A STUDY ON THE NEED OF PRISON REFORMS IN INDIA

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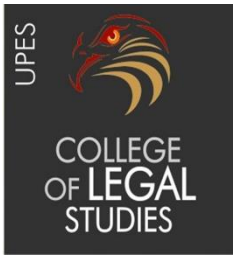
Submitted under the guidance of: Ms. Kavya Salim

This dissertation is submitted in partial fulfillment of the degree B.B.A., LL.B. (Hons.)



College of Legal Studies

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CERTIFICATE

This is to certify that the research work entitled **"A Study on the need of prison reforms in India"** is the work done by **Ms. Anjali Bhatt** under my guidance and supervision for the partial fulfillment of the requirement of B.B.A., LL.B (Hons.) degree at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

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DECLARATION

I declare that the dissertation entitled **"A Study on the need of prison reforms in India"** is the outcome of my own work conducted under the supervision of **Ms. Kavya Salim**, at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

I declare that the dissertation comprises only of my original work and due acknowledgement has been made in the text to all other material used.

Signature & Name of Student

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TABLE OF ABBREVIATIONS

UN	United Nations
UDHR	Universal Declaration of Human Right
Dr	Doctor
ed.	edition
U.P.	Uttar Pradesh
PIL	Public Interest Litigation
SAL	Social Action Litigation
Art.	Article
NGO	Non- Governmental Organization
HC	High Court
SC	Supreme Court
NHRC	National Human Rights Commission
CrPC	Code of Criminal Procedure, 1973
w.e.f	With effect from
SC/ST	Scheduled Class/ Scheduled Tribe
IPC	Indian Penal Code
OST	Oral Substitution Therapy
UNODC	United Nations Office on Drugs and Crime
AIIMS	All India Institute of Medical Sciences
ISO	Indian Standards Organization
HRD	Human Resource Development
IGNOU	Indira Gandhi National Open University
NIOS	National Institute of Open School
M.B.A	Masters of Business Administration
AIR	All India Reporter

SCC	Supreme Court Cases
ICCPR	International Covenant on Civil and Political Rights
Ors.	Others
A.P	Andhra Pradesh
I.G	Inspector General
Govt.	Government
CrLJ	Criminal Law Journal
BPR and D	Bureau of Police Research and Development
UTs	Union Territories
RICAs	Research Institutions in Correctional Administration
CSOS	Civil Society Organizations
CHRI	Commonwealth Human Rights Initiative
HIV/AIDS	Human Immunodeficiency Virus Infection/ Acquired Immune Deficiency Syndrome
M.P	Madhya Pradesh
HRC	Human Rights Commission

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1. Introduction

President Nelson Mandela commented during his time of incarceration:

"*Prison not only deprives you of your freedom, it endeavors to take away your distinctiveness. It is by meaning a purely dictatorial State that endures no liberation and individuality. As a freedom fighter and as a man, one must fight against the prison's efforts to rob one of these qualities.*"[1]

Prisons constitute a critical area of human rights. The sentence of detention not only implies denial of liberty which is the most elementary of all human rights but also imposes restrictions on the life and personal independence and autonomy of the individual involved. Once a person is incarcerated and his/her life is regulated by the State, he/she is endangered to suffer human rights abuses. Apart from the stigma associated with imprisonment, there is a general attitude of prisoners not being considered fit for the same protection as other members of society. As the poor are over-represented in prison population, with little advocacy to protect their human rights, they are particularly vulnerable to maltreatment.[2]

The basis of human rights arises from the intrinsic self-esteem and labor of the man which results in invocation of all the absolute rights and liberties that he is eligible to because of the very fact that he is the member of the community. When a person is confined these freedoms may be delimited and regulated but they cannot be absolutely dispossessed of. The philosophy promulgated by the Universal Declaration of Human Rights (UDHR) that was adopted by the United Nations in 1948, serves a springboard for a global action to uphold human rights in different spheres. The philosophy promulgated by UDHR has been well established in the covenants on civil and political rights and on economic, social, and cultural rights. The provisions such as prison administration which have a straight forward impact on criminal justice, there are other related provisions such as right to life and personal liberty of a person, the right to security, the right to equality before the law, right to be assumed above suspicion until proven guilty, right of not being subjected to any cruel, inhuman or

[11] S Singh, *The historical development of prisons in South Africa: A penological perspective*, NWU Institutional Repository, 2005, http://dspace.nwu.ac.za/handle/10394/5312.

[2] National Human Rights Commission, New Delhi, Improving Prison conditions in India—A Human Rights Perspective. (unpublished manuscript)

mortifying conduct while handling and right to an efficient remedy for any unlawful conduct or violation of law.

Prison and correctional administration is one of the most important of the four wings of criminal justice administration which constitute of the police, the prosecution and the Courts. It can be said manifestly that the institution of prison is totally alienated from the society. In our real world, the portrayal of prison is that of a four fenced station, that cannot be escaped. The prison system shows two distinct faces; first one showing that the prisoner is a very dreadful criminal who is not willing to change at all and the second face is that the prisoner is a very innocent minded person who has been entwined in the complexities of criminal justice system. The trouble and tragedy of correctional administration is that only corrections are not rare to see; but the society has also been reluctant to look at this aspect. It is therefore the most isolated part of criminal justice system. More particularly, it is a corporeal segregation, since it is a confined establishment with sealed exit and entries, and doesn't allow the society to enter and have feel of the problems in action. Their seclusion from general community has rendered them vulnerable to often ill- informed criticism and bordering condemnation.

Truly speaking, prison and correction hold a position of critical importance in the control of crime. They represent a system by which the society deals with the offenders. In that sense, they constitute an interrelated phase of the administration of justice. They serve the society by caging, confining and at times, reforming and rehabilitating offenders, and thereby making contribution to the prevention of anti-social and criminal activities prevalent in the society.

1.1 Literature Survey

In considering various aspects of prison administration that have a serious on the enjoyment of human rights of the prisoners, summary articles reviewing empirical studies by Mohit Verma titled "Changing Scenario of Human Rights in Prisons: A Case Study of Tihar Prison" focused on the modernization of infrastructure and use of technology, as per international standards, in the key areas of operations in Tihar, that has made it a flag bearer of Indian prisons.

Other reviewed articles focused on the torture and atrocities committed by police officers against persons in custody that is creating a great challenge before criminal justice system as it violates basic human rights of citizenry and undermine human dignity:

1. Custodial Violence and Criminal Justice System by Pradeep Kumar Singh, December 2011
2. Human Rights Perspective of Prisoners in India by GaganPreet Kaur, 2010
3. Custodial Violence Vis- A- Vis Indian Legal System by Dr. Simmi Virk, July 2012
4. New Dimensions of Prison Reforms: A Micro Macro Approach by Dr. Geeta Joshi, 2012

The book reviewing empirical study by Dr. Awasthi & Kataria titled "Law Relating to Protection of Human Rights" also focused on the Human Rights of Prisoners in Jail, Human Rights and Death, Torture in Police Lock- up.

1.2 Statement of Problem

The dissertation aims to examine weather prisons are abodes of hell, epitomes of depravation and misery or they are gigantic barriers of concrete with enough space for singing, dancing and where there is no unhygienic surroundings and filth.

1.3 Objectives

The objectives of the dissertation are as follows:

1. To provide a view of the state of prisoners in Indian prisons.
2. Constitutional and statutory rights of prisoners in India as per the International framework as well as Indian framework.
3. To depict the conditions of prisoners in Indian prison and the trends of varied types of torture on prisoners from time immemorial.
4. To analyze the judicial Intervention and trends in protection of Human Rights of the prisoners.
5. History of reforms, prison laws in India and further reforms needed in the prison administration system.

1.4 Hypothesis

Prison conditions most of the time do not follow the set international principles and guidelines and most of the jails lack basic features such as adequate food, water, sanitation, and medical facilities. When a person is in jail, communication with the people in the outside world gets shattered which results in inmates not knowing what is happening even to his close ones. This causes supplementary disturbance. Prisons and the work programs they have are outdated and lacking of any rehabilitative value for inmates.

1.5 Research Methodology

The research methodology adopted in preparing this dissertation is doctrinal as well as non-doctrinal in nature. An attempt has been made to analyze a proposition of law with the aid of relevant case laws and statutes on the subject. A detailed analysis of the existing jurisprudence on the subject has been made with the objective of arriving at a plausible and legally sustainable conclusion. The non- empirical approach through field study seeks to provide a view of living conditions of the prisoners in Indian prisons, health and other necessary recreational facilities provided to the inmates.

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2. History of prisons and prison reforms

A prison is state or federal facility of confinement for convicted criminals, especially felons[3]. It can also be termed as penitentiary; penal institution; adult correctional institution. In fact prison is a very important functionaries of the administration of criminal justice.

Prison comes under List II of Indian Constitution, which demarcates it as a state subject[4]. "Prison"[5] has been defined as any jail or place used permanently or temporarily under the general or especial order of state government of detention of prisoners, and include all lands and buildings appurtenant thereto, however, the same Act clearly mentions that it excludes:

- Any place for the confinement of the prisoners who are exclusively in the custody of the police.
- Any place specifically appointed by the state government under section 541 of the Code of Criminal Procedure, 1882.
- Any dwelling area which has been affirmed by the state government, by the general or especial order, to be a subsidiary jail.

Although several state governments have amended it to more clearly explain its objective such as the State of U.P. which has added the word "and reformation".

However it has always been a very difficult task to comment on the background of this age old institution. It can partially be attributed to the obscure history of the development of prison as an institution of criminal justice system. Most of the authorities simply say that the institution is as old as human civilization. Although one can very well say that it carries out the punishment ordered by a recognized authority in a designated place under the conditions of inconvenience and confinement.

The proof of the ancient nature of this institution in our country can be easily confirmed from the old historical documents and treatises. These texts tell us that prison was always meant for the detection of offenders awaiting trial or executing sentence. The institution was

[3] HENRY CAMPBELL BLACK & BRYAN A. GARNER, BLACK'S LAW DICTIONARY (7th ed. 2002).
[4] State List ; Schedule VII of The Constitution of India, 1950
[5] Section 3(1) of The Prisoners Act, 1894

always a place of great pain and suffering. This cruel and barbaric feature of Indian penal system continued till the end of the legacy of Mughals.

The role of prison in criminal justice administration, as we see today, is very much identical to British legacy. They promoted this institution especially to terrorize those who were raising their voice against their colonial rule and thus serve their interest. Slowly and gradually they made prison as a place to be dreaded through a ruthless process of severe privation, separation, hard work and solitude.

But after the freedom of India, much of the juristic time and ink has flown in an endeavor to give more meaning and a better shape to the institution. Several commissions and committees had been formed by central and state governments to improvise the system of prisons in India. Some of the well- known committees established by the central government of India are given below:

- All India Jail Reforms Committee (1980-83), or Mulla Committee
- Committee of 1986 led by Shri R.K. Kapoor.
- Justice V.R. Krishna Iyer Committee.

The All India Jail Reforms Committee is considered to be the most comprehensive and effective. Similarly the parliamentary committee in their report on women empowerment named "Women in Detention" made certain very imperative remarks and suggested solid measures in order to establish a minimum standard and a uniform practice regarding treatment of female offenders and the administration of prison.

Prisoners all over the country are being administered according to the Prison Act, 1894 which is a century old. The intention of the law is not clear from the body of the Act. It can only be inferred on the basis of the contents thereof[6].

Prisons have been closed institutions. Its inmates are disremembered by the society, prison being treated as a trash bin in which the left overs of the general public are placed. There has been a practice of punitive treatment, deserved punishments verging on the third degree. All this was practiced within the confines of high walls, beyond the public gaze and also, to

[6] P.S. Bawa, *Towards prison reforms*, India International Centre Quarterly, Vol. 27, No. 2, 155-162, (2000)

some extent, the gaze of the administration, in spite of the provision with regard to visitors. Prisons became a byword for totalitarianism. They stood for a strict regimen, controlled behavior, and Spartan living for the prisoners, with a lack of accountability and an unwillingness to provide facilities on the part of the authorities.

The Act of 1894 also provides for the institution of 'convict officers', implying thereby that such prisoners shall be considered as public servants under IPC.[7] This enables the creation of a power structure in the prison. Though well intentioned, the phenomenon leads to a power relationship that is difficult to defy.

Reforms in prison law have to be considered in the context of this background. Despite the draconian provisions of law, in recent times there have been changes in the treatment of prisoners. These have been inspired by the discourse on rights, introduced by the Declaration of Human Rights in 1948, which were then adopted by the Constitution of India in 1950 in the form of Fundamental rights. The preamble to the Constitution, which is a mission statement of national objectives, seeks to 'assure the dignity of the individual.'

