

**PRISONER'S RIGHT: A DETAILED ANALYSIS FROM
PAST TO PRESENT**

**A DISSERTATION TO BE SUBMITTED IN PARTIAL
FULFILMENT OF THE REQUIREMENT FOR THE AWARD
OF DEGREE OF MASTER OF LAWS**

SUBMITTED BY

ARUNA SINGH

ROLL NO.: 1200997014

SCHOOL OF LEGAL STUDIES

UNDER THE GUIDANCE

OF

VATSLA SHARMA

[ASSISTANT PROFESSOR]

SCHOOL OF LEGAL STUDIES



BBD UNIVERSITY

SESSION 2020-21

CERTIFICATE

This is to certify that the dissertation titled, **Prisoner's Right: A Detailed Analysis From Past to Present**” is the work done by **Aruna Singh** under my guidance and supervision for the partial fulfilment of the requirement for the Degree of Master of Laws in School of Legal Studies Babu Banarasi Das University, Lucknow, Uttar Pradesh.

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Vatsla Sharma

Assistant professor

Place- Lucknow

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Date :

Place- Lucknow

ARUNA SINGH

Roll No.: 1200997014

LL.M. (2020-21)

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Roll No.: 1200997014

TABLE OF CONTENTS

<u>SR. NO.</u>	<u>PARTICULARS</u>	<u>PAGE NO.</u>
CHAPTER 1	INTRODUCTION	1-20
1.1	Prisons	
1.2	Prison Reforms	
1.3	Prison Administration	
1.4	Prisoners	
1.5	Treatment of Prisoners	
1.6	Human Rights	
1.7	Fundamental Rights	
1.8	Rights of Prisoners	
1.9	Need of the Present Study	
1.10	Scope of the Study	
1.11	Objectives of The Study	
1.12	Research Methodology	
1.13	Sources Used	
CHAPTER 2	REVIEW OF LITERATURE	21-24
CHAPTER -3	TRACING THE HISTORY OF PRISONS, EVOLUTION AND MANAGEMENT OF PRISONS AND TREATMENT OF PRISONERS	25-52
3.1	Introduction	
3.2	Study of Criminology	
3.3	Crime	
3.4	Concept of Crime	

- 3.5 General Causes of Crime
- 3.6 Punishment
- 3.7 Concept of Punishment
- 3.8 Theories of Punishment
- 3.9 History of Prisons
- 3.10 Prisons in the World Scenario
- 3.11 Special Types of Prison
- 3.12 Modern Prisons
- 3.13 Prison Population
- 3.14 Prisons in India
- 3.15 Prison Reforms in India (Pre Independence Period)
- 3.16 Prison Reforms in India (Post Independence Period)
- 3.17 Types of Prisoner
- 3.18 Prison Administration in India
- 3.19 Treatment of Prisoners

CHAPTER 4 HUMAN RIGHTS WITH REFERENCE TO CONSTITUTION OF INDIA, HUMAN RIGHTS COMMISSION AND INTERNATIONAL COVENANTS 53-80

- 4.1 Human Rights
- 4.2 Fundamental Rights
- 4.3 Human Rights Commission and Human Rights Courts
- 4.4 International Covenants Relating To Human Rights with Special Reference To Prisons And Prisoners

CHAPTER 5 ROLE OF JUDICIARY IN PROTECTING THE RIGHTS OF PRISONERS 81-90

5.1	Right against inhuman treatment to the prisoners	
5.2	Right against solitary confinement and Bar Fetters	
5.3	Right to speedy trial	
5.4	Right to free legal aid	
5.5	Right to have interview with Friends, Relatives and Lawyers	
5.6	Right against hand cuffing	
5.7	Narco Analysis/Polygraph/Brain Mapping	
CHAPTER 6	STATUS OF PRISON AND PRISONERS IN INDIA	91-92
6.1	Types of prison inmates	
6.2	Status of prisoners in prison	
CHAPTER 7	LACUNE IN LEGISLATION	93-94
CHAPTER 8	CONCLUSIONS & SUGGESTION	95-100
8.1	Conclusion	
8.2	Suggestions	
BIBLIOGRAPHY		101-108

LIST OF CASES

State of Maharashtra vs. Prabhakar Pandurang Sangzgiri (1966)

A.K.Gopalan vs. State of Madras (1950)

Charles Chopra vs. The State of Bihar (1978)

Sunil Batra vs. Delhi Administration (1978)

Sunil Batra (ii) vs. Delhi Administration (1980)

Nilabati Behera vs. State of Orissa (1993)

State of Andhra Pradesh vs. Challa Rama Krishna Reddy (2000)

Paramjit Kaur vs. the State of Punjab

Common Cause vs. Union of India

Muktaram Sitaram Shinde vs. State of Maharashtra

A.R.Antulay vs. R.S.Nayak

Prem Shanker vs. Delhi

Selvi Vs State of Karnataka

Joginder Kumar vs. State of Uttar Pradesh

Uttarpradesh State Co-operative Land Development Bank Limited vs. ChandrabhanDubey

A.K. Gopalan vs. State of Madras

State of Maharashtra vs. Prabhakar Pandurang Sangzgiri

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Justice Krishna Iyer, Mohammad Giasuddin vs. State of Andhra Pradesh

Shyokaran vs. State of Rajasthan 2008

Phul Singh vs. State of Haryana

Justice P.N. Bhagawathi in Menaka Gandhi vs. Union of India

D. Murugesan in Tamil sakthi vs. State of Tamilnadu and others

GoodyearIndia vs. State of Haryana

Supreme Court Advocates on Records Association vs. Union of India,

GolakNath vs. State of Punjab,

KesavanandaBhartiSribbadgalvaru vs. State of Kerala,

ABBREVIATION

AIR	;	All India Reporter
All	:	Allahabad
ALL ER	:	All England Law Report
AP	:	Andhra Pradesh
Art	:	Article
Bom	:	Bombay
BMFIS	:	Bio-metric Finger Identification System
BPR&D	:	Bureau of Police Research and Development
Cal	:	Calcutta
CCTV	:	Closed Circuit Television
Cri	:	Criminal
CrLJ	:	Criminal Law Journal
CrLR	:	Criminal Law Reporter
CrPC	:	Criminal Procedure Code
ECG	:	Electro Cardiogram
Del	:	Delhi
DELNET	:	Delhi Library Network
DTP	:	Desk Top Publication
Edn	:	Edition
Gau	:	Gauhati
Guj	:	Gujarat
HC	:	High Court
Hon"ble	:	Honourable
IFA	:	Indian Foot-Ball Association
IGNOU	:	Indra Gandhi Open University
ILI	:	Indian Law Institute
INTAC	:	Indian National Trust for Art and Cultural heritage
IPC	:	Indian Penal Code
ISO	:	International Organisation for Standardisation
ISBN	:	International Standard Book Number
ISDN	:	Integrated Service Digital Network
J&K	:	Jammu and Kashmir

JGB	:	Juvenile Guidance Bureau
JJ Act	:	Juvenile Justice Act 2000
JJB	:	Juvenile Justice Board
JT	:	Judgements Today
JWC	:	Juvenile Welfare Committe
Karn	:	Karnataka
Ker	:	Kerala
LJ	:	Law Journal
LPG	:	Liquified Petroleum Gas
Mad	:	Madras
Mah	:	Maharashtra
MBA	:	Master of Business Administration.
MCU	:	Multi point Control Unit
MLJ	:	Madras Law Journal
MP	:	Madhya Pradesh
NABARD	:	National Bank for Agricultural and Rural Development
NACJW	:	National Authority on Custodial Justice to Women
NCRB	:	National Crime Records Bureau
NIOS	:	National Institute of Open Schooling
NHRC	:	National Human Rights Commission
NISD	:	National Institute of Social Defence
Ori	:	Orissa
P & H	:	Punjab and Haryana
PCP	:	Personal Cash Property
PNG	:	Piped Natural Gas
PO Act	:	Probation of Offenders Act
pp	:	Pages
PRC	:	Prison Reforms Commission
PUCL	:	Peoples Union for Civil Liberties
Punj	:	Punjab
Raj	:	Rajasthan
Rs.	:	Rupees
RO	:	Reverse Osmosis
RUDSET	:	Rural Development and Self Employment Training Institute.

SC	:	Supreme Court
Sec	:	Supreme Court Cases
SCJ	:	Supreme Court Journal
SCR	:	Supreme Court Reports
SHRC	:	State Human Rights Commission
SLP	:	Special Leave Petition
Supp	:	Supplement
UPSCLD	:	Uttar Pradesh State Co-operative Land Development Bank Limited
U/S	:	Under Section
UK	:	United kingdom
UP	:	Uttar Pradesh
USA	:	United States of America
USSR	:	Union Soviet Socialist Republic
VIP	:	Very Important Person
Vol	:	Volume
WP	:	Writ Petition

CHAPTER 1

INTRODUCTION

Crime is a social and economic phenomenon and is as antique as human society. It is eternal. It continuously exists with in the society. With extrude of time, the concept of crime has moreover exceeded via changes. In the early information of human civilization, crime have become regarded as a wrong in competition to the individual. But after sometime, crime have become regarded as a wrong in competition to the State.

Criminal Justice System is an organized reaction of the society in competition to the crime and the criminal. Crime and punishment are interrelated to each other. Various theories of punishment had been exercised at various times. The maximum critical object of punishment is to protect the society from the potential wrong doer usually thru the method of eliminating the motives of crime.

In early information, punishment have become never supplied with the object of correction and the criminals had been handled as those who can't be corrected. But now the punishment in terms of imprisonment is regarded as a manner of correction. The antique theories of punishment have because of the reality been discarded and given way to the idea of reformation. The prisons are not functioning as penal institutions but as reformatories. The essential object of the correctional control is to reform, rehabilitate, re-socialize and reintegrate the wrongdoer withinside the society. It is an frequently going on principle that the method of reformation and rehabilitation of wrongdoer commences from the date on which he enters the prison and it can't be postponed till the date of release.

The issue be counted for research is “New Dimensions of the Rights of the Prisoners - A Critical Study”. Before immediately entering into the issue, the researcher would like to enlighten in quick about the related components of the rights of the prisoners which incorporates the Prisons, Prison Reforms, Prison Administration, Prisoners, Treatment of

Prisoners and the Rights Guaranteed to an Ordinary Citizen underneath the Constitution for better expertise of the issue.

1.1 PRISONS

The real term of prison is 'Jail' or 'gaol' or 'penitentiary.' Prison has been defined as "a place well prepared and organized for reception of individuals who thru manner of approach of jail strategies are dedicated to it for steady custody on the equal time as searching ahead to trial or for punishment".¹

A "Prison"² or "Jail"³ Is a facility in which human beings are forcibly restricted and denied plenty of freedoms beneathneath the authority of the State as a form of punishment. The most now no longer unusualplace use of prisons as part of the criminal justice system, is in which human beings are officially charged with or convicted of crimes are restricted to a Jail or Prison until they may be each introduced to trial to determine their guilt or complete the duration of incarceration they were sentenced to, after being positioned accountable at their trial. Hence, in its beginning region the Prison have become considered as a place of detention of offenders until trial and Judgment and the execution of the latter.

Section 3 of the Prisons Act, 1894 (Act IX of 1894) defines prisons as: "Prison" way any jail or vicinity used absolutely or in short beneathneath elegant or specific orders of the State Government for the detention of Prisoners and embody all lands and houses appurtenant thereto, but does now now not embody - any vicinity for the confinement of prisoners who are absolutely withinside the custody of the police; ;any vicinity eparticularly appointed thru manner of manner of the State Government beneathneath section 541 of the Code of Criminal Procedure, 1882 or; any vicinity which has been declared thru manner of manner of the State Government, thru manner of manner of elegant or specific order to be a subsidiary jail.

¹ The Oxford English Dictionary Vol.VIII P. 1385.

² From the old French prisoun (see Douglas Harper2001 to 2013) "Prison" on line etymology dictionary, Douglas Harper retrieved 28th June 2013.

³ From the old French prisoun (see Douglas Harper2001 to 2013) "Prison" on line etymology dictionary, Douglas Harper retrieved 28th June 2013.

In historical times, distinctive locations had been used as Prisons. The Prison in historical Athens become called Desmoterion (area of chain).⁴ In Rome, steel cages, basement of public building and quarry were used as prisons. In India, the antique forts and castles were used as Prisons. The modern-day Prison in India originated as speedy as Lord Macaulay came to India in 1835. Views of Gandhiji on Prisons

It modified into Gandhiji who said that Prison want to function as clinic as offenders are very just like unwell humans and need to be treated. Quoting Lord Lytton near Prisons, Mahatma Gandhi wrote withinside the “Young India” 18.2.1926 at net web page 67

“Lord Lytton in presently speaking about Jails to the Rotarians of Calcutta said that certainly as we deliver our unwell in body to hospitals and now now not to Jails, so we ought to ‘provide moral medical doctors and moral clinic’ for unwell in thoughts, i.e. criminals”. His Excellency delivered his subject:

“The first-class I choice to set in advance than me, stated withinside the briefest and only shape, is certainly this,- the substitution of reformation for retribution as the idea of our Penal Code. Punishment can instill fear and placed into impact conduct – it can not inspire goodness. As a manner of moral regeneration, consequently, it's miles worse than useless and want to be abandoned. A morality it truly is handiest enforced with the useful resource of the usage of pains and results is a faux morality, and those who would possibly constant the popularity of moral necessities want to rent specific methods”.

Of the uses and quandary of punishment Lord Lytton stated: “Punishment, if resorted to at all, should continuously be aimed in the direction of training behavior essential for the properly-being of the character or difficulty essential to the properly-being of a community, I do now not say that punishment will continuously succeed; the form of punishment determined on in any particular case may be properly or badly suitable for the attainment of its object. Again, I do now not say that punishment is the most effective way of achieving this object, what I say is that those are the most effective objects which can be acquired with the useful resource of the usage of punishment. This one factor

⁴ Roth, Michael.P. 2006 Prisons and Prison Systems; A Global Encyclopaedia. Greenwood Publishing. p. 26

which can in no manner be received with the useful resource of the usage of coercion is goodness or moral behavior. All punishment therefore which interests at correcting wickedness or training goodness is absolutely mischievous. Goodness is a state of affairs of mind as health is a state of affairs of frame. Moral defects or character are not any more to be cured with the useful resource of the usage of punishment than defects of the frame. It may be essential withinside the interest of health of a community forcibly to segregate a person with an infectious disease; it can be essential on the equal ground to segregate males and females whose moral defects are a danger to the society".⁵

1.1.2 Types of Prisons

As consistent with the NCRB Reports in 2013 there are approximately 1391 exclusive forms of Jails in India viz., Central Jail (130), District Jail (346), Sub-Jail (780), Women Jail (19), Borstal School (21), Open Jail (53), Special Jail (38) and others (4), with a ability to deal with 3,47,859, Prisoners out of which 3,23,573 are Male Prisoners and 24286 are Female Prisoners.

In Tamil Nadu, there are approximately a hundred thirty five exclusive forms of Jails viz., Central Jail (9), District Jail (9), Sub-Jail (95), Women Jail (3), Borstal School (12), Open Jail (2), and Special Jail (5). With a ability to deal with 21,951 out of which Male Prisoners are 19510 and Female Prisoners are 2441.

1.2 PRISON REFORMS

The Prison Reforms originated in Indian Prisons as quickly as Lord Macaulay got here to India in 1835. The first Committee in India viz. "The Prison Discipline Committee" with regards to Prison Reform turned into appointed withinside the 12 months 1836 with Lord Macaulay as its Member. The Committee gave its document in 1838 and advocated, amongst different things, for creation of right building, upkeep of fitness care and intra-ethical employment which laid the muse for destiny Prison Progress. The subsequent committee to cope with the problem of Jail Management and Discipline turned into appointed in 1864. This Committee at the same time as reiterating the hints of Lord

⁵ Report of the All India Committee on Jail Reforms (Mulla) 1980-83 Vol.1 Preface, p.xix para 43.

Macaulay Committee 1836, it made particular hints concerning the lodging of Prisoners, development in diet, clothing, bedding, hospital therapy etc. In 1877, there has been a convention of professionals to investigate into Prison Administration wherein it turned into proposed to enact a Prison Law and a draft invoice turned into prepared. The passing of The Prisons Act, 1894, and the Prisoners Act, 1900 and numerous different statutes coping with prisons have been the final results of the advice of the Fourth Jail Committee 1888. The next Committees to observe in shape are:

The Indian Jail Committee, 1919-1920, Tamil Nadu Jail Reforms Committee, 1950-51, Dr.W.C.Wreckless Committee at the observe of Prison Administration in India, 1951-52, The All India Jail Manual Committee, 1956-57, Seminar on Correctional Services with the Inspector General of Prisons and Correctional Administrators in 1969, Conference on Probation and Allied Measures, 1971, Working Group, 1972, Justice Ismail Enquiry Commission, 1977, The Tamil Nadu Prison Reforms Commission 1978-79, A.N. Mulla Committee (All India Committee on Jail Reforms) 1980-83, Kapoor Committee, 1986, Justice Krishna Iyer Committee, 1987, Committee to Prepare a Model Prison Bill as in keeping with the path of the Supreme Court in 1996.

At this juncture, it's going to now no longer be out of region to cite the statement approximately jail reforms of Mahatma Gandhiji in his book "Young India" and Pandit Jawaharlal Nehru in his book "Prison Land" Appendix I as follows:

1.2.1 Mahatma Gandhiji's view on Prison Reforms

"Let or not it's remembered that we aren't searching for to damage jails as such. I worry that we will need to keep jails even beneathneath Swaraj. It will move tough with us, if we permit the actual criminals apprehend that they may be let out or be very a good deal higher dealt with while Swaraj is established. Even in reformatories via way of means of which I would love to update each prison beneathneath Swaraj, field might be exacted".⁶

1.2.2 Pandit Jawaharlal Nehru's view on Prison Reforms

⁶ Report of the All India Committee on Jail Reforms (Mulla) 1980-83 Vol.1 Preface, p.xx para 48.

Any reform should be primarily based totally at the concept that a prisoner isn't always punished however reformed and made into an awesome citizen. If this goal is as soon as accepted, it might bring about a entire overhauling of the jail system. At gift few jail officers have even heard of this sort of notion.

Another mistakess which humans take pleasure in is the worry that 'if gaol situations are stepped forward humans will flock in! This suggests a unique lack of information of human nature. No one desires to visit jail but desirable the jail may be. To be disadvantaged of liberty, own circle of relatives lifestyles, pals and domestic environment is a horrible thing. It is widely recognized that the Indian peasant will pick to paste to his ancestral soil and starve as opposed to pass somewhere else to higher his condition. To enhance jail situations does now no longer imply that jail lifestyles must be made soft; it method that it must be made human and sensible.

There must be difficult paintings, however now no longer the barbarous and wasteful labour of the oil pump or water pumps or mill. The Prisons must produce items both in huge scale cutting-edge factories in which prisoners paintings or in cottage industries. All paintings must be beneficial from the factor of view of the jail in addition to the destiny of the prisoner, and the paintings must be paid on the marketplace rate, minus the price of upkeep of the prisoner. After a difficult eight-hour day's paintings, the prisoners must be advocated to co-perform collectively in diverse activities – games, sports, reading, recitals, and lectures. They must exceptionally be advocated to snicker and increase human contacts with the jail workforce and different prisoners. Every prisoner's schooling should be attended to, now no longer best in only the 3 R's(Reformation, Re-socialisation, Re-integration), however some thing greater, anyplace viable.

The thoughts of the prisoner must be cultivated via the jail library, to which there should be loose access, must have masses of desirable books. Reading and writing must be advocated in each manner and meaning that each prisoner must be allowed to have writing cloth and books. Nothing is greater dangerous to the prisoner than to spend twelve to 14 hours at a stretch each nighttime locked up withinside the mobileular or

barrack with simply not anything to do. A Sunday or a vacation method, for him a miles longer length of locking up.

“Selected newspapers are critical to maintain the prisoner in contact with the world, interviews and letters must be made as common and casual as viable.

Personally, I suppose that weekly interviews and letters must be permitted. The prisoner must be made to sense as a long way as viable that she or he is a man or women and brutal and degrading punishments should be avoided”.⁷

1.3 PRISON ADMINISTRATION

Prison management is one a number of the 4 wings of the Criminal Justice System viz. Legislature, Judiciary, Executive and the Correctional Administration. The Prisons are positioned as State problem beneathneath article 246 of the Constitution of India, along with it withinside the Seventh Schedule, List II (i.e) State List, and Entry IV which study as follows: Prisons, Reformatories, Borstal Institution and different organization of the like nature, and character detained therein; preparations with different States for using Prisons and Institutions.

For the cause of sporting out the control of Prisons in India, the Government of India enacted The Prisons Act, 1894 and Prisoners Act, 1900 for steerage of all the State Governments. As according to the electricity vested beneathneath segment fifty nine of the Prisons Act, 1894, every State Government exceeded their very own Rules for the control in their Prisons.

If any State does now no longer have its very own Prison Manual, the present Central Act, i.e. The Prisons Act, 1894 is being followed. Model Prison Manual, 1960 is being taken as steerage withinside the Prison Administration.

Further, the Bureau of Police Research and Development has organized the Draft National Prison Manual, 2003 to deliver uniformity in Prison Administration in the course of India. The view of the numerous State Governments in this Draft National

⁷ Report of the All India Committee on Jail Reforms (Mulla) 1980-83 Vol.1 Preface, p.xx & xxi, para 48.

Prison Manual became resorted and it's far but to be implemented. The essential item of the brand new Manual is to get rid of sure disparities amongst sure States and rework prisons into correctional institutions.

To placed it in a nutshell, the targets of the jail management ought to be: To make jail a secure vicinity via way of means of preserving safety and field in goal terms;

To offer primary minimal centers to prisoners, to keep human dignity; To make the pleasant use of jail live for reformation and rehabilitation, re-socialization and reintegration of prisoners.

1.3.1 Existing statutes concerning law and control of prisons in India

Indian Penal Code, 1860; The Prisons Act, 1894; The Prisoners Act, 1900; The Identification of Prisoners Act, 1920; The Tamil Nadu Borstal Schools Act, 1925; The Exchange of Prisoners Act, 1948; The Constitution of India, 1950; The Transfer of Prisoners Act, 1950; The Representation of People's Act, 1951; The Prisoners (Attendance in Courts) Act, 1955; The Probation of Offenders Act, 1958; The Model Prison Manual, 1960; The Extradition Act, 1962; The Code of Criminal Procedure, 1973; The Mental Health Act, 1987; The Juvenile Justice (Care and Protection), 2000; The Repatriation of Prisoners Act, 2000; The Draft National Prison Manual, 2003 (To be implemented).

1.3.2 Prison Manual in Tamil Nadu

I. Tamil Nadu Prison Manual, Volume II, 1985 (Corrected as much as thirty first December 1982)-containing the statutory Rules made via way of means of the Government of Tamil Nadu for the inspection, superintendence of prisons withinside the State.

II. Tamil Nadu Prison Manual, Volume III, 1985 (Corrected as much as thirty first December 1982)-containing the Rules framed beneathneath different enactments viz. Cr.P.C 1973 (Suspension of Sentence Rules), Prisoners (Attendance in Courts) Act, 1982, Indian Lunacy Act, 1912 and different non statutory Rules.

III. Tamil Nadu Prison Manual, Volume IV, containing the govt and administrative order and guidance issued via way of means of the Government and the Inspector General of Prisons every so often for the inspection, superintendence of prisons withinside the State.

