of inmates. After Maneka Gandhi case[13] This article has been used to combat arbitrary executive actions, particularly by jail authorities. Following that judgement, it was established that the deprivation of an individual's life and personal liberty must be done in a fair and reasonable manner. When prison officials have subjected convicts to severe treatment, the courts have intervened to preserve their rights, according to the history of judicial involvement in prison administration. Prison circumstances and the environment have become one of the most prominent subjects in correctional philosophy, generating concerns about inmates' rights and the future of prison life.

Previously, prisoners have been handled in prisons in a cruel and barbarous manner. ‘When a man or woman was once convicted, it was assumed that he had lost all of his rights. The jail neighborhood was once dealt with as a closed system, with no outsiders having entry to the convicts' affairs. Under the pretence of discipline, the officers were capable of inflicting harm on the captives. The extent of judicial overview of prison authorities' moves was severely limited. The courts had been hesitant to intervene in the affairs of the convicts, leaving the entirety to the executive's discretion but there was once a regular shift.

1.3.1. Right to Fair Procedure

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

When we look for the origins of the prisoner's right in India, we can discover the embryo in the well-known case of *A.K. Gopalan v. State of Madras*.[14] .

One of the petitioner's key arguments was that the phrase "process established by law" in Article 21 of the Constitution refers to a "fair and reasonable" procedure, not only a semblance of a system dictated by the government for the deprivation of life or personal liberty of individuals.

The overwhelming opinion in Gopalan was that when a person's personal liberty is completely taken away by a legal procedure, the fundamental rights, including the right to freedom of movement, are not available. It was held that there can be no ultimate or unrestrained liberty that is completely free of limitation, because such would lead to anarchy and disorder.

To protect the interests of society, constraints must be placed on the free exercise of individual rights in some instances; on the other hand, social control that exists for the general good must be controlled, lest it be misused to the harm of individual rights and liberties.

State of Maharashtra v. Prabhakar Pandurang was another significant judgement. In *Pandurang*[15]The court ruled that detention restrictions cannot be extended to include denial of other fundamental rights if the detention is justified. The government imprisoned the respondent in the Bombay district prison to prevent him from acting in a way that would jeopardise India's defence, public safety, or the maintenance of public order. While in prison, he wrote a novel in Marathi called "Anucha Antarangaat," which means "within the atom," with the approval of the authorities. The book was solely for scientific purposes, and it had no bearing on India's defence, public safety, or public order. The detention was imposed on the government as well as the Sue. The detainee requested permission to transmit the manuscript out of the jail for publication from both the government and the Superintendent, but both were denied. When the case was brought before the High Court, it was decided that there were no restrictions forbidding a detainee from sending a book outside the jail to be published. The High Court ruled that a citizen's civil rights and liberties were not infringed upon by a detention order, and that the detainee was always free to carry on

[14] A.I.R. 1950 S.C. 27
[15] A.I.R. 1966 S.C. 424

his activities within the confines of his custody. It went on to say that there were no rules banning a detainee from sending a book outside the facility for publication.The Supreme Court affirmed the High Court's ruling, holding that the circumstances governing a detainee's personal liberty restrictions are not privileges conferred on him, but rather the conditions under which his liberty might be restricted.

The Supreme Court stated categorically in *D. B. M. Patnaik v. State of Andhra Pradesh*[16] , that convicts are not deprived of all of their fundamental rights simply because they are detained. The petitioners were serving their sentences in Visakhapatnam Central Jail in Patnaik. They were also detained and on trial in the Parvathipuram Naxalite Conspiracy Case at the same time. The petition was filed to have the armed police officers stationed around the jail removed, as well as the live wires electrical gear mounted on the top of the jail wall dismantled. The Supreme Court ruled that a convict's right to personal liberty and several other fundamental freedoms cannot be completely taken away during his or her detention. The placement of police officers close outside the jail did not deprive them of any of their fundamental rights. The police officers who live on the empty jail grounds are not seen having access to the prison, which is surrounded by high walls. However, the court established several crucial rights for inmates, J. Chandrachud ruled: [17]

The right to personal safety in opposition to arbitrary police incursion is crucial to a free society, and prisoners cannot be put at the mercy of police officers as if it has been an unwritten law of crimes. Such invasions go against the primary foundations of a device of regulated liberty. The petitioners also questioned the installation of high-voltage wires set up on the pinnacle of the compound wall. Regarding this the court docket held that the prisoners can't whinge of the installation of the live-wire mechanism with which they are probable to come into contact only if they try to break out from the prison.

According to the court, the petitioners had no chance of coming into contact with the electrical gadget while going about their usual tasks. Whatever the nature and scope of the petitioners' basic rights to life and personal liberty, they do not have a fundamental right to flee from lawful detention.

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[16] A.I.R. 1974 S.C 2093
[17] A.I.R. 1974 S.C. 2092

The court has determined that the petitioners' basic rights may not easily fit into the traditional mould of fundamental freedoms. In 1966 and 1974, there was a trend away from Gopalan in terms of the availability of fundamental rights to convicts. Even though the courts in Gopalan did not intervene in detention proceedings, there was a steady shift. However, the courts did not provide much relief to the detainees in their actual verdicts. Even breaking the law's procedures, as outlined in the Prisons Act or Jail Manuals, did not entitle inmates to any redress.

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

The court docket notices that there had been refined forms of punishment to which convicts and under-trial prisoners are now and again subjected to. These barbarous relics of a bygone technology offended the letter and spirit of the Constitution. The matters complained of did not amount to deprivation of the right to existence and liberty in Patnaik and the plea of the prisoners have been dismissed.

1.3.2. Personal Liberty

In *Kharak Singh v. State of Uttar Pradesh*[18], the Supreme Court had to analyse the relationship between Articles 19 and 21 and the rights of prisoners.The Supreme Court contrasted Article 21 of the Constitution with the Fourth and Fourteenth.

When we look for the origins of the prisoner's right in India, we can find the embryo in the famous case of *A.K. Gopalan v. State of Madras*. One of the petitioner's key arguments was that the phrase "process established by law" in Article 21 of the Constitution refers to a "fair and reasonable" procedure, not only a semblance of a system dictated by the government for the deprivation of life or personal liberty of individuals.

[18] AIR 1963 SC1295

The overwhelming opinion in Gopalan was that when a person's personal liberty is completely taken away by a legal procedure, the fundamental rights, including the right to freedom of movement, are not available. It was held:

There can be no unlimited or unrestrained liberty that is completely free of limitation, because that would lead to anarchy and turmoil. To protect the interests of society, constraints must be placed on the free exercise of individual rights in some instances; on the other hand, social control that exists for the general good must be controlled, lest it be misused to the harm of individual rights and liberties.

State of Maharashtra v. Prabhakar Pandurang was another significant judgement. In Pandurang[19] The court ruled that detention restrictions cannot be extended to include denial of other fundamental rights if the detention is justified. The government imprisoned the respondent in the Bombay district prison to prevent him from acting in a way that would jeopardise India's defence, public safety, or the maintenance of public order. While in prison, he wrote a novel in Marathi called "Anucha Antarangaat," which means "within the atom," with the approval of the authorities. The book was solely for scientific purposes, and it had no bearing on India's defence, public safety, or public order. The detention was imposed on the administration and the Supreme Court. The detainee requested permission to transmit the manuscript out of the jail for publication from both the government and the Superintendent, but both were denied. When the case was brought before the High Court, it was decided that there were no restrictions forbidding a detainee from sending a book outside the jail to be published. The High Court ruled that a citizen's civil rights and liberties were not infringed upon by a detention order, and that the detainee was always free to carry on his activities within the confines of his custody. It went on to say that there were no rules banning a detainee from sending a book outside the facility for publication. The Supreme Court affirmed the High Court's ruling, maintaining that the occasions governing a detainee's private liberty restrictions are no longer privileges conferred on him, however rather the stipulations under which his liberty may be restricted.

In *D. B. M. Patnaik v. State of Andhra Pradesh*[20], the Supreme Court stated unequivocally that criminals do not lose all of their fundamental rights simply because

[19] A.I.R. 1966 S.C. 424
[20] A.I.R. 1974 S.C 2093

they are incarcerated. The petitioners were serving their sentences in Visakhapatnam Central Jail in Patnaik. They were also detained and on trial in the Parvathipuram Naxalite Conspiracy Case at the same time. The petition was filed to have the armed police officers stationed around the jail removed, as well as the live wires electrical gear mounted on the top of the jail wall dismantled. The Supreme Court ruled that a convict's right to personal liberty and several other fundamental freedoms cannot be completely taken away during his or her period of incarceration. The placement of police officers close outside the jail did not deprive them of any of their fundamental rights. The police officers who live on the empty jail grounds are not seen having access to the prison, which is surrounded by high walls. However, the court established several crucial rights for inmates, J. Chandrachud ruled: [21]

The right to personal protection in opposition to arbitrary police incursion is imperative to a free society, and prisoners cannot be put at the mercy of police officers as if it has been an unwritten law of crimes. Such invasions go against the basic foundations of a device of regulated liberty.

The petitioners additionally puzzled the installation of high-voltage wires installed on the pinnacle of the compound wall. Regarding this the courtroom held that the prisoners can't whinge of the installation of the live-wire mechanism with which they are in all likelihood to come into contact only if they try to break out from the prison. According to the court, there was once no opportunity of the petitioners coming" into contact with the electrical machine in the normal pursuit of their everyday chores. Whatever the nature and scope of the petitioners' basic rights to life and personal liberty, they do not have a fundamental right to flee from lawful detention.

The court has determined that the petitioners' basic rights may not easily fit into the traditional mould of fundamental freedoms. In 1966 and 1974, there was a trend away from Gopalan in terms of the availability of fundamental rights to convicts. Even though the courts in Gopalan did not intervene in detention proceedings, there was a steady shift. However, the courts did not provide much relief to the detainees in their actual verdicts.

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

Even breaking the law's procedures, as outlined in the Prisons Act or Jail Manuals, did not entitle inmates to any redress.

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

The court points out that criminals and pre-trial detainees are sometimes subjected to subtle types of punishment. The letter and spirit of the Constitution were both insulted by these barbaric remnants of a bygone period. In Patnaik, the items complained of did not constitute a deprivation of the right to life and liberty, and the convicts' appeal was denied.

1.4. Extent of Judicial Interference

There may be situations when inmates are forced to go to court to seek redress of their concerns. Is it possible for a court to intervene in a jail's treatment of inmates and order a fair procedure? What recourse does a condemned individual have if his or her fundamental rights are violated by the actions of prison authorities? The Supreme Court in *Charles Sobraj v. Superintendent, Central Jail, Tihar*[22] analysed in detail the extent of judicial interference.

The Supreme Court emphasised not just the courts' right to issue writs, but also its responsibility and authority to ensure that the legal warrant was not abused. The fundamental rights provided to people under the Indian Constitution should be used to safeguard inmates from arbitrary and discriminatory treatment by prison authorities.

The Supreme Court ruled in Charles Sobraj that prison authorities are justified in distinguishing dangerous and ordinary prisoners. The court dismissed the petition since the petitioner was not placed in solitary confinement in this case.

The contrast between being "under trial" and being "convicted" is reasonable, because the petitioner is now a convicted person. Inside a prison, a slacker attitude on security is a professional risk.

Though the petitioner's plea was denied, the court did make some interesting observations about the role of Articles 19 and 21 in a prison setting. The Supreme

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

Court's Krishna Iyer remarked, when faced with inhumane detention conditions, the court's responsibility is enlarged. True, the right to life encompasses more than just animal survival or vegetable sustenance. True, even in a prison context, the value of the human person, as well as the dignity and divinity of each individual, inform articles 19 and 21. Wherever possible, true constitutional provisions and local regulations must be read in light of national normative laws, and a prisoner's Part III rights are not forfeited.

When it comes to the rights available to a prisoner, the Supreme Court has correctly stated that imprisonment does run: fundamental rights are a thing of the past, though the courts may refuse to allow in full the fundamental rights enjoyed by free citizens. The court made it clear that inmates' claims against cruel and unusual punishments do not have to be based on specific constitutional provisions barring such treatment for them to be valid.[23]

As a result, it is clear that Charles Sobraj is a seminal case in the field of "prisoner rights jurisprudence." The court expanded the extent of judicial interference in prison administration as a result of this case.

In Francis *Coralie Mullin v. The Administrator, Union Territory of Delhi*[24], the Supreme Court had another opportunity to advance human rights in the sphere of criminal law.

The right to existence covered by using Article 21 is no longer restricted to the proper to physical existence; it also encompasses the proper to use each faculty or limb via which existence is enjoyed, as properly as the right to live with fundamental human dignity. The Supreme Court stated that the right to have interviews with family and pals is a integral thing of the right to life, and that no prison legislation or system regulating the right to have interviews with household and buddies can be upheld as constitutionally legitimate underneath Articles 14 and 21, unless it is reasonable, truthful and just. Justice Bhagwathi further pointed:

Even if this dilemma is seen through the lens of the right to personal liberty inherent in Article 21, the freedom to conduct interviews with members of one's family and friends is plainly part of the personal liberty' granted 'under' that Article. The term "personal liberty," as used in Article 21, has the broadest meaning and includes the freedom to socialise with family and friends, subject to any lawful prison conditions,

[23] A.I.R. 1978 S.C. 1594
[24] A.I.R. 1981 S.C. 74

which must be reasonable and non-arbitrary under Articles 14 and 21. If any jail law or procedure governing the right to have interviews with family and friends is arbitrary or unfair, it will be declared unconstitutional for violating Articles 14 and 21. The state cannot deprive someone of their right to live in basic human dignity, whether through legislation or otherwise. The Constitution forbids torture and other cruel, inhumane, or humiliating treatment or punishment that violates human dignity. As a result, the Supreme Court elevated protection from torture and degrading treatment to the status of a basic right under Article 21, despite the fact that it is not directly mentioned in the Constitution.[25]

The fact that the petitioner was not an Indian citizen had no bearing on the Supreme Court's decision. Human rights are universal, as evidenced by the Supreme Court's affirmation of this notion in this case. The court's sensitivity to the pervasive character of human rights is clear in its expansion of the definition of "life" to include human dignity. The depth of knowledge extended beyond the words to the substance, and it is now a component of Indian constitutional law.

1.4.1. Sunil Batra Cases

The above-mentioned verdicts raised public awareness regarding the rights of prisoners. Except for the creation of several Prison Reform Committees, the Central Government and State Governments have made no significant improvements. Despite this, the Supreme Court has made steps to humanise prison administration to some degree. Sunil Batra's two lawsuits are crucial steps in this regard.[26]

The petition in Sunil Batra(I)[27] was filed by two inmates confined in Tihar Jail challenging the legality of Sections 30[28] and 56[29] of the Prisons Act. Sunil Batra, a death row inmate, appealed his solitary confinement sentence. Charles Sobraj, a French national and then an undertrial prisoner, contested the superintendent of jail's decision to place him in bar felters for an exceptionally extended period of time,

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

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

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

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

[29] 1 Id. , Section 56 reads:"Whenever the Superintendent considers it necessary (with reference either to the state of the prison or the character of prisoners) for the safe custody of any prisoners that they should be confined in irons, he may, subject to such rules and instructions as may be laid down by the Inspector General with the sanction of the State Government, so confine him.

beginning from his detention date. The judges hearing the cases, Chief Justice M.H. Beg, V.R. Krishna Iyer, J., and P.S.Kailasam, J., visited the Tihar Central Jail at some time during the hearing. The court ruled against the petition. However, the court has ensured that the petitioner be treated fairly inside the institution through a series of interim measures. According to the Supreme Court,[30]:

Convicts do not have all of their fundamental rights taken away from them. The prisoner and the Constitution cannot be separated by an iron curtain. Unless their liberty has been legitimately restricted, prisoners are entitled to all constitutional rights. However, the nature of things dictates that a prisoner's liberty is limited by the fact of his incarceration. His interest in the minimal liberty he has is heightened as a result. Conviction for a crime does not turn a person into a non-person whose rights are subject to the whims of the jail administration, so any severe punishment imposed inside the prison system is contingent on compliance of procedural safeguards because their fundamental rights are restricted by the nature of the system to which they have been lawfully committed, prisoners are unable to enjoy the complete range of fundamental rights simply by being incarcerated.

The Supreme Court held in this case that offenders do not lose all of their fundamental rights just because they have been convicted. The prisoner's fundamental liberties, such as the right to roam freely throughout India and the right to practise a profession, are revoked as a result of his conviction.

In Sunil Batra (II)[31] which arose from a letter written by Sunil Batra to one of the Supreme Court judges alleging that a warden in Tihar Jail had caused bleeding injury to a convict named Prem Chand by forcing a stick into his anus, the court liberalised the procedural rigidities of the writ of habeas corpus and used the writ, following American cases, for the oversight of state penitentiaries. The Supreme Court recognised Batra's letter as a habeas corpus petition and issued a writ to the Lieutenant Governor of Delhi and the Superintendent of Central Jail, directing that they release Batra. On this premise, the Supreme Court accepted Batra's letter as a habeas corpus petition and issued a writ to the Lieutenant Governor of Delhi and the Superintendent of Central Jail, ordering that Prem Chand not be tortured and that the lesion on his person be treated properly.

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

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

In this case, Justice Krishna Iyer openly acknowledged the judicial process' activist policymaking role in the humanisation of the prison system, particularly in light of legislative laxity, and stated, "Of course, new legislation is the best solution, but when law-makers take far too long for social patience to suffer, as in this case of prison reform, courts have to make-do with what they have.".

The court issued a number of recommendations for humanist improvements of the criminal justice system and prison administration. The Supreme Court has ruled that a prisoner's treatment must be proportionate to his sentence and meet the requirements of Articles 14, 19, and 21 of the Constitution. It broadened the scope of the writ of habeas corpus by acknowledging a prisoner's right to use it to challenge jail abuses perpetrated on him or a co-prisoner. In addition, the court issued a number of directives aimed at improving prison administration.

Judicial intervention in prison administration is not now prohibited; on the contrary, it is necessary and desirable in order to check arbitrary actions by jail administrators. The pillars of inmates' rights are habeas corpus powers and administrative procedures.[32]

At the right moment, the convicts can bring the matter to the notice of the courts. For example, if a person condemned to simple incarceration with ‘B' class treatment is subjected to rigorous improvement with ‘C' class treatment by the jail authorities, or if a prisoner is subjected to violent treatment, the prisoner might seek remedy from the court.

The judges' post-conviction visits to the prison will have numerous positive outcomes. They lessen the likelihood of the jail officials being spiteful and assist the prisoner in receiving appropriate treatment. The visits allow judges to observe the impact of a particular penalty on the victims. The visits allow judges to watch the effects of a particular sentence on the criminal, to learn first hand whether or not it aids in criminal reform, and to gain insight into how they should behave in the future to ensure that the prison system functions effectively. Justice Krishna Iyer provided a new dimension to the sentencing power of courts by emphasising the sentencing court's role to visit prisons and monitor inmates' sentences. The court's efforts to reduce jail injustice were not hampered by popular prejudice against offenders. The court said unequivocally that conviction, no matter how horrible the crime, did not

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

turn a person into a non-person. While incarceration would take away the convict's personal liberty, his fundamental right would not be immediately revoked.