A major shift in the Constitution was the conferment of citizenship to persons who were the 'subjects' of colonial rule. Another main focus laid on human dignity which could be secured by the granting of rights. And since every criminal or prisoner is a citizen, his rights and dignity are to be considered supreme. Cognizant of the cruel and inhuman handling of convicts, the United Nations declared the Standard Minimum Rules for Treatment of Prisoners in 1957. This was followed in 1975 by the Declaration against Torture and other Cruel, Inhuman and Degrading Punishment. But nothing of significance had changed either in outlook, or in the treatment of jail inmates.

The Emergency (1975-77) was a milestone event for the jails. A hefty number of political detentions were made. This gave leaders a feel of the arbitrary nature of the state, and made them conscious of the hardships undergone by the inmates of prisons. Another aspect was the judicial helplessness which was demonstrated in the *ADM Jabalpur v. S.S. Shukla*[8] case (1976), wherein the court held that the state could legislate and withdraw fundamental rights.

[7] Section 23, Prison Act, 1894
[8] AIR 1976 SC 1207, 1976 Cri LJ 945, (1976) 2 SCC 521

After the Emergency was lifted in 1977, there was a torrent of judicial pronouncements by the Apex Court on the people's rights. The right of life under Art 21 was liberally interpreted. The decisions were innovative, creative, and positive and widened the sphere of the right to life.

During this period, the Public Interest Litigation (PIL) or commonly known as Social Action Litigation (SAL) was born. Under this, the rule of locus standi was freed from the compulsions of the individual sufferer initiating the legal process. Someone else could be affected by the suffering of the victim. An individual's suffering was adopted by the tormented conscience of some sensitive people. The voice of the downgraded, the depressed, the enslaved, the disremembered, the unfortunate, and the downtrodden was channeled through the voices of enlightened citizens. The voices of the weak were made loud and clear to the authorities who could succor, ameliorate, and provide relief. The PIL was welcomed, supported and patronized by the judiciary.

The Supreme Court gave its most important decision in the case of *Maneka Gandhi v. Union of India*[9] which held that the procedures laid down (and by implication, all legislation) have to be 'just, fair, and reasonable. This set the trend for a liberal interpretation of the statutes. In the same year, there were other decisions against solitary confinement in the cases of *Sunil Batra vs Delhi Administration*[10] and *Sunil Batra v. State of Delhi (II)*[11], use of bar fetters in *Charles Sobhraj v. Superintendent Tihar Jail*[12] and for legal aid in *Hoskot case*[13]. In 1979, in the landmark decisions of *Hussainara Khatoon v. State of Bihar*[14] against illegal detention and for speedy trial .In the *Prem Shankar Jha case*[15], the Supreme Court ruled that use of handcuffs on detenues or arrested persons was not permitted unless approved by the court under special conditions and circumstances. Handcuffs were dubbed 'irons in the soul'. The *Bhagalpur case (Blinding case)*[16] brought to national focus the threats of custodial violence.

[9] AIR 1978 SC 597
[10] AIR 1978 SC 1675
[11] 1980 (3) SCC 488
[12] AIR 1978 SC 1514
[13] AIR 1978 SC 1548
[14] AIR 1979 SC1360,1369, 1377, 1819
[15] *Prem Shankar Jha v. Delhi Administration* AIR 1980 SC 1535.
[16] *Khatri v. State of Bihar* AIR 1981 SC 928

In the *Rakesh Kaushik case*[17] (1981), the court ordered against the illegality of unsocial detention, disciplinary cells, stiff labour, and compact intake.

The second trend during the post-Emergency period was the setting up of three committees on prison reforms, headed by Justices Mulla, Krishna Iyer and Shri Banerjee.

The *Sher Singh case*, (1983) articulated a protest against torture, cruel and inhuman treatment; the *Rudal Shah*[18] (1982) and *Veena Sethi*[19] (1983) cases against detention of the mentally ill in jail; *Sheela Barse*[20] (1983) for separate cells for women, access to prisons, and against custodial violence.

The Prison Act of 1894 may now be seen in the context of the Constitution, the Public Interest Litigations, the verdicts of the Supreme Court, and the trend set by these pronouncements. All pronouncements of the Supreme Court are binding on all subordinate courts[21], and thus have the authority of law. Secondly, the Constitution is the supreme law, and any act or law which is uneven and inconsistent with Fundamental rights is apprehended and annulled[22].

Hence it may be appreciated that in view of the latest developments, the Act of 1894 appears outmoded, and some of its provisions ultra vires the Constitution. Firstly, all the physical punishments are illegitimate. None of the sentences like hard labor, obligation of hand cuffs and fetters, solitary incarceration, or penal diet can be imposed. Custodial violence is strictly prohibited and hence whipping as penalty is rendered void.

The Act of 1894 thus requires amendment. The Supreme Court has voiced coherently, and with adequate judicial emphasis in pronouncements characterized by kindness, empathy and tears for the marginalized. The decisions are a treat to read. One's heart has been moved by the inequities, indignities, and injustices heaped on the wretched of the earth. All the repugnancies have been removed gradually.

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[17] *Rakesh Kaushik v. Supdt. Tihar Jail* AIR 1981 SC 1767.
[18] *Rudal Shah v. State of Bihar* AIR 1983 SC 1086
[19] *Veena Sethi v. State of Bihar* (1982) 2 SCC 583
[20] *Sheela Barse v. State of Maharashtra* AIR 1983 SC 378
[21] Art 141, Constitution of India
[22] Art. 13, Constitution of India

Even after the clear message of the Supreme Court in its various decisions from time to time, there was no move to amend the law. The second landmark phenomenon that gave a push to the prison reform movement was terrorism in the north. During this phase the discourse regarding human rights caught momentum, especially in the nineties when the alleged 'excesses' of the executive were examined prudently. In fact, the declaration of the Protection of the Human Rights Act, 1993, was provoked by national and international pressure from NGOs, rights activists, international financial.

In 1994 the National Human Rights Commission was set up. It gave an institutional fillip to the idea of human rights and helped in giving a concrete shape to the concept. In 1995, a Core Group was set up on the commendations of the National Conference on Human Rights of Prisoners. In 1996, the NHRC prepared an Outline on the Indian Prison Bill.

In the meantime, the Supreme Court announced a few important decisions. In the case of *Gurdev Singh vs State of Himachal Pradesh*[23], the Court cast the responsibility of providing adequate work, educational and vocational training, liberalization of remission and parole rules, better communications, etc. on the state. The court held in the *Sheela Barse case*[24] (1993) that admission of a person who is not a criminal and is also mentally ill in jail was unlawful and not constitutional. In the *Joginder Kumar Case*[25] (1994), the Court gave directions to police officers with respect to the process of arrest. In the *Citizens for Democracy case*[26] (1995), the apex court had restated the guidelines given in the *Prem Shankar Jha*[27] and *Sunil Batra*[28] cases that handcuffing of under trials prisoners and offenders and putting them in fetters was impermissible.

The Government of Delhi had set up a Prison Reform Committee in 1997 to examine various provisions of the 'Outline', taking into account the decisions of the SC and lower courts, and to formulate a comprehensive prison manual for Delhi Jails, keeping in view the jail manuals

[23] AIR 1992 SC 776
[24] *Sheela Barse v. Union of India* (1993) 4 SCC 204
[25] *Joginder Kumar v. State of U.P* 1994 (3) SC 423
[26] *Citizen for Democracy v. State of Assam* (1995) 3 SCC743
[27] AIR 1980 SC 1535
[28] AIR 1980 SC 1579

of Maharashtra, Punjab, and Andhra Pradesh. In 1998, the NHRC circulated a draft of the Indian Prison Bill.

A prison is run by the criminal justice system on behalf of society. The time is ripe to bring all reparations of the Act of 1894 within a comprehensive legislation. The need for this was triggered off by the observations of the Supreme Court in the *Ramamurthy case*[29] (1997), suggesting the State take appropriate decision on the 78 Reports of the Law Commission of India, and the Report of the All India Committee on Jail Reforms (Justice Mulla's Committee). This is to be done in view of problems like overcapacity, postponement in trial, cruelty, bad treatment, disregard of fitness and hygiene, prison vices, deficiency in communications, etc. which afflict the prison system.

The Delhi Prison Reform Committee finalized and submitted the Delhi Prison Bill, and a manual in August 1999. The Bill is under development. The Apex Court had been observing the advancement of the work of the Committee in a Public Interest Litigation initiated by Watchdog International. The Ministry of Home Affairs has also circulated a draft, the Model Prison (Management) Bill in 1999.

The Committee has not only dealt with various defects in the Act of 1894, but also structured a new Bill with respect to the observations of the Supreme Court, the aspirations of the UN, the guiding principle of the National Human Rights Commission, the reports of various Committees, and enlightened public opinion held by intellectuals, social activists, and reformers. The Committee was guided by five considerations; the principle of irreducible minimum; the principle of humanizing the environment; the readaptation of offenders to normal life; the dignity of the individual; and the rule of propriety.

The new Bill has deleted all the repugnant penalties and distinctions, provided for minimum needs, and proposed measures for the well-being of the inmates. All these are contained in the Bill, and the manual, spelling out in detail the activities, responsibilities, opportunities, and controls. The hegemony of the 'convict officer' has been done away with and replaced by 'prison functionaries' who may assist the prison administration. The protective custody of women and mentally ill persons is proposed to be prohibited.

[29] *Ramamurthy v. State of Karnataka* (1997) 2 SCC 642.

Prisons have been beset with two serious problems. One pertains to custodial deaths. The other is with regard to the overcrowding of prisons, as a consequence of delay in trials, and a rise in the figure of under-trial prisoners. Efforts have been made to deal with both the problems.

Custodial death in prison raises concern by the mere fact that jails are out of the view of the public, and the general assumption is that the inmate was tortured. In order to ensure fairness, and reduce the temptation to conceal custodial violence, the new bill provides for a mandatory enquiry by a magistrate into the root cause of death. This method shall fetch reality to the forefront, save the prison administration from harassment in the case of a usual natural decease, and look after the concern of the victim in the case of foul play. Such a requirement is necessary and has been incorporated.

The problem of overcrowding in prisons is very serious. This is partly due to the inability of indigent criminals to get sureties for release on bail. It is also due to delay in trials for various reasons. The result is that about eighty per cent of prisoners languish as the trial cannot be done assiduously. It not only hints to stress upon resources, derelictions, violence and indiscipline, but is iniquitous for reasons of denial of justice due to delay. The Supreme Court in the *Common Cause case*[30] (1996) had taken benign initiative in this regard and released under trials, suffering in prisons for prolong periods, on personal recognition. But these are entirely personal efforts due to empathy and compassion. For a mechanism to materialize in the circumstances of huge judicial hierarchies, it is essential that the procedure be made routine, and woven into a system that is mandatory, and not escape attention and implementation.

Hence the new Bill proposes a separate clause for the review of the cases of prisoners. It makes it compulsory for the state to review matters of under trial prisoners who are languishing in prison for more than one year, or when the incarceration is for more than half of the total penalty for the offence delivered under law. The government shall also guarantee that no under trial is incarcerated in prison for a period exceeding the total time period of chastisement delivered for the offence, or offences. This stipulation in law will force the

[30] *Watchdog International v. Union of India*: Writ Petition (Criminal) No. 402/94.20; *Common Cause v. Union of India:* (1996)4 SCC 533.

system not only to expedite investigation, and trials, but also to ensure that the detenue is not condemned to the prison for a longer period than he be worthy of. This stage will help contribute in the direction of a 'rule of law' as against the arbitrary or nonchalant behavior of the legal institutions whom it is difficult, expensive and problematic to question and bring to book, for the assumption is that they never err and are thus infallible.

The new Bill and the manual envisage reasonable and tolerable living conditions by providing for basics like appropriate nutrients, apparel, living space, drinkable and safe water, medical amenities, health and isometrics, suitable lavatories and sanitation, cultural enlargement, recreation/ and entertainment, besides services for educational advancement, learning of trades and skills. There are liberalized provisions for communication with the 'outside' world, friends, relatives, and legal counsellors.

The law enables the inmates to communicate their grievances to a prison or judicial authority and seek intervention through a Grievance Redressal Committee. It paves the way for contributions of NGOs in the sphere of social work related to drug abuse, education, counselling, and other healthy and positive activities. The state shall also endeavor to provide legal aid and rehabilitation of prisoners so that they integrate with the mainstream of life.