1.4 PRISONERS

In an normal sense “Prisoner” method someone limited or saved in custody. As according to the definition of the Oxford Dictionary Prisoner method “someone who's being saved in jail”.⁸

1.4.1 Kinds of Prisoners

As according to Section three of the Prisons Act, 1894, Prisoners are categorised into 3 groups. They are Criminal Prisoner, Convicted Criminal Prisoner and Civil Prisoner. “Criminal Prisoner” method any Prisoner duly dedicated to custody beneathneath the writ, warrant or order of any Court or authority workout crook jurisdiction or via way of means of order of a Court - Martial. “Convicted Criminal Prisoner” method any Criminal Prisoner beneathneath sentence of a Court or Court - Martial and consists of someone detained in jail beneathneath the provisions of Chapter VIII of the Criminal Procedure, 1882 (X of 1882) or beneathneath the Prisoner’s Act, 1871 (V of 1871). “Civil Prisoner” method any prisoner who isn't always a Criminal Prisoner. Prisoners can also be widely categorised in step with the time period of imprisonment, ailment, age, sex, political cause, instances of civil nature and instances of preventive arrest viz. Remand prisoner, Under - trial prisoner, Convicted prisoner, Short time period prisoner, (Rigorous Imprisonment), Long time period prisoner (Rigorous Imprisonment), Prisoner sentenced to Simple Imprisonment, Prisoner sentenced to life, Prisoner sentenced to death, Leper prisoner, Mentally unwell prisoner, Juvenile in battle with law, Adolescent offender, Adult prisoner, Male prisoner, Female prisoner, Political prisoner, Civil prisoner, Detenue.

1.5 TREATMENT OF PRISONERS

⁸ The Oxford English – English – Tamil dictionary, page 1109 ,Oxford University press 2009

Crime is an final results of the diseased minds and prison need to have an surroundings of medical institution for remedy and care. One have to endure in thoughts that “prisoner is a ward and now no longer the slave of the State”.⁹ The Prisoners are despatched to jail “now no longer for punishment however as punishment.” But alas prisoners are dealt with as though they had been despatched to jail now no longer only “as punishment” however even “for punishment.” The procedure of remedy ought to start proper from the time of admission of the inmate in jail. A newly admitted inmate faces some of troubles of adjustment with new environment. Study of the person inmate, preliminary type of prisoners, their care and welfare, company and fine area in jail represent important pre-needful for making plans balanced remedy programme.

The regimented recurring of institutional life, the sample and time of jail meals and anxieties approximately health, own circle of relatives and home troubles together with land, litigation etc., maintain bothering him. He tries to are searching for adjustment with inmate organization and jail employees and with the paintings allocated to him. If those pressing desires and troubles are explored, diagnosed and attended to via way of means of jail employees sympathetically and with understanding, the inmate could have lots of relief. This will even allow jail employees to set up a rapport with the inmate and steady his co-operation withinside the powerful implementation of remedy programme.

Therefore remedy of culprit in jail ought to be checked out from 3 angles; 1. the important pre-needful for wearing out suitable remedy programme conducive to rehabilitate the culprit 2. range and contents of remedy programmes and 3. evolution of the effectiveness of remedy programme.

Looked from those angles, the factors and additives of remedy programme in prisons may be diagnosed as follows:- A comfortable fine and optimistic surroundings withinside the institution, Good employees – inmate courting primarily based totally on mutual believe and confidence, Study of the person inmate; Initial type, Care and welfare of inmate, Firm and fine area, Attending to the on the spot and pressing desires and troubles of inmates, Attending to the long time desires, Planning a balanced and varied education

⁹ As quoted by of Dr. W.C.Wreckless in The Tamil Nadu Prison Reforms Commission, Vol.II Chapter XL, p.83.

and remedy programme along with varied education, paintings, vocational education, leisure and cultural activities, etc., Helping the inmate to hold continuity of his behavior together along with his own circle of relatives, network and out of doors world. A precise machine of incentives for self-control together with remission, leave, transfers to semi-open and open establishments and pre-mature launch, person steerage, counseling and case paintings, organization activities, organization steerage and organization paintings, social implantation of right habits, attitudes and approaches, education for social living, Psychotherapy, Supportive therapy, private fine have an impact on of institutional employees, periodical assessment of progress, reclassification, assessment of sentence and pre-mature launch, making plans for launch, pre-launch education, after care and follow-up and network participation.¹⁰

1.6 HUMAN RIGHTS

Every person desires positive requirements like food, water, clothes, shelter, fitness that are fundamental for maintaining life, with out which one can't stay. Likewise, each person is entitled to positive fundamental rights and essential freedom and withinside the absence of which one can't stay as person.

All societies and way of life have advanced a few concept of rights and concepts that need to be covered and revered as such rights advanced on a few fundamental concepts, that have been universally accepted, and contributed to the improvement of human rights.

The Rights of man – herbal rights, civil rights, political rights, monetary rights, social rights and cultural rights which advanced with distinct ranges of emphasis displays one not unusualplace feature – 'Human Dignity' that's taken into consideration necessary for the attainment of individual's healthy personality . Thus, those rights include start and are relevant to each person in the course of the arena no matter the race, colour, sex, language or political or different opinion.

1.7 FUNDAMENTAL RIGHTS

¹⁰ Report of the All India Committee on Jail Reforms (Mulla) 1980-83 Vol.1, Chapter X, Treatment Programme p.124

The time period essential proper is a technical one. When positive human rights are written down in a Constitution and are covered with the aid of using Constitutional guarantee, they may be known as essential rights within the feel that they may be positioned within the splendid or essential regulation of the land which has a splendid sanctity over all different legal guidelines of the land. Thus, while human rights are assured with the aid of using the written charter they may be known as as essential rights. Unlike an regular proper, a essential proper is an interest, that's covered and warranted with the aid of using the written Constitution. Such rights are known as 'essential' due to the fact at the same time as an regular proper can be modified with the aid of using legislature in its manner of rules however the essential rights, being assured with the aid of using the charter can't be altered with the aid of using any manner quick of amending the Constitution itself. The following are the essential rights assured to an regular citizen.

I. Right to Equality – Article 14,15,16,17, & 18

II. Right to Freedom - Article 19, 20, 21, & 22

III. Right in opposition to Exploitation – Article 23 & 24.

IV. Right to Freedom of Religion. - Article 25, 26, 27 & 28

V. Cultural and Educational Right – Articles 29 & 30

VI. Right to Constitutional Remedies – Article 32.

1.8 RIGHTS OF PRISONERS

Prisoners are essentially people. They being, people are to be entitled to human rights and constitutional rights besides the ones which are to be always denied due to their situation of imprisonment. The State is beneathneath a Constitutional responsibility to honour and to guard their rights, specifically their proper to stay with human dignity.

The accused, beneathneath- trials, suspects and convicts do now no longer quit to be people simply due to the fact they may be so named. Hence their rights as people are to be covered and revered. The essential rights, that are to be had to the prisoners, aren't described withinside the Indian Constitution in particular. The Judiciary, however, thru the manner of Judicial Activism has multiplied the scope of diverse freedoms assured to people when it comes to prisoners with the aid of using increasing the horizons of article 21 of the Indian Constitution and additionally contemplating the applicable provisions of International Covenants formulated for tracking and supervising the prisoners.

1.8.1 A.K.Gopalan vs. State of Madras (1950)

In the beginning, the Supreme Court turned into now no longer aware of the safety of the rights of the prisoner. It tested the difficulty right away after the graduation of the Constitution. It expressed the view that the prisoners are non-persons and essential rights beneathneath the Constitution aren't to be had to them with the aid of using their being incarcerated. The Court declared that someone loses his proper to non-public liberty with the aid of using manner of detention beneathneath legitimate regulation enacted with the aid of using a in a position legislature and as long as he stays beneathneath such detention, he ceases to be entitled to revel in his different essential rights.¹¹

1.8.2 State of Maharashtra vs. Prabhakar Pandurang Sangzgiri (1966)

The respondent become detained below the Defense of India Rules (1962). While below detention in jail, he wrote a ee-e book of medical hobby in Marathi called 'Anucha Antarangaat' (Inside the Atom), however become now no longer allowed to submit it with the aid of using the jail authorities.

The Bombay High Court issued a writ permitting Pandurang to submit the ee-e book. The State Government in an enchantment to Supreme Court argued that freedom to submit become best a thing a part of speech and expression and the detinue ceased to be loose in view of his detention, and as a result he couldn't workout his freedom to submit his ee-e book in view of an statement made in A.K.Gopalan case. Without going into the query

¹¹ A.K. Gopalan vs. State of Madras A.I.R 1950 827 = 1950 SCR 88,= 1950 CrLJ 138

concerning the relative positions of Articles 19 and 21, the Court discovered that the view held in Gopalan case become now no longer the ultimate phrase at the subject.

The Court held the view that the proper to 'Personal Liberty' below Article 21 blanketed the proper to write down ee-e book and get it posted and the refusal with the aid of using the State Government to ship the petitioner's manuscript for publication, infringes his private liberty manifested below Article 21. The Court observed that there has been not anything withinside the Bombay Detention Order 1951, prohibiting a detinue from writing or publishing a ee-e book and while a detinue sporting events his proper, its denial with out authority of law, might violate Article 21. Dismissing the enchantment of the State, the courtroom docket similarly held that the ee-e book being the only close to medical hobby which might now no longer in any other case be adverse to public hobby or protection as envisaged below the Defense of India Rules (1962).

1.8.3 Charles Chopra vs. The State of Bihar (1978)

In Charles Chopra's case the Supreme Court pointed out "prisoners maintain all rights loved with the aid of using loose residents besides the ones misplaced always as an incident of confinement."¹²

¹² W.P No. 4305 of 1978 delivered on 31st August 1978 – PRC Report Vol.II Chapter XXXVIII Rights of Prisoner p.73 para 38.2.

1.8.4 Sunil Batra vs. Delhi Administration (1978)

Sunil Batra (ii) vs. Delhi Administration (1980)

In Sunil Batra cases, even as deciphering Articles 14, 19 & 21, the Supreme Court has confident many substantial rights to the prisoner. The prolonged size given to article 21 has proved to be multi-dimensional. The proper to lifestyles enshrined in Article 21 has been liberally interpreted as to intend some thing extra than survival and mere animal existence. It, therefore, consists of all the ones elements of which that visit make a man's lifestyles meaningful, whole and really well worth living. This element of judicial pronouncement ends in emergence of prisoner's proper.

The big regions of extension had been the rights now no longer to be handcuffed, placed on bars and solitary confinement until surely necessary. The proper in opposition to custodial torture, proper to fast trial, proper to counsel, right situation of detinue, proper to fulfill relatives, buddies and lawyer, proper to wages or even the proper to reimbursement for violation of rights. Beginning with Sunil Batra case, the Court has armed itself and embraced the jurisdiction to wait the grievance of the prisoners wherein their rights both below the charter or below the regulation are violated.¹³

1.8.5 Nilabati Behera vs. State of Orissa (1993)

In Nilabati Behera vs. State of Orissa, the Supreme Court discovered that "it's miles axiomatic that convict prisoners or below-trials aren't denuded of essential rights below Article 21 and it's miles most effective such restrictions, as are approved with the aid of using regulation, which may be imposed at the amusement of the essential rights with the aid of using such persons. It is an duty ofthe nation to make sure that there may be no infringement of the indefeasible rights of a citizen to life, besides according with regulation whilst the citizen is in its custody.

¹³ Sunil Batra vs. Delhi administration (1978) 4 SCC 494 = AIR 1978 SWC 1675 = 1978 CrLJ 1741. Sunil Batra (ii) vs. Delhi Administration (1980) 3 SCC 488 = AIR 1980 SC 1579 = 1980 CrLJ 109

This valuable proper assured with the aid of using Article 21 of the Constitution of India can't be denied to convict, below-trials or different prisoners in custody, besides consistent with the technique hooked up with the aid of using regulation¹⁴.

1.8.6 State of Andhra Pradesh vs. Challa Rama Krishna Reddy (2000)

In the case of State of Andhra Pradesh vs. Challa Rama Krishna Reddy, the Supreme Court asserted that even a prisoner has essential rights which include different human rights. In that case, the claimant and his father had been lodged in prison. They asked the police to offer protection to them apprehending risk to their existence from their opponents. There changed into failure of police to offer ok protection regardless of being asked. When they had been attacked with the aid of using bomb of their prison cell, the daddy died and the claimant sustained severe injuries. The in shape for reimbursement changed into disregarded with the aid of using decrease Court however the High Court provided Rs.1,44,000 as reimbursement. In the immediately case, even as disregarding the enchantment filed with the aid of using the State Government, the Court reiterated;

"Right to existence is one of the fundamental human rights. It is assured to each person with the aid of using Article 21 of the Constitution and now no longer even the State has the authority to violate that proper. A prisoner be a convict or beneathneath-trial or detinue, does now no longer give up to be a human being.

Even while lodged withinside the prison, he maintains to experience all essential rights which include the proper to existence assured to him beneathneath the Constitution. On being convicted of a criminal offense and disadvantaged in their liberty according with the system mounted with the aid of using law, prisoners nonetheless hold the residue of constitutional rights."¹⁵

1.8.7 Further developments in Prisoner's Rights

As an offshoot of the observations, comments, instructions and pronouncements concerning the upholding of the rights of prisoners when it comes to the rights assured to

¹⁴ Nilabati Behera vs. State of Orissa (1993) 2 SCC 746 = AIR1993 SC 1960 = 1993 (2) SCJ 487.

¹⁵ Challa Rama Krishna Reddy (2000) AIR 2000 SC2083=2000 (5) SCC 712=2000 (4) Supreme 741 (2)

an normal citizen below the Constitution in diverse land mark judgments through the Supreme Court in this subject, such a lot of Commissions constituted succeeding the Supreme Court Judgments, followed the rights of prisoners of their record for strict implementation in prisons. Efforts also are being made to amend the prevailing statutes linked with jail management which will contain the rights of prisoners and put into effect them mandatorily.

The National Human Rights Commission, State Human Rights Commission and Human Rights Court installed below the Protection of Human Rights Act, 1993 additionally contributed lots to the safety of Prisoners rights.

The Government of India granted economic help to all States below Five Year Plans and Matching Grant (on the fee of 50:50 ratio) below modernization of Prison Administration to enhance the jail ecosystem and residing circumstance in Prisons like extra accommodation, diet, apparel and bedding, hygiene and sanitation, fitness care, water supply, electrification, endeavor centers etc., The State Government through making use of those finances took all viable efforts to enhance Prison circumstance and enlarge all centers to Prisoners to hold human dignity.

1.8.8 Prisoner's Rights and International Covenants

The proper of prisoners in International Law is observed in some of International Treaties and that too following the 2 World Wars. Due to the extensive denial of civil rights and liberties on the premise of racial, spiritual and political discrimination had a profound impact at the worldwide regulation of prisoner's proper. The systematic use of violence inclusive of wanton homicide and in the long run genocide and use of slave labour, abuse and murder of prisoners of war, extensive deportation and confiscation of property forced a huge scale adjustments that started out to arise in all regions of worldwide regulation inclusive of prisoners rights. At gift, there are various worldwide devices which lay down codes through which prisoners must be dealt with. The following are the most amongst them.

1. Third Geneva Convention (got here into pressure in 1924 substantially amended in 1949).
2. Charter of United Nations (1945).
3. Universal Declaration of Human Rights (1948).
4. United Nations Standard Minimum Rules for the Treatment of Prisoners (1955).
5. International Covenants on Civil and Political Rights (1966).
6. Convention towards Torture and different Cruel, Inhuman or Degrading Treatment or Punishment (1984).
7. Basic concepts for the Treatment of Prisoners (1990).
- eight. Basic concepts on using Force and Fire Arms through Law Enforcement Officials (1990).

1.9 NEED OF THE PRESENT STUDY

The precept of treatment of offenders has changed from penal to reformative withinside the contemporary era. Due to this, the prisons of the antique era have handed thru incredible extrade in recent times which has delivered approximately transparency withinside the prison control. The prison reforms in Indian prisons had its seed sown as fast as Lord Macaulay came to India in 1835. Following the study of the Prison Administration in India thru the Dr. W.C. Wreckless Committee withinside the post independence period (1951-52), lot of improvements were made in Indian Prisons. The raising cognizance maximum of the now no longer unusualplace public and the dominion on the need to protect the human rights of the prisoners delivered approximately the passing of severa United Nations Instruments together with the Universal Declaration of Human rights, 1948, United Nations Standard Minimum Rules for the Treatment of Prisoners, 1955, International Covenants on Civil and Political Rights 1966, Convention closer to Torture and specific Cruel Inhuman or Degrading Treatment or Punishments, 1984 and Basic Principle for the Treatment of Prisoners, 1990. All such Instruments and

Constitution of a number of the Democratic Countries together with the Constitution of India have diagnosed the human rights of the prisoners in precept. However, this does not mean that there can be no violence at all. Cases of excesses thru law enforcement organizations resulting in human rights violation come to slight proper right here and there now and then. The pleasant relief is the higher judiciary, every time such violations are introduced to its notice, has intervened to set right such violations and ordered remedial measures. The Supreme Court of India, which is not pleasant the incredible authority withinside the Judicial hierarchy, but moreover the guardian of the Constitution and the protector of the crucial rights confident beneath our Constitution, in workout of its big and varied Constitutional powers has time and again issued writs or orders to concerned authorities and those in-fee of and responsible for control of criminal justice, giving route and recommendations with a view of preventing the infringement of any crucial right, to which every citizen of the us together with the accused/prisoner are further entitled to. The Judicial Activism of the Apex Court has a outstanding impact on the criminal control and upholding the rights of prisoners in all respects. As an offshoot of the commands from the Apex Court such a variety of Prison Reforms Commissions were fashioned every at the Central and State diploma which endorsed such a variety of suggestions to beautify the prison condition and expand better treatment to prisoners. Under this condition, the researcher felt it critical to study the rights of the prisoners in India.

1.10 SCOPE OF THE STUDY

The study is largely a doctrinal research in an effort to find out whether or not or now no longer the rights of the prisoners are nicely blanketed or now no longer. In this regard, numerous aspects similar to the comments, observations, and pronouncements of the judiciary in upholding the rights of the prisoners with regards to the rights confident to the regular citizen under the Constitution, motion taken at Central and State diploma in response to Judicial Activism in order to include such rights withinside the Statutes and Prison Manuals, the contributions made via The National and State Human Rights Commission and Human Rights Courts constituted under The Protection of Human Rights Act, 1993 were considered for the analysis. The present situation count number

for the research study is “New Dimensions of the Rights of the Prisoners’- A Critical Study”. Even though one-of-a-type types of Prisoners are constrained in Prisons, the occupancy price of Remand / Under-trials and Convicted.

Prisoners is the highest. Under this circumstance, it is considered that it's far going to be extra appropriate to research their rights by myself withinside the proposed study. Hence, the researcher has centered in analyzing the rights of prisoners in prisons Remand / Under-trials and Convicted Prisoners.

1.11 OBJECTIVES OF THE STUDY

1. To examine whether or not the Constitutional rights of an normal citizen which can be prolonged to the prisoners are full- fledged in all aspects, besides the ones which might be to be always denied due to the circumstance of imprisonment.
2. To examine the need of incorporating the rights assured to normal residents below the Constitution which can be prolonged to the prisoners, with inside the current applicable statutes, laws, rules, and policies concerning the control of prisons and remedy and supervision of prisoners.
3. To examine whether or not there may be any hole among the principle and exercise in imposing the Rights of Prisoners withinside the everyday management of Prisons.
4. To examine whether or not it's miles taken into consideration as a mercy or reluctance or denial at the a part of the jail government in extending the rights to the prisoners.
5. To examine whether or not there may be enough finances in organising the rights of prisoners in prisons in such subjects wherein the economic dedication arises.
6. To endorse measures and advice for the higher implementation of the rights of prisoner.

1.12 RESEARCH METHODOLOGY

The examine is a doctrinal studies primarily based totally on Primary and Secondary reassets using the Historical Method, Comparative Method, Statistical and Analytical Method.

1.13 SOURCES USED

The Primary Sources are:

The Statutes, Laws and Rules referring to the Prison Administration and remedy of Prisoners like:

- Constitution of India Indian Penal Code
- Criminal Procedure Code Evidence Act
- Prisons Act Prisoners Act
- Immoral Traffic (Prevention) Act Borstal Schools Act
- Juvenile Justice Act
- Probation of Offenders Act
- Model Prison Manual (Central)
- Secondary Sources are
- Tamil Nadu Prison Reforms Commission Report 1978-79
- A.N.Mulla Committee Report (All India Committee on Jail Reforms), 1980-83
- Kapoor Committee Report, 1986
- Justice Krishna Iyer Committee Report, 1987 Justice Verma Committee, 2013
- Commentaries, Journals
- Statistics of the National Crime Records Bureau
- Statistics of the Bureau of Police Research and Development, New Delhi
Statistics of the Prison Authorities of Tamil Nadu
- Materials the ones are to be had withinside the websites.

CHAPTER 2

REVIEW OF LITERATURE

Dr. Vidya Bhushan, 1970 Prison Administration in India - with specific reference to Uttar Pradesh - The creator in this ee-e-book has made an exhaustive survey of Prison Administration in India with specific reference to Uttar Pradesh which he claims as a pioneer State in progressive prison reforms withinside the country. His contribution in financial disaster I underneath heading "Historical Resume" is excellent. His speak about the inspiration of prison & prison reforms in advance than and after 1951 indicates the unsparing effort. In the opportunity chapters, he has vividly stated about the organization and control of prisons; Classification and separation of prisoners;

Classification of prisons; Prison Management and discipline; Prison hygiene and clinical care; Prison education; Prison labour and discharged prisoners. He has touched on all factors of prison control in India and stated the areas wherein similarly reformative measures can be introduced.

J.P.S. Sirohi, 1995 Criminology and Criminal Administration - This ee-e-book is a thoughts infant of J.P.S. Sirohi, an Advocate of Supreme Court, Delhi. He has stated in detail about crime, motives of crime, a couple of causative precept of crime, crime control, precept of punishment, prison system in Foreign and India, probation and parole, juvenile delinquency and Juvenile Justice etc. This ee-e-book keeps the essential competencies about the theoretical factors of Criminology and Penology. It includes essential picks of the High Courts and Supreme Court connected with the hassle depend everywhere necessary. This ee-e-book clearly benefits the students, college people, Researchers, people of the bench, bar and the opportunity Officers withinside the vicinity of Sociology, Criminology, Anthropology, Psychology, Police Prisons and Public Administration.

Dr. HyderVali, 2003 Rights of accused in Criminal Trial - This ee-e-book is considerably based completely on the Doctoral thesis of the author approved through manner of

method of the Shri Krishna Devaraya University; Ananthapur for Ph.D., within the year 1995 at the concern entitled "Self -incrimination and Supreme Court of India". The creator in his e-e-book has vividly stated the right in competition to self - incrimination, interrogation, identification of suspects and seizure. On essential points, good enough references have been made to foreign places Constitution especially to those of the United Kingdom and United States of America at the manner to supply a comparative mindset of the Indian Constitution. Relevant facts of essential times and a summary of the law laid down therein have been given within the body of the text at the manner to permit the readers and researchers like me to better recognize the hassle whilst now no longer having to refer constantly to the reports. The right in competition to self-incrimination of an accused is a Constitutional critical right. On this point, the author has tried his degree great to carry within the Judicial interpretation.

Shivanna 2003, Rights and Privileges of Accused - The creator being an outstanding member of the Bangalore Bar and moreover having abiding interest in academia has brought out this useful e-e-book on all relevant aspects of the "Rights and Privileges of Accused". The creator for consolation and ready reference in his writings, has consolidated all rights, privileges and guarantees of accused under distinct heads like Constitutional rights of the accused, Procedural rights of the accused under the Criminal Procedure Code and rights of accused under the Penal Code, rights of accused under the Law of Evidence, Rights of accused to bail, right to acquittal etc. The creator has moreover taken loads of pain and eruditely stated the pivotal trouble of the hassle depends with the assist of judicial precedence especially those of the Apex Court which includes several landmark cases. He has brought to fore the subtle nuances of the hassle and several terrible and Constitutional rights of accused succinctly and in an enumerative manner.