1.5. New Dimensions of Reformative Jurisprudence

The goals of punishment justify the restrictions placed on a prisoner's right to travel freely inside the confines of the prison. However, because inmates are entitled to fundamental rights, the limits should be proportional to the correctional system's operation. If the criminal is likely to become more sociopathic than he was before the sentence, the court can order treatment standards to be followed by the jail administration. Justice Krishna Iyer, in L. *Vijayakumar v. Public Prosecutor*[33]

The importance of keeping juvenile first-time offenders separate from hardened criminals in prison, so that the former can be reformed into better citizens, was emphasised. The session court in Vijayakumar condemned all of the accused persons, all of whom were around seventeen years old, to two years in prison for stealing a bank using the non-violent use of crude firearms and country bombs. The sentence was increased to seven years in jail by the High Court. Despite the fact that the Supreme Court's complete bench did not intervene in the sentence, Justice Krishna Iyer provided many suggestions for the treatment of prisoners in order to lessen their criminal tendencies. The court, according to Justice Krishna Iyer, is responsible for ensuring that punishment serves social defence.

If the retributive theory, which is merely vengeance disguised, is to vanish and deterrence as a punitive goal is to succeed, it must be achieved not through the hardening practise of inhumanity inflicted on prisoners, but through reformation and healing, whereby the prisoner's creative potential is unlocked. These values are rooted in Article 19 of the Constitution, which allows for the deprivation of liberties if they are used to offer a legitimate service to the state's social defence, public order, and security.

The objective of incarceration is not to hand over a person to the jail authorities for a vengeful punishment. Confinement is the penalty, and it must be carried out in accordance with the law. A judge's job isn't done once he or she has decided on the accused's guilt and handed down a sentence of punishment. The judge has a bigger role to play in this case.

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

Justice Krishna Iyer advocated for positive rehumanisation initiatives such as meditation, music, arts of self-expression, games, constructive work with pay, prison festivals, family visits, and even participatory jail projects and restricted community life in Sunil Batra(I) He explained, "The roots of our Constitution lie deep in the finer spiritual sources of social justice, beyond the melting pot of bad politicking, feudal cruelties, and sublimated sadism, sustaining itself by profound faith in man and his latent divinity, and the confidence that "you can accomplish by kindness what you cannot do by force," and it is for this reason that the Prison Act provisions and the Jail Manual must be revised to reflect their deeper meaning in the behavioural norms, correctional attitudes and human orientation for the prison staff and prisoners alike.

The judges in the Sunil Batra case were united in their support for a modification in the legislation. The importance of having the Jail Manual available to the inmates was emphasised. According to the court, a decision on whether or not to put a prisoner in bar fetters under the authority of Section 56 of the Prisons Act 1894 must be determined after consideration of the unique and exceptional features of each instance. The nature and length of each sentence, as well as the gravity of the crime committed by the prisoner, appear to be irrelevant to the goal. Continuously putting prisoners in bar fetters for a long period of time is a harsh and unusual punishment that offends the spirit of the Constitution.

Prison is a place of not just imprisonment and deterrence, but also of rehabilitation and refinement.[34] The idea that the sentencing court has a duty to visit prisons at regular intervals and ensure that convicts are treated according to the law and in accordance with the rules of modern penological and correctional systems is revolutionary. If a convicted person's rights are violated in prison, there must be a system in place in the sentencing court for receiving complaints. The current method of punishing people and then forgetting about them should be changed. If the judiciary has a say in how offenders are treated in prison, effective improvements in prison justice administration are conceivable.

In the legal profession, there is a well-known adage that "justice delayed is justice denied." It is implied in Article 21's substance since no method can be reasonable, fair, or just if it refuses the accused a timely trial. The Supreme Court in Hussainara

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

Khatoon[35] prisoners can demand a fast trial, despite the fact that it is not an expressly defined fundamental right. The state has a constitutional obligation to take all necessary steps to ensure the accused's constitutional right to a speedy trial, and the state cannot be allowed to deny this right on the grounds that it lacks sufficient financial resources to spend on improving the administrative and judicial apparatus in order to ensure speedy trial.

The court, in its desire to defend and enforce this right to a quick trial, went on to say that the court has the authority to enforce this right by giving relevant instructions to the state, which may include taking proactive action geared to assure speedy trial. As a result, the court took an activist stance and took constructive initiatives. All people have the right to file a complaint with a judicial forum for redress of their grievances. If that right is denied, it will be a violation of the Constitution's Article 21 guarantee of due process.

The important question in *M.H Hoskot v. State of Maharashtra*[36] The question was whether the right of appeal is a necessary component of the fair procedure envisioned in Article 21 of the Constitution. In Hoskot, a Reader from Saurashtra University was found guilty of attempting to award fake university degrees. The person was sentenced by the session court till the court rose. The High Court ruled that the punishment was too light and sentenced him to three years in prison. Against this harsh punishment, the defendants sought special leave to appeal to the Supreme Court. The High Court decision was handed down in 1973, and it took four years for the special leave petition to be filed.During this time, the petitioner has served his entire sentence of jail. A thorough investigation by the Supreme Court established that the High Court swiftly forwarded a free copy of the judgement, intended for the applicant, to the Superintendent, Yervada Central Prison, Pune. The petitioner was satisfied that he had not received the copy. There was no record of his signature as a sign of acceptance of the High Court's decision. The special leave petition was denied by the court. The Supreme Court slammed the Sessions Court's decision to give the prisoner a nominal punishment as part of the remedial portion of the sentence. The court observed[37]:

[35] A.I.R. 1979 S.C. 13607 A.I.R. 1969 S.C. 1369; A.I.R. 1979 S.C. 1377
[36] A.I.R. 1978 S.C. 1548
[37] A.I.R. 1978 S.C. 154

The criminological foundation of punishment is social defence. The trial decision has made a big difference between correctional processes to prison cure and nominal punishment that techniques decriminalisation of full-size social offences.

The Supreme Court criticised the silent denial of liberty in imprisonment caused via unreasonableness, arbitrariness, and unfair procedures. The Supreme Court stated unequivocally that such methods should be prohibited under Article 21. For all lovers of liberty and judicial sentinels, the words "procedure established by law" have a special importance. Procedure refers to a fair and reasonable procedure that complies with civilised norms such as natural justice, which are firmly anchored in the law.[38]

Following this logic, Justice Krishna Iyer declared that the mechanism for regulating, restricting, or even rejecting a basic right under Article 21 must be fair, not foolish, and deliberately structured to effectuate, not subvert, the substantive right itself. Anything arbitrary, weird, or bizarre must be ruled out by procedure. The necessary element of liberty is procedural safeguards. The right to a hearing has a human right ring to it, and the history of personal liberty is primarily the history of procedural safeguards. Article 21 of the Constitution defines procedure as "fair," not "normal." Law is "reasonable," not "any enacted component."[39]

Natural justice is a necessary component of a fair trial, as defined by Article 21. As a result, if a right of appeal is guaranteed by law, it becomes an essential aspect of a fair procedure.

In Hoskot, the Supreme Court held that the constitutional obligation under Article 21 read with Article l9(l)(d) gives a prisoner serving a sentence inside a jail certain rights. The ‘rights established in this instance can be stated as follows:

The court has the most crucial responsibility when a person is sentenced to prison, the court is required to provide a free copy of the verdict. If an appellate, revisional, or other court sends such a copy to the jail authorities for distribution to the prisoner, the official in charge must ensure that it is delivered to the sentence and then acquire a formal acknowledgement from him.

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

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

It is not uncommon for a prisoner to desire to appeal his or her sentence. Every facility for the exercise of that right must be made available by the jail administration where the prisoner wishes to file an appeal or revision. There are a variety of situations in which a prisoner is unable to hire an attorney owing to factors such as indigence or difficulty communicating with outsiders..

In such instances, the court is required to appoint competent counsel for the prisoner's defence unless the party objects. When a deprivation of life or personal liberty is in jeopardy, these standards apply from the lowest to the highest court.

Two of the rights stated are particularly important in Hoskot. The first criterion is that the prisoner receives a copy of the judgement in time to submit an appeal, and the second requirement is that a prisoner who is impoverished or otherwise unable to obtain legal help receives free legal counsel when the interests of justice require it. If we give a broad definition, both of these are state tasks. If we apply a broader meaning to Article 21, both of these are state responsibilities.

The Jailor's distribution of a copy of the verdict to the prisoner in Hoskot raises some suspicions. The latter's written acknowledgement serves as a basic confirmation of delivery. Any jailer who withholds the copy due to indifference or malice thwarts the legal process and violates Article 21. Section 363 of the Criminal Procedure Code was added to give effect to the notion expressed in Article 21. These concepts will also have to be modified in 32 jail manuals.A lawyer's service is one of the essentials of a "fair procedure" for a prisoner who must seek his release through the court system. Articles 21, 22 and 39A of the Constitution make it mandatory to provide free legal assistance to the poor.[40] Article 39A is a necessary instrument for Article 21 to work.. Through section 304 of the Criminal Procedure Code[41] Some of the concepts outlined in Article 39A of the Constitution have been implemented by the legislature.

In Maneka Gandhi[42], it has been established that personal liberty cannot be taken away or restricted without due process. Enough evidence has been presented to show that a prisoner deprived of his liberty by a court sentence but eligible to appeal can

[40] Article 39A reads:"The state shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities".

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

[42] 5 AIR 1978 SC 597

claim, as part of his Article 21 protection and implied in his statutory right to appeal, the "essential" concomitant right to counsel to prepare and argue his appeal.

In Hoskot, the Supreme Court expanded the reach of Article 21 to include prisoners' rights. The court ordered the government to offer free legal assistance to the accused at taxpayer money. The Court held[43]:

The state has a constitutional obligation to offer free legal assistance to an accused individual who is unable to obtain legal services due to indigence, and the state must do whatever is required to fulfil this obligation.

Another question raised in *Khatri v. State of Bihar*[44], The question was whether the state was responsible to compensate the blinded convicts for a violation of their constitutional rights under Article 21. It was argued that the blinded convicts' eyesight was taken away by police officers who were government employees operating on behalf of the state, and that because this was a violation of Article 21 of the Constitution, the state was obliged to compensate the blinded prisoners. Article 21 implied the need to compensate a person robbed of his life or personal liberty in a manner other than that prescribed by law. The court was hesitant to provide injunctive relief. The court held:

The petitioners will obviously be unable to obtain remedy under Article 32 unless they can show that their fundamental right under Article 21 was infringed, and in order to do so, they must show that they were blindfolded by police officials at the moment of arrest or while in police custody. Some of the Indian Supreme Court's decisions, which emphasise the rights of convicts and the obligation to treat them in accordance with those rights, are significant milestones on the road to new penological aims for a corrective and reformative penal justice system. They will not allow the prison gates to remain closed indefinitely against a system of humane prisoner treatment and adequate judicial oversight of such a system. In the late 1970s and early 1980s, it was Prabhakar Pandurang who inspired and led the way in a flurry of cases involving solitary confinement.

Hoskot, the two Sunil Batra cases, and the Francis Coralie Mullin ruling were all just extensions of the Prabhakar Pandurang premise. The current trend is for the judge to have an effective supervision role over the treatment of convicts in prison even after they have been convicted. When a person is imprisoned, he loses some of his

[43] AIR 1975 SC 1548

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

fundamental rights, such as the freedom to roam around and create associations. Even inside the prisons, inmates have the right to claim residuary fundamental rights. The state has a constitutional duty to respect and preserve their rights, which include the right to life and human dignity.

1.6. CLASSIFICATION OF PRISONERS: PROBLEMS AND PERSPECTIVES

One of the goals of prison administration is to wean the offender away from future wrongdoing and reintegrate him into society in a safe and beneficial manner. The classification of inmates on scientific lines is critical to achieving this goal. Individualized treatment, which is how prisons today try to achieve their basic goals, is impossible without such classification. According to their particular capacities and needs for reform and rehabilitation, classification will allow the prison administration to provide different sorts of therapy to different categories of offenders. Even early prison reforms have shown that when criminals are packed together, regardless of their crime specifics, the worst psychological problems are certain to occur. Any attempt to remove or limit criminal proclivities will fail without a thorough understanding of the crime's history, including the criminal's family background, way of life, education, culture, and other facets of his or her existence. These objective features serve as the foundation for various sorts of care for different groups of convicts in terms of food, accommodation, labour assignments, relaxation, intellectual and reformatory courses, and so on. The categorising of inmates serves a variety of purposes. It allows prison officials to examine the criminal as a whole and design an overall, balanced, integrated, and tailored training and treatment programme for him or her. It guarantees that the institution's and community's resources and treatment facilities are used to their full potential. Scientific classification is thus the basis of individualized correctional treatment, which includes proper custody, discipline and work assignment.

The benefits of categorisation must also be considered. It enables better supervision and control in the custodial setting. Better categorisation leads to higher productivity and discipline. Another benefit is a more efficient organisation of all training and therapy. Age, sex, physical and mental condition, educational and vocational training demands, and possibility for reformation and rehabilitation should all be factors in jail categorization. In addition, elements such as the nature of the crimes, motives, provocations, the offender's prior history, his "social processing," and his

"sophistication in crime" should be considered while determining his graduation in detention and suitable treatment. The court assigned a broad classification based on the kind and quantity of offences committed. In practise, classification has devolved into a mechanical activity and a habit. Some modern criminologists believe that the type of crimes should not be considered when classifying convicts, arguing that the nature of a person's crime is not a gauge of his rehabilitation ability.As Barnes and Teeters put it[45]:

The cause of classification is to distinguish between offenders in terms of their capability for rehabilitation, independent of the crime for which they are serving a sentence.

It can't be refuted that the nature of a person's crime is now not a predictor of his rehabilitation prospects. Nonetheless, the form of crime has to be pretty taken into consideration for the motive of classification of offenders in jail, in order to keep away from the negative results of an overoptimistic appraisal of the criminal, as nicely as uncontrolled mixing and subsequent contamination. If a prisoner convicted of organised crime is saved with first-time offenders, the chance of contamination and deterioration of communal life stays high. As a result, the type of crimes should be considered while classifying inmates. The observation of an eminent criminologist Austin Mc Cormick is very significant in this context, when he says[46]:

Scientific classification and programme planning on the basis of complete case histories, examinations, tests and studies of the individual prisoners will promote a high degree of morale and efficiency. For that psychiatry and psychological services can be utilized.

Scientific classification of prisoners has been accepted as sum essential element of the modern prison system throughout the world. It should be adopted in the administration of prisons in India. However, it is often argued that scientific classification involves. Huge expenditure as it requires a large number of professional personnel in prison administration.

The existing Jail Codes of several States and Union Territories provide for the segregation of inmates based on their age, sex, criminal antecedents, nature and terms of incarceration, physical and mental problems, and other factors. These minimum

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

[46] Austin Mc Cormick, "The Prison‘s Role in Crime Prevention", 41 Journal of Criminal Law and Criminology 43: at p. 54

regulatory standards, while insufficient for scientific classification, are more frequently broken than followed. In the words of the All India Committee on Jail Reforms (1980-83), "this feature is lucidly underscored by the current All India Committee on Jail Reforms:

Criminal and non-criminal lunatics, under trial prisoners, prisoners sentenced to short, medium, and long terms of imprisonment, prisoners sentenced to simple imprisonment, habitual offenders, lifers, hardened and dangerous prisoners, children, young offenders, women offenders, civil prisoners, prisoners sentenced by court martial, criminal and non-criminal lunatics, detainees under the National Security Act.[47] The Committee went on to say that factors including overcrowding and a high rate of prisoner turnover trump all segregation principles and standards, and that segregation has essentially become a paper provision.

1.6.1. Adoption of Classification

Today, an increasing number of people believe that it is the prison's responsibility to assist convict reformation. If nothing is done to help them while they are in prison, many of them will become even more hazardous to life and property once they are released. The prisoner's treatment must assist him in changing his methods of thinking and attitudes, as well as prepare him for a constructive job. The classification of inmates should make achieving these goals easier.

Under the Prisons Manual, the classification program's goals are as follows:

(i). the investigation of the offender as an individual in order to comprehend the chronology of his illegal behaviour and the issues he faces;

(ii). to arrange inmates into homogeneous groups for treatment purposes;

(iii). to plan a customised training and treatment programme;

(iv). to build a system of constructive institutional discipline and to coordinate and integrate all institutional activities;

(v). to guarantee that the institution's resources and facilities are used to their full potential;

(vi). to assess the inmate's response to institutional activities in order to tailor the programme to his needs.

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

There is a classification committee in India, and the classification and reclassification procedure should be phased out over time. Prisoners should be categorised based on their age, physical and mental health, sentence length, criminality level, and character. The sequence of the offender's criminal behaviour, the sophistication of his crimes, his urban and rural backgrounds, the requirements of gradations in custody, as well as his vocational and educational demands, must all be taken into account. As a result, first-time offenders should not be mixed up alongside seasoned criminals. If they are not handled individually, deviants will become spoiled, and jails would become breeding grounds for young criminals.

In India, inmates have complained about non-categorization under several headings, such as persistent criminals, first offenders, and so on.

In England, inmates are divided into groups based on the criteria below.[48]:

(i). Prisoners, both male and female:

(ii). Civil and Criminal Prisoners;

(iii). Remand and Sentenced Prisoners;

(iv). Adult and Young Prisoners;

(v). Stars and Ordinaries

However, for a variety of reasons, the classification procedure in England is rarely strictly followed. In reality, the classification of convicts and the uses to which they are put are influenced by expediency and system pressure, which leads the system to accept solutions that are convenient rather than ideal. Treatment of those who are imprisoned in prison due to a court order is likewise covered by the law. Unconvicted prisoners are kept as far away from convicted criminals as possible.[49] An optimal correctional programme requires proper classification of offenders for the sake of treatment. The implementation of sophisticated classification systems in prisons is primarily aimed at achieving this goal.

1.6.2. Judicial Attitude in India

In India, many categorization standards are used to classify inmates. It is decided on the basis of a prisoner's gender, age, and the nature of the punishment he or she has received. In India, inmates are divided into A Class, B Class, and ordinary prisoners, as well as female prisoners, juvenile prisoners, lunatics, civil prisoners, prisoners on

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

[49] J D. Mclean and J.C. Wood, Criminal Justice and Treatment of Offenders (1969), p.100

trial, and convicts sentenced to death. If a prisoner has a contagious disease, he should not be placed in the same cell as other inmates. Not only are unconvicted from convicted female inmates classed and divided, but also adolescent from older inmates, habitual from non habitual, and prostitutes from respectable women. Female prisoners are protected in a variety of ways. Except for release, transfer, or presence at court, or under the Superintendent's order, they are not allowed to leave the female-only enclosure. Female inmates are also classified in this way under the Prisoners Act of 1900. If a male prisoner is under the age of twenty-one, he must be handled differently from other inmates.

As previously stated, civil and criminal prisoners, as well as those who have been convicted and those who are still awaiting trial, are all treated differently. If the circumstances warrant, further classification of convicted criminal prisoners can be made. Convicted criminal prisoners can be held in groups or individually in cells, or in a combination of both. As a result, Section 28 of the Prisoners Act authorises the jail Superintendent to segregate condemned inmates, putting them in separate cells and restricting their movements in order to preserve prison discipline.

In K.Valambal v. State of Tamil Nadu[50] the constitutional legality of Section 28 of the Prisoners Act, which authorises such classification, was called into doubt. It is a watershed moment in the categorisation of inmates. The Madras High Court's Justice Gokulakrishnan and Justice Venugopal held that the categorisation of inmates does not violate Article l4 of the Constitution.

The petitioners were caught in Valambal engaging in actions including as indoctrinating other inmates by advocating a programme of violence and annihilation of the wealthy, as well as plotting to flee the jail. The petitioners, according to the court, formed a class by themselves. In terms of security considerations, their separate classification was not arbitrary. As a result, the jail officials' actions did not violate Article 14 of the Constitution.The jail superintendent's disciplinary segregation cannot be classified as solitary confinement as defined by Section 73 of the Penal Code, nor can it be classified as cellular confinement or separate confinement as defined by Sections 46(8) and 46(10) of the Prisons Act as punishment for prison offences.