The journey of prison reforms proceeded haltingly. The pre independence period may be treated as an era of darkness. The independence and the promulgation of the Constitution raised expectations which were belied by the Emergency. The post Emergency period saw the ripening of the concept of rights and human dignity. The post-terrorism phase was a period of fruition which saw the setting up of the NHRC, an independent institutional framework with quasi-judicial, and full moral authority that triggered off the need to have a new legislation which is almost on the anvil. The voice of the silent, the mute, the wretched, the wronged (innocent till proved guilty), the 'other', —has been heard.

2.1 Legitimacy of Prison

In a very simple term, one can say that punishment is a painful and unpleasant consequence of violating a law, administered in harmony with the prescribed law, rules and procedure followed by the state. Several theories have been advanced in order to give justification to prison. They are as under

I. *Retribution*- The basic philosophy of retribution is that inflicting pain to the offenders or making them face dire consequence is natural, and hence right. Retribution appeals to many as it is a basic instinct of human beings to retaliate when his/her urge is not paid due attention. So there is every likelihood that the party affected by the crime may take law in their hand if the offender is set free without getting the required punishment. Although the theory has always carried the tag of being primitive, it is very much the part of the so called advanced and modern legal system.

- *Deterrence*- It has always been manifested by one and all that deterrence look primarily at the potential criminal outside the dock. However the theory has grown up with disparagement. People often pledge blast with the point that the human behavior is too unpredictable to be defeated to a mechanical formula. It is often seen that severe punishments are given with a hope that it will have more deterrent effect. The assumption has also been challenged time and again with the logic that clarity and certainty of a crime have a greater deterrent effect than severity. However at the end of the day the protagonists defend themselves with the formula that as long as the offenders are guilty, punishing them is completely personal and are very significant in the larger interest of the society. Not only that, it also prevents other members of the society from violating law or committing any crime.
- *Reformation*- The twenty first century is marked with a greater emphasis being laid down on reforming the criminals. Avoiding imprisonment, abandonment of short sentences, and a beautiful attempt to use prison for training rather wholesome chastisement, and the larger employment of experimentation, conditional release and suspended sentences are unsoiled evidence of this general trend. In fact most of the western countries have made their prison very advanced. They give several psychological treatments to the criminals to refine them. The success of this test can be very well gauged from the fact that several criminals with heinous background not only changed themselves but also turned towards social service. However in a poor and populated country like India it is still a distant dream.

There are several other theories advanced to give legality to this organization. It is believed that jails help criminals redress their remorse. Unless the offender is not punished, his/her personality would not be in equilibrium. The protagonists also argue that it helps in

determining criminality by thoroughly observing the behavior of the delinquent, and thus forecast his/her behavior in imperative to prevent further crimes. This theory has also been severely criticized on the ground that rehabilitation is based on false, or at least unproven assumptions. However with the changing world, legal systems are looking more towards the causes of crime and the negative effects of punishment.

2.2 Antagonists View

Rightly said by Clarence Thomas in *Hudson v. Macmillan*[31] "Forcibly keeping prisoners in detention is what prisons are all about". Certain individuals however interpret prison from a totally dissimilar perspective. It is often argued that the reformative and the deterrent element of prison hardly work. A practice which keeps a large number of people behind bars for so long cannot be possibly regarded as reasonable, just and fair so as to conform to the standards of Article 21 of the constitution. In the landmark judgment of *Hussainara Khatoon v. Home Secretary of Bihar*[32], the Humble Supreme Court raised the same concern and said that although it is nowhere specifically mentioned as a fundamental right, it can be implicitly read out in the broader sense of the term. Similarly in another case between *Syed Ahmad Khan* and A.*S.P. of Aligarh U.P.*[33], Justice P.R. Sinha said that prisoners are considered as the most neglected lot of our society. He also added that the deteriorating conditions of prison are challenging the very constitutional validity of article 21 of the constitution.

There is certainly no doubt about the fact the Court has laid down several good directives and guidelines to safeguard the interest of the prisoners. In *A.K. Gopalan v State of Madras*[34] regarding the fundamental rights of prison inmates, the view was propounded that prisoners are non-persons and that assured fundamental rights are not available to them by their being incarcerated. The majority judges in this case held that when the personal liberty of a person is totally deprived of according to the procedure established by law, the basic fundamental rights are not available. This ratio was diluted to some extent in *State of Maharashtra v. Prabhakar Pandurang Sanzgiri and Another*[35] where the Court held, in

[31] 112 S.Ct. 995 (1992).
[32] (1980)1 SCC 81
[33] (1987) 3 Cri.L.J.1130
[34] AIR 1950 S.C. 27
[35] AIR 1966 S.C. 424

effect, that circumstances of imprisonment can in no way be stretched out to deprive the convict of other fundamental rights consistent with the fact of confinement. In *D.B.M. Patnaik v. State of Andhra Pradesh*[36], the Supreme Court said that prisoners are not because of the fact of their detention[37], discarded of all the fundamental rights they enjoy[38]. In the matter of *M. H. Hosskot v. State of Maharashtra*[39], the Supreme Court came up with a beautiful judgment and said that the cost of free legal aid shall be borne by the state for an accused who doesn't have enough money to pay for legal services because of various reasons such as poverty, deprivation or solitary confinement situation, this endeavor of state is part of fair, just and reasonable procedure under article 21 of our constitution[40]. In *Sunil Batra v Delhi Administration*[41] the court gave its judgment with regard to the question that whether prisoners apart from their fundamental rights are also entitled to constitutional rights. In *Charles Gurmukh Sobraj v. Delhi Administration*[42] it was held that Court has the right to intervene in the prison administration if the statutory prescriptions are misbehaved with to cause injury to any prisoner. The Humble Court in the case of *Khatri [II] v. State of Bihar*[43] stated that the police administration is under a compulsion to notify the indicted that such person has a right to be represented by a lawyer and the cost of such representation shall be borne by the State.

Now a million dollar question which arises is that: *Have these decisions been really effective in countering the challenges posed by the ill management of prison?* Truly speaking they have not served much to the cause. The only reason being that there are several other problems which are inherent in the prison administration system which can't be eradicated without entering into the intricacies of the matter. Talking in a very practical and rational sense of the term all the grounds which build the legitimacy of this institution have their own limitations. There is every reason to stand with the argument often put forth by the human

[36] AIR 1974 S.C.2093
[37] UPENDRA BAXI, THE CRISIS OF THE INDIAN LEGAL SYSTEM, (1982).
[38] *Inder Singh v Delhi Administration* (1978) 4 SCC 161; *Mohd Giasuddin v State of A.P* AIR 1977 SC1926; *M.N. Naskot v State of Maharashtra*, 1978 SCC 544; *Hira Lal v State of Bihar,* AIR 1977 SC 2226
[39] (1978)3 SCC 544
[40] MAHENDRA P SINGH, CONSTITUTION OF INDIA, 175 (10th ed. 2003).
[41] AIR 1980 SC 1579
[42] AIR 1978 SC 1675
[43] (1981)1 SCC 635

right activists that imprisonment should be minimized because prisons are overcrowded and thus ill managed, which makes the life of the prisoners very punitive and painful. It may look very pleasant to say that prisons play a very significant role in acting as a deterrent and thus prevent people from committing an offence but it is really hard to believe so. One must understand that severity of punishment is not that important as is the certainty of punishment.[44]

Precisely it can be said that prisons are rarely able to reform, deter or rehabilitate the lawbreakers. It is also accurate to great extent in particular cases for young offenders in custody, instead of making it less likely that the offenders will offend again, increases the danger. It is all because of this that people have never hesitated to define prison as an expensive way of making bad people worse.

2.3 The Ethical Basis of Prison Management

Ethics (moral philosophy) is a known branch of philosophy which pursues to talk about questions related to morality, good and bad, right and wrong, etc. Major branches of ethics include Meta ethics, applied ethics, right mindset, and evocative beliefs.

In view of this, ethics in prison administration is a set of customs and ideology to monitor the members of prison service to act in a style constant with the principles and ideals recommended by international human rights law and constitutional provisions as interpreted by the Supreme Court in many path-breaking judgments relating to prisoners' rights and prison reforms as well as reiterated by various expert committees on Prison reforms, and to actively internalize and enforce these norms, standards and values.

It is an established fact that prison management needs to operate within a moral back ground and structure. Without a solid principled background, the state of affairs where one gathering of individuals is given generous control over option can easily turn into an abuse of supremacy. The Principled viewpoint is not simply a substance of the conduct of the individual staff towards detainees. An astuteness of the principled premise of detainment needs to saturate the overseeing procedure from top to down. An accentuation by the jail powers on precise methods such as weight to meet administration objectives without an

[44] See supra note 1

earlier consideration of moral prerequisites can prompt colossal mercilessness. A pondering by the jail foundations or specialized strategies and methods will lead staff to neglect that a jail is not the same as a processing plant which creates engine autos. The Administration of detainment facilities is mainly about the supervision and control of both staff and detainees similarly. This gives a wide range of explanations to believe that there are fears which drives past viability and adequacy. At the point when making judgments about the treatment of individuals there is a key thought; the first question which should dependably be asked is "Is what we are doing right[45]

More recently, Amartya Sen in his famous book "*The Idea of Justice*" has offered a theory of justice in a very wide sense. It advocates that how we can continue to address inquiries of upgrading equity and wiping out separation, as opposed to offer immovability of investigations about the way of immaculate equity. The central theme of Sen's argument in his theory of justice is that this theory which can serve as a foundation for practical reasoning must comprise of the techniques of judging how to lessen unfairness and how to ensure progress of equality and justice, rather than aiming only at the *Charter Barter of Perfectly Justice Societies*—implementation that is such a prevailing feature of many philosophies of righteousness in dogmatic viewpoint today. In understanding the agreement between a game plan centered and an acknowledgment centered perspective of equity it is helpful to summon an old qualification from the Sanskrit writing on morals and statute Consider two separate words—niti and nyaya—both of which remain for equity in Classic Sanskrit . Among the primary employments of the term niti are authoritative restrictive and behavioral precision. In difference with Niti, the word nyaya remains for a far reaching idea of acknowledged equity. In that line of visualization, the part of such foundations, association and there regulations, huge as they may be, must be assessed in the more extensive, and more comprehensive perspective of nyaya which in unpreventably connected with the word that really emerges, not simply the associations or tenets we happen to have.

In context of prison administration, the prison managers shall implement human rights and ethical standards through transparency and community participation. It is a well- known fact

[45] COYLE ANDREW, A HUMAN RIGHTS APPROACH TO PRISON MANAGEMENT- HANDBOOK FOR PRISON STAFF, 13 (2d ed. 2002).

because of obscurity that covers the institution of prison, which makes it a fertile breeding ground for human rights violation. Baring a few institutions, prison conditions are appalling in the country. Most of these illnesses is not an outcome from any malfeasance of the staff of prison but not from the combined abandonment of the whole system[46]. Those who can deliver goods do not know how to do that. Those who know have no means to cure the ailments. There is deficiency of actual communication. Those who communicate lack perseverance. There is no deadlines, no evaluation, no linkage, no monitoring evaluation and therefore no outcome. A classic example of this is the Performance Audit Report of the management of prisons in Maharashtra published by the Comptroller and Accountant General[47] covering period 2003-08 revealed that there was short receipt of central funds due to non-utilization of funds by the State in time; provisions of financial codes were not adhered to in the maintenance of cash books; a large number of posts of security staff were lying vacant; modern security equipment's were not installed in the prisons; there was overcrowding in the prisons; a large number of works relating to improvement to prison infrastructure were not completed; inspections of the prisons was not carried out regularly by the IGP; the internal audit of 42 units was pending for periods ranging up to 35 years, and Model Prison Manual, 2003 equipped by the Government of India to the State Government for adoption in December, 2003, was not accepted as of August, 2008.

[46] Draft compendium for potential justice sector reforms, UNDP, 40 (2008).

[47] Performance Audit Report (Civil) Maharashtra State, 2007-08, www.cag.gov.in/html/cag-reports/Maharashtra/rep_2008/Civil_Chap.p.87.

3. Urgent need of prison reforms in India

For too long, our parliament, state legislatures and the guardians of law and order have been oblivious to what goes on in places like police stations, jails and detention centers where justice and punishment are presumably awarded.