M.Abdul Hannan, 2003 Human Rights of the Accused within the Criminal Process - The e-e-book is certainly the revised version of the author's Ph.D., thesis entitled "Human Rights of the Accused under International Law and Municipal Law" through a case check in Bangladesh (1990 – 2000) completed in 2005 within the Department of Law and Justice under the college of Law of Rajshahi University,

Bangladesh. The creator has stated in lengths and breadths about the human rights and Constitutional guarantees of the accused, rights of the arrested and detained person, right to less costly investigation, questioning, are looking for and seizure, right to a trustworthy trial and the right of prisoners in Bangladesh with a evaluation made basically with the deliver withinside the Universal Declaration of Human Rights (UDHR) and International Covenants on Civil and Political Rights.

Dr. Ashuthosh , 2009 Rights of the Accused - The creator is an Advocate in Delhi High Court. He has highlighted the rights of accused in all respects eparticularly nearly approximately Criminal Procedure Code, Constitution of India and rights of accused in prison. He has narrated in detail the rights of the accused as envisaged withinside the Code of Criminal Procedure, 1973 like arbitrary or illegal arrest, extorting confession, are seeking for, production in advance than a Magistrate, bail and anticipatory bail, are seeking for recommendation from a Counsel and free legal aid, open trial, right to examine and byskip examine every prosecution and safety witnesses, double jeopardy, enchantment etc. Even aleven aleven though his ee-ebook is titled as 'Rights of accused' he has now not forgotten to talk approximately the 'rights of prisoners in prison'.

Pandit Kamalakar 2010, Human Rights and Criminal Justice - The creator being a lecturer of SBRTM Law College, Kadapa has taken due care to address the trouble in a systematic way, simply so even the beginners can follow the trouble and in fact, it's miles a similarly addition to the legal literature involved with human rights jurisprudence as well. He has elaborately noted about human rights, right to trustworthy trial, double jeopardy, right in competition to self-incrimination, right to lifestyles and liberty, right to freedom from arbitrary arrest, right to bail, right in competition to torture, right to rapid trial, plea bargaining, right to legal aid, right to compensation, right of prisoners and moreover Protection of Human Rights Act,1993. He has vividly noted that the rights of prisoner has emerged as an offshoot of Judicial Activism in 1960 in Prabhakar Pandurang case and it have turn out to be multi-dimensional in Sunil Batra times in 1978 & 1980. The desire involved with the trouble has been treated in an orderly fashion.

A. Sirajudeen, Advocate, Madras High Court, 2010 Law and Practice of Rights of Prisoner - Though prison occupies the most critical place in any society, a entire e-book on the trouble become now not available. The law governing the prisoners from the on the spotaneous of their arrest till the release each from police or from the prisons become an untouched trouble in India. While there are various judicial choices available regarding the arrest, remand, bail, sentence etc. suited legal statement become now not available on the rights of prisoners and the trouble related with the execution of sentence, treatment of prisoners, release and their after care. Keeping this in mind the writer in his superb art work has lengthy long gone indepth into the Law governing the prisoners from the on the spotaneous of their arrest till their release each from police custody or from the prison (i.e.) arrest, remand, bail, sentence, execution of sentence including set-off, pardon, parole, clemency, remission and rights withinside the prison. The creator has protected in the ideal places Judicial choices now not simplest that of the High Courts of diverse States and Supreme Court in India but moreover distant places Courts numbering about 1400 case felony suggestions in all.

CHAPTER -3

TRACING THE HISTORY OF PRISONS, EVOLUTION AND MANAGEMENT OF PRISONS AND TREATMENT OF PRISONERS

3.1 INTRODUCTION

Criminology is, ordinarily, the technological know-how of crime and the individual that research crime in a scientific way may be exactly defined as Criminologist. The issue of Criminology is to research special factors of crime and tool powerful measures for the remedy of criminals to rehabilitate them in society as correct citizens.

3.2 STUDY OF CRIMINOLOGY

Criminology is an immensely huge issue. It is aware of no limitations and will become worried in all of the sciences which cope with guy and his social organization. As such criminology is involved with the observe of antisocial and crook behavior, besides, crime manipulate and prevention of crook's remedy and rehabilitation.

3.3 CRIME

Paul W. Tappan described crime as “an institutional act or omission in violation of crook regulation, dedicated without protection or justification and sanctioned via way of means of the regulation as prison or misdemeanor”¹⁶. Crime is an act of warfare against community touching new depths of lawlessness.

3.4 CONCEPT OF CRIME

Crime is a felony idea and has a sanction of law. It is likewise referred to as a residing idea. The “Changing idea” of crime relies upon the social evolution of the person everywhere in the world. It seems in exceptional lighting fixtures in exceptional nations

¹⁶ Paul W. Tappan Crime, Justice and Corruption, p.10

at exceptional instances what's crime in a single country, might not be a criminal offense in any other. What is a criminal offense at one time might not be a criminal offense at any other and vice-versa

3.5 GENERAL CAUSES OF CRIME

The reasons of crime are one of the critical stages of crime hassle that calls for extra discussion, research and studies and phone for extra social and Government action. There can not be a unmarried solitary thing for the fee of delinquency and crime. But it's far a end result of many elements. Hence the query whether or not one thing or any other reasons delinquency and crime is an unsound one. The perception of unitary causation of crime need to be substituted for the idea of inner and outside pressures and inhibitions. Dr. Jyotsha H. Shah has widely divided the elements of delinquency causation into components viz., (I). Inside the house like Home influences, Home and own circle of relatives when it comes to crime, The damaged home, Criminality withinside the own circle of relatives, Impact of crook convictions, Psychological tensions and emotional disturbances at home (II) Outside the house like Environmental elements, Community, and School.

3.6 PUNISHMENT

Punishment is a way of social control. H.L.A. Hart with Mr.Bean and Prof.Flew has defined "punishment" in phrases of 5 elements: (i) It have to contain ache or different outcomes generally considered (ii) It have to be for an offence towards felony rules. (iii) He have to be an real or meant wrongdoer for his offence. (iv) It have to be deliberately administered through humans apart from the wrongdoer (v) It have to be imposed and administered through an expert constituted through a felony gadget towards which the offence is committed.¹⁷

¹⁷ H.L.A. Hart's Essay, "Pinciples of Punishment" published in Crime and Justice, Vol.II, Edited by Sir Leon Radzinowics and M.E. Wolfgang, p.3.

3.7 CONCEPT OF PUNISHMENT

The idea of punishment is that of causing a few form of ache at the perpetrator for his violation of regulation. This is an device of public justice. To illustrate, if a thief is prosecuted and taken earlier than a Court, his case heard, punishment presented with the aid of using the Court and sooner or later achieved with the aid of using the State, then this will become a punishment with inside the criminal sense. It will now no longer be a punishment in regulation, if father beats his son for committing a robbery in his residence or killing of Naxalites with the aid of using the State for his or her anti-countrywide hobby without prosecuting them.

3.8 THEORIES OF PUNISHMENT

All punishments take location inside a society's normal criminal and penal structures. In the past, numerous motives had been given for the justification of punishment. One of those motives is retribution. Another purpose, traditionally related to utilitarianism, is that punishment serves to discourage others from offending i.e. deterrence. A 0.33 purpose is partially that punishment or a exercise of treatment, secures that fewer offences may be dedicated withinside the future, however now no longer via deterrence. This may be defined as reformative issue recommending the 'ethical regeneration' of people as an cease itself and additionally a method for the prevention of crime. These 3 motives, every with versions and complexities, had been referred to as theories of justification of punishment.

3.8.1 Theory of Retribution

Retribution might be the oldest and maximum historic justification for punishment. "You harm me and I will harm you" is its literal meaning. The justification for retributive concept of punishments is that the crook is to be punished truly due to the fact he has dedicated a crime. It is to begin with primarily based totally on revenge. Revenge with the aid of using whom? The sufferer can't take the regulation in his personal arms withinside the present day democratic set up. The LexTelionis, 'an eye fixed for an eye fixed, a teeth for a teeth' can't be a justification for punishment withinside the present day

society. Punishment is regulated partially with the aid of using the legislators with the aid of using solving scale of consequences and partially with the aid of using judges and Magistrates with the aid of using awarding consequences after lawful attention of the well being of the perpetrator and his own circle of relatives or of the society as a whole, in the scale constant with the aid of using the legislators.

3.8.2 Theory of Deterrence

Deterrence is generally described because the preventive impact that's real or threatened punishment of offenders that has upon the ability offenders. The precept of deterrence is of historic beginning and has been outstanding during records in crook structures of punishment. According to Sir John Salmond, deterrence is, "Punishment is earlier than all matters deterrent, and the leader cease of the regulation of crime is to make the evil- doer as instance and a caution to all who're like-minded with him."¹⁸

3.8.3 Theory of Reformation

With the modern revelations of Sigmund Freud and with the increase of Psychology withinside the nineteenth century, reformative concept of punishment emerged. The current penology acknowledges that the punishment that is now not appeared as retributive or deterrent as reformation or rehabilitation. Reformation is described as "the attempt to repair a person to society as a higher and wiser guy and an amazing citizen."¹⁹ Progressive criminologists throughout the World will agree that "the Gandhian analysis of the offenders as sufferers and his idea of prisons as hospitals – intellectual and moral - is a key to the pathology of delinquency and healing function of punishment." It is, thus, clean that against the law is a pathological aberration, that a crook can basically be redeemed, that a kingdom has to rehabilitate instead of avenge.

The Indian Jail Committee, 1919-1920 described the pursuits of correctional management as 'the prevention of in addition crime and the recovery of the crook to the society as a reformed character'.

¹⁸ Sir Jon Salmond, "Jurisprudence", 1947 p.111

¹⁹ Prison Commissioners Report, 1912 p.24

Rehabilitative Ideal of the Reformatory Theory is that measures hired to deal with the convicted perpetrator to serve a healing function; that such measures need to be designed to impact modifications withinside the conduct of the convicted individual withinside the hobby of his personal happiness, fitness and pleasure and withinside the hobby of social defense.

The reformatory principle of punishment is contemplated each withinside the Constitution of India and withinside the International Conventions coping with human rights. Article 21 of the Constitution of India coping with 'existence' and 'private liberty' ensures a existence of dignity and really a existence above mere animal existence.²⁰

According to Hon'ble Justice Krishna Iyer "If you're to punish a person retributively, you ought to injure him. If you're to reform him you ought to enhance him. And guys aren't progressed with the aid of using injuries."²¹

3.9 HISTORY OF PRISONS

Prison machine that's a technique of dealing with criminals turned into a end result of ancients accidents. It turned into now no longer a cautiously notion out plan. Prison existed from historic days. Segregating criminals from society to shield it's far an mentioned necessity of each civilized State. Yet, unduly harsh remedy isn't favoured with the aid of using civilized State. Jail is one of the mysterious sections of the jail machine. There were jails and prisons for heaps of years, however previous to the eighteenth century, they had been seldom used to contain convicted offenders. Jails, meant as locations of "secure keeping" for people waiting for trial, are on the equal time utilized (intentionally or otherwise) as rehabilitation centers for convicted offenders. Every 12 months about lakhs of men, ladies and youngsters are locked up in jails, convicted or waiting for trial for offences starting from save lifting to homicide and from political demonstration to treason.

²⁰ Shyokaran vs. State of Rajasthan 2008 Cr.LJ 1265 Raj

²¹ Justice Krishna Iyer in his book on "Perspectives in Criminology Law and Social Change" (1980).

3.10 PRISONS IN THE WORLD SCENARIO

This is discussed under three heads viz., (1) Ancient Times. (2) Middle Age and (3) Modern Era.

3.10.1 Ancient Times

The beginning of prisons can be traced back to the rise of the State as a form of social organization. Corresponding with the advent of the State was the development of written language which enabled the creation of formalized legal codes as official guidelines for society. The most well-known of these early legal codes is the code of Hammurabi, written in Babylon around 1750 B.C. The penalties for violation of the laws in Hammurabi's Code were almost exclusively centered on the concept of "lex talionis" i.e. law of retaliation where people were punished as a form of vengeance, often by the victims themselves. This notion of punishment as vengeance or retribution can also be found in many other legal codes from earlier civilization, including the ancient Sumerian codes, the Indian Manu Dharma Sastra, Hermes, Trismegistus of Egypt and Mosaic Code²². The Gally slave was a common punishment in Early Modern Europe.

Some Ancient Greek Philosophers like Plato, started out to expand the concept of the usage of punishment to reform offenders in place of honestly the usage of it as retribution. Imprisonment as a penalty changed into used to begin with for folks who couldn't have enough money to pay their fines. Eventually, on the grounds that impoverished Athenians couldn't pay their fines, main to indefinite durations of imprisonment, closing dates had been set instead.²³ The prison in Ancient Athens was known as the Desmoterion (Place of chains).²⁴

The Romans have been a few of the first to apply the prisons as a shape of punishment instead of in reality for detention. A sort of current systems have been used to residence prisoners, consisting of metallic cages, basements of public homes and quarries. One of

²² Welch, Michael (2004). "A Social History of the Punishment and Corrections". Corrections: A Critical Approach. McGraw-Hill.

²³ Allen, Danielle S. "Punishments in Ancient Athens" Harvard University, Center for Hellenic Studies

²⁴ Roth, Michael P. 2006." Prisons and Prison Systems;A Global Encyclopedia". Greenwood Publishing.

the maximum superb Roman prisons became the Mamertine Prison, hooked up round 640 B.C. via way of means of Ancus Marcius. This jail became placed inside a sewer machine under Ancient Rome and contained a huge community of dungeons wherein prisoners have been held in squalid situations infected with human waste. Forced labour on public paintings tasks became additionally a not unusualplace shape of punishment. In many cases, residents have been sentenced to slavery, frequently in Ergastula (primitive shape of jail) wherein unruly slaves have been chained to workbenches and completed difficult labour.

3.10.2 Middle Age

During the center Ages in Europe castle, fortresses and the basement of public homes have been frequently used as makeshift prisons. The ownership of the proper and the functionality to imprison residents, however, granted an air of legitimacy to officers in any respect ranges of Government , from Kings to Regional Courts to town councils; and the cappotential to have a person imprisoned or killed served as a signifier of who in society possessed energy or authority over others²⁵. Another not unusualplace punishment became sentencing humans to gally slavery wherein they have been chained collectively withinside the backside of deliver and compelled to row on naval or service provider vessels. However, the idea of the Modern Prison in large part remained unknown till the early nineteenth Century. Punishment generally consisted of bodily sorts of punishment, along with capital punishment, mutilation and whipping and non-bodily punishments consisting of public shaming rituals just like the stock.²⁶

3.10.3 Modern Era

During the 18th century, famous resistance to public execution and torture have become extra good sized each in Europe and United States and Rulers commenced searching out

²⁵ Turning, Patricia (2012)..”Competition for the Prisoner’s Body: Wardens and Jailers in Fourteenth-Century Southern France.” In *Classe*, Albrecht&Scarborough, Connie. *Crime and Punishment in the Middle Ages and Early Modern Age: Mental-Historical Investigations of Basic Human Problems and Social Responses*. Walter de Gruyter.

²⁶ Spierenburg, Peter (1998) “The Body And The State: Early Modern Europe” In Morris, Norval& Rothman, David J. *The Oxford History of the Prisons: The Practice of Punishment in Western Society*. Oxford University Press.

method to punish and manage their topics in a manner that did now no longer purpose human beings to companion them with spectacles of tyrannical and sadistic violence. They commenced to appearance closer to growing machine of mass incarceration as a solution.²⁷ The jail reform motion that arose at the moment become closely inspired via way of means of incredibly contradictory philosophies. The first become primarily based totally on Enlightenment thoughts of utilitarianism and rationalism, and recommended that prisons must clearly be used as a extra powerful alternative for the punishments inflicted in public corporal punishments which include whipping, putting etc. This principle regularly known as deterrence, claims that number one motive of jail is to be so harsh and terrifying that they deter humans from committing crime out of worry of going to jail. The 2nd principle which noticed prisons as a shape of rehabilitation or ethical reform become primarily based totally out of spiritual thoughts that equated crime with sin, and noticed prisons as an area to train prisoners in Christian Morality, obedience and right behaviour. The later reformers believed that Prisons may be built as humane establishments of ethical instruction, and that prisoners' conduct may be 'corrected' in order that after they have been launched they could be version individuals of society.²⁸

Penal transportation of convicted criminals to penal colonies withinside the British Empire withinside the America from 1610 to 1770 and in Australia among 1788 and 1868 become frequently provided as an opportunity to loss of life penalty, which might be imposed for plenty offences.²⁹ France also sent criminals to tropical penal colonies including Louisiana in the early 18th Century.³⁰ Penal Colonies in French Guiana operated until 1951. Katorga prisons were harsh work camps established in 17th Century in Russia in remote, under populated area of Siberia and the Russian Far East that had few towns or food sources. Siberia quickly gained its fearful connotation of

²⁷ Foucault, Michel (1995). "Discipline & Punish: The Birth of the Prison." Vintage Books.

²⁸ Lewis, W. David (2009). *From Newgate to Dannemora: The Rise of the Penitentiary in New York, 1796 – 1848*. Cornell University Press.

²⁹ For a more detailed look at the English "transportation" system, and the transition from penal colonies to prisons, see: Hostettler, John (2009). "A History of Criminal Justice in England and Wales." Waterside Press.

³⁰ Taylor, Alan, *American Colonies*, Penguin: London(2001)

punishment.³¹ One reform of the 17th Century had been the establishment of London Bridewell as the house of correction for women and children.

The first State Prison in England became the Millbank Prison hooked up in 1816 with the potential for simply fewer than one thousand inmates. By 1840s penal transportation and use of hulks became at the decline and the Surveyor-General of the convict prisons Joshua Jebb, set an bold programme of jail constructing with inside the country, with one big jail commencing according to year. Pentonville jail opened in 1842, starting a fashion of ever growing incarceration fee and using jail because the number one shape of crime punishment.³² In 1855 engraving of New York's Sing penitentiary, which additionally observed the "Auburn or (or Congregate) system" wherein jail cells had been positioned interior of square constructing that lent themselves greater to large-scale penal labour.

In 1786, the State of Pennsylvania surpassed a regulation which mandated that every one convicts who've now no longer been sentenced to demise might be positioned in penal servitude to do public works tasks together with constructing roads, forts and mines. Besides the monetary advantages of offering a loose supply of tough labour, the proponents of recent penal code additionally concept that this deter crook pastime with the aid of using creating a conspicuous public instance of effects of breaking regulation. However what honestly ended up going on became common spectacles of disorderly behavior with the aid of using the convict paintings crews, and the technology of sympathetic emotions from the residents who witnessed the mistreatment of the convicts. But this regulation speedy drew grievance from the humanitarian perspective (as cruel, exploitative and degrading) and from a utilitarian perspective (as failing to discourage crime and delegitimizing the nation withinside the eyes of the public). Reformers together with Benjamin Rush got here up with an answer that could permit the ongoing use of compelled labour, even as maintaining disorderly behavior and abuse out of the eyes of the public. They recommended that the prisoners be despatched to be secluded "Houses of repentance" wherein they might be subjected (out of the view of the public)

³¹ Jonathan W. Daly, *Autocracy under Siege: Security Police and Opposition in Russia, 1866-1905* (1988)

³² Fox 1952, p.46

to “physical pain, labour, watchfulness, solitude and silence joined with cleanliness and a easy diet”.³³

Pennsylvania soon put this theory into practice, and turned its old jail at Walnut Street in Philadelphia into a State Prison in 1790. This Prison was modeled on what became known as Pennsylvania system or 'separate system' and placed as prisoners into solitary cell with nothing other than religious literature and forced them to be completely silent to reflect on their wrong.³⁴ New York soon built the New Gate State Prison in Greenwich Village, which was modeled on the Pennsylvania system³⁵ and other states followed. This system's fame spread and attracted visitors to the U.S.

The use of Prisons in Continental Europe was never as popular as it became in the English speaking world, although State Prison system were largely in place by the end of the 19th Century in most European countries. After the unification of Italy in 1861, the Government reformed the repressive and arbitrary prison system they inherited and modernized and secularized criminal punishment by emphasizing discipline and deterrence.³⁶ Italy developed an advanced penology under the leadership of Cesare Lombroso (1835-1909).³⁷

3.11 SPECIAL TYPES OF PRISON

This topic is dealt with fewer than five sub-titles like the prison for juveniles, women prisons, military prisons, and prisoners of war camps, political prisoners and psychiatric facilities prison.

³³ McClennan, Rebecca M. (2008). “The Crisis of Imprisonment: Protest, Politics and the Making of the American Penal State”, 1776 -1941. Cambridge University Press.

³⁴ Murty, Komanduri S.(2004). *Voices from Prison: An Ethnographic Study of Black Male Prisoners.* University Press of America.p. 64.ISBN 9780761829669.

³⁵ Lewis, W. David (2009). “From Newgate to Dannemora: The Rise of the Penitentiary in New York”, 1796-1848. Cornell University Press p. 30

³⁶ Mary Gibson , “ Women’s Prisons in Italy: A Problem of Citizenship, “ *Crime Histoire et, Societes* (2009) 13#2 pp 27-40

³⁷ Paul Knepper and Per Jergen Ystehede, eds, *The Cesare Lombroso Handbook* (2012)

3.11.1 Prison for Juveniles

Prisons for Juveniles are known by a variety of names including 'youth detention facilities', 'Juvenile detention centers' and 'Reformatories'. The idea of separately treating youthful and adult offenders is a relatively modern idea. The earliest known use of the term 'Juvenile delinquency' was in London in 1816, from where this quickly spread to the United States. The first Juvenile Correctional Institution in the United States opened in 1825 in New York City. By 1917, Juvenile Courts have been established in all but 3 States. It was estimated that in 2011 more than 95000 Juveniles were locked up in prisons in the United States (the largest youth population in the world). Besides prison, many other types of residential placements exist within Juvenile Justice System including Youth Homes; Community based programmes, Training Schools and Boot camps.³⁸

3.11.2 Women Prisons

A developing focus that lady prisoners had special desires than male prisoners caused the status quo of first jail for girls in Canada in 1874 (Andrew Mercer Reformatory, Toronto, Canada). The goal of this Reformatory turned into to create a homelike ecosystem for its lady inmates and to educate them the ability vital to steer a first rate lifestyles as soon as their sentence expired. The Training provided turned into meant to instill female Victorian virtues which includes obedience and servility.

Female inmates revel in excessive fees of rape and sexual violence at the same time as incarcerated. Sexual aggression and abuse via way of means of male jail group of workers turned into widespread. In the USA in 2008 (in line with Bureau of Justice statistics) greater than 216,six hundred humans have been sexually abused in prisons.³⁹ Sexual offences in opposition to girls prisoners consists of rape, attack and groping for the duration of pat frisks. Male correctional officers frequently violate girls prisoners privateness via way of means of looking them undress, bathe and visit the bathtub room. It is found in a studies that "girls with histories of abuse are much more likely to simply

³⁸ Welch, Michael (2004). "Juveniles in Corrections. Corrections: A Critical Approach." McGraw-Hill.