In Madhukar Bhagwan Jambale v. State of Maharashtra[51], the prisoner questioned the designation of inmates as class I and class II on the basis of higher rank, more

[50] 1981 Cr.L.J. 1506

[51] 1985 Cr.L.J. 78

education, and a higher level of life in Maharashtra, among other things. It was discriminatory, according to the petitioner, and a violation of Article 14 of the Constitution. While dismissing the claim, the court stated that the grievance over the classification of convicts as class I and class II prisoners is no longer valid because the classification has been abolished in that state.

The categorisation of convicts can be attributable to a variety of factors. The prison's security as well as the safety of the inmates must be prioritised. However, the court has a primary responsibility to defend the rights of convicted inmates and to guarantee that they are not subjected to inhuman or degrading treatment in the name of maintaining internal order and discipline in prison. At the same time, the prison authorities' discretion in isolating guilty inmates as a means of maintaining internal order and discipline in prison cannot be easily questioned.

In Naresh Soni v. State of U.P.[52], since they were deposited within the jail, the accused who were being prosecuted under Section 107 I.P.C. and Section 25 of the Arms Act have been forced to reside in solitary cells with iron-bar batters on their bodies, day and night. The authorities justified their actions against the accused by claiming that the accused was a member of a well-known gang that had wreaked have in several states. As a result, officials can use several classifications to ensure that detainees are treated properly inside the prison. However, the classification must be appropriate in light of the legislation' standards.

He must be committed to a mental institution without the knowledge of authorities. The state government may order his removal to a lunatic asylum or other place of safe custody within the state, where he will be kept and treated as the state government directs for the remainder of the term for which he has been ordered or sentenced to be detained or imprisoned, by issuing a warrant setting forth the grounds for believing that the person is of unsound mind.[53] If, at the end of that time, a medical official certifies that it is necessary for the prisoner's or others' safety that he be held in custody for additional medical care or treatment, he must be retained in custody according to law until he is released. He is then remanded to the prison from whence he was released after becoming a normal person. If the prisoner is no longer required to be held in custody, he may be released. The maximum period for which a person alleged to be a lunatic can be detained for observation by a magistrate under Section

[52] 1983 Cr.L.J. (NOC) 16

[53] Prisoners Act 1900, S. 30(I)

16 of the Indian Lunacy Act IV of 1912 is 30 days from the date on which he was first brought before the magistrate, but each order given by the magistrate for such detention can only be for ten days and must be renewed as soon as that period expires. If a convict becomes mad after being committed to prison, a report of his condition must be filed to the Inspector-General immediately, with the government being urged to order his transfer to a mental facility. As can be seen, there are a variety of precautions in place for the handling of lunatic criminals. However, the jail authorities did not always adhere to these legal requirements. There have been countless cases where crazy inmates have sought redress of their grievances through the courts.

In Veena Sethi v. State of Bihar[54], the predicament of l6 detainees in Hazaribagh Central Jail was brought before the Supreme Court by a letter from the Free Legal Aid Committee of Hazaribagh. At the time of their arrival in the jail, these inmates were mad or mentally ill. Some of the inmates were held in prison for periods ranging from 37 to 19 years. These inmates were judged insane at the time of their trial and were sent to central prison with orders to produce medical reports every six months. When the court investigated the records of six convicts, it discovered that they were still found to be mentally ill. The court refused to grant their release "since, in light of these convicts' mental conditions, it would not be in the interests of society as well as in their own interests to set them free." The court further stated that putting lunatics or people of unsound mind to jail for safekeeping is not a healthy or desirable practise, because jail is not a place where people who are mentally ill may be treated. At the same time, the Supreme Court ordered the release of a number of other detainees. The Court also emphasised the importance of the state government compensating the detainees for their wrongful imprisonment.

In *Sant Bir v. State of Bihar*[55], Even after a medical assessment stating that he was fit for release, a person was kept in jail as a criminal lunatic for sixteen years. While releasing the individual from custody, the Supreme Court requested that the State Government pay the necessary monies to cover the costs of his return trip to his hometown. The facts in this instance are really sad and difficult to read. It appears that we have lost all respect for the individual dignity and human value so eloquently proclaimed in our constitution. It also demonstrates that we are willing to forget about a person once he has been sentenced to prison, and that we are uninterested in

[54] 1983 Cr.L.J. 675
[55] A.I.R. 1982 S.C. 1470

learning whether he has been imprisoned in the prison in accordance with the law or not. Detaining a person in jail for more than six years without legal permission is a disgrace to society and the administration.

In *Amrit Bhushan Gupta v. Union of India*[56] The Supreme Court was hesitant to offer criminals sentenced to death on the grounds of insanity additional rights. In the High Court of Delhi, a plea was brought under Article 226 of the Constitution, seeking a writ of mandamus to prevent the respondents from carrying out the death sentence imposed on the petitioner, who was convicted of culpable homicide amounting to murder. The Supreme Court, in dismissing the appeal, stated that the courts have no authority to prevent the execution of a legally imposed death sentence on the grounds that there is a rule in English common law prohibiting the execution of an insane person sentenced to death, or that there are theological, religious, or moral objections to it. The Supreme Court did not pay due consideration to the goals of punishment in this ruling. One of the goals of punishment is for the offender to understand that he is being punished for his wicked deed. If a person is insane at the time of the sentencing, he will not be able to feel the pain. So there is no meaning in awarding punishment to such a person.

In Cheruman Velan's case, the unlawful delay caused in the situation of insane people was revealed. The detainee had been held in three mental facilities in Tamil Nadu and Kerala for forty years before the Kerala High Court ordered his freedom. Through a letter, Mr. Justice Krishna Iyer has brought this case to the attention of the Kerala High Court. After treating the case as a writ petition, the division bench of Justice V.S. Malimath and Justice V. Bhaskaran Nambiar ordered his immediate release from the mental institution and asked the State Government not to prosecute him for the alleged murder.

Velan's case is part of a growing trend in Kerala, where the judiciary is investigating the fate of mentally ill inmates. The role of former Supreme Court Justice Krishna Iyer is also worth noting because it was only because of him that the case was brought to the High Court. Some non-profit organisations were also willing to assist the victim. It's a positive trend. According to studies, there is a significant overlap between the populations of prisons and mental institutions, and many inmates in jails deserve to be released.[57]

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

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

They require special treatment, and putting them in the same cell as other inmates will exacerbate their situation. That is why, according to Justice Krishna Iyer, "the treatment of partially disordered persons in the same cells as others, lugging them together without regard for their mental handicaps and often treating them more severely, confusing derangement and delinquency, is a practise where the prison system is the criminal."

As a result, the mad people inside the people should be addressed medically. Putting them in the same cell as regular inmates will exacerbate their situation. They will be a burden for prison officials as well, because numerous security procedures cannot be strictly implemented on them. Despite the fact that some statutory provisions for their treatment exist, they are not being fully applied.

1.7. Youth inside the Prisons

If properly raised, a child is a national asset. As a result, it is the state's responsibility to look after the child in order to ensure his full development as a person. That is why all child-related statutes stipulate that a kid may not be imprisoned. When we go back in history, we can see that before legislation became effective, philanthropic groups and social organisations established specific facilities for children, minors, mad people, and so on.[58] These institutions proved to be beneficial to the state, which therefore turned to law to solve its problems. Apart from the assistance provided by philanthropic institutions, juvenile delinquents were treated in an unfavourable manner prior to the passage of such legislation. Juveniles were tried in regular courts and punished to imprisonment or treated the same as adults if proven guilty.

They were incarcerated alongside adults who frequently taught them undesirable habits. Even for minor offences, the child offender was frequently imprisoned and treated the same as an adult offender.

The Prisons Act of 1894 stipulates that in a jail where male inmates under the age of twenty-one are kept, mechanisms must be given for isolating them entirely from other prisoners, as well as separating those who have reached puberty from those who have not. As long as a male prisoner under the age of twenty-one is confined in an aged jail, precautions must be taken to prevent him from communicating with other prisoners of the same class. However, the prisoner should not suffer as a result of this

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

arrangement. As a result, if there is only one such prisoner in the jail and it is deemed unwise to maintain him in isolation, the Superintendent must seek for his transfer to a jail where prisoners of the same class are housed. It is a crime for a young prisoner to refuse or neglect to acquire the lessons that have been allocated to him. In such circumstances, however, a diet reduction must be avoided. Timely notice of the date of release of every youthful prisoner has to be intimated to his parents, relatives or friends, to enable them to attend at the jail to receive him.

The majority of juvenile offenders sentenced to prison in the state are sent to a reformatory school. Detention in these schools is not viewed or equated to punishment in the way that the term is used in Section 53 of the I.P.C., however it is punishment in a limited sense because personal liberty is restricted. The purpose of detention is to retrieve erring young people who have been lost or are soon to be lost to society due to their surroundings, terrible upbringing, or friendship, and to turn them into good citizens.[59]

A borstal school, strictly speaking, is a correctional institution, not a prison. If the child or young person is sent to prison from the borstal school, that object is frustrated. It would be absurd to reintroduce the individuals into jails, where they would be allowed to mix with hardened, incorrigible, and habitual offenders, obliterating the reformation achieved during borstal confinement.

Even while there are provisions in the statutes that give young offenders particular treatment, they are not properly executed. The Supreme Court has intervened on several occasions to defend the rights of children.

In *Sanjay Suri v. Delhi Administration*[60] The Supreme Court has warned state home secretaries that if appropriate affidavits regarding the status and number of children in jails are not provided, they will be in contempt of court. The Supreme Court has instructed jail authorities across India not to accept any detention warrant as valid unless the detainees are under the age of 18. The Supreme Court issued decisions releasing and rehabilitating minors who were detained alongside regular criminals in jails.

Earlier in *Hiralal Mallick v. State of Bihar*[61], in the case of a twelve-year-old kid convicted of homicide, Justice Krishna Iyer and Justice Goswami of the Supreme

[59] Ratanlal and Dhirajlal, Law of Crimes, Vol.1 (1988) , p.143
[60] 1988 Cr.L.J. 705
[61] A.I.R. 1977 SC 2236

Court developed the topic of compassionate incarceration circumstances. The Court ordered that the appellant's reformatory type of work be prescribed in consultation with the jail's medical officer. It instructed the central prison's visiting staff to see to it that this was done. Parole was also ordered on a regular basis. The Court went even farther in emphasising transcendental meditation's regenerative and reformative potential, urging the prison authorities to arrange, with the prisoner's cooperation and under medical supervision, initiation into courses that will develop the prisoner's meditation skills, his behaviour and develop his potential. Kadra Pehadia v. State of Bihar[62] depicts the fate of four juvenile undertrial convicts who spent eight years in prison without a trial. They had no choice except to work outside the prison walls. They were put in leg irons to prevent them from fleeing, and the leg irons were not removed even when they were locked up. Bhagawathi J., who ruled it unlawful, said it demonstrates callousness and disrespect for civilised values. The defendants should not be kept in leg irons against the court's orders, nor should they be forced to work outside the jail. It appears that once a person accused of a crime is incarcerated, everyone forgets about him and no one is concerned about his well-being. The Supreme Court has attempted to give full effect to constitutional obligations concerning children while they are in prison in the Sheela Barse series of decisions.[63] In this case, the Supreme Court has given effect to the directive principles of state policy guaranteed under Article 39(f), according to which the state must direct its policy toward ensuring that children are given opportunities and facilities to develop in a healthy and dignified manner, and that childhood and youth are protected from exploitation and moral degradation. In this case, the petitioner has performed a genuine public service by bringing this concern to the attention of the courts. She offered to personally travel to various sections of the country to gather information and verify the accuracy of facts stated. Here the petitioner volunteered to perform the functions which the state should have done.

1.7.1. Female Prisoners

The fact that female offenders are so scarce in comparison to male offenders is the most remarkable feature about them. This is a universal reality, although the number

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

[63] 9 Sheela Barse I v. Union of India (1986) 3 S.C.C. 596; Sheela Barse II v. Union of India (1986) 3 S.C.C. 632

of female criminals varies depending on the degree of feminine freedom and the level of social support provided to women in various cultures.[64] As can be seen, the claim that males are the delinquent sex has some validity. Former inmates and prison visitors have written a variety of narratives of women's experiences in jail. Ann D. Smith conducted a large-scale scholarly study that was published in 1962.[65]

In India, the National Expert Committee on Women Prisoners, directed by Justice V.R. Krishna Iyer, conducted a thorough investigation into female criminals.

Even the most educated thinkers and policymakers did not realise that the requirements of 'women inmates might be different from those of males' until the beginning of the nineteenth century. In general, it was assumed that if women were appropriately separated from men in prison, they would pose no further problems. Women are rarely featured in publications about criminal justice reform, and the hardships of female inmates, if they were mentioned at all, were not shared by the more fortunate members of their gender. Discrimination existed between male and female inmates even when it came to the method of execution for capital punishment. Women convicted of treason in England were sentenced to be burned at the time. Hanging had become the standard punishment for women guilty of capital crimes by the middle of the seventeenth century. With the prior elaborations reduced to simple ranging such as mutilation and exposing of the executed person's corpse it was thought that extending the punishment of hanging to women would no longer insult the "decency owed to sex."

Elizabeth Fry had made a significant contribution to the relief of the suffering of female inmates in England. She encouraged female inmates to volunteer to be school mistresses in the jails. She realised that in order to provide regular care and comfort to the convicts, as well as provide them with a job, an organisation needed to be founded to organise this charity work. It was not simple, however, to provide labour for the women over the years. Mrs. Fry was convinced that paying women inmates a pittance for their labour was preferable to paying them nothing at all. She was similarly convinced that having any type of creative employment was preferable to having no occupation at all. She believed that rather than the substance of the crime they had committed, women convicts should be categorised based on their overall character and degree of criminality.

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

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

Women who have been incarcerated confront a variety of challenges when they are released. One benefit of providing labour for inmates was that they would learn skills and be able to support themselves after they were released. Those who were released with no means of support would undoubtedly return to their previous lifestyles. Women in prison who do not have a place to live should be given a place to remain until they can find work. In terms of how they operate, women's prisons are no different than men's prisons. Women offenders commit far fewer crimes than men, hence no special programmes are developed for them. Female inmates are not permitted to leave the female-only enclosure except for release, transfer, or presence at court, or under the Superintendent's orders for any special purpose. Male inmates are not permitted to visit the female ward. A man is not allowed to enter the female ward of the jail during the day unless he has a good reason to do so and is escorted by a female warder. All of these provisions are designed to provide women with protective discrimination while they are incarcerated. Various particular precautions are provided for the female body, taking into account the special care that it requires. For example, inside the jails, provisions are made for the treatment of female inmates' hair. A female prisoner's hair cannot be cut without her permission, save in the case of vermin or dirt, or where the medical officer deems it necessary for health and cleanliness. There are plans in place to provide them with oil, a comb, and a magnifying lens. Prenatal and Postnatal therapy for women is available in all jails that house female inmates. Handcuffs can be used as a form of restraint in the same circumstances as male prisoners, however they are not permitted in the case of female inmates. When a female prisoner is freed from prison in the state, she receives preferential care. A timely notice must be issued to a female prisoner's relatives or friends before she is freed, allowing them to attend the jail and greet her. When women are released from prison, they must be provided with transportation if the distance they must travel exceeds 1.6 kilometres. If a female prisoner's kid is under the age of five, she will be admitted to jail with her mother if she cannot be put with relatives or otherwise properly cared for.

If there is no one to look after the child outside, children born in jail will be permitted to stay with their mother until they are five years old. According to a recent poll, the majority of moms are concerned about their children. They also believe that providing them with sufficient vocational training will aid in their rehabilitation and resocialization.

Women's rights in prison are specifically protected under the Indian Penal Code against crimes such as rape, intercourse with the jail superintendent, remand home, and so on. Under special circumstances inside the jail, a female inmate may agree to have intercourse with the prison authorities in exchange for a bribe from the authorities. Even if the intercourse did not amount to rape, it will be penalised under Section 376C of the Indian Penal Code. As a result, this part of the Indian Penal Code can be considered a protective shield for women detained in India, but how these offences are brought to the notice of criminal courts remains to be seen. At this time, the procedure and measures proposed are insufficient. As a result, the vast majority of such offences go unreported. Only after the prisoner's release will the crimes be revealed.

In its report to the government in February 1988, the National Expert Committee on Women Convicts, led by Justice V.R. Krishna Iyer, advised that constructive correctional approaches be provided to all prisoners, men and women, regardless of their number. According to the committee, the numerical argument cannot be used as a stumbling block to ensuring adequate conditions for women in custody. Furthermore, a non-custodial institution can expose a prisoner to extra harm through the danger of contamination. As a result, the Committee proposed that separate correctional facilities be established in each state for convicted and under-trial women, as well as enough mobility for the prisoner and law enforcement officials to expedite such focused intake. The group recommended separate jails for women and fully distinct detention facilities for convicted and undertrial women. Another committee made the same recommendation, and the Kerala government took action based on it.

Following Elizabeth Fry's idea in England, numerous recommendations for the treatment of female convicts have emerged. However, in India, these unique social and rehabilitative practises are not legally recognised. Steps should be done in this direction. Women, the crazy, and young people in prison are among the groups who require ‘protective discrimination' in order to be rehabilitated. Individualization of the offender as a means of rehabilitating him or her has now become a core principle of modern criminology. As can be seen, modern criminologists have devised an objective classification of convicts based on their treatment. The inmates should be divided into groups based on the type of treatment they are most likely to respond well to.

1.8. Need of the Study

The laws are made to regulate the human conduct in the society, as it is the primary duty of the state to maintain the public peace and tranquility in the society, the state legislatures has made different enactments to regulate the human conduct in the society, for the implementation of the laws a kind of machinery is required for the state for that the government appoints some qualified persons for the implementation of laws in the society for the advancement of the law and order in the society. For the implementation of the criminal justice administration a systematized well established organizations like police department to bring the accused before the court of law and to investigate the offence and finally to file a final report in the court. Once the investigation is completed and final report of investigation is filed in the court the duty of the police comes to an end, than the duty of the judiciary begins, once the court takes cognizance of the offence than the duty of the investigating police officers turns into witness, if the case is proved beyond all the reasonable doubt, than the trial court convicts the accused and passes a sentence of imprisonment, it may be a day or days, a month or months, a year or years or it may be life or death, it depends upon the nature and gravity of the offence committed by the accused.

Once the sentence is passed and confirmed by the appellate court, the role of the judiciary in the criminal justice administration system also comes to an end, then the role of the prison and correctional services department comes into play. After the sentence is inflicted by the court, the police officers take the custody of the accused and simultaneously handover the accused to the prison department. Now the duty of the prison department begins, after the admission of the accused in to the prison, the first and foremost duty of the prison authority is to take the identification marks of the accused and sends him to the government civil surgeon for his health report including his weight, after completion of taking all the necessary identification marks and health report, upon entering them in the prison admission register, the prison authority admits the convicted person in to the prison and gives him a number, from this the care and custody of the convicted person is in the hands of the prison authority, the prison authority should serve the prisoner as per the prison Acts and state prison manual the prisoner also should obey the prison rules.

1.9. Scope of the Study

The study is mainly aimed at understanding the legal and constitutional rights of the prisoners in various statutes-and the implementation of those rights by the State Government and prison authorities in prisons. The study includes both under trial and convicted prisoners present in the Cherlapally Central Prison, Hyderabad and all the sub-jails present in the Guntur district including district Jail Guntur. Since the study is related to prisoners rights and their implementation in prisons, the study is restricted to both convicted and undertrial prisoners in Cherlapally Central prison located in Hyderabad and also for the purpose of comparison, the researcher has extended his study to all the sub-jails present in Guntur district along with District jail Guntur.