What happened in the 200-year old Chennai Central Prison on November 17, 1999 should be an eye-opener to our operators of criminal justice administration. Arson, mayhem and rioting by the prisoners on that day rocked the prison with at least nine prisoners killed in police firing and a deputy warden burnt alive. More than 120 others including 20 policemen were injured. The rampage triggered by the death of an inmate, Vadivelu, on the way to the hospital, was an expression of the prisoners' anger and dissatisfaction with the abysmally poor conditions in the jail. Most of the jails of the country are congested and are noticeable by lack of privacy and sanitation, mistreatment, mismanagement and callous attitude of prison officials. The outrageously high number of under trials and those who languish in jails for years without any specific charges or evidence of their offence, add to the problem of prison management.

Some years ago, EPW had published a report on the conditions in the Calcutta Central Prison. There is, it said, a beautiful garden in front of the jail. But as you go inside, the prison appeared as a den of corruption, mismanagement, sex crimes, various gangs operating in collusion with prison officials and outside people, and the unquestioned power and authority of the 'dadas' among the inmates. Some of them were reportedly involved in drug trafficking, smuggling and other corrupt practices and had contact with released prisoners. In fact, the EPW said, the jail inside looked like a veritable miniature hell. Will the government give urgent attention to this much-neglected area of our criminal justice system and initiate basic prison reforms as advocated by the NHRC in the form of a Model Prison Act to be followed by all the states in the country? [48]

[48] C. N. Bhalerao, *Urgent Need for Prison Reforms*, Economic and Political Weekly, Vol. 35, 746, (Mar. 4-10, 2000)

Since the enactment of Indian Penal Code in the year 1860, many improvements have taken place, several new methods of crimes have come into existence and some styles of punishment have been under severe criticism.

The use of a century old law in a completely changed socio-political situation is totally unusual, and is off key with altogether transferred picture of human society. There have been various organizations and committees, which have been established for the main purpose of reforming the prisons, have communicated their perspectives on the significance of revising the act which is not that extensive. The reformed thought on jails have been rightfully abridged by decree that sentenced persons go there as sentence not for sentence.

There are essentially two classifications of detainees: (1) under- trial detainees, and (2) indicted detainees (other than them here are those confined as preventive measures, and those experiencing confinement for default of installment of fines). Those in the first classification can't be obliged to do any work while they stay detained in prison, yet numerically they are in more number than all the remaining classifications set up together. Statistics show that in most of the states the under- trial prisoners have overwhelming majority when compared with the number of condemned convicts e.g. under- trial prisoners in Bihar jails are 84.04% of the total inmates of the jail. In U.P the percentage is 85.17. In Madhya Pradesh, it is 64.22% and in most other states the percentage of under- trial prisoners is above 50.

3.1 Under trial prisoners and the Criminal Justice System

In the contemporary world, the application of prison administration has been under severe criticism and has also invited intense debates at different public forum. The situation has not been much different in India. It has been noticed in a portion of the latest judgments of the various Humble Courts of India that prisons are under sub-human conditions and are really suffering from the issues of congestion and overcrowding. Expanding number of under-trial detainees, predetermined number of jail staff and poor handling of detainees had also gained the attention of press and several other social organizations. It can be very well substantiated by the data taken on 30.6.2002 from National Human Rights Commission of India (NHRC):

- There is a total of 3, 04,893 prisoners in Indian jails out of which 2, 25,817 are under-trial prisoners.

- The sanctioned strength is 2, 32,412. It can be very well inferred that the prisons are overcrowded by 31.19%.
- Women population in jail accounts for 3.42% of the total population in the jails.
- There are 787 children below the age of 5-6 with their respective mothers in the jails[49]

A viable criminal equity framework definitely needs to guarantee that the blamed stand trial for the wrongdoings they are affirmed to have perpetrated. It is along these lines essential for the framework to hold them till the trial is over. Contingent upon the gravity of the offense, the police are enabled to keep an individual in their care for 24 hours, after which any more detainment must be authorized by the judiciary. The sympathy toward individual freedom made the framework, spare a couple of exemptions, such as an option of being released on bail.

The Code of Criminal Procedure, 1973 (CrPC) does not characterize the expression "bail" in spite of the fact that offenses are named bailable and non-bailable. The previous are less serious offenses and any individual blamed for conferring these is qualified for be discharged on bail when she/he is willing to furnish bail. At the point when blamed for committing non-bailable offenses, an individual must only be discharged on bail by the court in the event that it is fully satisfied the court that the individual shall go to the court to stand trial; won't mess with evidences or impact witnesses or block police examination in any way; shall not commit whatever other offense or frustrate the interest of equity [50]. In spite of sounding reasonable, the bail procurement and their usage are very prejudicial. As far back as in 1971, the Legal Aid Committee designated by the Government of Gujarat noted:

The system of bail causes victimization against the poor since the poor would not have the capacity to provide bail on record of their property while the wealthier persons generally would have the capacity to secure their independence on the grounds that they can afford to

[49] Jaimini Kumar Srivastava, *Human Rights News Letter*, NHRC Newsletter, June 2003

[50] *State of Rajasthan* v. *Balchand*, (1977) 4 SCC 308: 1977 SCC (Cri) 594, where it was held: (SCC p. 308, para 2) *2*. The essential principle might maybe be shortly put as bail, not prison, with the exception of where there are circumstances suggestive of escaping from equity or foiling the course of equity or making different inconveniences fit as a fiddle of rehashing offenses or scaring witnesses and so forth, by the solicitor….Also see, *Gudikanti Narasimhulu v. Public Prosecutor, HC of A.P*, (1978) 1 SCC 240.

furnish bail. This separation against poor emerges regardless of the fact that the amount of bail settled by the Magistrate is less, for a powerful number of individuals coming in court for criminal matters vast dominant part are poor to the point that they would think that it hard to furnish bail even in a little sum[51].

The malevolence of the bail framework is that either the poor who are blamed needs to fall back on touts and expert sureties for giving safeguard or endure pretrial detainment. Both these adverse situations bring incredible hardship to poor people. For one situation poor people who is blamed is conned of his cash by expert sureties and touts and some of the time he has even to bring undertake loans to make installment to them for securing his discharge; on the other hand he is denied of his freedom without trial and conviction and this prompts grave outcomes….[52]

The Supreme Court has held that the outlandish "savagery and costly detention" characteristic on account of "avoidable detainment makes refusal of unreasonable bail and an arrangement favoring discharge equally sensible"[53]. Indeed in number of matters, pre-trial detainment is avoidable and unnecessary. Undiscerning captures by police, unawareness of legitimate rights, delay in trial, unwillingness of the courts to grant bail and failure to give surety are a few reasons that have prompted the pointless detainment of extensive number of individuals. The Supreme Court has perceived this for a considerable length of time and has been concocting ways and intends to secure the arrival of under trial detainees on safeguard[54]. The Union Government has additionally understood the gravity of the circumstance and amended the provisions of CrPC to add to the liberal procurements of bail. Contending that the non-execution of the current legitimate provisions is a significant purpose behind the vast under trial populace held up in jails. It further desires the jail powers

[51] Justice P.N Bhagwati, Report of the Legal Aid Committee appointed by the Government of Gujarat, 185 (1971).
[52] Ibid.
[53] *Gudikanti Narasimhulu v. Public Prosecutor, HC of A.P*, (1978) 1 SCC 240.
[54] See for example, *State of Rajasthan v. Balchand* (1977) 4 SCC 308; *Gudikanti Narasimhulu v. Public Prosecutor, High Court of A.P*, (1978) 1 SCC 240 : 1978 SCC (Cri) 115; *Moti Ram* v. *State of M.P*, (1978) 4 SCC 47 : 1978 SCC (Cri) 485; *Hussainara Khatoon v. Home Secretary, State of Bihar*, (1980) 1 SCC 93 : 1980 SCC (Cri) 35; *Supreme Court Legal Aid Committee* v. *Union of India*, (1994) 6 SCC 731: 1994 SCC (Cri) 39; *Common Cause, A Registered Society v. Union of India*, (1996) 4 SCC 33 : 1996 SCC (Cri) 589.

and the visitors in jails to pay consideration on and additionally assume a positive part in improving the predicament of under trial detainees.

3.2 Explanations behind the continued detention of under trial detainees:

A. ***Indiscriminate arrests:*** The police has wide power to capture individuals and they capture individuals even when they help the police with the investigation and are not prone to sidestep trial. This outcomes in superfluous confinements. This issue has now been tended to in the CrPC (Amendment) Act, 2006. This Bill changes the predominant sections of arrest i.e. Sec 41 (furthermore inserts Section 41-A into CrPC). Sec 41 limits the aimless powers of arrest and detention of cops. An individual can't be captured only on the grounds that there is a complaint against her/him. It must be a "believable" information and the cop must "have motivation to accept" that "such individual has committed the said offence"[55]. In cases concerning a wrongdoing culpable with detainment up to a greatest of seven years, the police can arrest an individual just under certain predefined condition set down in the law. The officer must record her/his purposes behind capture in writing. In cases, where the expressed circumstances are not met, the cop might, as opposed to capturing an individual, issue to her/him a notification of appearance[56]. This obliges the denounced to show up before the cop when obliged and to cooperate with the police in the investigation of the crime.[57] This section, if judiciously executed, will lead to an extraordinary reduction in the count of people—accused for offences punishable up to 7 years—who would have otherwise end up being imprisoned during the period of investigation, inquiry or trial of their offence.

B. ***Inability to provide security:*** Numerous needy individuals are confined in penitentiaries for asserted association in bailable offenses basically in light of the fact that they are not able to outfit surety. This is a genuine concern in light of the fact that in such cases safeguard is a matter of right and individuals wind up spending long stretches in prison only because of the fact that they are poor. This circumstance

[55] Section 41 CrPC
[56] Section 41- A CrPC
[57] Ibid

prompted the amendment of Section 436 in 2005[58]. It obliges the court to set free a poor man on personal bond without asking for any surety[59]. The change in the section permits a destitute individual to execute a bond that she shall show up in the court and stand trial. The sec expresses that the court should consider any individual who is incapable in furnishing bail within the period of 7 days from the date of her/his arrest as a poor[60]. Thus, now a person indicted for a bailable offence can be imprisoned for a maximum period of 7 days only.

C. ***Delayed investigation:*** Numerous detainees are compelled to grieve in jails on the grounds that the police don't end up the investigation and filing the charge-sheet in set time. This is an extremely serious matter on the grounds that such individuals stay in detainment facilities with no notion of a police argument against them. Appropriate and speedy implementation of Section 167 CrPC can however obviate this difficulty. Sec. 167 CrPC sets out the most extreme period of time inside which the police investigation must be finished and a charge-sheet documented under the watchful eye of the court. This period is 90 days for offenses culpable with death, life detainment or detainment for a term of at the very least ten years, and 60 days for all different offenses. Where the investigation has not been finished inside the stipulated timeline, it is compulsory upon the Magistrate to discharge the blamed on bail, if he is prepared to furnish bail. This provision defends the prosecuted from affliction imprisonment because of the powerlessness of the investigating organization to finish the investigation.

D. ***Delayed trial:*** It is likewise perceived that numerous detainees are accused of a non-bailable offense which is not very intense and is triable by a Magistrate. They stay in penitentiaries for long stretch on account of the postponement in trial. Sec. 437(6) was enacted to prevent this and makes it obligatory for an individual to be discharged on bail where the trial has not finished up inside 60 days from the first date settled for taking evidence. The Magistrate may say no to such release, however when recording the reasons in writing is mandatory.

[58] The Code of Criminal Procedure (Amendment) Act, 2005 (Act 25 of 2005) w.e.f 23-6-2006.
[59] Proviso to Section 436 CrPC.
[60] Explanation to the proviso to Section 436 CrPC.

Many under trial detainees are kept in penitentiaries for long stretches, which now and again amplify past the most extreme time of detainment endorsed for the offense with which they are charged. The framework reacted to this circumstance by enacting Section 436-A which spells out the privilege of an under trial detainee to seek bail once she/he has served 50% of the most maximum term of sentence she/he would have served had she/he been condemned. On a bail application recorded under this section, the court might hear public prosecutor and may arrange the[61]:

1) Discharge of such individual on a personal bond with or without surety; or
2) Discharge of such individual on bail instead of personal bond[62]; or
3) Continued imprisonment of such individual[63].

This segment further banishes the confinement of an under trial detainee past the most extreme time of punishment endorsed for the offense that she/he is alleged to have committed [64]. Thus the effect of this section is to state the maximum time period an under trial can be imprisoned in any case.

3.3 Legislative and judicial response critically examined

Though the provisions for avoiding needless confinement of under trial detainees have been in reality for ages[65], they are not being effected, subsequently resulting in a huge number of under trial people within prisons. The explanations for not implementing the provisions are obvious. Maximum prisoners who are unable to make use of the provisions under Section 167 or 437(6) are unknown of their right to be free and also they are very poor who may not be able to furnish sureties.