³⁹ Kaiser, David; LouvisaStannow(24th March 2011). "Prison Rape and the Government". The New York Review of Books: 1-19

accept sexual misconduct from jail group of workers due to the fact they're already conditioned to reaction to coercion and threats via way of means of acquiescing to guard themselves from similarly violence".⁴⁰ In federal ladies's correction facilities, 70% of guards are males, reinforcing woman inmates' powerlessness. Incarcerated ladies go through disproportionately from HIV/AIDS, infectious disease, reproductive problems and continual diseases. Within the American Prison System, HIV have become greater popular amongst ladies than amongst men. In 2007, the Bureau of Justice Statistics said that an average, 5% of ladies who entered into State Prison are pregnant and in Jail6% of ladies are pregnant.⁴¹

3.11.3 Military Prisons and Prisoner of War Camps

Captives at camp X-ray is a U.S. Military Prison placed in Guantanamo Bay, Cuba in which many human beings have been being indefinitely detained in solitary confinement as a part of the "War on Terror" The Prisoners have been compelled to put on goggles and headphones for sensory deprivation and to save you them from speaking with different prisoners.

Prisons have shaped a part of Military structures for the reason that French Revolution. France installation its gadget in 1796. They have been modernized in 1852 and that they have been used variously to residence prisoners of battle, illegal warring parties the ones freedom is deemed a countrywide protection threat via way of means of army or civilian government and individuals of the army observed responsible of a extreme crime. In the American Revolution, British Prisoners held via way of means of the U.S. have been assigned to nearby farmers as labourers. The British stored American sailors in damaged down deliver hulks with excessive dying rate. In the American Civil War, at the start prisoners of battle have been released, when they promised now no longer to combat once more until officially exchanged. When the Confederacy refused to change black prisoners, the gadget broke down and every facet constructed large-scale prisoner of battle (POW) camps. Conditions in phrases of housing, meals and hospital treatment have

⁴⁰ Law, Victoria (2009), *Resistance Behind Bars: The Struggle of Incarcerated Women*, Oakland:PM Press. p.61

⁴¹ Shackling of women in custody. The Rebecca Project Retrieved 2011-04-27

been horrific withinside the Confederacy, and the Union retaliated via way of means of implementing harsh conditions.⁴²

By 1900 the criminal framework of the Geneva and Hague Convention supplied massive protection. In the First World War, hundreds of thousands of prisoners had been hung on each sides, and not using a primary atrocities. Officers obtained privileged remedy. There became an boom withinside the use of compelled labour at some stage in Europe. Food and scientific remedy had been usually akin to what energetic obligation squaddies obtained, and housing became tons higher than front-line conditions.⁴³

3.11.4 Political Prisons

Political prisoners are human beings who've been imprisoned due to their political beliefs, sports and affiliation. There is a great deal debate approximately who qualifies as a 'Political Prisoner'. The class of 'Political Prisoner' is frequently contested and plenty of regimes that incarcerate political prisoners frequently declare that they may be merely 'criminals'. Others who're now and again categorized as 'political prisoners' consist of prisoners who had been politicized in prisons and finally punished for his or her involvement with political causes.⁴⁴

Many nations hold or have withinside the beyond had a device of prisons specially supposed for political prisoners. In a few nations, dissidents are detained, tortured, achieved and/or disappeared with out trial. This can take place both legally or greater legally or every now and then at the same time as falsely accusing humans or fabricating proof in opposition to them.⁴⁵

Single cells withinside the B phase Court backyard of Robben Island Maximum Security Prison changed into used to residence political prisoners in South Africa from 1961 to

⁴² Michael B. Chesson, "Prison Camps and Prisoners of War", in Steven E. Woodworth, ed. *The American Civil War* (1996) p.466-78.

⁴³ Heather Jones, "A Missing Paradigm, Military Captivity and the Prisoner of War, 1914-18, Immigrants and Minorities" (2008)

⁴⁴ James, Joy, ed. (2003). *Imprisoned Intellectuals: America's Political Prisoners Write on Life, Liberation and Rebellion*. Rowman & Littlefield.

⁴⁵ Wu, Yenna (2011) "Introduction". In Livescu, Simona et al. *Human Rights, Suffering, and Aesthetics in Political Prison Literature*. Lexington Books.

1991. Many of the humans which include Nelson Mandela who have been concerned in resistance towards the apartheid Government have been restricted in Robben Island.

3.11.five Psychiatric Facilities Prisons

Some Psychiatric centers have traits of prisons, mainly whilst confining sufferers who've dedicated against the law and are taken into consideration dangerous. Many prisons have psychiatric devices committed to housing offenders identified with extensive form of intellectual disorder. The United State Government refers to psychiatric prisons as 'Federal Medical Centre'. (FMC).

3.12 MODERN PRISONS

To save you escapes through the Prisoners, Prisons are surrounded through fencing, big walls, earthworks, geographical capabilities or different boundaries. Many cutting-edge prisons relying on the extent of safety are having more than one boundaries like a fringe of excessive walls, razor cord or barbed cord, concertina cord, electrified fencing, movement sensors, protect towers, secured and defensible major gates, safety lighting, puppies and roving patrols on the way to save you prisoners from escape.⁴⁶ Remotely controlled doors, CCTV monitoring, alarm, cages, restraints, lethal and non-lethal weapons, riot control gear and physical segregation of units and prisoners must be present within a prison to monitor and control the movement and activity of prisoners within the facility.⁴⁷

Modern jail layout has an increasing number of sought to limitation and manipulate the motion of prisoners at some stage in the ability and additionally to permit a smaller jail team of workers to screen prisoners directly. Smaller, separate and self-contained housing gadgets recognized as 'pods' or 'modules' are designed to preserve sixteen to 50 prisoners and are organized round exercising yards or help centers in a decentralized 'campus' pattern. A small variety of jail officers, occasionally a unmarried officer, supervise every pod. The pods incorporate degrees of mobileular organized round a principal manipulate

⁴⁶ Hanser Robert D. (2012) Introduction to Corrections.SAGE.

⁴⁷ Latessa, Edward J. (1996). "Technology". In McShane, Marilyn D. & Williams, Frank P. Encyclopedia of American Prisons. Taylor and Francis.

station or table from which a unmarried officer can screen all of the cells and the complete pod, manipulate mobileular doorways and speak with the relaxation of the jail.

3.13 PRISON POPULATION

It is estimated that in 2010 at least 10.1 million people were imprisoned worldwide.⁴⁸ The United States had the world largest prison population over 2.3million (one in every 100 American adult was in prison) people in American prisons or jails in 2012 whereas it was 744,000 in 1985.⁴⁹ In California, nearly 158,000 inmates were detained in 2009 whereas the prisons were designed to hold 84,000 inmates only. The incarceration rate in California prisons was at an increasing rate and new prisons could not be built fast enough.⁵⁰ In 2009 China's prison population is about 1.6 million while the prison population in India was 3, 32,112.⁵¹

3.14 PRISONS IN INDIA

In India, the early prisons were only place of detention where an offender was detained until trial and judgment and the execution of the latter. The structure of society in ancient India was founded on the principles enunciated by Manu and explained by Yajnavalkya, Kautilya and others.⁵² In Arthshastra, we find a long list of offences and the penalties therefor. The crimes which offended against person, property, the institution of marriage and administration of justice were regarded very heinous. The punishment for these crimes usually inflicted was mutilation, death and penance. Trials by ordeal were frequently resorted to. In some cases the accused was made to take⁵³ a caustic drink and it was believed that if he spoke the truth the drink would do no harm.⁵⁴ Expiation was recognized as a form of punishment.⁵⁵

⁴⁸ Walmsley, Roy (October 2010), "World Prison Population List (Ninth Edition)" (PDF) Retrieved 2012-12-17

⁴⁹ Michael Myser (15th March 2007). "The Hard Sell" CNN Money, Time Warner Company, Retrieved 28 June 2013

⁵⁰ Engdahl, Sylvia (2010). Prisons. Farmington Hills: Greenhaven Press.

⁵¹ "World Prison Population" BBC News. 2009 Retrieved 28 June 2013

⁵² Aiyangar, K.V.R., Some Aspects of Ancient Indian Polity. P.94

⁵³ Aiyangar, K.V.R., Some Aspects of Ancient Indian Polity. P..95

⁵⁴ Jayaswal, K.P., "Hindu Polity" p.134-139

⁵⁵ Rapson, E.J., "Cambridge History of India", Vol.I, p.485

Among numerous sorts of corporal punishments branding, hanging, mutilation and death, imprisonment become the mildest type of penalty recognized in historic Indian penology. Imprisonment occupied an everyday vicinity many of the penal remedy and this form of corporal punishment become counseled withinside the Hindu Scriptures. The evil doer become positioned into jail to segregate them from the Society. The foremost goal of imprisonment become to maintain away the incorrect doer in order that they won't defile the individuals of the social order. These prisons had been completely darkish dense, cool and damp, unlighted and unwarmed and that no right preparations for sanitation and no manner of facility for human dwelling.

Kautilya is a forerunner for the jail reforms which might be being finished today. In his Arthashastra he has prescribed that prison have to be built in a capital and offer separate lodging for guys and women. He has mentioned the troubles of prisoner's existence and their welfare. He is of the opinion that each 5th day a few prisoners have to be made unfastened who pay a few cash as first-class or undergoes a few different moderate corporal punishment, promise to paintings for social upliftment. He has additionally counseled wellknown amnesty at the delivery of Prince, Royal Monarch or coronation of Royal Heir and at the event of Social Festivals.

In the early years of Asoka there has been an unreformed jail wherein maximum of the conventional fiendish tortures had been inflicted and from which no prisoner got here out alive. In the later duration of his rule, especially while he become encouraged via way of means of Buddhism many reformatory measures in prisons had been taken.

During the duration of Sultanates there had been no ordinary prisons. Only antique Forts and Castles had been used as Prisons. During the time of Akbar there had been styles of prisons. One for criminals who've devoted critical offence and different for everyday criminals. Important nobles and princess responsible of treason and rebellions had been imprisoned in fortresses located withinside the exceptional elements of the country.

The criminal gadget withinside the medieval India resembles that of historic India and the Muslim Sovereigns seldom tried to tamper with the every day management of Justice. Crimes had been divided into 3 companies viz. (a) Offences towards God (b) Offences

towards the State (c) Offences towards non-public classes. The punishment for those offences had been of 4 classes: (a) Hadd (b) Tazir (c) Qisas and (d) Tashhir. Hadd manner a punishment prescribed via way of means of canon law, Tazir is punishment meant to reform the culprits and relying at the discretion of the judge; Qisas is the private proper of the sufferer or his subsequent of relatives to inflict punishment; Tashhir is public degradation.⁵⁶ The punishment for these offences were fines and confiscation, forfeiture of rank and title, subjecting to humiliations, banishment, whipping, mutilation of offending limbs, execution and other corporal punishments.⁵⁷ Imprisonment turned into now no longer resorted to as a shape of punishment in case of everyday criminals. It turned into used usually as a method of detention handiest. There have been fortresses located in specific components of the us of a wherein the criminals have been detained pending trial and judgment. During the technology of cutting-edge prisons, imprisonment have become conspicuous and the maximum usually used tool of penal remedy.

3.14.1 Types of Prisons

As according to the NCRB Reports of 2012, there are approximately 1394 specific varieties of Jails in India viz., Central Jail (127), District Jail (340), Sub-Jail (806), Women Jail (20), Borstal School (21), Open Jail (46), Special Jail (31) and others (3), with a ability to house 3,47,859 Prisoners out of which 3,23,573 are Male Prisoners and 24286 are Female Prisoners.

In Tamil Nadu there are approximately a hundred thirty five specific form of Jails viz., Central Jail (9), District Jail (9), Sub-Jail (95), Women Jail (3), Borstal School (12), Open Jail (2), and Special Jail (5). With a ability to house 21,951 out of which Male Prisoners are 19510 and Female Prisoners are 2441.

3.15 PRISON REFORMS IN INDIA (PRE INDEPENDENCE PERIOD)

The prisons in India have been in a horrible circumstance while the East India Company took over a number of the provinces of India. The East India Company, however, turned

⁵⁶ Sarkar, J.N., "Moghul Administration", p.116-124

⁵⁷ Saran, P., "The Provincial Government of the Moghul", p.382

into additionally now no longer so eager to make investments cash on jail development being a non-worthwhile welfare programmes. Moreover the jail machine withinside the extra enlightened international locations together with U.S.A and U.K. have been additionally horrible in the ones days as deterrence turned into the handiest intention of a jail sentence.

3.15.1 Prison Discipline Committee (Lord Macaulay Committee) -1836

Our cutting-edge jail management is a legacy of the British Rule. Lord Macaulay who later have become the writer of the Indian Penal Code which offers for imprisonment because the maximum usually used tool of penal remedy, at the same time as supplying a be aware to the Legislative Council in India on twenty first December 1935, mentioned for the primary time, the horrible circumstance then winning in Indian prisons. He vehemently subscribed to the concept that “the great crook code may be of little or no use to a network except there be properly equipment for the infliction of punishment”. He pressured that “it is, therefore, of the finest significance to set up such rules as shall make imprisonment an apprehension to wrong-doers and shall on the equal time save you it from being attended through any situations surprising to humanity.”

Lord Macaulay advocated that a committee be appointed to indicate measures to enhance subject in prisons. Consequently on 2d January 1936, a committee turned into appointed through Lord William Bentick to observe the situations of subject in Indian prisons. Lord Macaulay and a few different maximum outstanding Statesmen and Jurists of the day constituted the committee. This committee referred to as Prison Discipline Committee gave its record in 1838 to Lord Auckland, the then Governor General. The Committee in its record mentioned its super disapprobation, the rampant corruption withinside the subordinate establishment, the laxity of subject and the machine of using prisoners on extra-mural labour on public roads. Presumably beneathneath the affect of the response from those officials, the Committee advocated improved rigors of remedy and rejected all notions of reforming criminals thru ethical and spiritual teaching, schooling or any machine of praise for properly conduct. It endorsed production of principal prisons and

that the sentences have been sought to be finished in this type of manner as to discourage each the real culprit of crime and the capability perpetrator from committing crime.⁵⁸

3.15.2 Commission of Enquiry into Jail Management and Discipline-1864

Sir John Lawrence's exam of the situations of jails in India lead Lord Dalhousie to rent the second one fee of enquiry into prison control and area in 1864. It is exciting to be aware that the British regime become inquisitive about the prisons simplest from the factor of view of management and area. The sociological thoughts of reformation or welfare of inmates had now no longer crystallized until then. The file of the Commission of 1864, therefore, intending at the traces of the file of the formerly constituted Committee (1836) laid down a gadget of jail regimentation which with change can be stated to be in operation withinside the call of jail area. The Commission additionally made a few unique pointers concerning lodging for prisoners, development in diet, clothing, bedding and hospital therapy simplest to the quantity that those had been incidental to 'area and control.' The Commission endorsed separation of prisoners – men from females, adults from children. Prison area become codified in unique phrases and violations made cause jail offences attracting punishment of solitary confinement, discount in diet, whipping and tough labour.⁵⁹

3.15.3 Conference of Experts in 1877

A Conference of Experts met in 1877 to investigate into the jail administration. By that point there had been the subsequent 5 enactments to be had withinside the us of a governing the control of prisons in diverse States. They are an Act for the higher manipulate of the jails withinside the Presidency of Bombay (1856), An Act for the law of jails withinside the City and Presidency of Bombay and enforcement of subject therein (1864), An Act for the law of jails and enforcement of subject therein (Bengal – 1864). Madras Jails Act (1860), Prisons Act (1870).

⁵⁸ Report of the All India Committee on Prison Reforms (Mulla Committee) 1980-83, Vol. I, Chapter II, Review of Prison Reforms, p.7, paras 2.1. & 2.2.

⁵⁹ Report of the All India Committee on Prison Reforms (Mulla Committee) 1980-83, Vol. I, Chapter II, Review of Prison Reforms, p.7,& 8 para 2.3.

Prisons Act, 1870 became made with the aid of using the Governor General in Council and the relaxation with the aid of using the Governors in Council for his or her respective jurisdiction. These Acts differed interse on diverse crucial factors governing the concepts and practices of jail control. The treatment proposed with the aid of using the convention of 1877 became the enactment of a jail regulation that could steady uniformity of device at the least on such fundamental troubles as reckoning of the phrases of sentence. On the premise of the advice of the convention, a draft invoice became in reality organized however as “situations had been unfavorable” the problem became postponed.⁶⁰

3.15.4 Fourth Jail Commission-1888

In 1888, the Fourth Jail Commission became appointed by means of Lord Dufferin to investigate into the records on prisons. The item and scope of the Commission as given out withinside the Resolution appointing the Commission make an thrilling analyzing specifically in view of the truth that when a lapse of just about a century we're nevertheless groping for a option to the identical problem.

The management of Jails with recognize to economy, sanitation and field has for decades obtained the cautious interest of the Governor-General in Council. Three Commissions (in 1836, 1864 & 1877) have below the orders of the Government of India, taken into consideration and mentioned on the overall concepts which need to be found withinside the control of Indian Jails. There is at the a part of Governor-General in Council no want to rethink the precept so laid down, however an exam of the facts of Jails in exclusive provinces or even of prisons withinside the identical province indicates that first-rate range of exercise exists in wearing the concepts into effect. The Governor-General in Council isn't always to be understood as advocating absolute uniformity of management in all provinces in reference to prison management. He admits that neighborhood occasions have to continually deliver upward push to diversities of exercise. But an exam of the provincial file for a few years practiced by means of him that the divergences in regard to the value of preserving prisoners in regard to their sanitary situations and in regard to field factor to the lifestyles of defects that is applicable to remove. There being

⁶⁰ Report of the All India Committee on Prison Reforms (Mulla Committee) 1980-83, Vol. I, Chapter II, Review of Prison Reforms, p. 8 para 2.4.

not doubt concerning concepts and the query being certainly considered one among exercise, it seems to His Excellency in Council that development may be high-quality be effected via a cautious and thorough exam of professionals immediately into the reasons which perform in positive provinces and positive Jails to provide a variation.

The Jail Commission of 1888 visited diverse provinces and made an exhaustive enquiry into all subjects related with prison management. The Commission became of the opinion that uniformity couldn't be done with out enactment of a unmarried prisons act. On the idea of the advice of the Jail Commission of 1888, a consolidated Prison Bill became prepared. Commission's guidelines in regard to prison offences and punishments had been specially tested by means of a convention of professionals on prison control from all Provinces, which became convened for the cause in 1892 at Calcutta. They furnished withinside the Bill for such jail punishment as gunny clothing, imposition of iron handy and feet, penal diet, solitary confinement and whipping.

The draft invoice became circulated to the neighborhood authorities with a letter addressed by means of Mr. C.J.Lyall, the then Secretary to the Government of India, Home Department in March 25, 1893 soliciting for the neighborhood authorities to ahead their observations on it and after incorporating such observations as had been necessary, the Bill became offered to the Governor-General's Council. Thus got here into being the Prisons Act, 1894 that is the modern-day regulation governing control and management of prisons in India. The Britishers had observed it efficacious for the success in their political ends to run prisons in keeping with the provisions of this Act. Even after sixty six years of independence, it has hardly ever passed through any massive alternate withinside the palms of our personal authorities, even though plenty of latest questioning has emerged at the objectives, control and management of prisons.⁶¹ The enactment of The Prisoners Act, 1900 also is an outcome of the recommendation of this Commission.⁶²

⁶¹ Report of the All India Committee on Prison Reforms (Mulla Committee) 1980-83, Vol. I, Chapter II, Review of Prison Reforms, p.8 & 9 para 2.5, 2.5.1 – 3 & 2.6.

⁶² Prison Reforms Commission, 1978-70 Vol.1 Chapter II Historical Background p.5 Para 2.3

3.15.5 Indian Jails Committee 1919-1920

The first ever complete examine of jail troubles became made via way of means of the Indian Jails Committee. This Committee tested the situations of prisons now no longer most effective in India however additionally in England, Scotland, U.S.A, Japan, Philippines and Hong Kong. It produced its document containing as many as 584 hints that's certainly a land mark withinside the records of jail reforms in India. It can, in all fairness, be known as the corner-stone of cutting-edge jail reforms withinside the united states of america. For the primary time withinside the records of prisons 'reformation' and 'rehabilitation' of offenders had been recognized because the targets of jail management.

The Committee advocated that the care of criminals ought to be entrusted to competently skilled group of workers, decided on and recruited after cautious scrutiny. It advocated that the profits of the jail employees ought to be enough to steady and keep devoted service. It rejected the concept of immoderate employment of convict officials and advocated the discount of such immoderate employment. Executive and clerical responsibilities had been advocated to be separated. The Committee additionally advocated the induction of technical group of workers in Jail service. As for development of bodily circumstance the Committee advocated diversification of establishments declaring that separate jails ought to be marked for numerous classes of prisoners. It advocated a minimal region of seventy five rectangular backyard in keeping with inmate in the wall of the prison. It deprecated overcrowding and advocated remedial measures to save you it. The Committee strongly repudiated the presence of youngsters in jails supposed for person prisoners. It advocated the introduction of Children's Court for listening to all instances of sweet sixteen delinquents and their housing remand home. The Committee made a forceful plea for creation of warning, probation, and exceptional for paintings in lieu of short- time period imprisonment. With a view to persevering with the system of evolution of prisons troubles and bringing in prison reform the Committee advocated that a convention of Inspector General of prisons be held each opportunity year.

The advice of the Indian Jail Committee even though radical within the mild of the sociological notion of the day, couldn't be applied because of particularly, reasons. In the primary region the diarchical gadget delivered via way of means of the Government of India Act, 1919 left the challenge of prisons to the attention and judgment of the provincial authorities with none powerful supervision and manage of the Central Government. As an apparent end result maximum of the provincial authorities relegated the management of prisons to a decrease priority, neglecting the precious hints for jail reforms made via way of means of the Committee. The different motive why the advice of the Committee couldn't have a vast effect at the jail management within the united states of america became the political surroundings that prevailed at some point of the state throughout the many years following the submission of the document. Widespread political agitations and authorities's pre-career in quelling them over-shadowed the query of jail reforms. People had been commonly pre-considering the broader and extra crucial hassle of reaching political independence and their interest became interested in the winning awful situations of prisons most effective after they had been imprisoned throughout the political struggle.

However, following the advice of this Committee most effective, the Presidency of Bombay, Calcutta and Madras should reap a few innovation within the subject of crook justice via way of means of enacting Children Act within the early twenties. In 1923 Section 560 of the Criminal Procedure, 1898 became additionally amended to facilitate the suspension of sentence in decided on instances.

The Constitutional modifications added approximately via way of means of the Government of India Act, 1935 which resulted within the switch of the challenge of Jail to the manage of provincial authorities in addition decreased the opportunities of uniform implementation of the advice of the Indian Jail Committee within the united states of america. The durations from 1937 - 1947 became crucial within the records of Indian prisons as it arose public attention and preferred consciousness for jail reforms as a minimum in a few modern States. Efforts of a number of the eminent freedom warring parties who had recognised the situations in jail succeeded in persuading the Governments of those modern States to rent committees to in addition enquire into jail

situations and to indicate development in consonance with the neighborhood situations. Some of the Committees appointed and the modern legislation surpassed throughout this era had been: Mysore Committee on Prison Reforms, 1940 - 4, 1 Uttar Pradesh Jail Reforms Committee, 1946. The Bombay Jail Reforms Committee, 1946 - 48, The Madras Probation of Offenders Act, 1936. The Bombay Probation of Offenders Act, 1936 The C.P. and Berar conditional launch of Prisoners Act, 1936.