The study also covers different stages of the principle operation of the criminal justice administration system from the arrest of accused person, conviction and sentence of imprisonment after full-fledged trial and release of convicted person from prison after the period of sentence is over or it may be premature release, by the remission of period of sentence due to good conduct of the prisoner or his health conditions so necessitated or by the appropriate government as envisaged in the prison manual.

1.10. Objectives of the study

The main objectives of the research study is as mentioned here under:

1). To make a critical appraisal on the existing prison laws which are enacted for the treatment and reformation of the prisoners in prisons, in the State of Andhra Pradesh, through various enactments, orders and rules, etc.

2). To analyse the various kinds of practices and procedures following, in implementation of prison laws in prisons.

3). To analyze whether the existing real conditions present in the prisons are backed by the law or not.

4). Whether the legal and constitutional rights of prisoners in prisons are implemented properly or not.

5). To analyse whether the present existing treatment of prisoners are, without any prison violence or not, in the Central jail Prison, at Lucknow in the State of Uttar Pradesh and in all sub-jails present in Lucknow district including, district jail Lucknoe.

6). To examine whether the reformative and rehabilitative measures taken by the prison authority in central Jail prison are adequate or not for the reformation of prisoners in prisons and to make them law obedient citizens in the society.

1.11. Methodology of the Study

The study is being carried out through, both the doctrinal and no doctrinal methods; more emphasis was laid on non-doctrinal methods to arrive at the real problems which are being faced by the prisoners in prisons during their term of imprisonment. The researcher has adopted the empirical study through the questionnaire prepared by him and accepted by the DGP A.P, through direct interview and observation methods simultaneously, it is to find out the problems which are being faced by the prisoners, it is weather due to the dereliction of duties by the prison authorities in prison administration or due to the no importance given by the state and central governments to make effective legislation for the welfare and reformation of the prisoners.

1.12. Hypothesis of the Study

By taking into consideration the objectives of the study as stated above, the researcher has formulated the below mentioned hypothesis for his effective research work.

1. Prison laws and prison manuals intended to protect the fundamental rights and human rights of the prisoners are not being adhered to in letter and spirit and there are no proper mechanisms to monitor the implementation of the laws and manuals.

2. The reformative and rehabilitative programmes for the reformation of the prisoners are not sufficient to achieve the objectives.

3. The directions of the Supreme Court through its various decisions with regard to the treatment of prisoners in prisons are not followed meticulously.

1.13. REVIEW OF LITERATURE

Human Rights of Prisoners is comparatively a new and perceptive area of study from a research point of view. Though, we find literature in the shape of guidelines on the rights of prisoners by the United Nations Organisation, National Human Rights

Commission, Jail Manuals and Judgments of Supreme Court of India and High Courts, we do not find much literature on the rights of prisoners in the form of empirical studies particularly on various aspects of problems of prisoners. The present study is purely empirical in nature as it is based on practical orientation of the rights of prisoners. Therefore, it becomes a humble attempt to fill the gap of the practical aspects of the literature.

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

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

Guidelines given by the United Nations and other National and International

1.13.1 Human Rights Organisations

(a). Minimum Standards for the Treatment of Prisoners[66] is the first major United Nations document which advocates the rights of the prisoners. As per these rules, the ultimate goal and rationale for a sentence of imprisonment or other deprivation of liberty is to protect society against crime. This goal can only be realised if the time spent in jail is used to ensure that the criminal is not only willing but also capable of leading a law-abiding and self-supporting life when he returns to society.

Putting stress on the basic human needs of the prisoners like food, drinking water, health and hygiene, According to the Rules, every prisoner shall be given food of nutritional content adequate for health and strength, of healthy quality, and well cooked and served by the administration at regular intervals. Every prisoner will have access to drinking water whenever he or she requires it.[67] The sanitary facilities must be adequate to allow every prisoner to respond to nature's calls when necessary and in

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

[67] Ibid., Rule 20

a clean and decent manner.[68] In a temperate climate, adequate bathing and shower facilities must be provided so that every prisoner is able and required to take a bath or shower as often as necessary for general hygiene, at a temperature appropriate to the climate, depending on the season and geographical region, but at least once a week. Furthermore, the Rules state that where sleeping accommodations are in individual cells or rooms, each prisoner must occupy a cell or room at night. If the central prison administration must make an exemption to this regulation for particular circumstances, such as temporary congestion, it is not acceptable to keep two convicts in a cell or chamber.

If dormitories are employed, they must be filled by prisoners who have been carefully vetted to be able to live together in those conditions. In keeping with the nature of the institution, there will be regular nighttime supervision. All prisoner accommodation, particularly sleeping quarters, must meet all health requirements, with particular attention paid to climatic conditions and, in particular, cubic content of air, minimum floor space, lighting, heating, and ventilation.

Advocating the right of communication, the Standard Minimum Rules say that Prisoners will be allowed to connect with their family and reputable friends at regular intervals, both by mail and receiving visits, under the control of the authorities. Regarding right to education, Rule 77 says, "Provision shall be made for all inmates who are capable of benefiting from further education, including religious instruction in nations where this is possible. Illiterates and young convicts will be required to attend school, and the government will pay special attention to their education. The education of inmates should be integrated into the country's educational system as much as possible, so that they can continue their education without difficulties following their release." As per Rule 84 the undertrial Prisoners are assumed innocent and must be treated accordingly. Rule 85 states that pre-trial detainees must be maintained separate from convicted detainees, and that minor pre-trial detainees must be kept separate from adults and held in separate institutions.

(b). The Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment is the second most important text addressing prisoners'

[68] Ibid. ,Rule 12

basic rights.[69] It advocates the basic human rights and dignity of the prisoners and says, 'All persons detained or imprisoned in whatever form shall be treated humanely and with regard for the inherent dignity of the human person.' Principle 6 of this Resolution prohibits any kind of torture, cruel behaviour, inhuman or degrading treatment of prisoners.

"A detained individual shall be entitled to the help of a legal counsel," according to Principle 17 of this Resolution. He must be informed of his right by the relevant authority as soon as possible following his arrest, and he must be given fair opportunities to exercise it. If a detained person does not have access to legal counsel of his own choosing, he has the right to have one assigned to him by a court or other authority in all circumstances where the interests of justice necessitate it, and without having to pay for it if he lacks the financial means to do so."

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

Principle 38 of this Resolution lays stress on quick trial and provision of bail. A person detained on a criminal charge has the right to a speedy trial or to be released pending trial. Principle 39 of this Resolution further says that "Unless a judicial or other authority decides otherwise in the interest of the administration of justice, a person detained on a criminal charge shall be entitled to release pending trial subject to the conditions that may be imposed in accordance with the law, unless a judicial or other authority decides otherwise in the interest of the administration of justice."

Principle 16 of this Resolution is related with the 'foreigner prisoners' which makes provision for immediate consular access or correspondence with which he is associated with the diplomatic mission of the country in which he was born.

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

(c). The third UN document related with the rights of prisoners is Basic Principles for the Treatment of Prisoners.[70]It ensures that prisoners are treated with respect because of their intrinsic dignity and worth as human beings. It forbids discrimination based on race, colour, gender, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. It also advocates for protecting the basic rights set out in the International Covenant on Civil and Political Rights. It also describes a prisoner's right to participate in cultural and educational activities aimed at the full development of the human psyche. It further lays stress on the rehabilitation of the prisoners in the society after release through community participation and support from social institutions.

(d). Commonwealth Human Rights Initiative in the "Recommendations on Prisoners Rights" (1995) advocates for the adoption of measures to ensure the freedom of communication between the prisoner and members of his or her family, who should be allowed periodic visits under conditions that, while ensuring security, do not impair communication privacyLegal aid should be provided to an accused at the point of first contact with the police. A prisoner's right to consult with a lawyer of his or her choice should be protected. Meetings with the lawyer may be subject to reasonable time and place restrictions, but they must not take place within the hearing of prison officials. Urgent steps should be taken to reduce the time it takes to bring prisoners to trial. While prisoners serve their terms, their inner creativity should be developed so that they can be more easily integrated into society when they are released. It was emphasised that the criteria for granting parole should be relaxed in order to allow for more access to and interaction with the family.

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

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

that the living conditions of prisoners in most of the jails in the various States and Union Territories leave much to be desired. Overcrowding is the main reason for this, a principal reason being the presence of undertrial prisoners who languish in jail for long periods because of the slowness of the judicial process." [71]

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

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

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

(iii). Every jail should, as a result, have a library for all types of inmates, which should be appropriately stocked with both recreational and educational books, and inmates should be encouraged to use it to its full potential. The materials in the library should be commensurate with the size and nature of the prison population.

(iv). Further, diversified programmes should be organized by the prison authorities for different groups of inmates, special attention being paid to the development of suitable recreational and educational materials for women prisoners or for those who may be young or illiterate. The educational and cultural background of the inmates should also be kept in mind while developing such programmes."[72]

[71] Annual Report 2002-03, National Human Rights Commission of India, New Delhi
[72] National Human Rights Commission, Guideline No. 68/5/97-98, 1 March 2000

CHAPTER -2

2.1. THE JUDICIARY'S PART IN PROTECTING PRISONERS' RIGHTS

Every country's judiciary has a commitment and a constitutional role to defend citizens' human rights.

This feature is delegated to the most reliable judiciary, namely the Supreme Court of India and the High Courts, by the Constitution of India. The Supreme Court of India is one of the most active tribunals in the world when it comes to human rights protection. It has a robust reputation for independence and trustworthiness. The separation of powers, in which the executive, legislature, and judiciary structure three departments of government, is the basis of the independent judicial system. The judiciary's effectiveness in retaining the rule of regulation and human rights is dependent on this separation and subsequent independence.

Because each and every society has a court system to safeguard its law-abiding citizens, it must additionally grant prisons for those who disobey the law. However, this does no longer mean that the detainees have no rights. Prisoners have their own set of rights. The Supreme Court of India has produced human rights jurisprudence for the protection and protection of prisoners' rights to maintain human dignity through interpreting Article 21 of the Constitution. Any breach of this right is punishable below Article 14 of the Constitution, which ensures equality and equal safety under the law. Furthermore, the issue of prisoner cruelty is addressed, especially by way of the Prison Act of 1894 and the Criminal Procedure Code (CRPC). Any abuse of a prisoner by using police authorities attracts the attention not solely of the legislature, but additionally of the judiciary. In recent years, the Indian judiciary, particularly the Supreme Court, has been particularly vigilant towards violations of prisoners' human rights. The Supreme Court and the High Courts have each expressed a challenge about the deplorable prerequisites that exist inside prisons, resulting in violations of prisoners' rights. Prisoner rights have emerged as a crucial issue on the agenda for prison reform. Over the last three to four decades, the need for prison reform has become more apparent.

2.2. Prisoners and the Human Rights

In recent years, the Supreme Court of India has been particularly vigilant against violations of prisoners' human rights. Article 21 of India's Constitution states that "no person shall be deprived of his life or personal liberty except in accordance with the procedure established by law." The right to life and personal liberty is the bedrock of Indian human rights. The Indian judiciary has served as an institution for providing effective remedy for violations of human rights through its positive approach and activism. The courts have formulated and established a plethora of rights by giving a liberal and comprehensive meaning to the phrase "life and personal liberty." The court gave a very narrow and concrete meaning to the Fundamental Rights enshrined in Article 21. In A.K.Gopalan's case, the court determined that each Article dealt with distinct rights that had no relationship with one another, i.e. they were mutually exclusive. However, in the Maneka Gandhi case, it was determined that they are not mutually exclusive, but rather form a single scheme in the Constitution, and that they are all parts of an integrated scheme in the Constitution. In this case, the court stated that “the scope of Personal Liberty as defined by Article 21 of the Constitution is broad and comprehensive.” It encompasses both substantive rights to Personal Liberty and the procedures prescribed for their deprivation” and opined that the procedures prescribed by law must be fair, just and reasonable.

The Supreme Court has ruled in the following cases: Maneka Gandhi, Sunil Batra (I), M.H.Hoskot, and Hussainara Khatoon, that the provisions of Part III should be given the broadest possible interpretation. It has been held that the right to legal aid, a speedy trial, the right to an interview with a friend, relative, or a lawyer, the right of prisoners in jail to be protected from degrading, inhuman, and barbarous treatment, the right to travel abroad, the right to live with human dignity, the right to a livelihood, and other rights that have not been specifically mentioned are Fundamental Rights under Article 21 of the Constitution. Thus, the Supreme Court of India has significantly broadened the scope of Article 21 and determined that its protection will be available for safeguarding prisoners' fundamental rights and enacting prison reforms. The Supreme Court of India has developed Human Rights jurisprudence to preserve and protect the Right to Human Dignity of prisoners. The

Apex judiciary's concern can be seen in the various cardinal judicial decisions. The Supreme Court's decision in Sunil Batra was a watershed moment in the development of Indian prison jurisprudence.

2.2.1. Rights against Solitary Confinement and Bar Fetters

The courts have taken a strong stance against solitary confinement, ruling that its imposition has a highly degrading and dehumanising effect on the prisoners. The courts have ruled that it can only be imposed in exceptional cases where the convict is so dangerous that he must be separated from the other prisoners. In Sunil Batra (1), the Supreme Court considered the legality of solitary confinement. The Supreme Court has also spoken out strongly against the use of bar fetters on prisoners. The court stated that confining a prisoner in fetters 24 hours a day, 7 days a week reduced the prisoner to an animal, and that such treatment was so cruel and unusual that the usage of bar fetters was against the spirit of the Indian Constitution.

2.2.2. Rights against Inhuman Treatment of Prisoners

Human Dignity is inextricably linked to human rights. In a number of cases, the Supreme Court of India has taken serious note of inhumane treatment of inmates and has issued appropriate directives to jail and police officials to protect the rights of prisoners and people in police custody. The Supreme Court interpreted Articles 14 and 19 of the Constitution to include a guarantee against torture. The court stated that "treatment of a human being that offends human dignity, imposes avoidable torture, and reduces man to the level of a beast would undoubtedly be arbitrary and can be challenged under Article 14." In Raghubir Singh v. State of Bihar, the Supreme Court expressed its outrage at police torture by upholding the life sentence given to a police officer who was responsible for the death of a suspect as a result of torture in a police cell. The Supreme Court ruled in Kishore Singh v. State of Rajasthan that the use of the third degree method by police is a violation of Article 21. The Supreme Court's decision in the case of D.K. Basu is noteworthy. While hearing the case, the court focused specifically on the issue of custodial torture and issued a number of directives to eradicate this evil, as well as to improve the protection and promotion of human rights. The Supreme Court defined torture and examined its implications in this case.

2.2.3. Right to have Interview with Friends, Relatives and Lawyers

Human Rights is broadening its horizons. Prisoners' rights have been established to protect them not only from physical discomfort or torture in person, but also from mental torment. Article 21's right to life and personal liberty cannot be limited to the existence of animals. It implies a lot more than just physical survival. The right to have an interview with members of one's family and friends is plainly part of Article 21's Personal Liberty. Article 22 (I) of the Constitution states that no one who has been arrested is denied the right to speak with and be represented by a lawyer of his choosing. Section 30441 of the Code of Criminal Procedure likewise provides for this legal privilege. This right accrues to the accused individual from the time of arrest, according to the court, and he has the right to choose his own lawyer. The Supreme Court of India evaluated the scope of a prisoner's or detainee's right to have interviews with family members, friends, and counsel in a series of decisions. In Dharambir vs. State of Uttar Pradesh, the court ordered the state government to allow family members to visit the prisoners and for the prisoners to visit their families at least once a year under guarded conditions.

The Supreme Court ruled in Hussainara Khatoon vs. Home Secretary, Bihar that it is the constitutional right of every accused person who is unable to engage a lawyer and secure legal services due to factors such as poverty, indigence, or an incommunicado situation to have free legal services provided to him by the state, and that the state has a constitutional duty to provide such a lawyer. If free legal services are not provided, the trial may be void as a violation of Article 21.

The court decided in Sheela Barse vs. State of Maharashtra that prisoner interviews are required since otherwise accurate information may not be acquired, but that such access must be limited and monitored. The court stated in Joginder Kumar vs. State of Uttar Pradesh that the horizon of Human Rights is expanding as the crime rate is also rising, and that the court has been receiving complaints regarding Human Rights violations due to indiscriminate arrests. The court stated that everyone has the right to be informed.

2.2.4. Right to Speedy Trial

One of the primary goals of the criminal justice system is for offences to be tried as quickly as possible. Once the court has taken cognizance of the accusation, the trial must proceed quickly in order to punish the guilty and absolve the innocent. Until the

guilty is proven, everyone is deemed innocent. As a result, the accused's quality or innocence must be determined as soon as feasible. As a result, it is the court's responsibility to ensure that no guilty person escapes punishment, and it is also the court's responsibility to ensure that the accused persons are not harassed indefinitely. It is important to note that "delay in trial by itself constitutes denial of justice," as "justice delayed is justice denied" is asserted. It is critical that those accused of crimes be tried quickly so that, in the event that bail is denied, the accused do not have to spend more time in jail than is absolutely necessary. The right to a timely trial is now regarded as a universal human right.

The main procedure for investigating and prosecuting an offence in order to have a speedy trial is outlined in the criminal procedure code. Section 309 of the Criminal Procedure Code provides for the right to a speedy trial. There would be no need for a grievance if the provisions of the Cr.PC were followed in their letter and spirit. However, these provisions are not being implemented in their spirit. The constitutional guarantee of a speedy trial derived from Article 21 must be properly reflected in the code's provisions. In A.R.Antulay vs. R.S.Nayak, the Supreme Court established the following propositions, which will go a long way toward protecting the Human Rights of prisoners. In the instant case, the Supreme Court ruled that the right to a speedy trial under Article 21 of the Constitution applies to accused at all stages of the process, including investigation, inquiry, trial, appeal, revision, and retrial.

2.2.5. Right to Legal Aid

Though the Indian Constitution does not expressly provide for the right to legal aid, the judiciary has favoured poor prisoners who are unable to hire a lawyer of their choice due to their poverty. Under Article 39A of the Constitution, the 42nd Amendment Act of 1976 included Free Legal Aid as one of the Directive Principles of State Policy. This is the most important and direct provision of the Constitution relating to free legal aid. Despite the fact that this Article appears in Part IV of the Constitution as one of the Directive Principles of State Policy, and despite the fact that it is not enforceable by courts, the principles outlined therein are fundamental in the governance of the country. Article 37 of the Constitution requires the state to apply these principles when enacting legislation. While Article 38 imposes a duty on the

state to promote the welfare of the people by securing and protecting a social order in which justice, social, economic, and political, shall inform all institutions of national life. To give effect to the Constitutional mandate of Article 39-A, the parliament enacted the Legal Services Authorities Act, 1987, which guarantees legal aid, and various state governments established legal aid and advice boards and framed schemes for free legal aid and incidental matters. Legal Aid is more widely available under Indian Human Rights law, and it is provided not only in criminal cases, but also in civil, tax, and administrative issues.

In Madhav Hayawadan Rao Hosket vs. State of Maharashtra, a three-judge bench of the Supreme Court (V.R.Krishna Iyer, D.A.Desai, and O.Chinnappa Reddy, JJ) read Articles 21 and 39-A, as well as Article 142 and section 304 of the Cr.PC, and concluded that the government had a duty to provide legal services to the accused.