The State Legal Services Authority, Jail Superintendent or the trial court are not mandated to inform the accused about these provisions. For example, almost three years have passed since Section 436-A was enacted, but it is yet to show the result that it was required to

[61] Commonwealth Human Rights Initiative, *"Prison Reforms",* http://www.humanrightsinitiative.org/index.php?option=com_content&view=article&id=105&Itemid=118

[62] Madhurima, *Under trial Prisoners and Criminal Justice System,* 28-29, http://www.humanrightsinitiative.org/new/2010/undertrial_prisoners_&_criminal_justice_system.pdf

[63] In cases pertaining to (2) and (3) the court is required to record reasons in writing.

[64] This provision is not applicable to persons who are accused of an offence which attracts death sentence as one of the punishments.

[65] Except changes introduced by the Code of Criminal Procedure (Amendment) Bill, 2006.

achieve[66]. At the time of enactment, news reports expressed that the initiation of this section would affect maximum of 50,000 under trial detainees crosswise over India [67]. But, till now there has been no considerable alteration in the number of under trial inmates.

Though some High Courts[68] have issued guidelines for the discharge of under trial prisoners under these provisions, results are yet to be seen. A judgment of the Patna High Court[69] wherein, the Court on its own motion introduced a Public Interest Litigation for the effectual and operative implementation of Section 436-A CrPC. The Court clarified that the Jail Superintendent, the Inspector General (Prisons) and the Legal Services Authorities ought to take enthusiasm for the execution of this section. In its mandates, the Court depended the Jail Superintendent with the essential obligation to educate the under trial detainees of the benefits of Section 436-A CrPC. The Inspector General (Prisons) was allocated the role of a "Monitor" for the whole procedure.

In a disposition with respect to Section 436 CrPC, the Bombay High Court in October 2008 took up the issue of under trial detainees in bailable cases who couldn't furnish bail. Amid the procedures, it was presented that in one of the penitentiaries inside Bombay itself, 1660 out of 2296 detainees were occupied in for bailable offences. The Court decided to undertake the task of monitoring the situation for a year and directed all Sessions Judges of the State to call for periodical records from the Magistrates and Jail Superintendents[70]. With regard to the implementation of Section 436, the Court stated that the State Government and jail authorities should not ignore the law and allow such persons to stay inside jails.

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[66] National Human Rights Commission, *Issues and Recommendations made at the workshop on Detention*, New Delhi, (October, 2008), http://nhrc.nic.in/dispArchive.asp?fno=1617.

[67] "*50,000 under trials could be freed under India's new criminal laws*", http://infochangeindia.org/200606245038.Human-Rights/News/50,000-undertrials-could-be-freed-under India-s-new-criminal-laws.html

[68] The High Court of Kerala in November 2006 (Section 436-A CrPC), the High Court of Gauhati in September 2008 (Sections 167, 436-A CrPC), the High Court of Bombay in October 2008 (Section 436 CrPC).

[69] *Dr. Karuna Kumar & Ors. Versus State of Bihar & Ors., CWJC No. 7363,* The Times of India, (June 26, 2006), http://patnahighcourt.bih.nic.in/CJJudgements/CWJC%207363%20OF%202006%20_16.10.2006_.pdf.

[70] *HC order to flush out prisoners unable to pay bail bonds*, (October 23, 2008), http://www.expressindia.com/latest-news/hc-order-to-flush-out-prisoners-unable-to-pay-bail-bonds/376861/

4. Supreme Court Rulings and Prison Administration

Expressively, the human rights personified in the United Nations Instruments[71] wholly in tune with the spirit behind the Fundamental Rights and Directive Principles of State Policy and in the Constitution of India. Human Rights of detainees have been deciphered inside the system of the key rights known as fundamental rights as set down in the Constitution of India. In the course of 30 years, the Supreme Court of India has repeated the Principle "detainment does not spell goodbye to basic rights"[72]. Therefore, the Court has amiably expressed that for a detainee the fundamental rights are enforceable authenticity, however constrained by the actuality of imprisonment. This viewpoint has more than once been accentuated by the Apex Court and has prompted the enunciation of three fundamental principles for the jail organization to folllow:

1. An individual in detention does not become a non- person;
1. An imprisoned entity is permitted to delight in all human rights within the constraints of confinement; and
2. A criminal is imprisoned as punishment and not for punishment i.e the prison personnel's has no authority to exaggerate his/her misery supplementary to imprisonment.

In recent years, the advocacy for the protection of human rights of persons in prison custody has stirred the Court to intervene in all such areas where the prison management is likely to exercise its power arbitrarily or indiscriminately.

Discarding its erstwhile "hands-off" doctrine towards prisons in favor of a judicial intervention when the rights of prisoners are found in jeopardy, the Supreme Court has

[71] Some of the United Nations Instruments are as follows:

i. Standard Minimum Rules for the Treatment of Prisoners (1955).
ii. Principles of Medial Ethics relevant to the Role of Health Personnel, particularly physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (1982).
iii. Convention against Torture (1984).
iv. Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment (1988).
v. Basic Principles for the Treatment of Prisoners (1990).
vi. United Nations Standard Minimum Rules for non-custodial measures (The Tokyo Rules) (1990).

[72] *Charles Sobraj v. Supt., Central Jail*, (1978) 4 SCC 104 : AIR 1978 SC 1514

issued a number of directives to the prison administration. Accordingly, the Court has held that prisoners must be allowed to study, workout, perform leisure activities for pastime, concentration and yoga activities, live in suitable environment as per weather conditions, absolute freedom from torturous activities like compulsory nudism, involuntary homosexuality and other intolerable alacrity, movement of detainees inside the grounds of jail subject to necessities of order and security, the base satisfaction or presentation toward oneself to procure abilities and strategies and all other essential rights as customized to the impediment of detainment.

As indicated by the Supreme Court, while physical ambushes are to be completely disposed of actually, also pushing the detainees into a singular cell, dissent and essential facilities, exchanging detainees to a removed jail, allotment of debasing work, appointing him/her to edgy or intense gang, and so forth must fulfill Articles 21, 11 and 19 of the Constitution. The youthful detainees must be divided and liberated from misuse by grown-ups. Any unforgiving disconnection from society for long or extensive cell detainment can be delivered just reliably with reasonable strategy. Subject to discipline and security, detainees must be given their entitlement to meet his fellowmen/individual ladies, meetings, visits and classified correspondence with legal counselors assigned by the competent authorities.

In a comprehensive judgment delivered in *Rama Murthy v. State of Karnataka*[73] on December, 1996, the Supreme Court observed that there were 9 basic difficulties that posed to the prison system in India and required prompt deliberation. These take account of:

i. Overcrowding,
ii. Delay in trial,
iii. Torture and ill-treatment,
iv. Neglect of health hygiene,
v. Insubstantial food and adequate clothing,
vi. Prison vices,
vii. Deficiency in communication,
viii. Streamlining of jail visits and

[73] (1997) 2 SCC 642: AIR 1997 SC 1739.

ix. Management of open air prisons.

While issuing show cause notices to central and State Governments on the relevant points, the Court has emphasized, inter alia the need to consider the enactment of a new prison law on the lines suggested by the National Human Rights Commission, and the formulation of a new Model Jail Manual for the country as whole. A reference has also been made to the recommendations of the All India Committee on Jail Reforms (1980-83) commonly known as Mulla Committee, in regard to the systems of remission, parole and pre-mature release, facilities for health and hygiene, food and clothing and streamlining of the jail visits.

The Supreme Court further observed that "A sound prison system is a critical necessity of our age". The Supreme Court of India laid weightage on the following cases and stated that *Charles Sobraj*[74] and *Sunil Batra*[75] should be deliberated as "beacon lights in so far as management of jails and rights of prisoners are concerned."

Broadly, the following rights of prisoners have been recognized under the various Indian laws governing prisons[76] , Supreme Court and High Court rulings as well as those recommended by Expert Committees. Each category lists the corresponding duties of the prison staff and other officers of the criminal justice system[77]:

- Rights of women prisoners[78]
- Right to healthy environment and timely medical services[79]

74 *Charles Sobraj v. Supt., Central Jail*, (1978) 4 SCC 104 : AIR 1978 SC 1514;

75 *Sunil Batra v. Delhi Admn.*, (1978) 4 SCC 494 : AIR 1978 SC 1675; *Sunil Batra (II) v. Delhi Admn.*, (1980) 3 SCC 488 : AIR 1980 SC 1579

76 These are Prisoners Act (1894), Prisons Act (1900), Identification of Prisoners Act (1920), Transfer of Prisoners Act (1950) Prisoners (Attendance in Courts) Act (1955), Civil Jails Act (1874), Borstal School Act, Habitual Offenders Act, and Mental Health Act, 1987. Other than these, the Jail Manuals of each State govern the day to day administration of prisons in the States.

77 SREEKUMAR. R, HANDBOOK FOR PRISON VISITORS, New Delhi: Commonwealth Human Rights Initiative, (2003).

78 *Sheela Barse v. State of Maharashtra*, (1983) 2 SCC 96: AIR 1983 SC 378; and also refer Section 24(3) of Prisons Act, 1894.]

79 Refer various sections of Prisons Act, 1894: such as Sections 24(3); 13, 26(3), 26(2), 29, 35(2), and 39-A. Also refer *Rama Murthy v. State of Karnataka*, (1997) 2 SCC 642 : AIR 1997 SC 1739; and NHRC letter DO No. 4/3/99-PRP and P dated 11-2-1999 addressed to all Chief Secretaries/Administrators of all States/UTs.

- Right to be lodged appropriately based on proper classification[80]
- Special right of young prisoners to be segregated from adult prisoners[81]
- Right to bail[82]
- Right to speedy trial[83]
- Right to free legal services[84]
- Right to have interviews with one's lawyer[85]
- Right against being detained for more than the period of sentence imposed by the Court[86]
- Right to protection against being forced into sexual activities[87]
- Right against arbitrary use of handcuffs and fetters[88]

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[80] Section 27(3), Prisons Act, 1894: and *Rakesh Kaushik v. B.L. Vig*., 1980 Supp SCC 183: AIR 1981 SC 1767.

[81] Section 27(3) Prisons Act, 1894. Also refers to the Right to Protection against Being Force into Sexual Activities.

[82] Section 436-A CrPC lays down the right of an under trial to apply for bail once he/she has served one-half of the maximum term of sentence he/she would have served had he/she been convicted. On a bail application filed under this section, the Court shall hear the Public Prosecutor and may order the:(i) release such person on a personal bond with or without surety; or(ii) release of such person on bail instead of personal bond; or(iii) continue detention of such person (in cases pertaining to (2) and (3). The Court is required to record reasons in writing. This section further prescribes the detention of an under trial beyond the maximum period of punishment prescribed for the offence he/she is alleged to have committed. (This provision is not applicable to persons who are accused of an offence which attracts death sentence as are of the punishment). This is noteworthy to maintain that Section 436-A was inserted in the Criminal Procedure Code by the Code of Criminal Procedure (Amendment) 2005 vide Act 25-9-2005, w.e.f. 23-6-2006.Please also refer Supreme Court rulings in *Motiram v. State of M.P*., (1978) 4 SCC 47 : AIR 1978 SC 1594; *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 93 : AIR 1979 SC 1360; *Supreme Court Legal Aid Committee v. Union of India*, (1994) 6 SCC 731; *Common cause v. Union of India*, (1996) 4 SCC 33.

[83] *Hussainara Khatoon (1) v. State of Bihar*, (1980) 1 SCC 93: AIR 1979 SC 1360. This aside, non-official visitors appointed under Jail Manual Rules should follow up with the officials concerned.

[84] *M.H. Hoskot v. State of Maharashtra*, (1978) 3 SCC 544: AIR 1978 SC 1548. Also refer Section 383 CrPC *Sunil Batra (II) v. Delhi Administration*, (1980) 3 SCC 488 para 79(1) of p. 522.

[85] Section 40 of Prisons Act, 1894. Also refer *Sunil Batra (II) v. Delhi Admn*., (1980) 3 SCC 488 para 78 (3) of p. 521.

[86] *Veena Sethi v. State of Bihar*, (1982) 2 SCC 583: AIR 1983 SC 339. Also refer Section 12(2) of Prisons Act, 1894.

[87] *Munna v. State of U.P*., (1982) 1 SCC 545: AIR 1982 SC 806. Also refer No escape: Male rape in US prisons, Human Rights Watch, New York, 2001.