Besides, the primary Jail Training School became installed at Lucknow in 1940 for the schooling of Jail Officers and Warders.⁶³

3.16 PRISON REFORMS IN INDIA (POST INDEPENDENCE PERIOD)

When India received independence in 1947, the recollections of awful situations in prisons have been nevertheless clean withinside the minds of political leaders and they, on assumption of power, embarked upon powerful jail reforms. However, the Constitution of India which got here into pressure in 1950 retained the placement of the Government of India Act, 1935 withinside the remember of prisons and kept 'Prisons' as a nation difficulty with the aid of using together with it in listing II - State listing of the VII schedule. The first decade after independence became marked with the aid of using strenuous efforts for development in dwelling situations in Jails. A range of Jail Reforms Committees have been appointed with the aid of using the State Governments seemingly to obtain positive degree of humanization of jail situations and to place the remedy of offenders on a systematic footing. Some of the Committees which made splendid suggestions on those traces have been: East Punjab Jail Reforms Committee 1948 - 49, Madras Jail Reforms Committee, 1950 - 51, Jail Reforms Committee of Orissa, 1950 - 55, Jail Reforms Committee of Travancore and Cochin, 1953 - 55, Uttar Pradesh Jail Industries Inquiry Committee, 1955 - 56. Maharashtra Jail Industries Re-corporation Committee, 1958 - 59.

Unfortunately, the spirit and exuberance with which the difficulty of jail reforms became taken up with the aid of using diverse governments did now no longer final long. The

⁶³ Report of the All India Committee on Prison Reforms (Mulla Committee) 1980-83, Vol. I, Chapter II, Review of Prison Reforms, p.9 & 10 Para 2.7-2.7.3 & 2.8.

reviews and suggestions of those committees, perfect and critical al even though they have been, have been now no longer carried out in an powerful manner. However, some new thoughts of jail reforms have been delivered withinside the united states are as follows: Availing of furlough and parole with the aid of using prisoners, Granting nominal wages for prisoners for the paintings carried out with the aid of using them, The advent of Panchayat device so that it will enhance the dwelling circumstance of prisoners, Development of open prisons which function a half-manner residence for long time prisoners for his or her transition from jail to open society, Establishing a Jail Officers Training School at Pune.⁶⁴

3.17 TYPES OF PRISONER

As in line with the Prisons Act 1894 prisoners are commonly categorised as Criminal Prisoner, Convicted Criminal Prisoner and Civil Prisoner. As in line with Sub segment 2 of Section three below head 'Definition' of the Prisons Act 1894, "Criminal Prisoner manner any prisoner duly devoted to custody below the writ warrant or order of any Court of authority workout crook jurisdiction or with the aid of using order of the Court martial". As in line with Section three(three)of the above Act 'Convicted Criminal Prisoner' manner any crook prisoner below sentence of a Court or Court Martial and consists of someone detained in jail below the provisions of Chapter VIII of Criminal Procedure Code, 1882 (10 of 1882) or below the Prisoners Act, 1871 (five of 1871). As in line with segment three(4) of the above Act 'Civil Prisoner' manner any prisoner who isn't a crook prisoner. Prisoners can also be categorised in keeping with the time period of imprisonment, ailment, age, sex, political cause, instances of civil nature and instances of Preventive arrest.

3.18 PRISON ADMINISTRATION IN INDIA

In the phrases of Mahatma Gandhi, "Crime is the final results of a diseased thoughts and prison should have an surroundings of health center for remedy and care." Imprisonment as a style of managing offenders has been in trend due to the fact time immemorial.

⁶⁴ Report of the All India Committee on Prison Reforms (Mulla Committee) 1980-83, Vol. I, Chapter II, Review of Prison Reforms, p.10 &11, para 2.9, 10 & 11.

Though the rules of the current Prison Administration in India had been laid at some point of the British period, the gadget has considerably modified through the years in particular for the reason that sunrise of independence because it become handled exhaustively supra below the head 'Prison Reforms Pre-Independence' and 'Post-Independence Period.'

The four hyperlinks that shape the chain of Criminal Justice Administration are

1. The Legislature 2. The Police three.The Judiciary 4.TheJails. Prior to the passing of the Government of India Act, 1935, the problem of Jails become withinside the valuable listing and after the passing of the Act best, this problem become transferred to the then provincial government. Now the prisons are located as State Subject below Article.246 of the Constitution of India which includes it withinside the Seventh Schedule, List II, and State List Entry IV which examine as follows:

"Prisons, Reformatories, Borstal Institutions and different Institutions of the like nature and character detained therein, preparations with different States for using Prisons and Institutions."

The Prisons Act, 1894 (Act IX of 1894) enacted with the aid of using the Government of India is the guiding device for the control of Prisons in all of the States in India. The different Central Acts governing the management and control of Prisons are The Prisoners Act, 1900, The Identification of Prisoners Act,1920, The Tamil Nadu Borstal Schools Act, 1925, The Exchange of Prisoners Act,1948, The Transfer of Prisoners Act, 1950, The Representation of Peoples Act, 1951, The Prisoners (Attendance in Courts) Act, 1955, The Probation of Offenders Act, 1958, The Extradition Act, 1962, The Mental Health Act, 1987, The Juvenile Justice (Care and Protection)Act, 2000, The Repatriation of Prisoners Act, 2000.

3.18.1 Prisons Act, 1894

The Prisons Act, 1894 is the best enactment to cope with the prisoners and jail subjects in any State after independence to run the Prison Administration. The Act has hardly ever gone through any sizable extrade even after the lapse of one hundred twenty years. The

Act, except containing the provisions concerning control of Prisons, offers with the field of the prisoners interse and their residing conditions. Since the problem of Prisons and allied establishments is covered withinside the Seventh Schedule of the Constitution of India, in pursuance of Section fifty nine of the Act the State Government with the aid of using notification withinside the Official Gazette is empowered to make guidelines below this Act.

3.18.2 Model Prison Manual, 1960

The All India Jail Manual Committee 1957-fifty nine organized and offered the Model Prison Manual withinside the 12 months 1960 that's a commendable file on prisons. The Model Prison Manual, 1960, now no longer best enunciates precept for an green control of prisons however additionally lays down clinical pointers for corrective remedy of diverse training of prisoners.⁶⁵

3.18.3 Institutions connected with Prison Administration

The Central Bureau of Correctional Services which became installation through the Government of India below the Ministry of Home Affairs withinside the yr 1961 was assigned with the characteristic of manage and Management of Prisons in India. In 1964 the Central Bureau of Correctional Services became transferred from the Ministry of Home Affairs with the newly created Department of Social Security now called Ministry of Social Welfare. However, the Bureau endured to be connected to the Ministry of Home Affairs for diverse topics regarding Jail management and reforms. In 1975 the Bureau became reorganized right into a National Institute of Social Defense. While thru the Ministry of Home affairs, the Institute offers with management and Management of Prisons and because the technical organization of the Ministry of Social Welfare, it assists the Government withinside the prevention and manage of youngster delinquency, welfare offerings in prisons and probation and allied topics.⁶⁶ Later, the paintings

⁶⁵ Report of the All India Committee on Prison Reforms (Mulla Committee) 1980-83, Vol. I, Chapter II, Review of Prison Reforms, p.12, para 2.14.1.

⁶⁶ Report of the All India Committee on Prison Reforms (Mulla Committee) 1980-83, Vol.I, Chapter II, Review of Prison Reforms, p.12 - 16, para 2.15 & 2.16.

associated with the Management of Prisons became transferred to the Bureau of Police Research and Development via way of means of the Ministry of Home Affairs in 1995.⁶⁷

3.19 TREATMENT OF PRISONERS

The philosophy of reformation and rehabilitation of offenders solid upon the prisons, the duty of using the length of imprisonment of offenders for his or her remedy in an effort to enhancing their behaviour to resocialise them as a remember of truth the contents of the every day habitual of prisons need to be deliberate in any such manner that the path existence of inmates have a tendency to go with the drift in the direction of the closing purpose in their rehabilitation withinside the society. The complete ecosystem of prisons, inclusive of the behaviour of the jail personnel, must be surcharged with high-quality values and the inmates must be uncovered to a healthful surroundings wherein they are able to retrospect and reform themselves. Such congenial ecosystem is an important pre-considered necessary for the execution of any reformative remedy. Apart from this, the inmates need to take delivery of unique remedy programme according with their distinctive want and persona characteristics.

But it became certainly a unhappy revelation that there has been neither a wholesome ecosystem for executing any sustained programme of behaviour amendment nor any making plans for unique remedy programme in Indian Prisons. There became even no readability approximately the additives of correctional remedy amongst jail directors everywhere in India. Prison directors had been least stricken approximately this vital issue of jail work. In truth no heed has been paid both to the document of the All India Jail Manual Committee 1957-fifty nine wherein the query of correctional remedy and education has been elaborately mentioned or to the Model Prison Manual, 1960, wherein a number of the fundamental idea and method for remedy programmes had been incorporated.⁶⁸

⁶⁷ Draft Model Prison Manual, 2003, by Bueau of Police Research and Development - Introductory Chapter

⁶⁸ Report of the All India Committee on Prison Reforms (Mulla Committee) 1980-83, Vol.I, Chapter X, Treatment Programmes, p.127, para 10.1 & 10.2.

At this juncture, it might be suitable to cite the ignominy of imprisonment within the phrases of Pandit. Jawaharlal Nehru from 'Prison Land'.

"High partitions and iron gates cut off little global of jail from the huge global out of doors. Here on this jail global the entirety is different; there aren't any colors, no changes, no movement, no hope, and no pleasure for the long time prisoners, the 'lifer'. Life runs its stupid spherical with a horrible monotony; it's miles all flat desolate tract land and not using excessive factors and no oasis to quench one's thirst or refuge one from the burning heat. Days run into weeks, and weeks into months and 12 months until the sands of existence run out.

All the may of the State is towards them and not one of the normal exams are available. Even the voice of ache has husked, the cry of suffering can't be heard past the excessive partitions. In idea there are a few exams and traffic and officers from out of doors visit inspect. But it's miles uncommon for a prisoner to dare to whinge to them, and people who dare must go through for his or her daring. The tourist goes, the petty gaol legit continue to be and it's miles with them that he has to byskip his days. It isn't sudden that he prefers to place up together along with his issues as opposed to threat an addition to them".⁶⁹

In this connection Justice Krishna Iyer rightly located that deprivation of private freedom need to be aim orientated and humanely restorative, aside from being deterrent. The insulated years at the back of the insensitive bars need to own a hospital, if correction is a social purpose, as Gandhiji regularly insisted. In jail remedy need to therefore, be geared to psychic healing, launch of stresses, recuperation of self-appreciate and cultural normalization aside from education to evolve oneself to the lifestyles outside.⁷⁰

It is the top duty of the Prison machine to store the simple, impressionable first offenders from the dangerous and dehumanizing affects of the focused sub-tradition of the jail consisting of jail grape vine, jail code language, under-global within the jail, unwanted sports consisting of gambling, homosexuality, auto-erotic practices,

⁶⁹ Jawaharlal Nehru, *India and the world*, P.108-129.

⁷⁰ *Phul Singh vs. State of Haryana*, (1979) 4 SCC 413:(AIR 1980 SC 249: (1980 1 SCR 589: 1980 CrLJ 8:1980 SCC (Cri.) 1.

domination of goondas prisoners, favouritism, corruption etc. In addition to this protecting element, there may be additionally the reformatory element which calls for jail directors to nicely plan the daily-ordinary of prisoners and to increase balanced, healthful and different remedy programmes for diverse classes of offenders requiring remedy and reformation.⁷¹

⁷¹ Report of the All India Committee on Prison Reforms (Mulla Committee) 1980-83, Vol. I, Chapter X, Treatment Programmes, p.127, para 10.3.

CHAPTER 4

HUMAN RIGHTS WITH REFERENCE TO CONSTITUTION OF INDIA, HUMAN RIGHTS COMMISSION AND INTERNATIONAL COVENANTS

4.1 HUMAN RIGHTS

Respect for Human Rights has continuously been one of the essential issues of every democratic society. It is universally identified that democracy can't live on and maintain itself without respect for Human Rights and sincere efforts to promote and protect them. Although Human Rights, in idea can be nurtured and progressed inner severa political systems statistics has convincingly proved that they'll be definitely confident handiest in conditions of the pleasant viable transparency in choice making on the part of oldsters which might be in positions of power.⁷² However earlier than appreciating this factor one has to recognize the idea and which means of 'Human Rights'.

4.1.1 Concept and Meaning

Human is a concrete concept which refers to us and "Right" manner identified and protected interest with the resource of the use of law. So it can be said that our interest this is identified with the resource of the use of law is human rights.⁷³ Every guy or girls goals certain necessities like food, water, cloth, shelter, health which are easy for keeping life, without which one cannot live. Likewise every guy or girls is entitled to certain easy rights and vital freedoms and withinside the absence of which one cannot live as human beings. Thus 'Human Rights' are those rights which are essential to human beings to live as guy or girls.

⁷² India and Human Rights p. (iii)-Rights of Accused by Dr.Ashuthosh, Chapter 6"protection of Human Rights" P.292.

⁷³ Dr. N.C. Patnaick, Misuse of Police Power; A Strain on Human Rights Indian Bar Review Vol. XXIII 2002 at p.85

All societies and life-style have advanced some idea of rights and ideas that ought to be protected and respected as such rights superior on some easy standards which have been universally not unusual and contributed to the development of human right. Rights of guy – natural rights, civil rights, political rights, economic rights, social rights and cultural rights which superior with one in every of a type tiers of emphasis shows one now no longer unusualplace feature – 'Human Dignity' it's considered essential for the attainment of person's wholesome person . Thus the ones rights encompass starting and are applicable to anyone during the arena no matter the race, colour, sex, language or political or one of a kind opinion.

The idea of human rights is tied to the idea of human dignity, it's the cornerstone of all human rights. All those rights which are essential for the protection and upkeep of dignity of person and create conditions in which every guy or girls can increase his person to the fullest amount may be termed human rights.⁷⁴ The standards of human rights have been drawn up as a way of ensuring that the respect of absolutely everyone is well and further respected. Any action, which can have an impact on or violate the inherent dignity of the human being, should amount to violation of Human Rights.

Human Rights are those minimal rights which every individual have to have in competition to the State of various public authority with the resource of the use of specific function of his being a 'member of the human family', regardless of some other consideration.⁷⁵ But the concept and meaning of 'Human Rights' is not as simple as stated above. According to Professor Upendra Baxi, the very term 'Human Rights' indeed problematic⁷⁶ In rights-talk, the articulation routinely veil the attempts, to diminish the plentitude of its implications to supply a phony entirety. One such undertaking finds the solidarity of all Human Rights to a couple of careful entirety of opinion alongside human 'poise' 'prosperity' and 'thriving'. Another mode solicitations us to discuss basic freedoms as' essential', recommending that a couple of others can be debatable, even unnecessary. Those who're denied, denied and confiscated may likewise also absolutely find it intense

⁷⁴ Observation of Hon'ble Justice P.N. Bhagawathi in *Menaka Gandhi vs. Union of India* AIR 1978 SC 597 p.619 = 1978 (1) SCC 248

⁷⁵ Professor D.D. Basu: *Human Rights in Constitutional Law* (1994) p.5.

⁷⁶ UpendraBaxi, *The Future of Human Rights* p. 5-13.

to just acknowledge and defenses for a totally impression of Human Rights that can surrender of refusal in their privileges to be human. However some other method of aggregation causes us to surrender to a human ghost that the assortment of Human Rights is bound to individuals, the pristine rights to climate (for sure's amazingly improperly, even savagely, called 'practical turn of events') take us far past this sort of thin insight as illustrative endeavors, such attempts at aggregation diminished to a 'cognizant' class forbiddingly various worldwide of really current Human Rights.⁷⁷ As prescription venture, such modes clearly privilege sure favored values over others. In each cases, the normative complexity and existential outreach of Human Rights norms and requirements are made to yield their anciental functions to the needs of a uniform narrative. This, overall, difficult to understand the contradictory nature of improvement of 'Human Rights'. There isn't one international of 'Human Rights' however many conflicting words.

The plurality and multiplicity of the fecund expressions 'Human Rights' is worth of birthday party most effective if we're capable of designate exclusive modes of the maintaining networks of that means and logics of famous movement that protest in opposition to all types of human violation. If the notion 'Human Rights' way many stuff to distinctive people, those meanings want to be configured in a few styles with out violating the richness of difference. Professor Baxi essays it tentatively below the subsequent distinctive rubrics.⁷⁸ viz. Human Rights as Ethical Imperative; Human Rights as Grammar of Governance; Human Rights as Languages of Global Governance; Human Rights as Syndrome of shared Sovereignty; Human Rights as insurrectionary proxies; Human Rights as Juridical safety and Human Rights as culture.

4.1.2 Human Rights in step with Justice Palok Basu

The idea of Human Rights falls in the framework of Constitutional Law and International Law. For this reason it's been diagnosed to “guard with the aid of using institutionalized method the rights of humans towards abuses of strength dedicated with the aid of using

⁷⁷ Andrew Rowell Green Backlash: Global Supervision of the Environmental Movement 1996 p. 4-41. and for the Extraordinary Relation between Nazism and Deep Ecology = Luc ferry, the New Ecological Order, (1992) P.91-107

⁷⁸ Upendra Baxi, The Future of Human Rights p. 5-13.

the organs of the State and on the equal time to sell the status quo of human residing situations and the multi-dimensional improvement of human personality.

A close analyze the above definition proposes that Human Rights, address, claims which individuals or enterprises make at the general public. They envelop the legitimate to independence from torment, the appropriate to live, brutal cure independence from subjugation and constrained work, the legitimate of freedom and security, opportunity of movement and want of home, appropriate to honest preliminary, legitimate to protection, opportunity of idea, feeling of good and bad and religion, opportunity of assessment and articulation, the legitimate to wed and shape a family, the legitimate to participate in one's Government both quickly or randomly or idea chose agent, the appropriate to identity and correspondence sooner than law. These rights can not be compromised all around. Basic liberties are the beginning legitimate of the people the field over. Subsequently their prosperity does now presently don't lie withinside the copy of the gathering of the unrivaled world, in any case at the mindfulness withinside the developing scene, to make certain the honor and wellbeing of Human Rights. This will forestall the accommodation of their refusal as an episode of authentic primary change.⁷⁹

4.1.3 Origin of Human Rights

Basic freedoms are the ones unchangeable minima which has a place with every individual from humanity while pitted towards the State or distinctive public government or organization and packs and diverse abusive networks, Being an individual from a human own circle of family members he has the appropriate to be managed as human when he is taking start or is alive withinside the belly with an ability name to personhood. At the point when criminal contemplations had been presently not, at this point straightforward that obscured, memorable Pandits thought of the convention if home grown rights dependent on natural guideline now not, at this point because of the reality it's far established notwithstanding as it unavoidably has a place with each individual as imagined in enlightened political social orders. At the point when the religious request prevents this legitimate the utilization from getting confidence assent and authority, the

⁷⁹ Justice PalokBasu, Law Relating to Protection of Human Rights under the Indian Constitution and Allied Laws. p. 5

unprejudiced considerations of fellow communicates disappointment and challenges. At the point when rulers and sovereigns and various diadems and oppression tried to smother the person's opportunity and fascination with natural guideline become made on the conviction that previous profound bosses and beat heads, there has been a contraption of home grown guideline which typified reason, equity and acknowledged morals.⁸⁰ However the possibility of Human Rights is as antique in light of the fact that the notable precept of 'Normal Rights depends on natural guideline the articulation Human Rights" is of most recent beginning, ascending from (set up 2d worldwide conflict) International Charters and Conventions. Common liberties are gotten from poise and are intrinsic in individuals. Common freedoms are natural rights which accompany the guide of utilizing start as individuals which can be essential, indissoluble, basic and built into which somebody is conceived. Comprehensively speaking, Human Rights can be showed up as the ones fundamental rights which can be moved by the guide of utilizing every person. Such rights with the guide of utilizing their detached nature address the insignificant this is indispensable for a man or lady to remain in common and political society as a loosened person with nobility and regard.⁸¹

4.1.4 Human Rights in Ancient India

The belief of Human Rights as we apprehend it today, as universalistic, has advanced in western civilization. The struggle, hobby or difficulty to shield and to protect, hold and sell Human Rights is possibly as antique as human civilization. In fact, the idea of Human Rights is neither completely western now no longer modern. It is thrilling to be aware that the purpose of Human Rights isn't always alien to historical India, which has age antique tradition of respecting Human Rights. It can be recalled that from time immemorial Indians have known as their tradition with the aid of using call of human tradition (Manava Dharma or Manava and sanskriti and it's miles inherent withinside the Hindu existence.

⁸⁰ V.R.KrishnaIyer, *The Dialectics and Dynamic of Human Rights in India (Yesterday, Today and Tomorrow)*, p. 54

⁸¹ Justice D. Murugesan in *Tamil sakthi vs. State of Tamilnadu and others*, 2010 CLJ 245 Mad (1)

Many centuries in the past the precept of 'Vasudhaika Kutumbam' (we're all one human family) propounded regularly occurring brotherhood and equality and the very best best of human existence become echoed 'Sarve Jana Sukhinobhavanthu' (allow each person be happy) become proclaimed from this land. But the philosophy of human existence become broadly and accurately mentioned on spiritual foundations and may be obvious withinside the Rig Veda.

No one is advanced or inferior. All are brothers. All must try for the hobby of all and all must development selectively'. (The unique textual content is in Sanskrit and is taken from Mandala five Sukta 60 Mantra five which states 'Ajyestasoakanishtasa etc., sambhratova vridhuuhu sowbhogya'). Accordiing to Rig Veda "there may be one race of human beings" and validity of various traditions, spiritual in deed of paths to truth, has continually been reputable and the guiding precept 'Sarva Dharma samanana' (all religions are equal).

Rig Veda cites 3 civil rights that of Tana (body) Skridhi (living region and Jibhasi (existence). Mahabharatha tells approximately the significance of freedoms of individuals (civil liberties) in a State. An eminent historian U.N. Ghosal⁸² pointed out a number of civil rights enjoyed by the individual in ancient India. He says that they occupy an important place in the literature of Smritis. These rights were enjoyed by ancient Indians either expressly knowing them as comprehended in dharma or inferred from the concept of duties. The ancient Indian concepts of Human Rights and humanitarian law were primarily based on conduct of war, and were laid down in the legal text such as Manu Smrithi or code of Manu (200 B.C. - 100 A.D), the Mahabharatha 1000 B.C. Koutilyas's Arthasasthra (300 B.C. and Sukranitisara of Sukracharya.⁸³

According to Manu, one who's sound asleep without or with his armour or someone who's disadvantaged of his guns or who's engaged in combating with some other character or one who's handiest searching at the conflict however now no longer combating must now no longer be slain. Further, all such locations of spiritual worship, homes of people couldn't be attacked or destroyed. The Mahabharata states that enemy

⁸² U.N.Goshal, Studies in Indian History and Culture (1957), P.293

⁸³ Chiranjivi.J.Nirmal: "Human Rights in India - Historical, Social and Political Perspectives (1999)" p. 3

captured in battle now no longer to be killed however is to be properly treated. Koutilya's Arthasashtra evidenced that Chandragupta Mourya let loose prisoners captured in battle. The conventional exercise of battle became that assault must be knowledgeable in advance and battle must take region handiest after dawn and after sunset. In the 4th century B.C Koutilya's Arthasashtra elaborated on civil and criminal rights. The idea of social, monetary responsibilities of the State additionally referred to that State (king) shall offer the orphan, the dying, the infirm, the affected and helpless with protection and shall additionally offer subsistence to moms and children.

Both Buddhism and Jainism emphasised the concepts of equality and non-violence. The Buddhist doctrine of non-violence in deed and idea is a humanitarian doctrine par excellence, relationship returned to third century B.C. The Mauryan Empire Ashoka, the terrific king all through his reign persuaded an respectable coverage of Ahimsa (non-violence) and safety of human rights as his leader concern. Ashoka described the primary concepts of non-violence, tolerance of all sects and reviews of all spiritual and ethnic companies have been granted proper to freedom of spiritual exercise and equality.