2.2.6. Rights against Handcuffing

The Supreme Court added another projectile to its arsenal in Prem Shanker vs. Delhi Administration, which would be utilised against the fight on jail reform and prisoner rights. The issue in this case was whether or not handcuffing is constitutionally permissible. The Supreme Court went over the handcuffing jurisprudence in great detail. It is the matter that has been brought before the court as a Public Interest Litigation, requesting that the court rule on the constitutional legitimacy of the "handcuffing culture" in light of Article 21 of the Constitution. In this instance, the court recognised the distinction between clapping and handcuffing to be a constitutional mandate, and the court prohibited systematic handcuffing of inmates.The court also stated that "handcuffing is prima facie inhuman and, thus, unreasonable, is overly harsh and, at first blush, arbitrary." To inflict "irons" in the absence of a fair method and objective monitoring is to turn to zoological techniques, which are in violation of Article 21 of the Constitution."

2.2.7. Narco Analysis/Polygraph/Brain Mapping

The Supreme Court ruled in Selvi vs. State of Karnataka, (2010) that narco analysis, polygraph tests, and brain mapping are unconstitutional and violate human rights. This decision is quite unfavourable to various investigation authorities because it will impede further investigation and many alleged criminals will avoid conviction as a

result of this new position. However, the Supreme Court went on to say that a person can only be subjected to such tests if he or she consents to them. The results of the tests will not be admissible in court and can only be used to further the investigation. Narcoanalysis, polygraph tests, and brain mapping have emerged as favourite tools of investigation agencies around the world for eliciting truth from the accused, thanks to advancements in technology and neurology. However, human rights organisations and those subjected to such tests eventually voiced their displeasure. They were labelled as an atrocity to the human mind and a violation of an individual's right to privacy. The Supreme Court agreed that the tests in question violated Article 20 (3), which states that no one can be forced to testify against himself. The court also ordered that the National Human Rights Commission's directives be followed by the investigation agencies adhered to strictly while conducting the tests. These tests have previously been used in a number of cases, including the Arushi Talwar murder case, the Nithari killings case, the Abdul Telagi case, the Abu Salem case, the Pragya Thakur (Bomb blast case), and others that have piqued the public's interest.

CHAPTER - 3

3.1. THE CRUSADER OF PRISONERS' RIGHTS INDIAN JUDICIARY AND ARTICLE

The 15th of August 1947 marked India's independence from the British Empire; the people who lived within the country's borders were no longer prisoners of a despotic rule; they were now free. Then came the 26th of January 1950, when "The Constitution of India" was enacted. This book came to be known as the "Supreme Law of the Land," which means that no law can be in conflict with the rights granted by this book. Certain fundamental rights were bestowed upon the people of India through the Articles of the Constitution.These rights are regarded as human beings' fundamental and inalienable rights. Few of these rights are specific (granted only to citizens) and a few are general (conferred on any person residing in India). One such article is the 'Right to Life and Personal Liberty,' which is regarded as the sanctum sanctorum of the Indian Constitution. Despite this newfound freedom, independence, and democracy, where everyone is granted a "Right to Life and Personal Liberty" under Article 21 of the Indian Constitution, a small group of individuals continue to see the state as barbaric since they are not considered "persons." These individuals are referred to as "prisoners," and the locations where such barbarism occurs are referred to as "prisons." Article 10(1) of the International Covenant on Civil and Political Rights, to which India is a signatory, states that all persons deprived of their liberty should be treated with humanity. Despite such flagrant violations of human rights, there is no provision in Part III of the Indian constitution that alleviates the condition of prisoners or protects their rights. Prior to the intervention of the judiciary, the executive had made no meaningful steps to improve the conditions of the convicts.

In recent years, India has seen a shift in the judiciary's attitude toward prisoners. Instead of using a "retributive" method, the judiciary has begun to use a "rehabilitative and reformative" approach. The rights of these people are maintained through legal interpretations of Article 21. In the post-emergency era, this activist strategy has gained traction. People came to recognise that even inmates are human beings, and that humanity does not end at the gates of a prison institution, thanks to several judicial rulings.

The question now is who actually is a prisoner, what are their rights, and what role does Article 21 play in their protection. A prisoner is a person who has been denied his liberty and is being held in a correctional institution because he has committed or is about to commit an offence. The term "prisoners' rights" refers to the basic human rights given to all prisoners; these rights cannot be taken away, even if the prisoner commits a grave crime against the public welfare.

Human Rights were unknown in primordial societies, but as time passed, individuals realised the significance of these rights and began to promote them. Philosophers such as Thomas Hobbes, John Lock, and JJ Rousseau believed that man is born with certain unalienable rights, the most important of which were the rights to life, liberty, and property. 109 Article 21 of the Indian Constitution was introduced to support the notion of inherent and inalienable rights, and it is considered the life and soul of the Indian Constitution. Every human being has the right to be treated with humanity and respect under the law. Prisoners do not fall outside the scope of the term "human," and their right to life and personal liberty cannot be violated, no matter how heinous their crime. When a person is convicted and taken into custody by the police, it is the responsibility of the state (including police officers) to ensure that the inmates' right to life is not jeopardised. Police officers are also not authorised to waive inmates' basic rights, and they are not allowed to treat them as anything other than human beings, whether they are a petty thief or a terrorist.

3.2. RIGHTS OF PRISONERS UNDER ARTICLE 21

The following are a few of the rights guaranteed to prisoners under the broad interpretation of Article 21 of the Indian Constitution:

3.2.1. RIGHT TO BE TREATED WITH HUMANITY

“Human dignity is the essence of human rights, and it is expressly guaranteed in India under Article 21”110. This right attempts to protect the right of those who are incarcerated to be treated equally to people who are not incarcerated. Judges have repeatedly taken a stand to ensure that those living behind the wall are not denied their fundamental right to be treated with humanity. For example, while vehemently supporting the concept of a prisoners' right, Justice Krishna Iyer stated that "a prisoner does not lose his basic constitutional rights at the prison gate."

In the case of Mohammad Giasuddin v. State of Andhra Pradesh[73] The court ordered the state to focus on the development of the convicts' mental powers rather than providing them with jobs that came within the category of manual labour. While intervening, the court stated that it is the role of courts to care after the well-being of prisoners because it is the court's judgement that sends them to prison in the first place.

In the case of Charles Sobhraj v. Superintendent of Jail[74] The petitioner alleged that he was subjected to intentional prejudice; the court ruled that this was a breach of Article 21 and that the right to life encompasses more than mere animal existence. Even prisoners who have committed heinous crimes are still human beings, and their dignity should be preserved. Except in cases where the law requires it, a person's rights cannot be revoked.

In Sunil Batra V. Delhi Administration[75] The Supreme Court ruled that solitary confinement violated a person's right to roam around and talk to anyone. Until the incarceration is justified by a law, this impairment to a person's liberty is a violation of Article 21. Relying on this decision Justice Krishna Iyer in Prem Shankar Shukla v. Delhi Administration[76] declared the Punjab Police handcuffing rule, which discriminated on the basis of a person's economic situation while handcuffing him, as harsh, unreasonable, and arbitrary[77]. State of Gujarat v. Hon'ble High Court of Gujarat[78] It was held that no prisoner was supposed to work without pay; this is both legally and ethically wrong.

"Justice Chandrachud in the case of D.B.M. Patnaik v. State of Andhra Pradesh[79] "Convicts are not deprived of all Fundamental Rights that they otherwise retain simply because they have been convicted. A convict is entitled to the precious right guaranteed by Article 21 of the constitution, which states that "he shall not be deprived of his life or personal liberty except in accordance with the legal procedure."

[73] 1974 AIR 1926,1978 SCR (1)153
[74] 1978 AIR 1514,1979 SCR(1)512
[75] 1980 AIR 1579,1980 SCR(2) 557
[76] 1980 AIR 1535,1980 SCR (3) 855
[77] Ibid
[78] 6 PEOPLE'S UNION OF CIVIL LIBERTIES, infra 25.
[79] 1974 AIR 2092, 1975 SCR (2) 24

After a long period of struggle and massive sacrifices, Indians were recognised as human beings. These sacrifices and protests would be in naught if these human beings were treated like animals again, even if it was behind prison walls in the guise of retribution or national security. A person is born with some inherent rights, which provide an individual with a claim on himself that no one else should be able to take away. As a result, it is appropriate to state that NO ONE should be a subject or slave of another person, to do with as he pleases, simply because he has committed a crime. If these activities take place behind bars, it will not be long before they become widely prevalent, as people who are dissatisfied with the law will begin to behave with people in the same way that the police or state does. The Maoist problem is a foreshadowing of things to come. Furthermore, if this type of treatment is meted out to convicts, people convicted of minor offences will emerge as hardened criminals, because inhuman treatment has the ability to transform a person from a human to a monster. This type of treatment appears to be more of a form of vengeance than a step toward reformation, and if this is the case, the entire foundation of punishment is undermined. It is preferable to treat prisoners with dignity so that they can reform themselves.

3.2.2. RIGHT AGAINST CUSTODIAL VIOLENCE

Through the case of *D.K. Basu v. State of West Bengal*[80] Custodial deaths were strongly denounced by the Supreme Court. "Custodial death is possibly one of the greatest crimes in a civilised society governed by the Rule of Law," said the bench, which was headed over by Justice Kuldeep Singh and Justice A.S. Anand. The court stated that in cases of custodial death, police officials would pick up persons on suspicion, torture them in the name of interrogation, and if anyone died during the investigative process, their bodies would be disposed of in a discreet manner. There would be a lack of evidence because police officers would not stand up to the other officers because they would be stymied by a sense of brotherhood, and other inmates would not report such activities because their own safety would be jeopardised. In the case of *State of Madhya Pradesh vs. Shyamsunder Trivedi & Ors*, one such incident occurred.[81] In this case, the deceased was brought in for interrogation, and he died as a result of the use of severe torture methods. The trial court acquitted all of the

[80] AIR 1997 SC 610
[81] Air 1995 SCW 2793

respondents, citing an absence of proof. Justice A.S. Anand believes Custodial violence, including torture, interrogation, and death in solitary confinement, is a major source of concern. Custodial violence is a flagrant violation of Article 21 and a violation of a person's basic human rights by the law's protectors. If these protectors violate such basic human rights, everyone will take on the task of achieving justice, which will eventually lead to anachronism. No developed or civilised society can afford such a situation. Justice Kuldeep Singh further proceeded to lay down the guidelines to be followed by the officers in future cases[82]. In the case of *Nilabati Behara vs. State of Orissa*[83] The mother of a small boy who died as a result of police brutality while in police custody received compensation from the court. To reduce such occurrences in its 113th report, the Law Commission recommended that Section 114B be added to the Indian Evidence Act. In the case of *Kishore Singh vs. State of Rajasthan*, the Supreme Court ruled that third-degree torture violated the spirit of Article 21.

Just one year before this case, "The Indian Express" brought to the court's attention, through a series of newspaper articles, the condition of the prisoners, particularly those under trial, who were never even brought before the courts, and some of whom had already endured more suffering than the prescribed punishment. The bench in *Maneka Gandhi vs. Union of India*[84] It was observed that this was a rather dishonourable practise, which resulted in a person's trust in the current judicial system being eroded because these lost souls were denied trial for a long time and were kept in prison without even hearing their side of the storey. These inmates languished in prisons not because they were guilty, but because they could not afford bail.[85]

In the case of *Mantoo Majumdar v. State of Bihar*[86] In a case where two petitioners spent seven years of their lives in prison, Justice Krishna Iyer criticised the State and police for failing to investigate the case promptly. What made the petitioners' situation even more pitiful was the government of Bihar's refusal to provide facts even after the court asked for them.

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[82] Supra 17
[83] 1993 AIR 1960, 1993 SCR(2)581
[84] 1978 AIR 597, 1978 SCR(2)621
[85] People's Union of Civil Liberties, Prisoners' Rights: Some Landmark Judgements, available at, http://www.pucl.org/fromarchives/81nov/prisoner-rights.htm , last seen 20/09/15 at 12:15pm
[86] 1980 AIR 847,1980 SCR(2) 1105

One of the most shameful and shocking case that came in front of India was *Veena Sethi v. State of Bihar*[87] In a letter to Justice Bhagwati, the Free Legal Aid Committee of Hazaribagh detailed the dreadful conditions of 16 detainees who were mentally ill at the time of their detention. Several of them regained their sanity but spent decades in prison, while six of them were compelled to live in prisons because they did not restore their sanity. The respondents' defence was that Bihar's psychiatric institutions were overcrowded. The practise of treating convicts in jails rather than mental hospitals was extensively condemned and disapproved by the court.

An interesting view was given in the case of *Abdul Rehman Antulay v. R.S. Naik*[88] The petitioners in this case argued that the right to a speedy trial should be made meaningful, enforceable, and effective by establishing a time limit beyond which the continuation of a proceeding would be considered a violation of Article 21.

The goal of legislation is to punish those who are guilty of a crime rather than the innocent, but this is the current tendency. A person is arrested on suspicion and locked up; the prisoner then waits for the time when he will be allowed to tell his side of the storey; unfortunately, he must wait a long time for this opportunity, and in some cases, the person may not even get it. If the individual is financially insecure, the situation deteriorates. Sometimes people are not even guilty of the crime for which they are accused, but he still suffers the pain and humiliation as a result of the delay in conducting a trial and the one who should be behind bars the mastermind is not even caught. Situations like this make a mockery of the Indian legal system, the Constitution, and the rights guaranteed therein; they must be addressed as soon as possible, or people would lose faith in the entire court system, resulting in anarchy.

3.2.3. RIGHT TO FAIR TRIAL

Deviants, criminals, and so-called witches were executed without trial in older western nations.[89] The practise was widely used by Indian kings to punish deviant behaviour. The right to a fair trial is one of a person's most fundamental rights, especially when his or her life or liberty is at stake. According to Article 14 of the ICCPR, "everyone shall have the right to a fair and public hearing before a competent,

[87] AIR 1983 SC 339
[88] 1992 AIR 1701, 1991SCR(3) 325
[89] CHIRANJIVI J. NIRMAL, HUMAN RIGHTS IN INDIA, HISTORICAL, SOCIAL AND POLITICAL PERSPECTIVE 161.

independent, and impartial tribunal established by law." The Apex Court of India in the case of *Zahira Habibullah Sheikh & Anr vs State Of Gujarat*[90] propounded that, "The fair trial principle now informs and energises many areas of the law." It is reflected in numerous rules and practises. A fair trial would obviously imply a trial before an impartial Judge, a fair prosecutor, and a judicially calm atmosphere. A fair trial is one in which bias or prejudice for or against the accused, witnesses, or the cause under trial is eliminated."

This same right is protected by the 1973 Code of Criminal Procedure. Article 21 states that the legal procedure must be just, reasonable, and fair, but a hearing without a fair trial violates this Article. The court in the famous case of *Naresh Sridhar v. State of Maharastra*[91] The public gaze puts a check and balance mechanism on the judiciary and controls the arbitrary functioning of judges, hence a public trial in open court is vital for the proper administration of justice. When the importance of in Camera trials was raised, the court held that, while open trials are important, the primary requirement of a court proceeding is to impart justice, so if the judge presiding over the case is convinced that there is a possibility that the facts or evidence could be distorted, it is up to him to hold the entire oath.

It goes without saying that no one's right to a fair trial should be revoked. An unbiased judge should preside over the trial, which should be held in a public setting. Many people would be condemned for crimes they never committed if this right was taken away because the method would become arbitrary and whimsical. It is possible that an innocent person will be punished since there is no suitable procedure in place to determine his guilt. Even if the evidence prima facie suggests that the accused is guilty, the Indian judiciary has always placed a premium on giving the accused a fair trial. In the case of Ajmal Kasab, despite the fact that the accused's misdeeds were broadcast on television, the judiciary allowed him to defend himself.

3.2.4. RIGHT TO LEGAL AID

The question now is whether the Right to Free Legal Aid falls under the purview of Fair Trial. Yes, it is necessary for a person to have a fair trial before going to jail, but this will only be possible if he is given the opportunity to represent himself in court through a lawyer. It has been observed as a trend that the majority of people who

[90] Appeal (crl.) 446-449 of 2004
[91] 1976 AIR,1 1996 SCR (3)744

commit crimes generally belong to the economically disadvantaged section of society, who are forced to languish in jails for such crimes simply because they cannot afford a lawyer, resulting in an infringement of a person's Right to Life and Personal Liberty. A person should not be punished simply because he was born into a lower-income family; this would violate their legal right to equal treatment. The courts recognised this quandary for the first time in *M.H. Hoskot v. State of Maharashtra*, where the court stated that in case of economic inability or incommunicado situation, if the gravity of the case is such that the accused's life and liberty are in danger, the state is required to appoint counsel for the accused provided he does not refuse it. This is also true in the event of an appeal or revision.

In the case of *Ramchandra Nivrutti Mulak vs. the State of Maharashtra*, the question was whether the trial court should ask the accused to make some other arrangement so that the lawyer is present in court, or should the court itself appoint a lawyer for them, if the accused's lawyer files for a withdrawal from the case and that request is denied. The court responded that, as stated in *Suk Das and others vs. Union Territory of Arunachal Pradesh and Khatri and Others vs. State of Bihar and Others*, conviction of a person who did not have a lawyer to represent him violates his fundamental right to a fair trial.

If any law is enacted, it should be done so with a specific goal in mind, and steps should be taken to ensure that these laws are properly implemented. Similarly, simply granting the right to a fair trial does not solve all problems because, even if the courts desire to give the accused a fair trial, the accused will not be able to exercise this right until he is financially able to do so. The right to free legal assistance is one of the most well-considered and noble rights established by the Indian court, as it not only confers rights on individuals but also assists them in enforcing such rights. The public's trust in the courts has improved as a result of this action by the judiciary.

3.2.5. RIGHT TO BAIL

Article 21 states that no one's life or liberty may be taken away unless it is done in compliance with the law. When a person is arrested for the purpose of investigating an offence, he is placed in confinement, which limits his liberty but is necessary and cannot be avoided because there is always the possibility that the accused will manipulate the evidence or flee. In such a case, bail serves as a form of relief for the accused. Bail is a guarantee that the accused will be present during trial, and it is

based on this guarantee that the accused is granted temporary release. In fact, there is a general understanding in the law that a person is innocent until otherwise proven, so he should not be forced to live in prison where his freedom has been violated until and until such time as a proceedings are carried out and a person's guilt established.

In the case of *Hussainara Khatoon v. State of Bihar*[92] It was said that people who are awaiting trial should be released on bond. The problem in this case was that grants of bails depended essentially on the discretion of the judges; they mostly provided bails based on the financial stability of the bailiffs, a luxury item that is only available to the rich. The Court proposed an alternative for the bail based on community roots, safety at work and family ties.

When the case of *Hitendra Vishnu Thakur v. State of Maharashtra*[93] came before the court, the court held that if an investigation is not completed within a specified time and the status of the accused is not determined, the accused will acquire the right to ask for bail, and the court will not consider the merits or gravity of a case when deciding whether or not to grant bail.[94]

Bail is a necessary evil in today's society. As stated earlier in the paper, the majority of people who waste away their lives in jail awaiting their trials are from the economically disadvantaged section of society. Consider a family of four with one single bread earner, the husband. He is married with two children. He is apprehended by the police on suspicion, and then he languishes in jail due to a lack of funds; he suffers, his family suffers, and this is all before his guilt is determined. If he is an innocent soul, then he and his family have gone through all of this pain for nothing. The ultimate goal of the law is to punish those who are guilty in proportion to the severity of their crime. No innocent person should be punished, and as the saying goes, "not guilty until proven," one should be allowed to request bail after a reasonable amount of time has passed.