[88] *Prem Shankar Shukla v.Delhi Admn*, (1980) 3 SCC 526: AIR 1980 SC 1535. Also refer *Sunil Gupta v. State of M.P*., (1990) 3 SCC 119 and *Citizens for Democracy v. State of Assam*, (1995) 3 SCC 743: AIR 1996 SC 2193.

- Right against torture, cruel and degrading punishment[89]
- Right not be punished with solitary confinement for a prison offence[90]
- Right to air grievances to effective remedy[91]
- Right to evoke the writ Habeas Corpus against prison authorities for excesses[92]
- Right to be compensated for violation of human rights[93]
- Right against arbitrary prison punishment[94]
- Right to reformative programs[95]
- Right to information about prisons rules[96]
- Right to visit and access by family members of prisoners[97]
- Right to write letters to family and friends and to receive letters, magazines, etc.[98]
- Right in the context of enjoyment of prisoners and prison wages[99]

Besides, Supreme Court and High Court rulings on prisoners' rights, the problems of prison administration in India have been examined by expert bodies since independence. Their reports contain extensive recommendations for streamlining prison management. As early as 1951, Dr. W.C. Reckless was invited by the Government of India under the UN Technical Assistance Program to prepare a plan for the reorganization of prison system on modern lines. The All India Jail Manual Committee, 1957-59, formulated a model prison manual which was circulated among the State Governments as a guide for revising their respective prison manuals. Subsequently, the All India Committee on Jail Reforms 1980-83 (commonly

[89] *Francis Coralie Mullinv. Union Territory of Delhi*, (1981) 1 SCC 608 : AIR 1981 SC 746

[90] *Sunil Batra v. Delhi Admn.*, (1978) 4 SCC 494 : AIR 1978 SC 1675

[91] *Sunil Batra (II) v. Delhi Admn.* (1980) 3 SCC 488 para 78(4) at p. 521.
[92] *Sunil Batra (II) v. Delhi Admn*. (1980) 3 SCC 488 at page 504.
[93] *Rudul Shah v. State of Bihar,* (1983) 4 SCC 141: AIR 1983 SC 1086, *Sebastian M. Hongray v.Union of India*, (1984) 3 SCC 82: AIR 1984 SC 1026 and *D.K. Basu v. State of W.B.*, (1997) 1 SCC 416: AIR 1997 SC 614.

[94] Section 50 of Prisons Act of 1894.
[95] Ibid
[96] *Sunil Batra (II) v. Delhi Admn.*, (1980) 3 SCC 488 para 79 (1) of p. 522.
[97] *Sunil Batra (II) v.Delhi Admn*, (1980) 3 SCC 488.

[98] Ibid.
[99] Various Sections 34 and 35 of Prisons Act, 1894 and also *State of Gujarat v. High Court of Gujarat*, (1998) 7 SCC 392.

known as Mulla Committee) presented detailed blueprint for the restructuring of prison administration in a progressive manner. Among its major recommendations, this Committee proposed a draft of a national policy and an outline of consolidated law on prisons in the country. However, the performance has yet to match the intent, as a result of which the cleavage between the objectives and the achievements has increased over the years, especially in the wake of a heightened advocacy for the protection of human rights in prisons and the judicial activism to see it happening.[100]

Besides this, during last 25 years various committees Kapoor Committee (1986),[101] National Expert Committee on Women Prisoners (1987)[102], All India Model Prison Manual Committee (2000),[103] Parliamentary Committee on Empowerment of Women 2001-02[104], All India Committee on Reforms in Criminal Justice (2003)[105] (commonly known as Malimath Committee), All India Committee on National Draft Policy on Prison Reforms and Corrections (2007)[106], and Committee on Draft Policy on Criminal Justice Reforms[107] headed by Dr. Madhav Menon were constituted by the Government of India to improve human rights situation to the extent as are conducive to the reformation and rehabilitation of prisoners in the changing scenario.

Besides Supreme Court and High Court rulings and recommendations made by various committees on prisons reforms, the National Human Rights Commission[108] has also issued

[100] Singh, Hira, *Status of Human Rights in Prisons*, ACPF Sixth World Conference, New Delhi (December, 1999)

[101] A Group of Officers on Prison Administration headed by Shri R.K. Kapoor (1986) popularly known as Kapoor Committee, was constituted to examine and review various aspects such as prison administration and prison management, especially in the context of security and discipline in prisons and suggest measures for their improvement

[102] National Expert Committee on Women Prisoners of 1987 chaired by Justice V.R. Krishna Iyer.

[103] Bureau of Police Research and Development (BPR and D), Ministry of Home Affairs, New Delhi

[104] Third Report of the Parliamentary Committee on Empowerment on "Women in Detention" presented to the Parliament on 24-8-2001.

[105] Committee on Reforms of Criminal Justice System, Government of India, Ministry of Home Affairs, New Delhi, (2003).

[106] Constituted by Bureau of Police Research and Development, Ministry of Home Affairs, Government of India, New Delhi.

[107] Constituted by Ministry of Home Affairs, 2007.

[108] One of the important functions of the National Human Rights Commission as provided under Section 12(*c*) of the Protection of Human Rights Act, 1993 (as amended) by the Protection of Human Rights (Amendment) Act, 2006—No. 43 of 2006) is to "visit notwithstanding anything contained in any other law for the time being

guidelines and written letters to various authorities including the Judiciary, the prison departments and the State Governments to ensure that the right of prisoners are respected. The Commission has also recommended the payment of interim compensation to the prisoners/next of kin in violation of their human rights during incarceration period.

in force, any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations there one to the Government". The Commission during the last 16 years undertook visits to a large number of prisons all over the country, enquired into numerous complaints regarding violation of human rights from prisoners and highlighted the need for prison reform in its orders and reports. The Commission time and again reiterated that there is an urgent need for systematic reforms in prisons. (For details please refer proceeding of workshop on detention held on October 11-12-2008, at New Delhi, published by NHRC, New Delhi, 2008. Also refer Annual Reports and a recent publication "Human Rights Best Practices Relating to Criminal Justice in a Nutshell". Besides above, for details refer "Rights Behind Bars" published by Commonwealth Human Rights Initiative, New Delhi, 2009, www.humanrightsinitiative.org and Annual reports of National Human Rights Commission, New Delhi, www.nhrc.nic.in

5. Upholding the specific rights of prisoners

The Judicial activism in jail related matters had a constrained effect, subsequent to the Court could by and large give help in individual cases, the general administration of penitentiaries stayed more or the less unaffected. This is not amazing in view of the jail administration. The jail administration is most impervious to change and view outside intercessions as superfluous impedance. Mulla Committee (1983 p. 279) remarked on the misgivings:

"*The humanistic approach in the treatment of offenders being emphasized by the courts through their judgment seems to have generated an unfounded apprehension of security and personal risk among them. Staff has taken all such healthy directions in the wrong perspective and has interpreted them as leading to unbridled laxity in prison discipline.*"

Besides higher judiciary reforms initiated by various Commissions and Civil Society Organizations during last 15 year or so cannot show pouring effect on the basic level. The jail administration don't like bleeding heart liberal approach of the judiciary and Human Rights Commission because it has opened the floodgate of prison litigations many of which, they say, are based on false and frivolous ground. To explain their view point, they say that offenders charged for organized and political crime, etc. often forward false and malicious complaints against prison staff in order to brow-beat and demoralize them. Some prisoners, they say, are interested in lax administration so that they may violate the rules of jail control, concentrate benefits, get a prevailing position on other prisoners, carry booty and orchestrate continuous visits to outside healing centers. To accomplish these targets they need to cripple the jail staff by making false, unmerited and noxious affirmations.

Despite the impassive or antagonistic demeanor of most of the jail authorities with respect to court made jail changes, there are few amongst them who see a silver lining in the legal and semi legal intercessions in jail administration.

Judicial intervention in specific cases has been invited by the dynamic jail administrators who have since quite a while ago perceived the requirement for change, yet have did not have the valor to push the legislature and different authorities to do their obligation. Judicial activism, they contend, can help fulfill the changes that numerous jail authorities are holding up to perform. Their more vital contention is that under judicial risk of court activity the

lawmakers and top level jail administration may quicken proper therapeutic measures for jail changes.

Scholastics in Criminology and Correctional Administration, social workforce and human rights activists take part in the field have broadly invited lobbyist mediation of the judiciary in the dinky business of jail administration. They feel that the judicial mediation has at any rate possessed the capacity to make the likelihood and appearance of detainees' rights. They see three net increases[109].

i. The alteration of convicts from non-persons to a jural body;
ii. Prison administration are uncertainly starting to accept that unqualified powers over the lives of offenders is threatened; and
iii. Jail litigations have required a small opening in a system surely in need of freshening.

There is a far reaching mindfulness among the edified circles that regardless of court requested changes and the landmark work done by different expert committees at the national and State levels, jail organization has been ignored for long. The decisions of the Apex Court have expanded the gap between the treasured standards and real practices. Administered by the age-old laws, out mode structure and outdated systems and contraptions, the jail organization end up not able to adapt to the changed and changing requests of the general public experiencing significant change. It is along these lines, high time that a real push is given towards through rebuilding of the Indian jail framework.

5.1 Specific Areas of Human Rights in Prisons

Of different parts of jail management, state in which prisoners are living in jails have been subjected to serious feedback by courts, expert committees., advocacy gatherings and other intrigued by the upkeep of minimum measures of human self- respect in detainment facilities. The feedback has been leveled by virtue of inadequate settlement, aimless treatment of diverse classes of guilty offenders,, unhygienic conditions, sub-standard food,

[109] LNJN National Institute of Criminology and Forensic Science, *Special course on Human Rights in Prison Administration,* Ministry of Home Affairs, Government of India, New Delhi.

lacking water supply, women detainees and abuse with the poor detainees (uniquely detainees having a place SC/ST classifications), and so forth.

In compliance with the court rulings and recommendations of expert committees and the National Human Rights Commission, the Government of India released a fund to the tune of Rs 125.24 crore during 1987-2000. However, conditions of prisoners did not improve as per expectations nor was there any significant change in the general conditions of prisons or in the attitude of jail authorities.

Due to rareness of capital and resources with the Governments of various states and keeping in view the dreadful circumstances of the prisons, the Kapoor Committee (1986)[110] particularly, accentuated the need to give central help to the States under the plan called the "Modernization of Prisons" for enhancing the states of the penitentiaries, detainees and detainment facilities staff.

Considering the horrifying states of the penitentiaries in the States, lack of the resources with the State Governments and the critical requirement for enhancing the states of jails, detainees and prison staff, a much larger investment in this sector was required.[111] Based on the assessment conducted by the Bureau of Police Research and Development (BPR&D), the Central Government in 2002-03 launched a non-plan scheme of Modernization of Prison Administration with a total outlay of Rs.1800 crore. The scheme involved the contribution from Central as well as the State Governments on the cost sharing basis of 75:25 and was proposed to be implemented over a period of five years for 2002-03 to 2006-07. Under this scheme, financial assistance was given to State Governments for undertaking the following items of work:

i. Construction of additional jails to reduce overcrowding;
ii. Repair and renovation of existing jails;
iii. Improvement in sanitation and water supply; and

[110] A Group of Officers on Prison Administrative headed by Shri R.K. Kapoor, Ministry of Home Affairs, Government of India (1986).

[111] "Prisons" being a State subject as per Entry 4 of List II (State List) to the Seventh Schedule of the Constitution the upkeep of prisons is within the jurisdiction of the State Governments.

iv. Living accommodation for prison staff. While launching this scheme, Ministry of Home Affairs envisaged that "The scheme would definitely help in improving the physical condition in prison as creation of additional accommodation would help in reducing overcrowding. Repairs, renovation and water and sanitation works will help in improving the living condition of prisoners, the construction of staff quarters for prison personnel will boost the morale of the prison staff which will thereby help them in performing their duty more efficiently.[112]

More recently, the implementation of this scheme was assessed by the Department-Related Parliamentary Standing Committee on Home Affairs in 2009.[113] The Committee noted that some States like Chhattisgarh, Haryana, Gujarat, Jammu and Kashmir, Manipur, Tamil Nadu and Andhra Pradesh have performed better while the States of Bihar, Goa, Himachal Pradesh, Jharkhand and Kerala have performed badly. Besides, evaluating this scheme, the Committee has made various progressive recommendations for augmenting prison infrastructure suitable for realization of human rights in prison setting.