4.2 FUNDAMENTAL RIGHTS

The State that's prepared due to person choice to attain security, in path of time emerged as an prepared sovereign strength which violated the rights of the person. This extrade directed the political idea closer to devising a method through which to bind the unchartered will of the sovereign. This result in the organization of written charter. Such a written charter may be an embodiment of rights and could be needful for the safety of person rights, liberties and freedoms towards absolute and arbitrary movement of the State.

The time period Fundamental Rights is a technical one. When positive human rights are written down in a charter and are blanketed through constitutional assure they're known as essential rights withinside the experience that they're positioned withinside the superb or Fundamental Law of the land which has a superb sanctity over all different legal guidelines of the land. Thus while human rights are assured through the written charter they're known as as essential rights. Unlike an everyday proper a Fundamental Right is an

interest, that's blanket and assured through the written Constitution. Such rights are known as "Fundamental" due to the fact even as an everyday proper can be modified through legislature in its technique of law, however the Fundamental Rights, being assured through the charter can't be altered through any technique brief of amending the charter itself. The impact of making certain Human Rights in a written charter is to make sure that any State movement along with law which violates the Fundamental Rights will be struck down through the Courts due to the fact the charter is the Fundamental Law of the land. A proper can't be stated to be 'essential' if it isn't always enforceable towards the State through the Courts. When Human Rights are guaranteed by a written constitution they are called 'Fundamental Rights' because a written constitution is the Fundamental Law of a State.⁸⁴ Constitution is not to be construed as a mere law⁸⁵ or simply as a Statute⁸⁶ It is the fountain head of all the Statutes the Supreme Court of India, in a nine Judge Bench⁸⁷.

Decision has held that even though India has a written Constitution its written textual content isn't the exhaustive supply of Constitutional Law that's enforceable within the Court of regulation. Thus even custom or utilization while installed might have the pressure of regulation and might be enforceable if now no longer inconsistent with the essential rights guaranteed. "Conventions" as such might additionally pave a surer basis to such rights as might be enforceable as regulation. Just as a written Constitution has advanced from the idea of herbal regulation as a better regulation, so the Fundamental Rights can be stated to have sprung the doctrine of Natural Rights. As the Indian Supreme Court has placed it "Fundamental Rights are the contemporary-day call for what had been historically regarded as 'herbal rights'."⁸⁸

4.2.1 Fundamental Rights and Constitution of India

⁸⁴ Durga Das Basu, *Comparative Constitutional Law* (1984) p. 159-160

⁸⁵ *GoodyearIndia vs. State of Haryana*, AIR 1990 SC 781 (791): (1990) 2 SCC 71: JT 1989 (4) Sc 229: (1989) 2 SCALE 982: (1990) 1 Comp- LJ 23: (1989) Supp 1 SCR 510: (1991) 188 ITR 403.

⁸⁶ *Uttarpradesh State Co-operative Land Development Bank Limited vs. ChandrabhanDubey*, (1991) 1 SCC 741 (para.27):AIR 1999 SC 753: (1998) 6 SCALE 670: (1998) 9 Supreme 535: (1999) 1 UPLEBC 296

⁸⁷ *Supreme Court Advocates on Records Association vs. Union of India*, AIR 1994 SC 268 (Para352), per Kuldeep Singh, J: (1993) 4 SCC 441: JT 1993 (5) SC 479: (1993) Supp SCALE 67: (1993) 5 SLR 337.

⁸⁸ *GolakNath vs. State of Punjab*, AIR 1967 SC 1643 (1656) (para.16): (1967) 2 SCR 762: 1967 SLR 301.

A few exact motives made the enunciation of the Fundamental Rights within the Constitution inevitable. For one aspect the primary political party, the Congress had for lengthy been traumatic those rights in opposition to the British Rule. During the British Rule in India Human Rights have been violated with the aid of using the Ruler in India in very extensive scale. Therefore, the framers of the Constitution many of whom had suffered lengthy incarceration all through the British Regime had a totally advantageous mindset toward those rights. Secondly, the Indian society as fragmented into many religions, cultural and linguistic groups, and it changed into important to claim Fundamental Rights to provide to provide to the peoples a experience of protection and confidence.

Then, it changed into concept important that humans need to have a few rights which can be enforced in opposition to the Government which may also grow to be arbitrary at times. Though, democracy changed into being caused in India, but democratic traditions have been lacking, and there has been hazard that almost all within the legislature may also enact legal guidelines which can be oppressive to people or minority groups, and the sort of hazard will be minimized with the aid of using having a Bill of Rights.

The want to have the Fundamental Rights changed into so thoroughly regular on all fingers that within the constituent meeting the factor changed into now no longer even taken into consideration whether or not or now no longer to comprise such rights within the Constitution. In fact, the combat all alongside changed into in opposition to the regulations being imposed on them and the attempt all alongside changed into to have the Fundamental Rights on as wide and pervasive a foundation as possible.⁸⁹

The Fundamental Rights are a important result of the announcement within the preamble to the Constitution that the humans of India have solemnly resolved to represent India into Sovereign, Democratic Republic and to stable to all its residents

⁸⁹ For an Analysis of discussion on Fundamental Rights in the Constituent Assembly; Granville Austin, *The Indian Constitution of a Nation*, 1966, p.50-113.Chapter I

justice, social, financial and political; liberty of thought, expression, belief, religion and worship, equality of repute and opportunity.⁹⁰

The Fundamental Rights in India apart from guaranteeing certain basic Civil Rights and freedom to all also fulfilled the important function of giving a few safeguards to minorities, outlawing discrimination and protecting religious freedom and Cultural Rights. During emergency, however some curtailment of the Fundamental Rights does take place⁹¹. But all these curtailments of Fundamental Rights are of a temporary nature.

The Preamble, Fundamental Rights and Directive Principles of State Policy together provide for the basic Human Rights for the people of India which are discussed below in detail.

i. Preamble

The preamble sets out the main object of the Constitution; the object which at the Constitution-makers intended to be realized through it.⁹² It is a key to open the mind of the Constitution makers.⁹³ The preamble is a legitimate aid in the construction of the provisions of the Constitution. The framers of the Constitution set out two purposes in the preamble. First, to constitute India into a Sovereign Democratic Republic. Second, to secure its citizens justice: social, economic, and political; liberty of thought, expression, faith and worship; Equality of status and opportunity; and to promote among the people of India fraternity, assuring dignity of the individual and the unity and integrity of the nation.⁹⁴ Although the expressions 'justice', 'equality' and 'fraternity', may not be susceptible to exact definition, yet they are not mere platitudes. They are given content by the enacting provisions of Constitution particularly by the Fundamental Rights and the

⁹⁰ For an Analysis of discussion on Fundamental Rights in the Constituent Assembly; Granville Austin, *The Indian Constitution of a Nation*, 1966 p.50-113, see Chapter I. *supra*

⁹¹ For an Analysis of discussion on Fundamental Rights in the Constituent Assembly; Granville Austin, *The Indian Constitution of a Nation*, 1966 p.50-113, see *Supra*, Chapter XIII, Sec.B (b) also *infra*. Chapter XXXIII, Sec F

⁹² The Preamble contains in a nutshell its ideals and its aspirations" per SubhaRao, C.J.in *L.C. GolakNath vs. State of Punjab*, AIR 1967 SC 1643 (1655): (1967) 2 SCR 762: 1967 SLR 301.

⁹³ *Berubari Union and Exchange of Enclaves, Re*, AIR 1960 SC 845 (856): (1960) 3 SCR 250: 1960 SCJ 933

⁹⁴ On the Concept of Dignity see GovindMisra, "The Concept of Human Dignity And the Constitution of India", in M.P. Singh (Edn.), *Comparative Constitutional Law*, p.353, 1989.

Directive Principles of State Policy.⁹⁵ Thus the preamble declares the great rights and freedom which the people of India intended to secure to all citizens and basic type of Government and polity which was to be established.⁹⁶

ii. Fundamental Rights

Article 12 to 35 of the Constitution relates to Fundamental Rights of the people. These rights are memory of a number of the provisions of the Bills of Rights within the United States Constitution however the former cowl a miles wider floor than the latter. Also the US Constitution proclaims the Fundamental Rights in wide and wellknown phrases. But as no proper is absolute, the Courts have in direction of time spelled out a few regulations and barriers on those rights. The Indian Constitution however, adopts a one of a kind technique in up to now as a few rights are worded generally; in admire of a few Fundamental Rights, the exceptions and qualifications had been formulated and expressed in a compendious shape within the Constitution itself, even as in admire of a few different rights the Constitution confers strength at the Legislature to impose barriers. The end result of this method has been that the Constitutional provisions touching on Fundamental Rights have end up instead unique and complex.

The framers of the Indian Constitution gaining knowledge of from the revel in of United States visualized a extraordinary many problems in enunciation of the Fundamental Rights in wellknown phrases and in leaving it to the Courts to implement them, viz., the Legislature now no longer being in a role to understand what view the Courts might take of a selected enactment, the manner of regulation will become difficult; there arises a big mass of litigation approximately the validity of the legal guidelines and Judicial Opinion is frequently converting in order that regulation will become uncertain; the Judges are irremovable and aren't elected; They are, therefore, now no longer so touchy to public wishes within the social, or financial sphere because the elected legislators and so a entire and unqualified veto over regulation couldn't be left in Judicial hands. Even then,

⁹⁵ B. Sivaramayya, 'Reflections on the Preamble of the Constitution', XVII Indian Bar Review, p.32 (1990); Peter sack, 'Legal Technology and Quest for Fraternity: Reflection on Preamble of Indian Constitution', 32 Journal of Indian Law Institute, p.294 (1990).

⁹⁶ KesavanandaBhartiSribbadgalvaru vs. State of Kerala, (1973) 4 SCC 225; AIR 1973 SC 1461; (1973) Supp SCR 1; per Shaelat and Grover , JJ. at p.424, 425; contra see Mathew, J. atp. 845 Beg.J at p.904

positive rights specifically financial rights have needed to be amended on occasion to store a few financial programmes.⁹⁷

4.3 HUMAN RIGHTS COMMISSION AND HUMAN RIGHTS COURTS

The motive of putting in place the Human Rights Commission is to reinforce the equipment for extra powerful enforcement of the Fundamental Rights of the people. The assertion of item and motives appended to the Bill which later have become the Act made clean the motive underlying the proposed enactment. While noting that India changed into a celebration to the International Covenant on Civil and Political rights and the International Covenants on Economic, Social and Cultural Rights each of which had been followed via way of means of the United Nations General Assembly on sixteenth December 1966. The Rights embodied in the ones Covenants stood appreciably covered via way of means of the Constitution of India; the Statement located that there had been "developing challenge withinside the united states of america and approximately problems pertaining to Human Rights." Having appeared to this and to the converting social realities and rising developments withinside the nature of crime and violence. It has been taken into consideration vital to check the present legal guidelines and the tactics and the device of management that allows you to bringing approximately more performance and transparency. The Protection of Human Rights Bill changed into exceeded via way of means of the Lok Sabha and Rajya Sabha on 18th and twenty second December 1993 respectively. It acquired the President's assent on eighth January 1994. The Act changed into exceeded to offer for the charter of National Human Rights Commission and State Human Rights Commission and Human Rights Courts for higher safety of Human Rights and for topics related therewith or incidental thereto.

4.3.1 National Human Rights Commission

National Human Rights Commission has been installation as a statutory frame below the safety of Human Rights Act, 1993. The Commission includes A Chairperson who has been the Chief Justice of the Supreme Court of India; One member who's or has been a Judge of the Supreme Court; One member who's or has been the Chief Justice of a High

⁹⁷ B.N. Rau, *India's Constitution in the Making*, 245.

Court: & Two individuals who're to be appointed from among the folks having the know-how of , or realistic revel in in, topics referring to Human Rights.

The Chairperson and the individuals of the Commission are to be appointed via way of means of the President of India. Every such appointment is to be made after securing the suggestions of a Committee along with the Prime Minister as Chairperson; Speaker of the Lok Sabha; Minister in-fee of the Ministry of Home Affairs, Government of India; Leader of the Opposition withinside the Lok Sabha; Leader of the Opposition withinside the Rajya Sabha; and Deputy Chairman of the Rajya Sabha.

The Chairpersons of the National Commission for Minorities, the National Commission for Women and the National Commission for Scheduled Castes and Tribes are deemed to be individuals of the Commission for (NHRC) the release of the numerous features assigned to it, besides for the features referring to inquiry into proceedings of violation of human rights, viz the characteristic stated in S.12 (a)(i) and (ii) of the Act.

The features to be discharged via way of means of the Commission are indexed in S.12 of the Act as given below:

- a. To inquire, suo motto or on a petition offered to it via way of means of a sufferer or any man or woman on his behalf, into criticism of-
 - i. Violation of the human rights abetment thereof, or
 - ii. Negligence withinside the prevention of such violation, via way of means of the general public servant;
- b. to intrude in any intending related to any allegation of violation of human rights pending earlier than a courtroom docket with the approval of such courtroom docket;
- c. to go to, below intimation to the State Government, any prison or some other group below the manipulate of the State Government, in which folks are detained or lodged for functions of remedy, reformation or safety to have a look at the residing situations of the inmates and make advice thereon:

- d. to check the safeguards supplied via way of means of or below the Constitution or any regulation in the intervening time in pressure for the safety of human rights and propose measures for his or her powerful implementation;
- e. to check the factors, inclusive of acts of terrorism that inhibit the employment of human rights and propose suitable remedial measures;
- f. to have a look at Treaties and different International Instruments on Human rights and make suggestions for his or her powerful implementation ;
- g. to adopt and sell studies withinside the discipline of human rights ;
- h. to unfold human rights literacy amongst numerous sections of society and sell focus of the safeguards to be had for the safety of those rights to be had via publications, the media, seminars and different to be had means;
- i. to inspire the efforts of non-governmental enterprises and establishments running withinside the discipline of human rights;
- j. such different features as it could recollect important for the advertising of human rights.

According to Section thirteen of the Act the Commission has been given sufficient powers to allow it to discharge its features effectively. The Commission has its very own powers to adjust its tactics. It has, at the same time as inquiring into proceedings below the Act, powers of a Civil Court attempting a fit below the Code of Civil Procedure , and specially in appreciate of the subsequent topics:

- i. Summoning and imposing the attendance of witnesses and analyzing them on oath;
- ii. Discovery and manufacturing of documents;
- iii. Receiving proof and affidavits;
- iv. Requisitioning of any public report or replica thereof from any Court or office;

v. Issuing Commissions for the exam of witnesses or documents;

vi. Any different depend which can be prescribed;

The Commission shall additionally have the energy to require any man or woman problem to any privilege which can be claimed via way of means of that man or woman, below any regulation in the intervening time in pressure; to provide records on such factors or topics as, withinside the opinion of the Commission can be beneficial for, or applicable to, the problem depend of the enquiry. Any man or woman so required is legally sure to provide such records in the which means of sections 176 and 177 of the Indian Penal Code.

The Commission or any of its accepted officials can also additionally input any constructing or area in which the Commission has motive to trust that any record referring to the problem depend of the enquiry can be determined, and might capture this sort of record. This energy is problem to segment a hundred different Criminal Procedure Code.

The Commission is deemed to be a civil Court. When any offence as is defined in segment 175,178,179, a hundred and eighty or 228 of Indian Penal Code is committed, withinside the view of the presence of the Commission, the Commission can also additionally, after recording the information constituting the offence and the assertion of the accused as supplied for withinside the Criminal Procedure Code ahead the case to a Magistrate having jurisdiction strive the equal and the Magistrate to whom this sort of case is forwarded shall continue to pay attention the criticism in opposition to the accused as though the case has been forwarded to him below segment 346 of the Criminal Procedure Code. 1983.

Every intending earlier than the Commission will be deemed to be a Judicial Proceeding in the which means of segment 193 and 228 and for the motive of segment 196 of the Indian Penal Code, and the Commission will be deemed to be a Civil Court for all of the functions of segment 195 and bankruptcy xxvi of the Criminal Procedure Code.

According to segment 18 of the Act, the Commission is accepted to take any of the subsequent step at the of of entirety of an enquiry.

i. in which the enquiry expose violation of human rights, the Commission can also additionally propose to the involved Government or authority the initiation of complaints for the prosecution or such different motion in opposition to the involved man or woman or folks;

ii. Approach the Supreme Court or the involved High Court for such course, or orders or writs as that Court deem important;

iii. Recommend to the involved authority the provide of an meantime comfort to the sufferer or the individuals of his own circle of relatives because the Commission can also additionally recollect important;

iv. Provide a duplicate of the enquiry document to the petitioner or his representative;

v. Send a duplicate of the enquiry document collectively together along with his suggestions to the involved Government or authority and the involved Government or authority shall, inside a duration of 1 month or such similarly time because the Commission can also additionally allow, ahead its touch upon the document, inclusive of the motion taken or proposed to be taken thereon, to the Commission;

vi. Shall submit its enquiry document collectively with the remarks of the involved Government or authority if any, and the motion taken or proposed to be taken via way of means of the involved Government or authority on the advice of the Commission.

The Supreme Court has given a far wider measurement to the functioning of the NHRC via its rulings in *Paramjit Kaur vs. the State of Punjab*. The Court has held that below article 32 it may refer any depend to the Commission for enquiry and the Commission then acts *sui generis* below the remit of the Supreme Court and, in any such case the Commission isn't sure via way of means of the shackles and challenge of the NHRC Act. The Court has defined the Commission as "a completely unique and professional frame in itself". Fundamental Rights assured via way of means of the Constitution constitute the

fundamental human rights possessed via way of means of each human being. The Supreme Court's jurisdiction below Article 32 "can not be curtailed via way of means of any statutory challenge" inclusive of the ones contained within the numerous provision of NHRC Act. The Court has emphasized that every one government within the United States of America are sure via way of means of the guidelines of the Supreme Court and should act in resource of the Court (Article 144). Therefore, while the Court within the exercising of its jurisdiction below Article 32 entrusts to the NHRC to cope with positive depend in a way indicated in the Court order - the Commission might characteristic pursuant to the course issued via way of means of the Supreme Court and now no longer below the Act constituting it. The Court has located:

"In figuring out the topics referred via way of means of this Court NHRC is given a loose hand and isn't circumscribed via way of means of any circumstance. Therefore, the jurisdiction exercised via way of means of the Commission in those topics is of a unique nature now no longer included via way of means of enactment or regulation and as a result acts sui generis."(?)

NHRC acts as a watchdog to defend human rights. It is anticipated to play an lively position in finishing violations of human rights. The maximum critical function of the Commission is its energy to independently probe instances of violation of human rights. The Commission can act suo motto with out looking ahead to any formal utility if any violation of human proper involves its notice.

The Role of National Human Rights Commission in Prison Reforms and Management
Members of the Commission go to jails, lock-ups and different facilities of detention in exclusive components of the United States of America. Officers of the Commission further specifically requested to have a look at the situations of prisons in Bihar (Sarai Kale, Bhagalpur), Punjab (Patiala) and Uttar Pradesh (Agra, Basti, Meerut and Muzaffarnagar). The findings accompanied a now acquainted and miserable pattern: overcrowding, loss of sanitation, mistreatment and mismanagement. Officers of the Commission learnt of the bodily torture of the prisoners via way of means of their prison workforce in Basti, insufficient shares of drugs for the remedy of prisoners and needs for

cash from people who come to go to them. The Inspector General of Prisons, Uttar Pradesh changed into summoned via way of means of the Commission to New Delhi and informed to position depend proper. In Meerut prison investigators of the Commission determined rampant corruption. Upon the intervention of the Commission remedial steps, inclusive of disciplinary and different motion has been initiated in opposition to the offending workforce. In Bikaner prison, it transpired that prisoners had been pressured to pay bribe in an effort to follow to parole; scholar prisoners likewise needed to pay bribe that allows you to be capable of seem for exam.

The different extreme trouble referring to the control of jails withinside the united states of america acquired the eye of the Commission changed into that harmless folks with intellectual disabilities had been occasionally being held in prisons; further prisoners with intellectual disabilities had been being handled as had been different prisoners, with out a attempt being made to cope with the unique trouble. The Commission addresses a letter to all of the Chief Ministers on eleventh September 1996 stating the right provisions of the regulation in appreciate of the way wherein folks with intellectual incapacity have to be handled. The letter advised that, have to the Commission locate in direction of its go to to the jails that mentally disabled folks had been nonetheless being held in them, it might propose the price of repayment to the ones so detained and to their families. In result of that letter many prisoners and others with intellectual incapacity had been transferred to establishments in which they may be given psychiatric help. In this connection the Commission strongly recommends that rule 82 (1) and rule 82 (4) of the United Nations Standard Minimum Rules for remedy of prisoners be accompanied. Rule 82 (1) calls for that "folks who're determined to be insane shall now no longer be detained in prisons and preparations will be made to take away them to intellectual establishments as quickly as possible." Rule 82 (4) calls for that "clinical or psychiatric provider of the penal establishments shall offer for the psychiatric remedy of all different prisoners who're in want of such remedy." The Commission additionally endorses the suggestions made in advance via way of means of the Mulla Committee which said that if a convict present process imprisonment have become mentally sick he have to be accommodated withinside the psychiatric wing if such wing exists withinside the jail clinic, or he have to be despatched to the closest intellectual clinic for remedy. Further, if the prisoner fails to

get over intellectual contamination even after finishing 1/2 of of the most time period of conviction, the State Government for launch from jail have to recollect his case.

The Commission persevered to present unique interest to the circumstance of girls who had been held in prison. In Nari Bandi Niketan of Uttar Pradesh some of girls prisoners informed the research officials of the Commission that they feared that their husbands might not receive them after their launch from prisons. Some others complained that they hardly ever heard from their children. The Commission felt that there's terrific want for common possibility for girls prisoner to satisfy or unite with their own circle of relatives. In this connection the Commission additionally felt that the subsequent key advice of the National Expert Committee on girls prisoners, which met below the chairmanship of Shri. Justice V.R. Krishna Iyer in 1986-87, have to be accompanied with more diligence.

All custodial premises for girls prisoners have to have a personal and stable environment.

Qualified female medical doctors and nurses have to be connected on a journeying foundation to each jail for girls and custodial centre for girls inmates.

The scale of food plan for girls prisoners have to be in strict accordance with clinical norms; unique more food plan have to be supplied if medically prescribed.

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Overcrowding in jails, prompted in large part due to the enormous range of below-trials persevered to create situations grossly at variance with the call for of the human dignity. For example a go to to Meerut prison via way of means of the workforce of the Commission discovered the presence of a few 3 thousand folks in that jail, as in opposition to a declared capability of 650. The Commission had expressed the desire that the a ways achieving judgement via way of means of the Supreme Court withinside the

case *Common Cause vs. Union of India* (W.P. no.1128/1986) might substantially expedite the disposal of instances pending in Criminal Court within the United States of America. Yet the state of affairs seems nonetheless to be grim. The Commission has, for this reason, asked all Inspectors General of Prisons to submit month-to-month reports to it giving information of the range of below-trials within the prisons. The facts acquired over a time period could be cautiously analysed via way of means of the Commission that allows you to verify the effect of the judgement, and notice what subsequent desires to be achieved.

In an thrilling current improvement the Mumbai High Court in *Muktaram Sitaram Shinde vs. State of Maharashtra* in W.P. no. 3899/ninety six has requested the State Government to rent nominees of the National Human Rights Commission as ex-officio or non-reliable site visitors to the prison within the State. The Commission is seized of this depend and shortly make its nomination. The Commission believes that any such step will result in extended transparency within the management of jails and additionally upload power to the Commission's efforts to enhance the circumstance of jails within the United States of America.