3.3. INFRINGEMENT OF ARTICLE 21 IN JAILS

India is a country plagued by tremendous poverty, corruption, abuse of power, legislative ineptitude, and, to top it all, the Indian people are unaware of their rights.

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[92] 1 1979 AIR 1369, 1979 SCR (3) 532

[93] Anonymous, Right to Bail Constitutional Aspect, available at http://www.legalera.in/events-2/item/8318-right-to-bail-constitutionalaspects.html , last seen 20/09/15, 22:42 pm

[94] Supra 29 169

In such a situation, the judiciary's aggressive attitude to protecting those who are unable to defend themselves is admirable. Despite the judiciary's rigorous approach, there are still a few areas where additional effort is needed.

Here is a list of issues that the researcher believes require the highest level of attention from the judiciary in the current situation:

(1). Overcrowding: Overcrowding in prisons has an impact on a person's right to a dignified life. According to the National Institute of Justice's Prison Statistics Report, The population of Indian jails was 3, 85,135 in 2012, whereas the allowed capacity was 3, 43,169. On February 28, 2014, the central jail in Tihar, Delhi, displayed a permitted capacity of 6,250 inmates, despite the fact that the prison facility had 13,836 detainees. According to the National Human Rights Commission, the primary reason for overcrowding in jails is police officials' unjustified arrests, which result in traffic congestion. Other factors that contribute to this factor include a lack of adequate housing, an increase in the number of under-trial prisoners, and a lack of a consistent and adequate probation, parole, remission, and commutation of sentence policy. Overcrowding in prisons has an odd effect on a person's mentality; he becomes more aggressive as he lives in a constant competitive state where, due to a scarcity of resources, he believes his survival is threatened. Overcrowding in prisons can sometimes lead to riots, as seen in the January 2008 riots at Jalandhar Jail. It has a negative impact on citizens' health because the quality of food decreases as the population grows, there is an absence of proper sanitation facilities, these people do not even get enough space to sleep which a human being requires. The availability of doctors are also constrained which leads to inefficient healthcare facilities hence infringing the Right to Health which Article 21 guarantees.

(2). Prisoner Rape: “Rape”, the crime for which people go to jail, the crime which is so heinous that places like prisons are created in the first place. The objective is to stop this crime but how is it going to stop if it takes place behind the bars too? Prison rape is a well-accepted norm in the jails of India where inmates take pride when they commit this act; it’s a sign of authority, power and masculinity. The most shocking thing is that it is not only the inmates who commit this act but also the prison staff, most of the time they are not even stopped as people are scared of the position the other party holds. This act rather than acting as a reforming a person transforms him into a more hardened criminal as people convicted for petty offences would be subjected to such torture. The judiciary should take necessary steps to do away with

prison rape as it creates a scenario of gross human rights violation and infringes Right to life and liberty of human being behind the bar.

3.4. SOLUTION

Here are some suggestions, upon the application of which the researcher thinks a more just and fair justice system would be created.

1. The first and foremost step of judiciary should be to think carefully and exercise all possible ways to reform the person rather than sending him to jail
2. The courts should treat minor offences differently than the major ones.
3. Approaches like warnings, psychiatric help, imposition of fine, house arrest should be used before sending a person to jail.
4. Court should order the jail authorities to keep a close watch, physically and technologically in the prison facilities.
5. Courts should appoint psychiatrists who can have one on one interaction with the prisoners and if any news of such activity comes to them they should immediately tell the concerned authorities.
6. The cases should be dealt with in a speedy manner so the number of under trials would be decreased.
7. Develop certain guidelines necessary for the safety of prisoners.

From the plethora of judgments to the various guidelines in various cases and the various interpretations of Article 21, it is clear that the judiciary has played a critical role in protecting human rights. The judiciary has advanced and added a new role to its repertoire. Apart from being an interpreter of the law, the judiciary has begun to discuss people's inherent rights. In this new India, the judiciary has taken on the role of rights defender and is widely trusted by the general public. This can be seen in the judiciary's activist approach to prisoners' rights. Despite the fact that the courts have recognised prisoners' rights to be part of Article 21, enforcing these rights is a difficult task in and of itself. Despite the fact that the judiciary has established norms against custodial violence, bad practises continue. It is apparent that the judiciary makes legislation in good faith and with the intention of protecting the marginalised, but there is a gap in the enforcement of these rights, which is why the judiciary's noble goal cannot be accomplished. The judiciary has attempted to fill in the gaps to some extent, but it would be naive to believe that everything is fine and dandy; there is still a long way to go before the goals set forth by the constitution under Article 21 can be

achieved in their true sense. The judiciary has worked tirelessly to foster a climate of transparency and accountability; it is now the responsibility of executives to ensure that such transparency and accountability is maintained.

Apart from the fact that the judiciary has worked tirelessly, there are a few issues with the judiciary's operation that need to be addressed. They must comprehend the genuine nature of punishment as well as the various methods in which one might be punished without being imprisoned. Judges should also be aware of the nature of the crime and the accused's mindset. The most serious error made by the judge is that the aftereffects of punishment are not taken into account. Judges believe that as soon as an accused appears in court and is found guilty of an offence, no matter how serious or minor, he should be sentenced to prison. Judgment takes the stance that there is no innovation on matters of punishment.

This court's approach, along with the current state of imprisonment, destroys people rather than reforms them. When imposing punishment, a court's goal and conclusion must be to reform a person rather than permanently scar him. The judiciary has done a lot in the last decade to improve the lives of people behind prisons, but if it goes much farther and closes these loopholes, India will be known as a country where everyone is treated equally.

CHAPTER-4

4.1. INTERNATIONAL APPROACH TO PROTECTION OF PRISONER RIGHTS

Recognition and protection of prisoners' rights at the international level is a recent phenomenon.[95] This universal concern about the "Protection of Prisoners rights and their enforcement is invariably intertwined with international movement for the protection, promotion and recognition of certain basic human rights."[96] Yet one does not find many provisions, in the various international instruments; which explicitly contemplate prisoners' rights.[97] Yet, general provisions applicable to all individuals, in these instruments do apply to prisoners also.

The international community's interest for human rights can also be traced lower back to historic humanitarian traditions and the conflict for freedom and equality on all continents, as well as to the English, American, French, and Russian peoples. Most notably, World War II supplied an immediate spur for the preservation of human rights through the United Nations' instrumentality. Human rights were positioned on the global agenda by using the United Nations Charter. The postwar era has been appropriately dubbed "the Human Rights Era."[98] A world shaken by large-scale violations of human rights caused by the Nazis and Fascists' inhuman acts of genocide and other atrocities "became acutely aware of the necessity of limiting state sovereignty to the extent possible in the interest of protecting human rights and human dignity."[99]

The concept of "limited State sovereignty" has resulted in the enactment of laws establishing specific standards of treatment that reflect the international community's customary norms of conduct. "The existence of these laws and customs has prompted

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[95] the emergence of the free world of an organised concern for the recognition and protection of Prisoner' rights is a phenomenon of very recent vintage dating back only about two decades". Alessandra, Prisoners right ofAccess to the court: A Comparative Analysis of Human Right Jurisprudence in Europe and the United States, 13 J. INTL' L & ECON 1, (1978) at 1.

[96] Bhagawati, Inaugural address: in Tandon, M.P, (ed), International LawSeminar on Human Rights, Allahabad: The Allahabad Polytechnic 1980, at 7

[97] "In all international instruments setting human rights standards ... there is a general dearth of provisions establishing the dimensions of prisoners' rights and total silence as to their right of access to the Courts" Alessandra supra note 1, at 6.

[98] T.S.Rama Rao, Human Rights- Problems of developing Countries supra note 2, at 188.

[99] Id.

universal recognition of a minimum standard of treatment due to all persons," as a natural corollary. This bare minimum defines fundamental rights from which no deviation is permitted.

4.2. INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

4.2.1. United Nations Charter

The United Nations Charter contains several references to the promotion of human rights. "We the peoples of the United Nations, determined to reaffirm faith in fundamental human rights; in the dignity and worth of the human person, in the equal rights of men and women, and of nations, large and small, have resolved to combine our efforts to accomplish these aims," the Charter states unequivocally. Among the United Nations' stated goals in Article 1, "the promotion of respect for human rights and fundamental freedoms for all" stands out. Articles 55 and 56 are also crucial. Article 55 states that the United Nations shall promote, among other things, universal respect for and observance of human rights and fundamental freedoms for all peoples without regard to race, sex, language, or religion. Article 56 states that all members pledge to take joint and separate action in cooperation with the organisation to achieve the goals outlined in Article 5.

The achievement of the goals outlined in the preceding provisions was deemed critical to the world's long-term peace and security. However, because a number of delegations and influential nongovernmental organisations felt that the Charter's human rights provisions were too weak, it was agreed that a Bill of Rights should be drafted separately. Since the signing of the United Nations Charter, a virtual academic discipline has emerged to champion the idea that international law grants individuals rights against the state.

4.2.2. Universal Declaration of Human Rights, 1948

In the Universal Declaration of Human Rights, the United Nations created and accepted worldwide principles of fundamental freedoms for all peoples.[100] As it "gave substance to the human rights pledge contained in the United Nations Charter and set the normative template for future human rights conventional law," this document is one of the most important and fundamental documents on human rights.

[100] Adopted by the U.N.General Assembly on Dec. 10 1948 G.A.Res. 217A U N Doc. A/810, at 71 (1948).

For the first time, the Declaration recognised certain basic human rights of man as an individual as fundamental human rights that all signatories to the United Nations Charter must always respect and honour.The acknowledgement of the inherent dignity and equal and inalienable rights of all contributors of the human family, according to the Universal Declaration of Human Rights' Preamble, is the basis of world freedom, justice, and peace. The United Nations General Assembly declared this Declaration of Human Rights to be a shared popular success, and it is the responsibility of everybody to work to promote admiration for these rights and freedoms.[101] The Declaration might eventually become the Magnacarta of all mankind.

According to the Declaration, "All humans are born free and with equal dignity and rights. They are endowed with reason and conscience and should act in a brotherly manner toward one another."[102] The Declaration includes a number of other fundamental rights that have a direct impact on the protection of prisoners' rights. The Declaration, on the other hand, is merely a statement of principles and has no legal force. As a result, in 1951, the General Assembly made a provision for two separate conventions: a Covenant on Political and Civil Rights, which included traditional rights, and a Covenant on Economic, Social, and Cultural Rights, which included economic, social, and cultural rights.[103]

The two Human Rights Covenants were accepted by the United Nations General Assembly in 1966 after extensive debate. These Covenants, along with the Optional Protocol, entered into force in 1976. The same causes that pushed the United Nations to focus on human rights protection resulted in a similar outcome in Europe. Article 1 of the 1949 Statute of the Council of Europe attested to western Europe's commitment to the "maintenance and further realisation of human rights and fundamental freedoms," and Article 3 specifically defined each state's obligation to accept the principles of the rule of law and the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms.[104]

To reinforce this commitment, the European Convention on Human Rights entered into force, establishing a European system of fundamental freedoms protection. The most important and revolutionary feature of that system was the unique procedure established in the Convention, under which an individual, who previously had no

[101] Id
[102] Universal Declaration of Human rights, Article 1.
[103] U.N. Yearbook on Human rights 1951-52.
[104] Statute of Council of Europe, 1949, 87 UNTS, 103

locus standi in international law to assert his international claims against a sovereign state, was given the right to file an application with the Commission alleging violations of his human rights. Similarly, the American Convention on Human Rights, a regional international human rights instrument, was adopted in 1969 at an inter-governmental conference convened by the Organization of American States. The American Human Rights Convention was modelled after the European Convention on Human Rights. The states that signed the American Convention agreed to respect and ensure the free or full exercise of these rights for all people under their jurisdiction. States that have signed the American Convention are obligated not only to respect the rights guaranteed in the convention, but also to ensure their free and full exercise.

There are provisions laying down basic human rights that have a direct bearing on prisoners and their protection in all of these international instruments, namely the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European Convention, and the American Convention on Human Rights, which set human rights standards. They are as follows:

(A). Right to life, Liberty, and Security of Person.

The fundamental rights that give rise to several other rights are enshrined in Article 3 of the Universal Declaration of Human Rights, which states that "everyone has the right to life, liberty, and security of person." "The right to life is a fundamental human right because it is the only way for a human being to enjoy other rights." The Political Covenant contains similar provisions guaranteeing these rights. According to Article 6 (1), "every human being has an inherent right to life." This right is legally protected. Nobody's life shall be taken from him arbitrarily. Furthermore, Article 9(1) states that "everyone has the right to liberty and personal security." No one shall be arbitrarily arrested or detained. No one's liberty may be taken away except on legal grounds and in compliance with legal procedures." Similarly, the European Convention on Human Rights' Articles 2(1) and 5(1), as well as the American Convention on Human Rights' Articles 438 and (I)39 and 7(2)40, guarantee the right to life, liberty, and security of the person.

(B). Freedom from Torture and Cruel, Inhuman or Degrading Treatment or Punishment.

Protection from torture, cruel, inhuman, or degrading treatment is another essential right guaranteed by international conventions. This right is directly related to the protection of detainees from torture. "No one shall be subjected to torture or to cruel, brutal, or degrading treatment or punishment," states Article 5 of the Universal Declaration. This sentence is repeated identically in Article 7 of the Political Covenant. Similarly, the European Convention's Article 3 and the American Convention's Article 5 both give this protection. "All persons deprived of their liberty shall be treated with respect to the inherent dignity of the human person," says Article 5(2) of the American convention. This is a crucial right for those who are detained, as it ensures that they are treated humanely and with regard for their human dignity. Article 5 and other clauses aim to humanise prisons by giving inmates a number of privileges. "Accused persons shall be segregated from convicted persons, unless in extraordinary circumstances, and shall be subjected to distinct treatment suitable to their position as unconvicted persons," says Article 5 (4). Article 5(5) specifies that adolescents who are the subject of criminal proceedings must be isolated from adults and brought before specialised tribunals as soon as feasible so that they can be treated in conformity with the law.

In terms of the purposes of punishment, Art. 5 (6) states that deprivation of liberty punishments must have as a primary goal the reform and social readaptation of the convicts. As a result, the treatment of prisoners in prisons is required to be humane.

The provisions of the Political Covenant, the European Convention, and the American Convention that prohibited "torture" have been criticised because they lack a definition of "torture" and do not distinguish it from cruel, inhuman, or degrading treatment. However, the United Nations adopted a Declaration on the Protection of All Persons from Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment by Resolution No.3452 in 1975. "Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person by or at the instigation of a public official for such purposes as obtaining information or a confession from him or a third person, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons," according to the Declaration. Torture is described as an aggravated and deliberate form of cruel, inhuman, or degrading treatment.[105]

[105] Id. Article 1(2).

The Declaration stated unequivocally that any act of torture or other cruel, inhuman, or degrading treatment or punishment was an affront to human dignity and should be condemned as a violation of the purpose of the United Nations Charter as well as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights, 47 states have mandated that in exceptional circumstances such as a state of war or threat of war, internal political instability, or any other public emergency, the state may not use torture or other cruel, inhuman, or degrading treatment or punishment.[106]

The Declaration stressed the importance of including the prohibition of torture in the training of law enforcement and other public employees who may be accountable for detainees. This ban had to be contained in general regulations or instructions, such as those issued with regard to the duties and functions of anybody involved in the custody or treatment of such people. According to the Declaration, each state must conduct a systematic review of interrogation methods and practises, as well as arrangements for the custody and treatment of persons deprived of their liberty, in order to prevent torture or other forms of cruel, inhuman, or degrading treatment or punishment. Torture or other cruel, inhuman, or degrading treatment or punishment victims have the right to file a complaint and have their case heard by impartial authorities. Upon proof of torture, a criminal case will be brought against the alleged offender in line with the concerned state's national legislation. Victims are entitled to remedy and compensation in accordance with the law.

(C). Convention Against Torture and other Cruel Inhuman or Degrading Treatment or Punishment

This Convention has been ratified by the U.N.General Assembly in 1984[107] to provide for greater specificity in the definition of 'Torture' and its control, and to set up a special control organ than the Human Rights Committee under the political covenant. This Convention is a comprehensive instrument, providing for effective control over Torture and other inhumane, degrading, or degrading treatment or punishment are prohibited.

The Convention provides for a detailed definition of torture contained in Article 1(1). It provides: "for the purposes of this Convention, Torture is defined as any act in

[106] Id. Article 3.
[107] U.N. DOC E/1984/14, EICN. 4/ 1984 77 at 13 (1984).

which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for purposes such as obtaining information or a confession from him or a third person, punishing him for an act he or a third person has committed or is suspected of having committed, intimidating or coercing him or a third person, or for any other reason based on discrimination. It excludes pain or suffering coming solely as a result of, or as a result of, authorised sanctions." This definition is more detailed than the one in the Declaration of 1975.

Regarding cruel, inhuman or degrading treatment or punishment, the convention states that, "each state party undertakes to prevent other acts of cruel, inhuman, or degrading treatment or punishment in any territory under its jurisdiction that do not amount to torture as defined in Article 1, when such acts are committed by or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity."

Every state is required by the Convention to take effective legislative, administrative, judicial, and other measures to prevent torture in any territory under its jurisdiction. A state that tortures its citizens cannot excuse their actions by using a war or threat of conflict, internal political unrest, or any other public emergency. So, prohibition against torture has been absolute. The Convention requires every state to reform its criminal law in order to make all acts of torture as offences. The Convention further requires every state to include Education and information on the prohibition of torture should be included in the training of law enforcement personnel, civil or military, medical personnel, public officials, and other individuals who may be involved in the custody, interrogation, or treatment of any individual subjected to any form of arrest, detention, or imprisonment. Each state must include this prohibition in the rules or instructions issued to any such person's duties and functions. This type of programme will keep law enforcement personnel informed.

Every state must conduct a comprehensive examination of interrogation rules, instructions, methods, and practises, as well as procedures for the custody and treatment of anyone arrested, detained, or imprisoned in any territory under its jurisdiction, in order to prevent torture. The state must ensure that any individual who claims to have been tortured on its territory has the right to file a complaint with, and have his case promptly and impartially investigated by, its competent authorities. The state must take the necessary precautions to protect the complainant and witnesses from any ill treatment or intimidation as a result of his complaint or any evidence

provided. The legal system must be overhauled to ensure that a victim of torture receives redress and has an enforceable right to fair and adequate compensation, as well as the opportunity for full rehabilitation. Further, the state has to ensure in its legal system that any statement given as a result of torture shall not be invoked as an evidence in any proceeding, except against a person accused of torture as evidence that the statement was made.

(D). Committee Against Torture

The Convention has provided for a more effective control machinery - a Committee against torture consisting of Ten experts of high moral standing and recognised competence in the field of human rights who shall serve in their personal capacity.[108] The states shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken, to give effect to their undertaking under the Convention, within one year after the entry into force of the convention for the state concerned. Thereafter the states shall submit supplementary reports once in every four years on any new measures taken and such other reports as the Committee may request' After considering the report, the Committee may make such general comments on the report as it may consider appropriate and shall forward these to the state party concerned.

If the Committee receives reliable information that torture is being systematically practiced in the territory of a state party, the Committee can invite that state party to co-operate in the examination of the information and for this purpose to submit observations with regard to the information concerned. The Committee may, if it decides, designate one or more of its members to make a confidential inquiry and to report to the committee urgently.

After examining the findings of its members the Committee shall transmit these findings to the state party concerned together with any appropriate comments or suggestions.All these proceedings are to be kept confidential.