5.1.1 Right to life

Right to life being a fundamental right guaranteed under the Constitution of India 1950 is also a right that is enjoyed by prisoners. Therefore, it is the duty of the state to ensure that the prisoner is provided with the basic niceties of life. The right to life that rests with the prisoners also includes the right to meet relatives and friends. The state also has the duty to see that the health of the prisoner does not suffer.

The Constitution of India did not guarantee to the persons in police custody effective safeguards that were regulated by the discretion of the police. The Constitution contained no specific rights against torment, harsh, insensitive behavior and degrading penalty. In a country so familiar with police raj, the Court evolved a judicial process more appropriate in a police State than in a welfare State. The police assumed that the criminal process attached

[112] Ministry of Home Affairs, *126th Parliamentary Standing Committee Report on the Demands for Grants* (2007-08), http//rajyasabha.nic.in.

[113] Rajya Sabha Secretariat, New Delhi, *142 Report on "Implementation of Central Scheme of Modernization of Prison Administration*", (Feburary 26, 2009) , http://rajyasabha.nic.in

greater importance to the end than the means, to order than to law.[114] The Supreme Court of India in the fifties glorified public order at the expense of individual rights,[115] and declined to examine the righteousness of the procedure and whether it accorded with principles of natural justice. Almost three decades later in *Maneka Gandhi v. Union of India*,[116] the Court rejected its earlier interpretation and held that, the procedure contemplated under Article 21 of the Constitution is a right, just and fair procedure, and not an arbitrary or oppressive procedure. Many statutes have since been tested on this touchstone. In the famous case of *Kartar Singh v. State of Punjab*, the validity of several sections of Terrorists and Disruptive Activities Act, 1985 was tested in the light of Article 21 of the Constitution. The Court reaffirmed that Article 21 of the Constitution asserts a basic human right to life and liberty. It is the · State which is prevented from taking away this right except in accordance with the procedure established by the law. In short right to life and personal liberty is the most valuable, inviolable, absolute and vital of all the fundamental rights of citizen.[117]

Safeguards against personal liberty in Cr PC: The Code of Criminal Procedure, 1973 provides for the following procedural safeguards against infringement of personal liberty:

i. Right to be informed of the grounds of Arrest (Sections 50, section 55 and section 75).
ii. Right not to be subjected to unnecessary restraining (Section 49).
iii. Right against arbitrary or illegal detention (Sections 56, section 57 and section 76).
iv. Right to be released on bail, if, arrested (Sections 436, 43, 50(2) and 167).
v. Right to obtain a receipt when property is seized (Section 100(6) and (7).
vi. Right not to be detained for more than 24 hours after arrest without judicial scrutiny (Section 57).
vii. Right to medical examination at his behest to disprove the commission of an offence by him or to establish commission of an offence against his body by others (Section 54).

[114] MOHAMMED GHOUSE, STATE LAWLESSNESS OF CONSTITUTION IN COMPARATIVE CONSTITUTION, 253 (Mahendra Singh Eds. 1989)
[115] *A. K Gopalan v. State of Madras*, AIR 1950 SC 27: 1950 (51) Cri LJ 1383
[116] AIR 1978 SC 597
[117] *M.C. Mehta v. Union of India*, AIR 1986 SC 1086

viii. Right to a fair and speedy investigation (Section 309).

ix. Right to legal aid at the expense of the State in certain cases (Section 304).

Article 32 and Article 226 of the Indian Constitution empower the Supreme Court and High Courts, respectively, to act as sentinels of individual liberty and freedoms. A Human Rights Commission was also established in 1993 for monitoring and investigation of human rights violation in India and taking prompt remedial action.[118]

5.1.2 Speedy Trial

Right to speedy trial is inherently contained in Article 21 of the Constitution. But long pretrial incarceration of an accused person in India is one of the perilous characteristic of our criminal justice structure. In this background, the Supreme Court of India in the case of *Sunil Batra v. Union of India* and *Hussainaara Khatoon v. State of Bihar* perceived that the speedy trial is an essential and crucial part of the basic right to life and liberty enshrined in Article 21 of the Constitution of India. These cases have occasioned in law taking on a new uniqueness as a tool of justice retorting to the requirements of the public as steps towards dropping of the barriers between the common man and court[119]. In *Hussainara Khatoon case*, a writ petition was files before the Supreme Court disclosed that a large number of men and women, including children, were behind bars for years awaiting trial in court of law.

They had languished in jail for a period longer than they would have been detained, had they been tried for offences committed by them. In this regard the court observed that, it is a crying shame upon our adjudicatory system which keeps men in jail for years on end without trial[120].

The apex court laid down liberal rules for bail and bond, it insisted that a developed jurisprudence of bail is integral to a socially sensitized judicial process[121]. In *Santosh De v.*

[118] 1996 Cri LJ (Journal Section)125

[119] RANI DHAVAN SHANKARDASS, PUNISHMENT AND THE PRISON: INDIA AND INTERNATIONAL PERSPECTIVES, 197(2000).

[120] *Kadra Pahadiya v. State of Bihar*, AIR 1981 SC 939

[121] *Babu Singh v. Uttar Pradesh* AIR 1978 SC 527-529

Archana Guha[122] prosecution was pending for 14 years and not a single witness was examined. The delay was entirely on account of default by prosecution. The prosecution failed to explain the delay. The court held that the right of the accused to speedy trial has been infringed and proceedings were quashed on this ground.

On top of all, there is the undoubted right of rapid trial of under-trial detainees, as held in a catena of matters of the Apex Court, reference to which not viewed as obligatory. Reference might just be made of the extra leaves supplementary to this right. These include directing for release on bail where trial is waiting. The chief affirmation in such manner is by a two-Judge Bench in *Supreme Court Legal Aid Committee Representing Under trial Prisoners v. Union of India*[123]. Wherein the seat was concerned with the detainment of substantial number of persons in Jail regarding different offenses under Narcotic Drugs and Psychotropic Substances Act, 1986. The Court, in the wake of noticing the stringent provisions identifying to bail as inserted in that Act, coordinated for release of those under trial detainees who were grieving in prison for a period surpassing a large portion of the penalty given in the Act. This judgment was cited with appreciation by another two-Judge seat *Shaheen Welfare Association v. Union of lndia*,[124] in which provisions of TADA were borne at the top of the priority list and the Bench felt that a down to business and simply approach was obliged to be embraced to discharge TADA detenus on bail due to delay in finishes of trials. The Bench grouped these under-trials in four classes and passed distinctive requests identifying with their discharge on bail[125].

5.1.3 Solitary Confinement, bar fetter and Handcuffing

Maintenance of security and discipline in prison is very important for the smooth running of prison administration, hence, the section 30(2) of the Prison Act, 1894 and the Model Prison Manual has prescribed specific provisions about the scope and power of the prison officers for this purpose. These modes of preventing indiscipline like solitary confinement, bar

[122] AIR 1994 SC 1229

[123] (1994) 6 SCC 731; 1994 SCW 5115

[124] 1996 AIR SCW 1161; (1996) 2SCC 616 quoted in AIR 1997 SC 1739 at 1741; 1997 Cri LJ 1508

[125] *Rama Murthy v. State of Karnataka,* AIR 1997 SC 1739 at 1741: 1997 Cri LJ 1508: 1997 (1) SCJ 172: 1997 (2) SCC 642: 1997 SCC (Cri) 386

fetters and handcuffing etc., has provoke much debate[126] out of sight of developing affirmation of human rights infringement. In *Sunil Batra v. Delhi Administration* the Supreme Court of India set down elaborate rules and guidelines in regards to the act of isolation in Indian Jails. Terming isolation of amazingly pitiless and dehumanizing, the court said that, "there is no motivation to allow the same discipline to be carried into the jail framework expect in compelling instance of need".

The court likewise held that isolation will sum to imposition of second penalty for the same offense and in this way the jail powers can't force jail punishments without legal examination. In the same time, in the case of *Charles Sobhraj vs Supdt. Central jail and Prem Shankar Shukla vs Delhi Administration*[127] the court has limited the utilization of binding and shackles for the safe custody of detainees in prison. The court watched that, the treatment of individuals which irritates human self-esteem, enforces unavoidable sufferings and decreases man to an animal would certainly be arbitrary. Hence, section 36 regarding usage of fetters, of Prisons act, 1894 is not justifiable. On the concern of hand cuffing the court labelled the practice as inhuman and extremely harsh, to be engaged in only in extraordinary situations and accord with the judicial recommendations and guidelines[128]. Restriction of personal liberty is the basic deprivation faced by the persons whether they are in police custody or in the judicial custody either as accused (under trials) or as convicts. The privilege against bar shackles is the privilege of each person whose individual freedom is denied. The Court while commenting on bar shackles[129] binding of the under trial detainees by way of hand cuffing them while taking them from the penitentiary to Court by the escorts held that "protection against breaking the prison does not necessarily require handcuffing. There are different techniques where by an escort can keep safe authority of a detenue without nobility and brutality implied in cuffs or other iron contraptions"[130] and that this was violative of Art 14, 21 and 19 of the Constitution.

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[126] Section 73, 74 of IPC and Section 30 and 46 of Prisons Act 1894 recognizes solitary confinement. But the Law Commission of India in its 42nd repost favored the abolition of the same.

[127] SCC 1978. 104, Criminal law Journal, 930 (1080).

[128] Also see Snil Batra AIR (1978) and *Kahtri v. State of Bihar,* AIR 1981 (SC) 1675

[129] Charles Shobrai v. Delhi Administration.

[130] *Prem Shankar Shukla* v. *Delhi administration,* (1980) 3 SCR 855 also MP Dwivedi (1996) 4 SCC 152

5.1.4 Right to Live in Hygienic Environment:

In the case of *M.C. Mehta u Union of India*,[131] Supreme Court held that a· sanitized atmosphere was an integral facade of Right to healthy life and it would not be possible to live with human dignity enshrined in article 21 of Indian Constitution without a civilized and healthy environment. Almost all the State Governments have started working on this aspect, with the help of funding from BPR&D (Bureau of Police Research and Development), under the Ministry Of Home Affairs, where 7.5% of funds are provided to the State Governments under the prison modernization scheme.

For taking this right to the horizon of reality, the Model Ward in Central Jail No. 1, Tihar, New Delhi, provides the prisoners with newly built cells and barracks for lodging newly admitted offenders. The rooms are well ventilated with provision of exhaust fans, flooring with glazed tiles of bright colours. For providing the hygienic public utilities they have provided toilets fitted with the flush system.

Tihar also provides lush green gardens with bright colourful flowers that are nurtured and maintained by inmates, with the help of Prison Authorities. There are many water features, like ponds and tanks of special designs. Shrines of Lord Buddha, Mahatma Gandhi and many freedom fighters also grace Tihar prisons. Flocks of ducks and geese inside the jails present a blissful ambience.

For providing these hygienic facilities to end users i.e. prisoners, Tihar jail has recently received the ISO- 9001:2000 certification from Ministry of Communication and Information Technology.[132]

5.1.5 Right to Health and Recreational Facilities

Every person has the right to rest and leisure including reasonable limitation of working hours and periodic holidays with play[133]. Universal Declaration of Human Rights, 1948[134]

[131] (1999)6 SCC 9

[132] Delhi Prisons, Annual Review, 11(2009)

[133] Article 24 of the Universal Declaration of Human Rights, 1948 (UDHR)

[134] Article 25, UDHR

provides that, everyone has the right to an adequate standard of living and medical help if they are ill.

For purifying and restraining the brain, Yoga and meditation classes were begun in a huge manner with the assistance of different voluntary associations. In the year 1994, Tihar Jail made history by arranging a Vipassana Meditation camp for more than one thousand detainees. From that point forward a perpetual Vipassana Centre has been opened in Tihar Jail No.4, where courses of ten days, 20 days and one month duration are organized regularly. Special light diet is also provided to the participants for the cleansing of body and soul. In the year 1998, Sh. Satya Narain Goenka, educator of Vipassana, introduced "Pagodas" or Shunyagaar reflection cells in the center. Staff individuals are additionally supported, to go to yoga courses. Different yoga groups like Brahma Kumari Vishwa Vishvavidyalaya, Divya Jyoti Jagriti Sansthan, Sahaj Yoga Kendra, Art of living, Prison Fellowship India and many other groups have also opened their branches in Jails for imparting moral education, counselling and techniques of meditation to the prisoners. Further, during the morning hours the prisoners perform yogic exercises under the guidance of Yog Swami Ramdev through TV. All these activities have helped many prisoners in changing the whole approach to life.