During his go to to prisons in numerous states the Commission located that Session Judges had been now no longer journeying jails within the normal way this is required via way of means of Prison Manual. The Chair man or woman for this reason wrote to the Chief Justice of the High Court in all of the States on twenty fifth September 1996 soliciting for them to direct the Session Judges to satisfy their obligations extra diligently. A range of Chief Justices had answered pronouncing that they have got issued suitable instruction.

However, in line with Justice V.R. Krishna Iyer, the National Human Rights Commission is prestigious however powerless, which has achieved awesome activity a ways past its restricted statutory capabilities. If extra powers had been given to bite, now no longer simply to bark, the National Human Rights Commission might be a boon to the sufferers of the violation that are at the increase(3).

4.3.2 State Human Rights Commission

As in line with segment 21 of the Act a State Government may also represent a frame to be referred to as the call of the country Human Rights Commission to exercising the strength conferred upon and carry out the features assigned to a State Commission beneathneath bankruptcy V.

A State Commission is to includes 5 participants -- one Chairperson who has been the Chief Justice of a High Court, one member who has been a Judge of the High Court; one member who has been a district Judge and different participants to be appointed from among folks having know-how and sensible enjoy in topics regarding human rights.

All those participants are to be appointed through the Governor after acquiring the hints of a Committee including the subsequent: (i) Chief Minister (Chairperson); Speaker of the Legislative Assembly; (iii) Home Minister; (iv) Leader of the Opposition withinside the Legislative Assembly; (v) Chairman of the Legislative Council if any; (iv) Leader of the competition withinside the Legislative Council, if any.

Most of the provisions relevant to the National Commission additionally follow to the State Commission. A State Commission may also inquire into violation of human rights handiest in admire of topics regarding the entries enumerated in Lists II and III of the VII agenda to the Constitution.

There are many motives to help the State Human Rights Commission. India is a massive usa, and therefore, there need to be State Commissions as properly further to the National Commission. The redressal of grievances of breach of human rights need to be speedy and inexpensive; the message of human rights need to attain the gross root level. The federal man or woman of the usa need to be reputable through setting up separate National and State Human Rights Commissions.

Such Commissions were set up in numerous States. State Human Rights Commissions were set up in West Bengal, Himachal Pradesh, Madhya Pradesh, Assam and Tamil Nadu in that order. Uttar Pradesh has notified the Constitution of the Commission however the appointment chairperson and participants haven't begun been made. The Government of Jammu and Kashmir has surpassed rules to set up a State Human Rights Commission and

this has obtained the assent of the Governor; appointments are to be announced. In Governments of Kerala and Punjab the established order of State Level Commission is beneathneath consideration.

4.3.3 Human Rights Courts

As in line with segment 30, for the reason of presenting fast trial of offences springing up out of violation of human proper, the State Government may also, with the concurrence of the Chief Justice of the High Court, through notification, specify for every district a Court of Session to be the Human Rights Court to strive the stated offences. For each such Human Rights Court, the State Government shall, through notification, specify a Public Prosecutor or rent an endorse, who has been in exercise as an endorse for now no longer much less than seven years as a Special Public Prosecutor for the reason of accomplishing instances in that Court.

4.4 INTERNATIONAL COVENANTS RELATING TO HUMAN RIGHTS WITH SPECIAL REFERENCE TO PRISONS AND PRISONERS

Though there are various global devices which lay down codes through which prisoners need to be dealt with, the subsequent are the most amongst them.

4.4.1 The Third Geneva Convention-1924

The 1/3 Geneva Convention defines humanitarian protections for prisoners of struggelfare. Prisoners of struggelfare are described as participants of the militia or participants are militias or volunteer corps forming a part of the militia, belonging to a celebration to the conflict, participants of everyday militia who profess allegiance to a celebration now no longer acknowledged through the detaining strength, folks accompanying militia however aren't participants and population of a non-occupied-territory who soak up hands in resistance who're captured through an enemy strength. Prisoners of struggelfare won't resign rights secured through the convention. Those rights encompass the proper to humane remedy which prohibits especially violence inflicting

loss of life or critically endangering fitness or bodily mutilation or medical or clinical experiments, safety from acts of intimidation, insults and public curiosity, safety from reprisals exercised, bodily or intellectual torture, good enough bodily and mental remedy, to preserve non-public objects along with money, to be evacuated if the territory wherein they may be held turns into too dangerous, to good enough food, water, safe haven and garb, sanitary residing situations, spiritual freedom and to complain. Detaining powers ought to the proper to apply suitable pressure withinside the occasion of get away, require prisoners to provide of their call and rank, and to make use of prisoners for labour. The 1/3 Geneva Convention got here into pressure in 1924 however changed into notably amended in 1949. The United Nations Security Council is the very last global tribunal for all problems regarding Geneva Conventions. All signatories to the U.N. Charter (193) are certain through the Geneva Convention.

4.4.2 The Charter of United Nations-1945

The first documentary use of expression 'Human Rights' is to be located in Charter of the United Nation which changed into adapted (after the second one international strugglefare) at San Francisco on June on June 25, 1945 and ratified through majority of its signatories in October that year. The Preamble of this Charter, which changed into drawn as much as save you a recurrence of the destruction and struggling because of the second one international strugglefare, putting in place the global business enterprise known as the United Nations, declared that the United Nations shall have for its objects, inter alia, "to reaffirm religion in 'essential human rights'", and Article 1 thereafter said that the 'purposes' of the United Nations will be, amongst others,

"To gain global co-operation in selling and inspiring admire for Human Rights and for essential freedoms for all with out difference as to race, sex, language or religion..."

The United Nations Charter but changed into now no longer a binding device and simply said the precise which changed into to be later advanced through distinctive groups and organs.

4.4.3 Universal Declaration of Human rights-1948

The first concrete step through manner of formulating the diverse human rights changed into taken up through the United Nations General Assembly in December 1948 through adapting the Universal Declaration of Human Rights. It changed into meant to be observed through an global invoice of rights which can be legally binding at the covenanting parties. Of all of the global attempts, the familiar announcement of human rights, 1948 has gained an area of honour as a fundamental global code of behavior through which overall performance in selling and defensive human rights is to be measured. The preamble to the familiar announcement of Human Rights, 1948 act as a reflect thru which the essence of this device can be visualized. It embodies the expectancies of humanity as additionally basis of freedom, justice, peace and safety (through rule of regulation) in opposition to tyranny and oppression. The preamble lays emphasis on identical rights of men, ladies and youngsters and the want to stay with dignity. The following are the exquisite provisions withinside the Universal Declaration regarding folks in war of words with regulation:

Article five: No one will be subjected to torture or to merciless, inhuman or degrading remedy or punishment.

Article 9: No one will be subjected to arbitrary arrest, detention or exile.

Article 10: Everyone is entitled in complete equality to a honest and public listening to through an impartial and unbiased tribunal, withinside the dedication of his rights and duties and of any crook rate in opposition to him.

Article 11:

1. Everyone charged with a penal offence has a proper to be presumed harmless till proved responsible consistent with regulation in a public trial at which he has had all of the ensures important for his defense.

2. No one will be held responsible of any penal offence resulting from any act or omission which did now no longer represent a penal offence, beneathneath countrywide or global regulation, on the time whilst it changed into committed. Nor shall a heavier

penalty be imposed than the only that changed into relevant on the time the penal offence changed into committed.

four.four.four United Nations Standard Minimum Rules for the remedy of prisoners-1955

The United Standard Minimum Rules for the remedy of prisoners got here into pressure in 1955 (30.08.1955). The requirements set out through the United Nations aren't legally binding however provide suggestions in global and municipal regulation with admire to any individual held in any shape of custody. They are typically appeared as having correct precept and exercise for the control of custodial facility. The record units out requirements for the ones in custody which covers registration, separation of categories, accommodation, non-public hygiene, garb and bedding, food, exercising and sports, clinical offerings, field and punishment, device of restraint, records to and compliance through prisoners, touch with the outdoor international, books, religion, retention of prisoner's property, notification of loss of life, illness, transfer, elimination of prisoners, institutional employees and inspection of facilities. It additionally units out suggestions for prisoners beneathneath sentence which in addition consists of remedy, category and individualization, privileges, paintings, schooling and pastime and social relation and after-care. There also are unique provisions for insane and mentally strange prisoners, prisoners beneathneath arrest or watching for trial, civil prisoners and folks arrested or detained with out rate.

4.4.5 International Covenants of Civil and Political Rights-1966

After all, Universal declarations operated almost as a announcement of beliefs which changed into now no longer of the character of a legally binding Covenant and had no equipment for its enforcement. That deficiency changed into sought to be eliminated through the United Nations widespread Assembly through adopting in December 1966, covenants for the observance of Human Rights:

- a. The International Covenants on Civil and Political Rights.
- b. The International Covenants on Economic, Social and Cultural Rights.

While the previous formulated legally enforceable the rights of the people, the latter changed into addressed to the States to put in force them through rules. The Covenants got here into pressure in December 1976 after the considered necessary range of member states (35) ratified the Covenants finally, numbering sixty nine on the stop of 1981. The Government of India ratified the Covenants on 1979. It is tremendously regrettable that america of America, the version for the instruction of the International Covenants on Human Rights, which has additionally taken a lot hobby withinside the internationalization of Human Rights, has now no longer to this point ratified the International Covenants of 1966.

The impact of such ratification is that the ratifying State is obliged to evolve legislative measures to put in force the Covenant to make certain the proper proclaimed withinside the Covenant so that, aleven though the Covenant itself isn't a part of the home regulation of the ratifying State, the rights embodied withinside the applicable rules are enforceable thru the home Courts. The Universal announcement of Human rights, the International Covenants on Civil and Political Rights and the International Covenants o Economic, Social and Cultural Rights are collectively appeared as constituting the International Bill of Rights. The crucial elements regarding the Criminal Jurisprudence are highlighted beneathneath article 7, 9, 10, 11, 12, 14, and 15. They are inherent proper to life, sentence of loss of life; no torture or merciless or inhuman or degrading remedy or punishment; proper to liberty and protection, no arbitrary arrest or detention , treating with humanity the folks disadvantaged of liberty; keeping apart convicted from un convicted, presenting separate remedy, keeping apart juveniles from adults, fast adjudication, reformation and social rehabilitation will be the goal of prison system, no imprisonment for the incapacity to meet contractual responsibility; equality earlier than regulation, honest and public listening to through a competent, impartial and unbiased tribunal; proving responsible thinking about the regulation in lifestyles on the time of fee of offence, no heavier penalty than the only prescribed, permitting gain of lighter penalty whilst provision made next to the fee of offence. One of the crucial areas, International Covenants on Civil and Political Rights, 1966, changed into the proper to reimbursement for miscarriage of justice in article 14(6). This finally brought about the enactment of Criminal Justice Act, 1988

which especially supplied beneathneath segment 133, for fee of reimbursement for miscarriage of Justice.

On sixteenth December 1966 the United Nations General Assembly followed an offer for presenting for the opportunity of consideration, withinside the Human Rights Committee of proceedings or communications from people in opposition to State parties. This thought took the shape of the elective protocol to the International Covenants on Civil and Political Rights and followed at the identical day. The protocol but got here into pressure on twenty third March 1976. India has now no longer signed this elective protocol. The 2d elective protocol aiming on the abolition of loss of life penalty changed into followed through the General Assembly on fifteenth December 1989. India has now no longer signed even this elective protocol.

The Covenants on Economic, Social and cultural Rights, 1966 acknowledged huge variety of rights which have been now no longer to this point acknowledged viz, the proper to paintings, proper to simply situations of paintings, identical pay for identical paintings, a first rate residing, secure and healthful operating circumstance, social protection, proper to shape change unions and proper to strike.

4.4.6 Convention in opposition to Torture and different Cruel Inhuman or Degrading Treatment or Punishment-1984

The United Nations General Assembly followed on tenth December 1984 the Convention in opposition to Torture and different Cruel, Inhuman or Degrading Treatment or Punishment. The Convention imposes on State Parties the responsibility to make torture a criminal offense and to prosecute and punish the ones located responsible of it. This Convention is but to be ratified through India.

4.4.7 Basic Principles for the Treatment of Prisoners-1990

The fundamental concepts set forth for the remedy of prisoners withinside the global device are as follows:

All prisoners will be dealt with with admire because of their inherent dignity and cost as human beings.

There will be no discrimination at the grounds of race, colour, sex, language, religion, political or different opinion, countrywide or social origin, property, beginning or different status.

It is but suited to admire the spiritual ideals and cultural principle of the institution to which prisoners belong, on every occasion nearby situations so require.

Responsibility of prisons for the custody of prisoners and for the safety of society in opposition to crime will be discharged in step with a State's different social goals and its essential obligations for selling the properly-being and improvement of all participants of society.

Except for the ones boundaries which can be demonstrably necessitated through the truth of incarceration, all prisoners shall preserve the Human rights and essential freedom set out withinside the Universal Declaration of Human Rights and, wherein the Stated worried is a celebration the International Covenants on economic, Social and Cultural rights and the International Covenants on Civil and Political Rights and the elective protocol thereto, in addition to such different rights as are set out in different United Nations Covenants.

All Prisoners shall have the proper to participate in cultural sports and schooling geared toward the entire improvement of the human personality

Efforts addressed to the abolition of solitary circumstance as a punishment, or to the restrict of its use, need to be undertaken and encouraged.

Conditions will be created permitting prisoners to adopt significant remunerated employment in order to facilitate the reintegration into the usa's labour marketplace and allow them to make contributions to their personal economic help and to that in their families

Prisoners shall have get entry to to the fitness offerings to be had withinside the usa with out discrimination at the grounds in their prison situation.

With the participation and assist of the network and social institution, and with due regard to the pursuits of victims, beneficial situations will be created for the reintegration of the ex-prisoners into society beneathneath the great feasible situations.

The above concepts will be implemented impartially.

four.four.eight Basic Principles on using Force and Firearms through Law Enforcement Officials, Eighth United Nations Congress at the prevention of Crime and the Treatment of Offenders, Havana, twenty seventh August - seventh September, 1990 U.N. Doc. A/Conf.144/28/Rev.1 at 112-1990

The cops have a important function withinside the safety of proper to life, liberty and protection of the individual as assured withinside the Universal Declaration of Human Rights and reaffirmed withinside the International Covenants at the Civil and Political Rights. The Standard Minimum Rules for the remedy of prisoners offer for the occasions wherein jail officers may also use pressure withinside the direction in their responsibilities. Article three of the Code of Conduct for Law for Law Enforcement Officials offers that Law Enforcement Officials may also use pressure handiest whilst strictly important and to the quantity required for the overall performance in their duty. The assembly of the 7th United Nations Congress at the Prevention of Crime and Treatment of Offenders, held at Varenna, Italy, agreed on factors to be taken into consideration withinside the direction of in addition paintings on restraints on using pressure and firearms through cops. Resolution 14 of the Meeting inter alia emphasised that using pressure and firearms through cops need to be commensurate with due admire for human rights. The fundamental concepts set forth on this device , that have been formulated to help Member State, of their assignment of making sure and selling the right function of regulation enforcement officers, need to be taken into consideration and revered through Governments in the framework in their National Legislation and exercise, and be introduced to the eye of cops in addition to different folks inclusive of Judges, Prosecutors, Lawyers, Members of the govt department and the Legislature and

the public. This device includes in element on the overall and Special Provisions, Rules and Regulations concerning using pressure firearms through the regulation implementing officers. Policing illegal assembly, policing folks in custody or detention, qualifications, education and counselling for the regulation enforcement groups; reporting and evaluation process concerning the incidents took place also are elaborately dealt with. The following are the Principles concerning the policing folks in custody or detention.

Principle 15: Law enforcement officers, of their family members with folks in custody or detention shall now no longer use pressure, besides whilst strictly important for the upkeep of protection and order in the institution, or whilst non-public protection is threatened.

Principle 16: Law enforcement officers, of their family members with folks in custody or detention shall now no longer use firearms, besides in self-defence or withinside the defence of others in opposition to the instant chance of loss of life or critical injury, or whilst strictly important to save you the get away of the individual in custody or detention imparting the threat cited in Principle 9.

Principle 17: The previous Principles are with out prejudice to the rights, responsibilities and obligations of jail officers, as set out withinside the Standard Minimum Rules for the remedy of prisoners specially Rules 33, 34& 54.

CHAPTER 5

ROLE OF JUDICIARY IN PROTECTING THE RIGHTS OF PRISONERS

5.1 RIGHTS OF PRISONERS:

Indian constitution and other procedural law provide many provision and law against the violation of different rights of the prisoners. such rights are not specifically given in the constitution but supreme court played an important role and interpreted articles 14, 19 and article 21 in part 3 along with articles 39A, 42, 39, 38 in part 4 to provide or spell out different fundamental rights to the prisoners. like torture and inhuman treatment can be interpreted from the article 14 and article 19 of the constitution. Sometimes third degree is given that is against the article 21 of the constitution i.e. human dignity. There is no use of such rights if there is no remedy against them, Indian constitution provide certain writs under article 32 i.e. habeas corpus, mandamus, quo warranto, prohibition, certiorari. On the violation of such rights person can file a suit directly in the supreme court and under article 226 in the high court. As an independent judiciary Supreme court is the guardian of such rights and it also laid down certain guidelines parallel to such rights and also keep eyes on the legislature that no new law in violation of such rights take place as they are subject to judicial review. By this interpretation it is clear that prisoners also have some fundamental rights and they can't be deprived from such rights but to some limit they are deprived of their liberty for the purpose of reformation.

Hence, prisoners also have their rights and cannot be deprived of their rights. As certain rights are guaranteed by the constitution but they are not absolute some restrictions are imposed on them, like right to freedom of a person is one of the important right among fundamental right⁹⁸. When a person is convicted and put in the prison then his status is different from that of an ordinary person⁹⁹.

⁹⁸ Article 19 Constitution of India reads as "Protection of certain rights regarding freedom of speech etc
(1) All citizens shall have the right
(a) to freedom of speech and expression;

5.1 Right against inhuman treatment to the prisoners

Prisoners are also human and they should be treated as human. The Supreme Court of India in the recent past has been very vigilant against encroachments upon the Human Rights of the prisoners. Article 21 of the Constitution of India provides that “No person shall be deprived of his life and Personal Liberty except according to procedure established by law”. The rights to life and Personal Liberty is the back bone of the Human Rights in India. Through its positive approach and Activism, the Indian judiciary

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India; and

(f) omitted

(g) to practise any profession, or to carry on any occupation, trade or business

(2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State

from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or

incitement to an offence

(3) Nothing in sub clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub clause

(4) Nothing in sub clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub clause

(5) Nothing in sub clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as

it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe

(6) Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable

restrictions on the exercise of the right conferred by the said sub clause, and, in particular, nothing in the said

sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business,

industry or service, whether to the exclusion, complete or partial, of citizens or otherwise”

⁹⁹ Singh, Saket, “Role of the Supreme Court towards a New Prison Jurisprudence”, 6 Student Adv. (1994). Available at <http://legalsutra.com/810/role-of-the-supreme-court-towards-a-new-prisonjurisprudence/#sthash.x2jb8F9A.dpuf>

has served as an institution for providing effective remedy against the violations of Human Rights. By giving a liberal and comprehensive meaning to “life and personal liberty,” the courts have formulated and have established plethora of rights. 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 had taken the view that each Article dealt with separate rights and there was no relation with each other i.e. they were mutually exclusive. But this view has been held to be wrong in Maneka Gandhi case and held that they are not mutually exclusive but form a single scheme in the Constitution, that they are all parts of an integrated scheme in the Constitution. In the instant case, the court stated that “the ambit of Personal Liberty by Article 21 of the Constitution is wide and comprehensive. It embraces both substantive rights to Personal Liberty and the procedure prescribed for their deprivation” and also opined that the procedures prescribed by law must be fair, just and reasonable. So prisoners have right against inhuman treatment by different authorities i.e. jail authority, police officers. Sometimes prisoners are tortured and inhuman treatment in the police lock-up then it will be a violative action of concerned authority against article 14 and article 19 of the constitution. Similarly third degree by the police is taken against the article 21 i.e. human dignity. Such act will be considered as an arbitrary action by concerned authority and can be question under article 14 of the Indian constitution (interpetaion given by supreme court).in Raghbir Singh v. State of Bihar the supreme court expressed its anguish over police torture by upholding the life sentence awarded to a police officer responsible for the death of a suspect due to torture in a police lock –up¹⁰⁰. In Kishore Singh v. State of Rajasthan the Supreme Court held that the use of third degree method by police is violative of Article 21 and ruled that law does not permit the use of third degree methods or torture on an accused person since “actions of the State must be right, just and fair, torture for extracting any kind of confession would neither be right nor just not fair”¹⁰¹.

The decision of the Supreme Court in the case of D.K. Basu is noteworthy. While dealing the case, the court specifically concentrated on the problem of custodial torture and

¹⁰⁰ Dr. Minal H.Upadhyay, “Role of Judiciary in Protecting the Human Rights of Prisoners” IJRHSS Vol. 2, Issue:8, 2014.

¹⁰¹ Ibid.

issued a number of directions to eradicate this evil, for better protection and promotion of Human Rights. In the instant case the Supreme Court defined torture and analyzed its implications.

5.2 Right against solitary confinement and Bar Fetters

Punishment of solitary confinement and Bar Fetters is against the spirit of the constitution and such a punishment reduced the prisoner from human being to an animal. The courts have strong view against solitary confinement and held that imposition of solitary confinement is highly degrading and dehumanizing effect on the prisoners. The courts have taken the view that it could be imposed only in exceptional cases where the convict was of such a dangerous character that he must be segregated from the other prisoners. The Supreme Court in *Sunil Batra (1)* considered the validity of solitary confinement. The Supreme Court has also reacted strongly against putting bar fetters to the prisoners. The court observed that continuously keeping a prisoner in fetters day and night reduced the prisoner from human being to an animal and such treatment was so cruel and unusual that the use of bar fetters was against the spirit of the Constitution of India. So such a punishment is considered cruel and unusual, it causes mentally torture to the prisoner. Hence prisoners have right against the solitary confinement and bar fetters. Indian courts also consistently considered that such a punishment is highly degrading and dehumanizing effect on the prisoners. The supreme court in *Sunil Batra* case considered the validity of solitary confinement¹⁰². But it can be imposed only in the exceptional cases where convicted person is of such a dangerous nature or character that he must be confine separately from other prisoners. if we study solitary confinement and bar fetters in the light of constitution then it will be an arbitrary action against the prisoner and infringed the Fundamental Right i.e right to life and personal liberty¹⁰³. It is very clear that prisoners also have certain fundamental rights which are more restricted in nature than an ordinary person but it does not mean that they can be deprived by such kind of punishment.

¹⁰² *Sunil Batra (I) v. Delhi Administration*, AIR 1978 SC 1675.

¹⁰³ Article 21 of Constitution of India states as” Protection of life and personal liberty.

No person shall be deprived of his life or personal liberty except according to procedure established by law.”

Our judicial system follow the reformatory theory of punishment not retributive so it can be interpreted from it only that such harsh and cruel punishment is in violation of constitution.

5.3 Right to speedy trial

The speedy trial of offences is one of the basic objectives of the criminal justice delivery system. Once the cognizance of the accusation is taken by the court then the trial has to be conducted expeditiously so as to punish the guilty and to absolve the innocent. Everyone is presumed to be innocent until the guilty is proved. So, the quality or innocence of the accused has to be determined as quickly as possible. It is therefore, incumbent on the court to see that no guilty person escapes, it is still more its duty to see that justice is not delayed and the accused persons are not indefinitely harassed. It is pertinent to mention that “delay in trial by itself constitute denial of justice” which is said to be “justice delayed is justice denied”. It is absolutely necessary that the persons accused of offences should be speedily tried so that in cases where the bail is refused, the accused persons have not to remain in jail longer than is absolutely necessary. The right to speedy trial has become a universally recognized human right.