(E). Right to Legal Recognition

According to Article 6 of the Universal Declaration, everyone has the right to be recognised as a person before the law wherever they are. 'The right is guaranteed by

[108] Id. Article 17

Article 16 of the Political Covenant and Article 3 of the American Convention, with slight amendments.' The right to be recognised "as a person before the law" was considered just as vital as the right to protect one's physical integrity at the time the Universal Declaration was adopted.Given that Nazi Germany had arbitrarily stripped many people of their legal personality before subjecting them to assaults on their physical integrity, the drafters of Article 6 saw it as a critical right through which individuals could ensure themselves of their fundamental civil rights enshrined elsewhere in the Universal Declaration.

(F). Right to Remedy

This is a right guaranteed by all international treaties, and it enables every individual to seek redress for violations of his rights. Article 6 of the Universal Declaration of Human Rights guarantees all people "the right to an effective remedy by competent national tribunals for acts infringing on the fundamental rights granted to him by the constitution or by law." Article 2(3) of the Political Covenant, Article 13 of the European Convention, and Article 25 of the American Convention all contain similar provisions. Because professor Humphrey stated that human rights without effective implementation are like shadows without suction, the right to remedy has been regarded as a very important right.

Article 8 of the Universal Declaration has a very wide scope as its reach extends to those rights granted by domestic constitution and domestic law. On the other hand both the Political Covenant and the European Convention are more restrictive in this regard. Effective remedies are guaranteed by Article 2(3) (a) of the Political Covenant only to vindicate rights or freedoms recognised by the Covenant. Similarly, article 13 of the European Convention guarantees an effective remedy only for rights and freedoms as set forth in the Convention. The American Convention, on the other hand, seeks to provide relief, under Article 25(1), against acts that violate fundamental rights guaranteed by the constitution or laws of the state in question, or by international conventions . Thus, the American Convention seeks to provide a double protection.

(G). Right to a Fair Trial by Impartial Tribunal

Article 10 guarantees individuals the basic right to a fair trial in both civil and criminal matters. The provision declares: "Everyone has the right, in full equality, to a

fair and public hearing before an independent and impartial tribunal in the determination of his rights and obligations, as well as any criminal charge brought against him." This right is a very important one as the implementation of all other rights depends upon the proper administration of justice. Similarly Article 8 of the American convention provides for right to Fair trial by declaring that, "Every person shall have the right to hearing with due guarantees and within a reasonable time, by a previously established by law competent, independent, and impartial tribunal, in the substantiation of any accusation of criminal nature made against him or for the determination of his rights or obligations of a civil, labour fiscal or any other nature". Article 14 of the Political Covenant similarly provides: "Before the courts and tribunals, everyone must be treated equally. Everyone has the right to a fair and public hearing before a competent, independent, and impartial tribunal established by law in the determination of any criminal charge against him or of his rights and obligations in a legal proceeding ". The European Covenant provides similar provision in Article 6.

(H). Conditions and Treatment of Prisoners

Some of the provisions of the international instruments reflect a particular concern for the conditions and treatment of prisoners. ”All persons deprived of their liberty will be treated with humanity and regard for the intrinsic dignity of the human person,” says Article 10 of the Political Covenant. Unless there are extraordinary circumstances, accused persons must be separated from convicted persons and receive separate treatment commensurate with their position as unconvicted individuals."[109] This criterion is important to protect them from being tainted by offenders who have been convicted. Furthermore, juvenile accused persons are sought to be protected by requiring that they be separated from adults and brought to court as soon as possible. Both the Political Covenant and the American Convention require prisoners to be formatted and rehabilitated. Thus, the Political Covenant provides for a penitentiary system that includes the treatment of prisoners, the primary goal of which is their reformation and social rehabilitation. Juvenile offenders must be separated from adults and treated in accordance with their age and legal status. Similarly, the

[109] Convention against Torture, Article 10(2)(a); Article 5(4) of the American convention provides a similar provision,: “Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons".

American Convention stipulates that sanctions involving deprivation of liberty must have as their primary goal the reform and reintegration of the offenders into society.

4.3. THE UNITED NATIONS STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS

Another source of international protection for prisoners' rights is the United Nations Standard Minimum Rules for the Treatment of Prisoners, which were enacted in 1955 by the United Nations Congress on the Prevention of Crime and the Treatment of Offenders.[110] These Regulations were enacted in response to growing international concern over the treatment of inmates and prisons. These norms, unlike an international convention, do not have legal standing, but they do represent a consensus among governments on criminal standards. Before they can provide effective protection for detained people, they must be formally incorporated and implemented in each state's legal system. The states, on the other hand, have been tepid in their response to these Rules. This could be due to the world's wide range of legal, social, economic, and geographical situations. As a result, not all of the rules can be applied everywhere and at all times. They should act as stimulants to a constant effort to overcome practical difficulties in their application, with the knowledge that they represent, as a whole, the minimum conditions that the United Nations accepts as suitable. It has lately been proposed that the regulations be harmonised with the systems of particular states in order to apply the substance of their provisions rather than the wording of the law.

The Council of Europe recently revised the Rules in order to incorporate them into the framework of modern European correctional policies. The Council of Europe's Standard Minimum Rules, adopted as regional guidelines by the Committee of Ministers in 1973, include new provisions such as the prohibition of injurious punishment and the establishment of contracts outside of penal institutions to protect prisoners' rights, either through judicial supervision or through a permanent visiting body.

4.3.1. Rules of General Application

[110] Approved by the Economic and Social Council by its Resolution 663c (XXIV) of 31 July 1957 and later endorsed by the General Assembly in two resolutions in 1971 and 1973, G.A.Res.2858, 26 UN, GAOR (Supp.No.29) 94, U.N.DOC A/8588 (1971) and G.A Res 3144, 28, U.N.GAOR Supp (No.30) 85, U.N.DOC. A 9425 (1973).

i). Classification of Prisoners: The scientific classification is the first requirement for a suitable organisation of the prison as a correctional institution.[111] Thus, Rule 8 requires that different categories of prisoners be housed in separate institutions based on their gender, age, criminal record, the legal reason for their detention, and the needs of their treatment. Separation of men and women, unconvicted and convicted convicts, civil and criminal offenders, adolescent and adult prisoners is also planned.

ii). Accommodation: If sleeping quarters are in individual cells or rooms, each prisoner must occupy a cell or room by himself at night, and if dormitories are employed, they must be inhabited by convicts who have been carefully vetted as being compatible with one another. The housing provided for the use of inmates must meet all health criteria while taking into account climatic circumstances. The windows must be large enough to allow ample fresh air and light in. A sufficient amount of artificial light must be provided to comfortably read and work.

iii). Personal hygiene: Appropriate sanitary, bathing, and shower facilities must be provided, and every prisoner may be ordered to bathe as often as necessary for general hygiene, taking into account the climatic conditions. They must be given sufficient water and toiletries in order to stay clean and healthy.

iv). Clothing and bedding: Every prisoner must be provided with clothing that is appropriate for the climate and sufficient to keep him healthy. Such clothing shall not be degrading or humiliating in any way. All clothing must be clean and in good condition. When a prisoner is removed from the institution for an authorised reason, he may wear his own clothing or other inconspicuous clothing. Every prisoner shall be provided with a separate bed and sufficient bedding, which shall be clean when issued, kept in good order, and changed on a regular basis to ensure its cleanliness.

(v). Food: Every prisoner shall be provided with food of nutritional content adequate for health and strength, of wholesome quality, and well cooked and served by the administration at regular intervals. Every prisoner will have access to drinking water whenever he or she requires it.

(VI). Exercise and Sport: Every prisoner who is not doing out-of-door labour is required to get at least one hour of appropriate exercise in the open air every day. During the exercise period, young convicts and those of acceptable age and physique

[111] Classification of prisoners

will get physical and recreational instruction. This will necessitate the provision of space, installations, and equipment.

(vii). Medical Services: At least one competent medical officer with some expertise of psychiatry must be accessible in every prison. The medical service should be organised in close collaboration with the community's or nation's overall health administration. They must include a psychiatric service for the diagnosis and treatment of mental disorders in appropriate instances. The equipment, furniture, and pharmaceutical supplies at prison hospitals must be suitable for the medical care and treatment of sick inmates, and there must be an adequate number of staff. Specially treated prisoners will be sent to specialised facilities or civil hospitals.

There will be unique accommodations for women in prison to receive the essential prenatal and postnatal care and treatment. Wherever possible, arrangements should be made for children to be born in a hospital outside of the institution. The fact that a kid was born in prison shall not be noted on the birth certificate.[112]

When newborns are allowed to remain in the institution with their mothers, provisions must be established for a nursery staffed by qualified personnel where the infants will be kept when they are not in their mothers' care. Every prisoner must be seen and examined by a medical officer following admission and as needed thereafter. Inmates who are suspected of having infectious or contagious diseases will be segregated. He must assess each prisoner's physical capacity for work and identify any mental or physical flaws that may obstruct recovery. Every sick prisoner should be examined by the medical officer on a daily basis. When the medical officer believes that a prisoner's physical or mental health has been or will be harmed by extended confinement, he must notify the director.

The director shall study the medical officer's reports, and if he agrees with them, he shall take prompt action to implement additional recommendations. If he disagrees or if they are outside his power, he must immediately submit his own report as well as the medical officer's suggestion to higher authorities.

(viii). Discipline and Punishment: Maintenance of discipline in a prison is a matter of prime importance. The rules provide that discipline and order shall be maintained with firmness but the restriction shall not be more than is required for safe custody and a well-ordered community life. No prisoner is to be employed in any disciplinary

[112] Id. Rule 23 (1).

capacity. Only a competent administrative authority can determine The following are defined by law or regulation: (a) conduct constituting a disciplinary offence; and (b) the types and duration of punishment that may be imposed. and (c) the authority competent to impose such punishment.

A prisoner shall be punished only in accordance with such law or regulation, and shall not be punished more than once for the same offence. A prisoner shall not be punished unless he has been informed of the offence and has been given a reasonable opportunity to present his defence. Wherever possible, the prisoner will be allowed to use an interpreter to present his case. Corporal punishment, confinement in a dark cell, and all other cruel, inhuman, or degrading punishments are strictly prohibited as punishment for disciplinary offences.. No punishment which will affect the physical or mental health of a prisoner shall be inflicted. Close confinement or a reduction in nutrition shall not be imposed without a medical certificate stating that the prisoner is capable of sustaining it.

(ix). Instruments of Restraint: Rule 33 forbids the use of restraint instruments such as handcuffs, chains, irons, and strait-jackets as a form of punishment. Furthermore, chains or irons are not permitted to be used as restraints. Other restraints may be used as a precaution against escape; however, they must be removed when the prisoner appears before a judicial or administrative authority; on medical grounds by the direction of the medical officers; or by order of the director if other methods of control fail. The central prison administration has to decide the patterns and manners of use of the instrument of restraint.

(x). Information to and Complaints by Prisoners: On admission, every prisoner shall be given written information about the regulations governing the treatment of prisoners in his category, the institution's disciplinary requirements, the authorised methods of seeking information and filing complaints, and all other matters necessary to enable him to understand both his rights and obligations and to adapt himself to the institution. If the prisoner is illiterate, the above information must be delivered orally.

Every weekday, every prisoner must be given the opportunity to make requests or complaints to the institution's director. In addition, the prisoner shall have the chance to make a complaint to the visiting Inspector of Prisons and speak with him without the presence of the director or other members of the staff. Every prisoner shall be able to submit a request or complaint to the central prison administration, the judicial

authority, or other appropriate authorities through permitted routes without fear of censorship.

(xi). Contact with outside World: Prisoners should be allowed to speak with their families and trusted friends, as well as receive visits, under strict monitoring. Foreign nationals are entitled to adequate communication with the diplomatic and consular representatives of the country to which they belong, according to Rule 38. Inmates must have access to news by reading newspapers, receiving wire transmissions, or other comparable ways. Every prison must provide a library for all types of inmates, with a sufficient number of recreational and educational books."

(xii). Right to Religion: Adequate facilities to be provided to the prisoners to practice their religion. They may be allowed to keep in His denomination's religious observance and teaching books are in their possession.[113]

(xiii). Death, illness, transfer: If a prisoner dies or is seriously ill or if he is removed The director shall immediately notify his spouse, if he is married, or the nearest relative, or any other person previously selected by the prisoner, for the treatment of mental afflictions. A prisoner must also be told immediately if a close relative dies or becomes very ill. If a close relative is gravely ill, the prisoner should be allowed to visit him at his bedside, either escorted or unaccompanied.

(xiv). Institutional Personnel: Personnel for prison administration shall be carefully selected who have integrity, humanity, and professional capacity and personally suitable for the work. They will be appointed as professional prison officers on a full-time basis, with adequate pay and working conditions. Personnel will receive training in their general and specific responsibilities, as well as theoretical and practical assessments. Personnel must attend in-service training classes to maintain and increase their knowledge and professional capacity while on the job. Members of the staff must conduct themselves in such a way that they serve as role models for the inmates.

A suitable number of professionals, such as psychiatrists, psychologists, social workers, teachers, and trade instructors, must be included in the team. Social workers, teachers, and trade instructors' services must be guaranteed on a permanent basis, without excluding part-time or voluntary workers. The director of an institution should be adequately qualified for his position based on his personality, administrative

[113] /(/. Rules 41-42.

ability, appropriate training, and experience. He must devote his entire time to his official duties and must live on the institution's premises or in its immediate vicinity.

4.3.2. Prisoners Under Sentence

The ultimate goal and justification for a prison sentence or other deprivation of liberty is to protect society from crime. This goal can only be realised if the time spent in jail is used to ensure that the criminal is not only willing but also capable of leading a law-abiding and self-supporting life when he returns to society. For this end, the institution should make use of all appropriate and available remedial, educational, moral, spiritual, and other forces and forms of help, tailoring them to the unique treatment needs of the inmates.

(i) Treatment: The treatment of persons sentenced to imprisonment shall instill in them a will to lead law-abiding and self-sustaining lives after their release, and to prepare them to do so. The treatment must be designed to boost their self-esteem and develop their sense of responsibility. All appropriate means, including religious care in countries where this is possible, education, vocational guidance and training, social casework, employment, counselling, physical development, and moral character strengthening, shall be used for this purpose, in accordance with the individual needs of each prisoner, taking into account his social and criminal history, physical and mental health, and other factors.

Prisoners should be classified so that the prisoner, who, by reason of his criminal records or bad character, is likely to exercise bad influence is separated from the rest. A programme of treatment for each prisoner should Prepare for him based on what you've learned about his specific requirements, abilities, and dispositions.

(ii) Work: The prison labour must not be of an afflictive nature and the convicts will be expected to labour, subject to the medical officer's determination of their physical and mental fitness. The work supplied must sustain and improve the convicts' ability to earn a living after they are released. Prisoners should have the option of choosing the type of labour they do. subject to the requirement of institutional administration and discipline.

Necessary precautions shall be taken to protect the safety and health of prisoners. Prisoners' maximum daily and weekly working hours should be set by legislation or administrative regulation. They should be provided with equitable remuneration for the work.

(iii) Education and Recreation: Adequate provision should be made for further education of all prisoners. Education of illiterates and young prisoners should be made compulsory. Education of prisoners should be integrated, as far as possible, with the country's educational system, so that they can continue their studies without trouble after their release. All jails must provide recreational and cultural activities for the benefit of inmates' mental and physical wellbeing.

(iv) Social Relations: Maintaining and improving such relationships between a prisoner and his family, as well as persons or agencies outside the institution, that promote the best interests of his family and his own social rehabilitation, should be given special emphasis.

4.3.3. Prisoners Under Arrest or Awaiting Trial

The standard minimum Rules have special provisions for undertrial prisoners. The Rules provide for their separation from convicted prisoners. The young untried prisoners are to be kept separate from adults and shall in principle be detained in separate institutions. They should be accommodated in separate rooms for sleeping.[114]

Untried convicts may be permitted to obtain meals from outside sources, either through the administration or through family or friends. Otherwise, they will be fed by the administration.

Untried convicts are allowed to dress in their own clothes as long as it is clean and appropriate, according to the rules. If they wear prison clothing, it should not be the same as that worn by convicted criminals. Other Rules state that if an untried prisoner works, he will be paid wages; he will be allowed to get at his own expense such books, newspapers, and writing supplies as are compatible with the administration of justice and security; and he will be allowed to travel; he shall be allowed to avail medical treatment by his own doctor or dentist.

The most important right the rules contemplate for an untried prisoner is his right to inform his family about his detention. For this the rules require that, he will be provided with all reasonable means of interacting with his family and friends, as well as receiving visits from them, subject to such limitations and monitoring as are essential for the administration of justice and the Institution's security and good order.

[114] Id. Rule 86

Untried prisoners are permitted to obtain free legal assistance where such assistance is available in order to adequately prepare their defence. Any confidential instructions can be prepared and handed over to his legal adviser. Interviews between a prisoner and his legal counsel may be legitimate, but they cannot be heard by a police officer or institution official.

4.3.4. Civil Prisoners:

There is a special provision in the rules for prisoners arrested for nonpayment of debt or by order of a court under any other non-criminal process Such individuals who have been imprisoned shall not be subjected to any more restrictions or punishment than is required to guarantee their safety and well-being. Their treatment cannot be any less favourable than that of untried inmates, with the caveat that they may be forced to work.

4.3.5. Persons Arrested or Detained Without Charge

Without prejudice to the provisions of Article 9 of the International Covenant on Civil and Political Rights, the rules provide that persons arrested or detained without charge shall be accorded the same protection as those accorded under Parts I and II, Section C of the International Covenant on Civil and Political Rights. Where their application is conducive to the advantage of this special category of people in custody, relevant provisions of part II section A will also apply.

4.4. UNITED NATIONS STANDARD MINIMUM RULES FOR THE ADMINISTRATION OF JUVENILE JUSTICE ("THE BEIJING RULES.")

These Rules in general aim at promoting juvenile welfare to the greatest possible extent.148 The rules are deliberately formulated so as to be applicable within different legal systems and, at the same time to set some minimum standards for the handling of juvenile offenders under any definition of a juvenile and under any system of dealing with juvenile offenders.

4.4.1. Detention Pending Trial

For the protection of juveniles under detention pending trial, the rules lay down that they shall be entitled to all of the rights and protections set forth in the United Nations

Standard Minimum Rules for the Treatment of Prisoners.[115] They must also be kept separate from adults and held in a separate facility or a separate section of an institution that also houses adults.

The danger to juveniles of criminal contamination "while in detention pending trial cannot be underestimated. Therefore, the rules contemplate the need for alternative measures, by stipulating that pretrial custody should only be used as a last resort and for the shortest possible period of time. Furthermore, alternative measures such as strict supervision, intensive care, or placement with a family, in an educational setting, or at home must be used wherever possible to replace incarceration pending trial. The placing of a juvenile in an institution must always be a last resort and for the shortest time possible. This is an essential requirement for juveniles who are vulnerable to negative influences.

4.4.2. Institutional Treatment of Juveniles

Juvenile convicts placed in institutions must be provided training and treatment to offer them with care, protection, education, and occupational skills in order to help them adopt socially constructive and productive rules. The Rules also ensure that kids receive all essential social, educational, vocational, psychological, medical, and physical help that they may require as a result of their age, sex, or personality, and in the benefit of their healthy development. In institutions, juveniles must be kept separate from adults and held in a separate institution or a section of an institution that also houses adults. Young female offenders will receive equal treatment.

Insofar as it is relevant to the treatment of juveniles in institutions, the standard Minimum Rules for the treatment of convicts have been made applicable. As a result, the rules' objectives and content are linked to the relevant elements of the standard Minimum Rules for the Treatment of Prisoners.

4.5. CODE OF CONDUCT FOR LAW ENFORCEMENT OFFICIALS

The Code of Conduct adopted by the United Nations General Assembly lays down standards, which should become part of every law enforcement official. The Code is adopted considering the purpose in the Charter of United Nations, Universal Declaration of Human Rights, the International Covenants on Human Rights and the

[115] "The Beijing Rules" Rule 13 (3).

Declaration on the Protection of all Persons from being subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The Principles of the code are adopted keeping the important task which law enforcement officials are performing and also the potential for abuse in exercising their duties. They intend to make the law enforcement officials perform their duties diligently with dignity, in compliance with the principles of human rights. Every state should give favourable consideration to their use within the framework of national legislation or practice as a body of principles for observance by law enforcement officials. These principles will serve to humanize the machinery of justice.

To begin with, the Code requires law enforcement personnel to carry out "the obligation imposed on them by law by serving the community and protecting all persons against illegal acts, consistent with the high degree of responsibility needed by their profession." Furthermore, in the course of their duties, law enforcement officers must respect and preserve human dignity, maintain and uphold all people's human rights, and use force only when absolutely necessary and to the degree necessary to accomplish their duties. The use of force is regarded as an extreme measure in this country. "No law enforcement official may inflict, initiate, or allow any act of torture or other cruel, inhuman, or humiliating treatment or punishment," the Code states. A law enforcement official may not use superior commands or extraordinary circumstances to justify torture or other cruel, barbaric, or humiliating treatment of punishment, such as a state of war or threat of war, a threat to national security, internal political stability, or any other public emergency.

According to the Code, law enforcement authorities must "provide the full protection of the health of those in their custody, and, in particular, shall take early steps to get medical assistance if necessary." They should also not perform any acts of corruption, and they should vigorously oppose and battle any such acts whenever they occur. Act of corruption is an act of abuse of authority and it demoralizes the entire machinery. In order to maintain the sanctity of rule of law, the Code provides that the law enforcement officials shall respect law and the Code, and shall also, to the best of their capability, prevent and rigorously oppose any violations of them Whenever they have any reason to believe that a violation of the Code has occurred or is about to occur, they shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power. It is understood that the law enforcement officials shall not suffer administrative or other

penalties because they have reported that a violation of their Code has occurred or is about to occur.

4.6. DECLARATION OF BASIC PRINCIPLES OF JUSTICE FOR VICTIM OF CRIMES AND ABUSE OF POWER.

The United Nations General Assembly adopted this Declaration in order to provide justice to victims of crime and victims of abuse of power. The Declaration's principles apply to all categories of victims. Under the Declaration, prisoners who are subjected to inhumane treatment by prison staff may be deemed victims. The Declaration establishes as a fundamental concept that victims should be handled with compassion and dignity. They have a right to use the court system and receive speedy remedy for the injury they have suffered, as guaranteed by national legislation. The Declaration emphasizes the need for establishing and strengthening judicial and administrative mechanisms to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.

The offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependents, in the form of return of property or payment for the harm or loss suffered, etc. Where public officials acting in an official capacity have violated national criminal laws, the victims should receive restitution from the state whose officials or agents were responsible for the harm inflicted. The Declaration provides for vicarious liability of the state to pay compensation to the victims or the family of the deceased victim when compensation is not available from the offender, or other sources. Alternatively, the state may encourage the establishment and expansion of National funds for compensation to victims. In addition, the victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community based and indigenous means.

Regarding the victims of abuse of power the Declaration mandates that the states should consider incorporating into the national law, norms proscribing abuses of power and providing remedies to victims of such abuses. The states are further required to periodically review existing legislation and practices to ensure their responsiveness to changing circumstances, should enact and enforce, if necessary, legislation proscribing acts that constitute serious abuses of political or economic

power, as well as promoting policies and mechanisms for the prevention of such acts and, should develop and make readily available appropriate rights and remedies for victims of such act.

4.7. PRINCIPLES OF MEDICAL ETHICS RELEVANT TO THE ROLE OF HEALTH PERSONNEL, PARTICULARLY PHYSICIAN'S, IN THE PROTECTION OF PRISONERS AND DETAINEES AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

These Principles were prepared by the Council for International Organizations of Medical Sciences at the instance of the General Assembly and were adopted by it in 1982. The General Assembly was alarmed that not infrequently members of the medical profession or other health personnel are engaged in activities which are difficult to reconcile with medical ethics. The Assembly had recognised that throughout the world significant medical activities are being performed increasingly by health personnel not licensed or trained as physicians, such as physician-assistants, paramedics, physical therapists and nurse practitioners. The Declaration of Tokyo of the world Medical Association, containing the Medical Doctors' Guidelines Concerning Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment in Connection with Detention and Imprisonment adopted by the Twenty-ninth World Medical assembly, held at Tokyo in October 1975 was taken into account while preparing the draft principles.

The health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health, as well as disease treatment of the same quality and standard as those who are not imprisoned or detained, according to these Medical Ethics Principles. Further, the principles very tersely state that it is a gross contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in incitement to or attempts Torture or other cruel, inhumane, or humiliating treatment or punishment is prohibited. If a health professional has a professional contact with a prisoner or detainee for any reason other than to examine, protect, or promote their physical and mental health, it

is a major breach of medical ethics. It is against medical ethics for health professionals to:

(a). apply their knowledge and skills in order to assist in the interrogation of prisoners and detainees which may adversely affect the physical or mental health of such prisoners or detainees, and which is in violation of applicable international conventions;

(b). to issue a certificate of fitness to prisoners or detainees for any treatment or punishment that may have a negative impact on their health and is not in accordance with international instruments

Furthermore, it is a violation of Medical Ethics for Health Personnel, particularly physicians, to participate in any procedure for restraining a prisoner or detainee unless such a procedure is determined purely medically as being necessary for the protection of the physical or mental health or safety of the prisoner or detainee himself, of his fellow prisoners or detainees, or of the prisoner or detainee's fellow prisoners or detainees. These principles are declared non-derogable, and no deviation from them is permitted for any reason, including a public emergency. When working with prisoners and detainees, these Principles put an obligation on health staff to act strictly in accordance with medical ethics.

4.7.1. Implementation of the Standard Minimum Rules for the Treatment of Prisoners

The Rules include a number of clauses that detail the procedures for putting them into effect. In its Resolution 2858 (xxvi) of December 20, 1971, the General Assembly called attention to the Rules and recommended that they be effectively implemented in the administration of penal and correctional institutions, with favourable consideration given to their incorporation into national legislation. The focus is placed on the substance rather than the text of the Rules when states believe the rules need to be aligned with their legal system and assimilated to their culture. Procedure 3 of the Rules states that the rules must be made available to all parties involved, particularly law enforcement and correctional personnel, in order for them to be applied and enforced in the criminal justice system. On admission and during detention, all inmates and individuals under detention must be made aware of and understand the Rules as enshrined in national legislation and other regulations.

Furthermore, governments should report to the United Nations Secretary-General every five years on the degree of their implementation and progress in applying regulations, as well as the factors and challenges affecting implementation, by responding to the Secretary-questionnaire. General's The Secretary-General shall prepare an independent report on the status of the Rules' implementation and submit it to the Committee on Crime Prevention and Control for review and action. The governments should provide the Secretary-General with the following information:

(a). copies or abstracts of all laws, regulations, and administrative measures pertaining to the application of the Rules to detained persons, as well as detention facilities and programmes;

(b). any data and descriptive material on treatment programmes, personnel, and the number of people detained in any form, as well as statistics;

(c). any other relevant information on the Rules' implementation.

The importance of disseminating the Rules as widely as possible is self-evident. The Secretary-General is responsible for disseminating the rules and current implementing procedures in as many languages as possible, and making them accessible to all governments, intergovernmental and nongovernmental organisations. He shall also prepare analytical summaries of periodic surveys, reports of the Committee on Crime Prevention and Control, reports prepared for United Nations congresses on crime prevention and offender treatment, as well as the congresses' reports, scientific publications, and other relevant documentation as may be deemed necessary from time to time to further the implementation of the rules. The Secretary General must ensure that the text of the Rules is referred to and used as widely as possible by the United Nations in all relevant programmes, including technical cooperation activities.

The United Nations must, as part of its technical cooperation and development programmes:

(a). assisting governments in the establishment and strengthening of comprehensive and compassionate correctional systems in response to their requests;

(b). make expertise and regional and interregional advisers on crime prevention and criminal justice available to governments;

(c). promote professional and non-professional national and regional seminars and other events to increase the dissemination of the Rules and the current implementing method;

(d). strengthen substantive support for regional crime prevention and criminal justice research and training institutions affiliated with the United Nations

The United Nations regional research and training institutes in crime prevention and criminal justice, in collaboration with national institutions, shall develop curricula and training materials suitable for use in criminal justice educational programmes at all levels, as well as specialised courses on human rights and other related subjects, based on the rules and current implementing procedures. The reason for this method is to ensure that the United Nations technical assistance programmes and the training things to do of the United Nations regional institutes are used as indirect instruments for the software of the Rules and for the existing enforcing procedures.

As most of the information accumulated in the route of periodic inquiries as well as during technical assistance missions would be added to the attention of the United Nations Committee on Crime Prevention and Control, making sure the effectiveness of the Rules in enhancing correctional practices rests with the Committee, whose tips would determine the future course in the software of the Rules, together with the imposing procedures.

So, the United Nations Committee on crime prevention shall:

(a). preserve underneath evaluation from time to time, the Rules with a view to the elaboration of new rules, standards and techniques applicable to the remedy of people deprived of liberty;

(b). Follow up the present imposing approaches consisting of periodic reporting. The Committee on Crime Prevention and Control shall aid the General Assembly, the Economic and Social Council and any different United Nations human rights bodies, as appropriate, with guidelines pertaining to reviews of ad hoc inquiry commissions with appreciation to things pertaining to the application and implementation of the Rules.

The Rules have made it very clear that nothing in the existing enforcing procedures should be construed as precluding hotel to any different capability or remedies on hand beneath international law or set forth by different United Nations our bodies and businesses for the redress of human rights, such as the technique on consistent patterns of gross violations of human rights underneath Economic and Social Council Resolution 1503 (XLVIII) of 27 may 1970, the conversation system under the Optional Protocol to the global Convention on Civil and Political rights and the

conversation procedure under the International Convention on the Elimination of All Forms of Racial Discrimination .

As a result, the Standard Minimum Rules have detailed procedures in place to verify that they are followed. The member states must amend their laws to incorporate the Rules' provisions aimed at humanising prisons. The rules must be communicated to law enforcement and correctional personnel. The Secretary-General of the United Nations must serve as a nodal agency to ensure that member states follow the Standard Minimum Rules. However, it has been reported that the extent of incorporation into state legal systems has been rather limited. This is due to national legislatures' reluctance to embrace rules that are foreign to their own socio-legal structure. It has been proposed that the rules be aligned with the systems of individual states in order to execute the laws' substance rather than their letter. Then, perhaps, rules could be implemented more effectively.

Chapter 5

Conclusion

To sum up, a review of the Indian court's rulings concerning the preservation of prisoners' human rights reveals that the judiciary has acted as a saviour in cases when the administration and legislature have failed to address the people's problems. The Supreme Court has stepped forward to take corrective action and provide necessary guidance to the executive and legislative branches. The reading of the preceding contribution reveals that the Indian judiciary has been very sensitive and alive to the protection of the people's human rights. It has forged new instruments and found new remedies through judicial activism in order to vindicate the most precious of the precious Human Rights to Life and Personal Liberty.

Prison has recently become a major source of concern for everyone. In several decisions in the 1980s, the judiciary looked into the problems of prison administration. Jurists have also spoken on the subject. These developments were the result of the international community's newfound interest in human rights. The atrocities in jails, particularly the blinding cases in Bihar jails, compelled the courts to consider the conditions in jails. Questions were posed to them in a variety of ways. In addition to formal writ petitions, simple letters from prisoners or other concerned individuals, as well as newspaper articles written by social activists, compelled the courts to take an activist stance. Courts had granted many rights to the prisoners by reading them into Article 21.

There is no particular guarantee of prisoner rights under the Indian Constitution. However, while a prisoner remains a ‘person' in the prison, certain rights granted under Part III of the Constitution are available to them. A prisoner is a person who has lost his or her personal liberty as a result of a criminal conviction, and incarceration is the most prevalent form of punishment in all legal systems. Prison causes a prisoner to repent of his previous actions. The legal system safeguards and recognises the rights of inmates. Torture and solitary confinement are not permitted. Certain statutes in the Constitution, such as the Prisoners Act of 1900, the Prisoners (Attendance in Courts) Act of 1955, and the Prison Act of 1894, provide that certain rights of prisoners are enforced. There are also Prison and Police Manuals that contain specific rules and safeguards for the prisoners, and the prison authorities are required to follow these rules. The Universal Declaration of Human Rights states that "all human beings

are born free and equal in dignity and rights." They are endowed with reason and conscience and should act in a brotherly manner towards one another..

The attitude toward prisons, convicts, and punishment was violent and barbaric less than 200 years ago. After a protracted battle with the state, the principle of seeing the human being in the condemned perpetrator has been embraced. The Indian socio-legal system is built on the principles of nonviolence, mutual respect, and individual human dignity. If a person commits a crime, it does not entail that he is no longer a human being or that he can be stripped of the parts of life that define human dignity. Even the inmates have human rights since jail torture is a confession of failure to do justice to a living man, not the last medication in the Justice Pharmacopoeia. For a prisoner all fundamental rights are an enforceable reality, though restricted by the fact of imprisonment.

Article 21 of the Constitution guarantees personal liberty and, as a result, prohibits any inhumane, cruel, or degrading treatment of anyone, whether a national or a foreigner. Any breach of this right is punishable under Article 14 of the Constitution, which guarantees equality and equal protection under the law. Furthermore, the Prison Act of 1894 particularly addresses the issue of prisoner maltreatment. If a prisoner is subjected to abuse, the jail administration is held accountable. Any abuse of a prisoner by police authorities attracts the attention not only of the legislature, but also of the judiciary. In recent years, the Indian judiciary, particularly the Supreme Court, has been extremely vigilant against violations of prisoners' human rights.

SUGGESTIONS

1. Incorporating the Principles of Prison Management and Offender Treatment into the Directive Principles of State Policy enshrined in India's Constitution's Part IV.
2. Including the subject of Prisons and allied Institutions in the Concurrent List of the VII Schedule of the Constitution of India.
3. Enacting a new uniform and comprehensive Central Law by replacing the old Acts relating to Prisons and Prisoners viz. The Prisons Act of 1894, the Prisoners Act of 1900, the Identification of Prisoners Act of 1920, the Exchange of Prisoners Act of 1948, the Transfer of Prisoners Act of 1950, and the Prisoner (Attendance in Court) Act of 1955 are all acts that deal with prisoners.
4. Obtaining early approval of the 2003 Draft Model Prison Manual and Draft National Policy on Prison Reforms and Correctional Administration, 2007.
5. Revising the good old manuals of States / Union Territories where the revision has not been taken up on the lines of the model prison manual.
6. Extensive use of Probation Services in deserving cases by amending the appropriate provisions of the Probation of Offenders Act, 1958, adequately strengthening the infrastructure of the Probation Services and arranging sensitization programmes regularly for judicial Officers, Prosecuting Officers and Police Officers.
7. Insertion of a new Section 357-A in the Cr.P.C.,1973 for the payment of compensation to the victims of crime out of the earnings of the Prisoners under Wage Earning Scheme.
8. Amending the existing Section 167 (3) of the Cr.P.C suitably so as to introduce the system of video Conferencing in which the alleged offenders are produced before the Magistrate through videoconferencing instead of physical presence in the Court for pre-trial i.e for adjournment or extension of the Judicial Remand.
9. Amending the existing sections 164, 267 & 275 of the Cr.P.C. to enable the trial through Video Conferencing.

10. Insertion of a new sub- Section 305- A in Cr.P.C so as to expedite and 'dispose off ' the trial cases of Under-trial Prisoners in custody by giving top-priority.
11. Insertion of a new sub-section 305-B in the Cr.P.C so as to provide lesser punishment in uncontested matter and also on free and frank admission of guilt.
12. Inserting a new sub-section 44-A in the Cr.P.C. to minimise the need for the arrest in pursuance of the guidelines of the Hon'ble Supreme Court in Joginder Kumar vs. State of Uttar Pradesh Cri.L.J 1994 SC 1981.
13. Issuing appropriate direction by the State Government and Registrar of High Court for the effective implementation of the Section 436-A wherein liberalising Bail Provision has been liberalised for under-trials lodged in the Prisons who has undergone detention for a period extending upto one-half of the maximum period of imprisonment specified for that offence and that he shall be released by the Court on his personal bond with or without sureties in order to decongest Prisons..
14. Amending the existing Section 53 of the Indian Penal Code so as to include the Community services as one of the punishments prescribed under this Section.
15. Expediting the work carried out at present in different Jails regarding the renovation, repairs, construction of additional accommodation and new Jails
16. To assess the feasibility of constructing additional accommodation in the existing Jail and constructing new Jails in other areas wherever required.
17. Diversification of institutions should be evolved for the basic segregation and treatment of homogenous groups of Prisoners instead of keeping a heterogeneous group of Prisoners under one roof. Segregating Prisoners according to their age, sex, conviction. security, period of detention etc., (Convict Prison, Remand Prison, Borstal School, Open Prison, Female Prison, High, Middle and Low Security Prison etc.,) will help the Prison Administration in maintaining security with minimum staff and to implement the welfare and rehabilitative programmes effectively in Prisons wherever and to whomsoever necessary.
18. Identifying the factors responsible for vitiating the atmosphere of the Prison Institution such as accommodation, hygiene, sanitation, food, clothing,

medical facilities etc., and taking proper and immediate action at all levels effectively for rectification.

19. Strictly following the Rules and Regulations prescribed for the scientific classification of prisoners in letter and spirit with the support of Custodial and Correctional Staff and even NGOs.
20. Prison Work Programmes and Vocational training should be integrated with National Economic Plans.
21. Public participation in prevention of crime and treatment of offenders should be made a part of the National Policy on Prisons.
22. Relieving the Custodial Officer from all the clerical work as their primary duty is to supervise Prisoners and maintain security in the Prison
23. Considering the meagre strength of Correctional Officers in Prisons like Welfare Officers, Psychologists ,Social Case workers, Probation Officers etc., their strength should be increased in proportion to the inmate population so that individual attention on Prisoners on various spheres of correctional activities (Technique of case-work, Group work, individual and group guidance and counseling) could be taken up effectively
24. Participation of outside agencies shall be encouraged for utilising the potential prison labour available in plenty as an outsource by allowing the agency to start gainful trade by providing necessary infra-structure facilities in prison.
25. The feasibility of privatising the Prison Industry may be assessed through a pilot study wherever necessary as the custodial staff who presently manage the industries are lacking in experience in such industries.
26. Allowing NGOs and Philanthropists who are really interested in the welfare of Prisoners liberally in all the treatment programmes in Prisons like Classification, Education, Vocational training, Medical and Health care, Sanitation and Hygiene, Recreation Activities etc.
27. Increasing the rate of wages of the prisoners since the wages now paid to the prisoners in most of the Prisons is not on par with the market rate.
28. The practice of granting Furlough or Home leave may be extended in Indian Prisons unanimously as it is now in vogue in limited States only because it is unique in computing leave period towards the sentence and not at large period as in the case of other kinds of leave.

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