The main procedure for investigation and trial of an offence with regard to speedy trial is contained in the code of criminal procedure. The right to speedy trial is contained under section 309 of Cr.PC. If the provisions of Cr.PC are followed in their letter and spirit, then there would be no question of any grievance. But, these provisions are not properly implemented in their spirit. It is necessary that the Constitutional guarantee of speedy trial emanating from Article 21 should be properly reflected in the provisions of the code. For this purpose in *A.R.Antulay vs. R.S.Nayak*, the Supreme Court has laid down following propositions which will go a long way to protect the Human Rights of the prisoners. In the instant case the Apex Court held that the right to speedy trial flowing from Article 21 of the Constitution is available to accused at all stages like investigation, inquiry, trial, appeal, revision and retrial. Basic purpose of every judicial system in a democratic state is to grant fair and speedy trial to its citizens. Now right to speedy trial has become a universally recognized human right. As an independent judiciary it is the duty of the judiciary to grant such right. As a custodian of rights constitution grant right

to speedy trial to victim, accused as well as prisoners. If any judiciary failed to grant such right then the term “justice delayed is justice denied” is true. Due to the inordinate or negligent trial or delay investigation accused has to suffer a lot. Convicted person also has right to speedy trial because he has a right to appeal after conviction. There is a provision in the code of criminal procedure under section 309 for the procedure of investigation and trial of an offence with regard to speedy trial. If such provision is followed in a fair manner then there will not be a concept of delayed justice but it is not properly implemented in its original spirit. Therefore in *A.R. Antulay v. R.S. Nayak*, the Supreme Court has laid down following propositions which will go a long way to protect the Human Rights of the prisoners¹⁰⁴. Apex court also held that the right to speedy trial flows from the article 21 of the Indian constitution¹⁰⁵. Prisoner has right to appeal, revision and review against his conviction, so he cannot be deprived of such a right being a prisoner. If any inordinate, unexplained, unfair and negligent delay in pronouncing the judgment by any court then it will be considered as an infringement of the right under article 21 of the Indian constitution.

5.4 Right to free legal aid

Though, the Constitution of India does not expressly provide the Right to Legal Aid, but the judiciary has shown its favour towards poor prisoners because of their poverty and are not in a position to engage the lawyer of their own choice. The 42nd Amendment Act, 1976 has included Free Legal Aid as one of the Directive Principles of State Policy under Article 39A in the Constitution. This is the most important and direct Article of the Constitution which speaks of Free Legal Aid. Though, this Article finds place in part-IV of the Constitution as one of the Directive Principle of State Policy and though this Article is not enforceable by courts, the principle laid down there in are fundamental in the governance of the country. Article 37 of the Constitution casts a duty on the state to apply these principles in making laws. While Article 38 imposes a duty on the state to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the

¹⁰⁴ 1988 AIR 1531.

¹⁰⁵ Article-21 of Constitution of India reads as “Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law”.

institutions of the national life. The parliament has enacted Legal Services Authorities Act, 1987 under which legal Aid is guaranteed and various state governments had established legal Aid and Advice Board and framed schemes for Free Legal Aid and incidental matter to give effect to the Constitutional mandate of Article 39-A. Under the Indian Human Rights jurisprudence, Legal Aid is of wider amplitude and it is not only available in criminal cases but also in civil, revenue and administrative cases. Indian constitution does not expressly provide any specific provision regarding right to free legal aid but the judiciary shown its favour towards the poor prisoners who are not capable to engage or hire the lawyers of their own choice. Reason behind this is their indigency or poor condition. In *M.H. Hoskot v. State of Maharashtra* the Supreme Court laid down that right to free legal aid at the cost to the state to an accused who could not afford legal services for reason of poverty or indigence situation was part of fair, just and reasonable procedures implicit in Article 21. a three Judges Bench (V.R.Krishna Iyer, D.A.Desai and O.Chinnappa Reddy, JJ¹⁰⁶) of the Supreme Court reading Articles 21 and 39-A, along with Article 142 and Section 304 of Cr.PC together declared that the Government is under duty to provide legal services to the accused persons¹⁰⁷. Article 39A inserted as a free legal aid provision in the constitution by the 42nd constitution amendment act 1976. This is most important article in the Indian constitution which speaks for the free legal aid. This article is not enforceable because it inserted under the Directive Principles of the State Policy. This is one of the directives to the state policy in the governance of the states. Parliament also enacted Legal Service Authorities Act 1987 under which free legal service is guaranteed, other states also established Legal Aid and Advice Board. This free legal aid is not only confine with criminal cases it also available in the civil, revenue and administrative cases.

5.5 Right to have interview with Friends, Relatives and Lawyers

The horizon of the Human Right is more expanding with the passage of time. Rights of the prisoners not only limited to the physical torture but they also include mental torture. Right to life and personal liberty provided under article 21 of the constitution. It can be

¹⁰⁶ 1978 AIR 1548.

¹⁰⁷ Nair, Savdasivan, "Prison Justice and the Court", (1978) CULR 336.

interpreted from it that a prisoner has a right to meet or have interview with his family member, friends and lawyers. Because as per the article 21 prisoner also have right to personal liberty and he has right to meet his family members, friends etc. a specifically provision is given in the article 22(1) that an arrested person cannot be denied to consult and defended by a legal practitioner of his choice¹⁰⁸. This legal right is also provided under the section 304 of code of criminal procedure. And by consistently judgments of the courts rights of prisoners are protected. In *Dharambir v. State of U.P* the court directed the State Government to allow family members to visit the prisoners and for the prisoners, at least once a year, to visit their families, under guarded conditions¹⁰⁹.

Court also held in other cases that the interview of prisoner is necessary for the correct information. In another landmark judgement of *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi & others*, the Supreme Court ruled that the right to life and liberty included his right to live with human dignity and therefore a detainee would be entitled to have interviews with family members, friends and lawyers without severe restrictions¹¹⁰.

5.6 Right against hand cuffing

Hand cuffing is one of the most important rights of the prisoner and accused. As it affects the human dignity and considered more harsh, inhuman and arbitrary in nature. Article 19 of Indian constitution provide the right to freedom but this kind of arbitrary act violate such right. Right against the hand cuffing is with both accused and prisoner (in the judicial custody and trial in process). sometime hand cuffing is necessary in the exceptional cases where police officer have reasons to believe that concerned accused or prisoner may be abscond.

In *Prem Shanker vs. Delhi Administration* the Supreme Court added yet another projectile in its armoury to be used against the war for prison reform and prisoner's

¹⁰⁸ Article 22(1) of Constitution of India reads as "Protection against arrest and detention in certain cases. (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice."

¹⁰⁹ 1979 AIR 1595

¹¹⁰ Bhagwati, P. N., "Human Rights in the Criminal Justice System", 27 JILI 1985 38.

rights. In the instant case the question raised was whether hand–cuffing is constitutionally valid or not? The Supreme Court discussed in depth the hand cuffing jurisprudence. It is the case placed before the court by way of Public Interest Litigation urging the court to pronounce upon the Constitution validity of the “hand cuffing culture” in the light of Article 21 of the Constitution. In the instant case, the court banned the routine hand cuffing of a prisoners as a Constitutional mandate and declared the distinction between classes of prisoner as obsolete. The court also opined that “hand cuffing is prima-facie inhuman and, therefore, unreasonable, is over harsh and at the first flush, arbitrary. Absent fair procedure and objective monitoring to inflict “irons” is to resort to Zoological strategies repugnant to Article 21 of the Constitution”.

To bind a man hand and foot with hoops of steel shuffle and bring him publically in such a condition in the court and stand him for hours in the court is mentally torture to him. This kind of torture sometime more than the alleged offence punishment, so this type of behaviour is to dehumanizing. Supreme court also laid down that it should not be in a routine manner as it is against the human dignity. It is a kind of mental torture to him. But these kinds of guidelines are not followed by the police officers and prisoners have to suffer.

5.7 Narco Analysis/Polygraph/Brain Mapping

In *Selvi Vs State of Karnataka*, (2010), the Supreme Court has declared Narcoanalysis, Polygraph test and Brain Mapping unconstitutional and violative of human rights. This decision is quite unfavourable to various investigation authorities as it will be a hindrance to furtherance of investigation and many alleged criminals will escape conviction with this new position. But the apex court further said that a person can only be subjected to such tests when he/she assents to them. The result of tests will not be admissible as evidence in the court but can only be used for furtherance of investigation. With advancement in technology coupled with neurology, Narcoanalysis, Polygraph test and Brain mapping emerged as favourite tools of investigation agencies around the world for eliciting truth from the accused. But eventually voices of dissent were heard from human rights organizations and people subjected to such tests. They were labelled as atrocity to human mind and breach of right to privacy of an individual. The Supreme Court accepted

that the tests in question are violative of Article 20 (3), which lays down that a person cannot be forced to give evidence against himself. Court also directed the investigation agencies that the directives by National Human Rights Commission should be adhered to strictly while conducting the tests. These tests were put to use in many cases previously, Arushi Talwar murder Case, Nithari killings Case, Abdul Telagi Case, Abu Salem Case, Pragya Thakur (Bomb blast Case) etc. being ones which generated lot of public interest.

CHAPTER 6

STATUS OF PRISON AND PRISONERS IN INDIA:

Prisons in India, and their administration comes under the State List as it is a state subject covered by item 4 under the state list in the Seventh Schedule of Indian constitution. The management and administration of prisons falls in the domain of the State Governments and prisons are governed by the Prison Act 1894. States have the authority and responsibility to change the present laws, rules and regulation of the prison which are out dated and inconsistent with the society. The Central Government provides assistance in the different fields of the prison to improve the security in prisons, medical facilities, repair and renovation of old prisons. Government also work for the improvement of borstal schools, facilities to the women offenders and other reformation training.

Judiciary also shown its vital role in various aspects of the prison administration. The Supreme Court of India through its various judgments laid down three broad principles in relation to the prison status as well as prisoners status in jail which are taken as the guidelines of the higher judiciary. . Firstly, a person in prison does not become a non-person. Secondly, a person in prison is entitled to all human rights within the limitations of imprisonment. Lastly, there is no justification for aggravating the suffering already inherent in the process of incarceration¹¹¹.

6.1 Types of prison inmates

In India prison inmates are categorized as convicts, under-trials and Detenues. A convict is a person who found guilty of a crime sentenced by the court. An undertrial is a person who currently on trial before the court of law. A detune is a person who is in judicial custody¹¹².

There are some more prison inmates in relation with non- Indian Penal Code, they are called the civil prisoners. And such civil prisoners consist of convict and under-trial only.

¹¹¹ NCRB Prison Statistics India 2011 available at <http://ncrb.gov.in/PSI-2011/PrisonStat2011.htm>

¹¹² National Crime Records Bureau. Available at <http://ncrb.gov.in/PSI-2013/PrisonStat2013.htm>

6.2 Status of prisoners in prison

The condition of prisoners are very miserable and they are treated equivalent to animals. Lack of basic amenities in the jail premises creates a miserable condition to survive in jail. They are not accessible to the basic conditions necessary for survival. The quality of food provided to them are of substandard quality and are no feasible to intake. Sometimes, they are subject to sexual assault by the jail authorities as well as by the fellow inmates. No action has been taken for their grievances. They are subject to the brutal treatment by the hardcore criminals who are in the dominating position in the jail. They are subject to the long working hours without getting any remuneration in return. The life in prison is just equivalent to hell. Several times this issues was raised by still not been properly addressed by the parliament. The overcrowded jail which simply means the overcapacity also is big challenge. The lack of sensitivity on the part of courts as well as the legislature should be cured immediately. They must understand that the prisoners are also having the same rights which every individual is having which includes the right to live and right to get the justice also. The equality aspect and the justice principle enshrined by the preamble will be defeated if the rights of prisoners will not be addressed.

CHAPTER 7

LACUNE IN LEGISLATION:

Since 1894, extra than a decade has been exceeded however it's miles the lacuna of legislative coverage most effective that there may be no regulation associated with rights of prisoners. Mulla committee on prison reform encouraged the formation of countrywide coverage on prisons and prisoners. After that many tries are made or even with NHRC (NATIONAL HUMAN RIGHT COMMISSION) authorities drafted new invoice however the dream to preserve it in parliament is stored away until date. Inactive mind-set of legislature withinside the area of formation of regulation for prisoners has pressured judiciary to go into in to area of the coverage maker and had performed a seasoned energetic function in imparting herbal human rights to those un diagnosed elegance of human. As charter is the parent of the Human Rights however there aren't particular provision for the rights of prisoners. But judiciary performed an vital function because it interpreted such rights from the exceptional provision of the charter. It is obligation of the legislature to legislate the regulation for exceptional fields however withinside the area of prisoners proper it's miles the lacuna of the legislature.

Part III of the charter offer the essential rights to its residents and prisoners additionally blanketed withinside the residents for this reason additionally they had such rights however they're extra difficulty to limit than an everyday person. Most of the rights are interpreted from the Part III of the charter however they're now no longer given specifically. India is one in every of the most important democratic u . s . a . withinside the global and it having a characteristic of separation of strength which empower the legislature to enact the sure legal guidelines and modification. As we observe the Parliamentary shape of presidency with federal machine which made the legislature enacting machine extra complex. As for enacting regulation there may be a specific technique to be accompanied via way of means of the legislature. In India there are multi events, equal withinside the parliament which made the technique extra complex. There are many events withinside the competition facet which criticize the regulation via way of means of deciphering it withinside the incorrect way which bring about complexity

withinside the legislating technique. Hence regulation did not enact the legal guidelines in prefer of the rights of the prisoners, there aren't any take a look at and balances withinside the jail for the properly running of the prison authority. But as a parent of rights Supreme Court had laid down many recommendations for the jail and rights of prisoners however if we visit the floor fact they're now no longer accompanied. In exceptional instances apex judiciary of India offers sure guiding principle in safety of the rights of the prisoners. Due to the lacuna of legislature prisoners has to suffer, we understand that they're regulation breakers and threat to the society however prison is an organization for the reformation of such regulation breakers. So it's miles the obligation of the legislature to offer such type of regulation that is fine for the reform coverage. There is a Prison Act 1894, which is changed upto 1st January 1957 however it isn't always enough for the cause of prisoners rights. As it does now no longer incorporate the provisions concerning the rights of the prisoners. Even the provisions of the Act aren't well implemented.

Reforms Required

The modification will be made withinside the jail act, 1864, which fails to addressed the problems withinside the gift days. The society has modified with the passing of time.

New regulation are required for the reformation of the prisoners in Jail.

New jails will be made to erase the hassle of overcrowding or overcapacity withinside the Jail.

Proper prison assist will be furnished to the prisoners withinside the prison.

CHAPTER 8

CONCLUSION/SUGGESTION:

8.1 Conclusion

The Prisons in India aren't taken into consideration as a residence for incarceration to discourage crook behaviour. On the problem of Crime, Mahathma Gandhi, our father of our nation, had as soon as said "Crime is the final results of a diseased thoughts and prison ought to have an surroundings of a health facility for remedy and Care." Indian Prison Administration is having a sturdy religion on this precept. Sentence of imprisonment could be justifiable most effective if it in the long run results in social defence in opposition to crime. Such an goal will be completed most effective if incarceration motivates and prepares the wrongdoer for a regulation abiding and self-helping existence after his or her release. Imprisonment deprives the wrongdoer of his liberty and self-dedication and the jail device must now no longer be allowed to worsen the struggling already inherent withinside the system of incarceration. Hence the jail must endeavour to reform and re-assimilate the wrongdoer withinside the social milieu with the aid of using giving them suitable correctional remedy. Thus the goals of the Prison and Correctional Administration in India are:

- To defend society in opposition to crime with the aid of using steady and secure custody of prisoners and to expand a experience of area among them;
- To offer such situations to the prisoners as are conducive to their reformation and rehabilitation;
- To offer simple minimal centers to the prisoner for preserving their human dignity;
- To inspire the jail employees to reap the above goals of their control of prisons.

Prisons especially pre-independence and post-independence duration however earlier than judicial intervention at the jail management withinside the call of Judicial Activism withinside the overdue 70s. In among this era such a lot of Commissions and Committees

had been shaped each on the Central and State Level in reforming the Indian Prisons and Prison Administration. Of course, there has been a sluggish development withinside the control of prisons and remedy of prisoners. Only after the intervention of the Apex Court in decoding the Constitutional Rights in favour of the prisoners withinside the call of Judicial Activism many upgrades had been made withinside the every day habitual of the prisoners. In help of this, such a lot of case legal guidelines were stated with specified discussion. In truth after Judicial Activism most effective collection of Committees like Justice Mulla (1980-83), Justice Kapoor (1986), National Expert Committee on Women headed with the aid of using Justice Krishna Iyer (1986-87), had been shaped with the aid of using the Government of India and on an off-shoot of the advice of those Committees awesome upgrades had been witnessed withinside the remedy of Prisoners, residing situation in Prisons, the use of modernised technology withinside the Prison Administration.

Inspite of such a lot of upgrades made withinside the Prisons of India as mentioned in the sooner Chapters, the prevailing Indian Prison Administration isn't unfastened from, comments, criticisms, litigations and so forth from diverse angles just like the Inmates, Public, Mass-media, Judiciary, Human Rights Commission so on and so forth. This is on the only hand with the aid of using the Prison Authorities because of the lacuna in executing the due provisions of the Rules and Regulations in letter and spirit and then again with the aid of using the Prisoners who aren't gazing the prescribed Code of Conduct as laid down withinside the guide both knowingly or unknowingly or below the affect of others. The wellknown deviance of the prisoners which can be observed withinside the stroll of existence of the prisoners are Smuggling contraband articles inclusive of mobileular telecellsmartphone into prisons even as on their admission, go back from Court and leave, forming companies and taking an top hand which ends up in needless conflict amongst prisoners and with the Prison Personnel, teasing new prisoners, coaching the trick of the alternate in committing offences and changing them into tough center criminals and escaping the clutches of regulation, Bribing the Prison Officials in an effort to get more concession or/and suppress their unlawful sports and deviating the Prison Rules. The authoritarian tone of the Prison Officials has now no longer been changed. The precept of the jail is that "Remember that the prisoner is a ward and now no

longer the slave of the State". Still the prisons team of workers are below incorrect perception that the prisoners are at their mercy forgetting the truth that they may be the Correctional Officers. So Correction always needs to be commenced from the Correctional Officers instead of the prisoners. This is like aspects of the identical coin.

8.2 SUGGESTIONS

Incorporating the Principles of Management of Prisons and Treatment of Offenders withinside the Directive Principles of the State Policy embodied in Par IV of the Constitution of India.

Including the concern of Prisons and allied Institutions withinside the Concurrent List of the VII Schedule of the Constitution of India.

Enacting a brand new uniform and complete Central Law with the aid of using changing the antique Acts regarding Prisons and Prisoners viz. Prisons Act,1894, Prisoners Act, 1900, Identification of Prisoners Act, 1920, Exchange of Prisoners Act, 1948, Transfer of Prisoners Act,1950, and Prisoner (Attendance in Court) Act, 1955.

To get an early approval of the Draft Model Prison Manual, 2003 and Draft National Policy on Prison Reforms and Correctional Administration, 2007.

Revising the best antique manuals of States / Union Territories wherein the revision has now no longer been taken up at the strains of version jail manual.

Extensive use of Probation Services in deserving instances with the aid of using amending the proper provisions of the Probation of Offenders Act, 1958, appropriately strengthening the infra shape of the Probation Services and arranging sensitization programmes frequently for judicial Officers, Prosecuting Officers and Police Officers.

Insertion of a brand new Section 357-A withinside the Cr.P.C.,1973 for the price of repayment to the sufferers of crime out of the income of the Prisoners below Wage Earning Scheme.

Amending the present phase 320 (1) of the Cr.P.C., so one can claim greater offences compoundable.

Amending the present Section 167 (3) of the Cr.P.C definitely so one can introduce the device of video Conferencing wherein the alleged offenders are produced earlier than the

Magistrate via videoconferencing as opposed to bodily presence within the Court for pre-trial i.e for adjournment or extension of the Judicial Remand.

Amending the present sections 164, 267 & 275 of the Cr.P.C. to allow the trial via Video Conferencing.

Insertion of a brand new sub- Section 305- A in Cr.P.C so one can expedite and 'dispose off ' the trial instances of Under-trial Prisoners in custody with the aid of using giving top-priority.

Insertion of a brand new sub-phase 305-B within the Cr.P.C so one can offer lesser punishment in uncontested depend and additionally on loose and frank admission of guilt.

Inserting a brand new sub-phase 44-A within the Cr.P.C. to minimise the want for the arrest in pursuance of the pointers of the Hon'ble Supreme Court in Joginder Kumar vs. State of Uttar Pradesh Cri.L.J 1994 SC 1981.

Issuing suitable course with the aid of using the State Government and Registrar of High Court for the powerful implementation of the Section 436-A in which liberalising Bail Provision has been liberalised for below-trials lodged within the Prisons who has passed through detention for a duration extending upto one-1/2 of of the most duration of imprisonment targeted for that offence and that he will be launched with the aid of using the Court on his non-public bond without or with sureties with a purpose to decongest Prisons..

Amending the present Section fifty three of the Indian Penal Code so one can encompass the Community offerings as one of the punishments prescribed below this Section.

Amending definitely the present Section 433 of the Cr.P.C so one can take into account and launch below the Advisory Board Scheme the Lifers who provide accurate analysis for reformation and rehabilitation even earlier than the final touch of 14 years of real imprisonment say 8-10 years.

Expediting the paintings achieved at found in exclusive Jails concerning the renovation, repairs, production of extra lodging and new Jails.

To examine the feasibility of building extra lodging withinside the present Jail and building new Jails in different regions anyplace required.

Diversification of group ought to be advanced for the fundamental segregation and remedy of homogenous organization of Prisoners as opposed to retaining heterogeneous organization of Prisoners below one roof. Segregating Prisoners consistent with their age, sex, conviction. safety, duration of detention etc., (Convict Prison, Remand Prison, Borstal School, Open Prison, Female Prison, High, Middle and Low Security Prison etc.,) will assist the Prison Administration in retaining safety with minimal team of workers and to put in force the welfare and rehabilitative programmes correctly in Prisons anyplace and to whomsoever vital.

Identifying the elements answerable for vitiating the surroundings of the Prison Institution together with lodging, hygiene, sanitation, food, clothing, scientific centers etc., and taking right and instantaneously motion in any respect tiers correctly for rectification.

Strictly following the Rules and Regulations prescribed for the medical class of prisoners in letter and spirit with the help of Custodial and Correctional Staff or even NGOs.

Prison Work Programmes and Vocational schooling ought to be incorporated with National Economic Plans.

Public participation in prevention of crime and remedy of offenders ought to be made part of the National Policy on Prisons.

Relieving the Custodial Officer from all of the clerical paintings as their number one responsibility is to oversee Prisoners and keep safety withinside the Prison.

Considering the meagre power of Correctional Officers in Prisons like Welfare Officers, Psychologists ,Social Case workers, Probation Officers etc., their power ought to be elevated in percentage to the inmate populace in order that person interest on Prisoners on diverse spheres of correctional activities (Technique of case-paintings, Group paintings, person and organization steering and counseling) will be taken up correctly.

Participation of out of doors organisation will be endorsed for utilizing the capability jail labour to be had in lots as an outsource with the aid of using permitting the organisation to begin gainful change with the aid of using presenting vital infra-shape centers in jail.

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