There is a 150 bedded hospital and 120 bedded De-addiction Centre in Central Jail No. 3, in Tihar Prison Complex where 107 Doctors and 150 paramedical staff is deputed for prisoner health care. Complete Dental care units are available in the 3 different jails along with the Central Jail Hospital. Medical Investigation facility for Biochemistry, Pathology, X-ray and ECG is also available in all Jails. Various specialists like Medicine, Ophthalmology, Orthopedics, Chest and Tuberculosis, Skin, Psychiatry and Pathology are also available in Central Jail Hospital.

In the Tihar Jail about to 6 to 8% of the prison population comprises drug abusers who indulge in high risk behavior for transmission and spread of HIV etc. Tihar in collaboration with UNODC and AIIMS has launched Oral Substitution Therapy (OST) for the first time in any prison setting in South Asia to effectively treat drug users and particularly, as part of the program, to prevent spreading HIV amongst injected drug users. The OST treatment has

been rolled out under the Project titled RAS/ H71, for the Prevention of Spread of HIV amongst Vulnerable Groups in South Asia.

In year 2008 Delhi Prisons recorded the lowest mortality rate of inmates that is, 13, because of extreme care shown to sick and old combined with better medicinal infrastructure. This is the lowest mortality rate in the last 16 years considering the prisoner population in the given year.

An ISO 9001:2000 certification was awarded to Tihar prisons for providing efficient and effective Therapeutic Treatment to Drug addict Prisoners in Drug De-addiction Centre commissioned in Central Jail Hospital.

5.1.6 Right to Education

Knowledge is power and education is one of the ways to gather this knowledge. Supreme Court in the case of *Mohini Jain v State of Karnataka*[135], held that right to life under Article 21 and the dignity of an individual cannot be assured unless it was accompanied by the right to education. The court therefore stated that "the right to education flows straight from right to life". Right to gain education, being a fundamental right under Article 21, has held that a person detained in custody must be provided with the facility to appear in examination.[136] This right as assured by the Supreme Court has been followed in full spirit by the government, through its various policies, in various prison institutions. Almost all the state governments have ensured the right to education in their jails with the help of funding from central government, NGO's and universities.

Tihar Jails are the pioneer in starting study centres of Indira Gandhi National Open University (IGNOU), National Institute of Open School (NIOS) and technical course in collaboration with the Directorate or Technical Education, Government of NCT of Delhi. The imparting and gaining education both formal and informal is an important component of prisoner's daily routine. The Department of Adult Education which is a part of the Service of Human Resource Development (HRD) is offering training facilities to literate detainees to empower them to educate less taught

[135] AIR 1992 SC 1858

[136] *Mullipudy Mukunda Rao v. SI Police,* AIR 2004 NOC 366 (A.P)

detainees. In Tihar Jail uncommon consideration is given to the unskilled prisoner so that he may have the capacity to at least read and write his name inside a week's chance. Advance literacy avenues are accessible to detainees so that on the off chance if they need to seek higher studies, they may do as such through IGNOU and so on.

Uncommon consideration is given to prisoners appearing for various competitive examinations. Examination and course fee is borne by the prison administration in the case of poor prisoners. During the year 2007 - 2008 four prisoners were undergoing M.B.A courses whereas seventy six others were appearing for graduation, post-graduation, human rights, tourism, environment studies and hundred were appearing for secondary and senior secondary course from NIOS.

Many other courses are also offered in Tihar Jail like the Bachelor of Arts/ Commerce, preparatory programs, Diploma and certificate courses in various disciplines, masters as well as post graduate diploma in long distance education. Professional classes in typing various languages commonly English/ Hindi and Commercial Arts are organized by the Directorate of Training & Technical Education and certificates are given out to students who successfully complete the course. For dissemination of the Gandhian viewpoint, a Gandhi Centre has been well established by Gandhi Smriti, Government of India at IGNOU ward and Darshan Samiti. More than 500 books on Gandhian values and beliefs were added to the resources of the library. Few of the prisoners who got linked to the route of 'Reformation through Education' have been successfully rehabilitated.

Other than Tihar Prisons, trends are positive in others states of country too, in Central Jail, Patiala, one of the life time convicts, who is residing in jail for last eight years has recently submitted the Ph.D. thesis in Punjabi University, Patiala. Two prisoners of Mumbai prisons have also submitted their Ph.D.s and are looking forward to Post-Doctoral research. One of the, prisoners is going to reach in the Guinness book of World records for completing the maximum number of degrees i.e. seven, during his imprisonment.[137]

In 2006, 34730 prisoners in Indian Jails received Elementary education, 61578

[137] Prison Statistics, Maharashtra, 8, (2004- 2005)

received Adult educations, 1844 Higher Education and 2807 Computer Course education.[138]

5.1.7 Right against Torture

Atrocities and brutality on prisoners, under trails and accused persons has been a subject matter of concern of Apex court in various cases.[139] In *Kishore Singh v. State of Rajasthan,* the Supreme Court of India (SC) has stated that, the Third degree technique being used by the police in custody or prison is violative of Article 21 of the Constitution.[140] Custodial death and violence is one of the worst crimes in a civilized society governed by rule of law. *D.K Basu v. State of West Bengal* turned out to be a milestone judgment that solidified the fundamental rights under criminal law particularly those of the persons under the state of curtailed independence, for example, captured persons, prisoners, under trials and so forth, and set down principles of arrest. The Court wile holding torment, assault, passing, in police authority/ lockup to be violative of the fundamental human rights likewise held that torment includes physical enduring as well as mental anguish is the bare infringement of human pride and ruinous of human identity. While laying the fundamental principles court held that investigation however crucial, must be on specific principles. Third degree techniques are absolutely impermissible. In another case Supreme Court recognized the principle that a person do not become non-person after conviction and sentenced to jail. Hence, even after imprisonment he is still entitled for Fundamental rights in order to maintain his dignity[141]. In *Bachan Singh v. State of Punjab*[142], the court observed that the inhuman and cruel punishment infringes the fundamental human rights guaranteed under Part III of the Constitution. Hence, cruel punishment ought not to be imposed expect in the gravest of cases and that also subject to judicial scrutiny[143]. The court has recognized the

[138] AIR 1997 SC 1548

[139] *Raghubir Smgh v. State of Harayana,* AIR 1980 SC 1087 8 1088. *Kartar Singh v. State of Punjab,* 1994 SCC 56, *Nilabati Behera v. State of Orrisa,* AIR 1993 SC.1960

[140] AIR 1981, SC 625

[141] *T.V. Vathees waran vs State of T.N*., AIR 1983, SC, 361. *Prem Shanker v. Delhi Administration* AIR 1980, SC 1535

[142] AIR 1980 SC 898

[143] *Trivenal Ben v. State of Gujarat,* AIR 1989 SC 142. *Francis Coralie v. Union Territory of Delhi* AIR 1981 SC 746

right to fair treatment and dignity of the prisoners as a tool against the alleged acts of torture by police and jail authority.

The Universal Declaration of Human Rights (UDHR) 1948 proclaims that everyone has the right to life, liberty and the security of person and that no one will be subjected to painful, forbidding, coldhearted or debasing treatment.

The International Covenant on Civil and Political Rights (ICCPR) 1966 asserts that every human being has the inherent right to life and no one will be arbitrarily deprived of his life[144]. It further declares that no one will be subjected to painful or to forbidding, coldhearted or debasing punishment[145] Freedom from torture is a non-derogable human right even in times of public emergency which threatens the life of the nation and existence of which is officially proclaimed[146].

The International Covenant on Civil and Political Rights 1966 further provides that everyone has the right to liberty and security of person. No one will be subjected to arbitrary arrest or detention[147] and all persons deprived of their liberty will be treated with humanity and with respect for the inherent dignity of the human person[148]

The overall objectives of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 are to prevent acts of torture and other acts prohibited under the Convention and to ensure that effective remedies are available to victims when such acts occur. More specifically, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 requires state parties to take preventive action against torture such as the criminalization of acts of torture and the establishment of laws and regulations to promote respect for human rights among its public servants. State parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1987 are required to outlaw torture and are explicitly

[144] International Covenant on Civil and Political Rights 1966, Article 6
[145] International Covenant on Civil and Political Rights 1966 Article 7
[146] International Covenant on Civil and Political Rights 1966art 4(2).
[147] International Covenant on Civil and Political Rights 1966art 9.
[148] International Covenant on Civil and Political Rights 1966art 10.

prohibited from using higher orders or exceptional circumstances as excuses for acts of torture.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 introduced two significant new elements to the United Nations fight against torture.

- First, it determines that charged torturers may be attempted in any state gathering or they may be removed to face trial in the state party where their unlawful acts were submitted.
- Secondly, it accommodates that investigation of dependable reports of torment, including visits to the state party concerned, with its agreement, if the committee gets solid data, which seems to contain decently established signs that torment is as a rule deliberately honed in the region of a state party.

India signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 on 14 October 1997 but is yet to ratify it. Work is currently underway to make required changes in the domestic legislation in order to harmonize it with the obligations flowing from the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984.

5.1.8 Prison Labor and Wages

The question of human dignity vis-a-vis prisoners was the prime question in the case of *State of Gujarat vs. High Court of Gujarat*[149]. For this situation, the subject of payment of wages to detainees had come up for thought in the eyes of the Supreme Court and the Supreme Court held that the detainees who are made to work in agriculture operation or different industries must be paid wages which should not be less than given in the Minimum Wages Act or else it would add up to "Begar" within the significance of Article 23 of the Constitution. Prison labor in India has been normally viewed as a mode of punishment, but on the other hand there have been movements to eliminate free labor rendered by prisoners. Indian Judiciary has promptly reacted towards eliminating free labor practices in jail and

[149] 1998 (7) SCC 392

analyzed the scope of section 53 of the Indian Penal Code and explained that section talks about "hard labor" but not "free labor" for the rigorous imprisonment[150].

Several guidelines have been provided by the Legislature for fixing the rates of minimum wages and the need to make modifications for equal time periods. Section 3 of the MW Act enjoins a statutory duty on the appropriate Government to fix minimum rates of wages payable to employees employed in an employment and to review the rates of wages so fixed at such intervals as the Government may think fit but not exceeding five years. Section 5 of the MW Act provides that in fixing minimum rates of wages in respect of the scheduled employment for the first time or in revising such rates the Government shall appoint committees to hold enquiries and advice the Government in respect of such determination of wages. On the other hand, the Government is indebted to publish its suggestions. Determination or reconsideration of minimum remunerations can be made only in consideration of the advice of the Committee and the representations received about it.

5.1.9 Right to Legal Aid

Right against self-incrimination also brings in focus the larger right of legal aid. The Court expressed that Article 22(1) that gives that a privilege of the denounced to counsel and be shielded by a legal specialist of his decision stretched out to proceedings even before a panchayat where a greatest sentence that can be forced is fine[151]. Legal aid is no longer a matter of charity or benevolence but is one of the constitutional right and the legal machinery itself is expected to deal specially with it[152]. The right to legal service under Art 39-A (introduced in 1976) of the Directive principles of State Policy was held to be implicit under Art 21[153]. In *Sheela Barse v. State of Maharashtra*,[154] it was held that the necessary funds for legal aid must be made available by the State. In *Khadra Pahadia v. State of Bihar*, the

[150] Prison Reforms Enhancement of Wages of Prisoner. AIR 1983 Kerela 261.

[151] *State of M.P. v. Shobharam*, AIR 1966 SC 2193

[152] DR. PARANTJEET S. JASWAL & DR. NISHTHA JASWAL, HUMAN RIGHTS AND THE LAW, 203 (1995)

[153] *Khatri v. State of Bihar,* AIR 1983 SC 378

[154] AIR 1983 SC 378

Apex Court stressed that it was officeholder upon the powers to illuminate the blamed for the accessibility of lawful help which incorporates the privilege to legitimate support by able legal advisors at state's cost, which is a piece of the basic right and if in the event that it was not done, the conviction would be put aside. The privilege of the detenue to counsel the lawful counselor of his decision for any object is not so much not restricted to guard in a criminal continuing additionally for securing discharge from preventive detainment of documenting a writ request of or arraigning any case, climate of common or of criminal nature, is clearly included in the privilege to live with human pride and is likewise a piece of Liberty."[155] Legal Services Authority Act, 1987 is another remarkable step in the direction of providing for free legal aid.

The Supreme Court in the landmark judgment of *M.H. Haskot v State of Maharashtra*[156] stated that,

"That right to legal aid is integral to fair procedure. It cannot be denied on the ground, that, first that the accused has not for asked, second, as a financial burden on the State. Legal Aid is no longer a matter of charity but a Constitutional Right. Article 21 imposes a positive duty on the Magistrate to inquire whether the accused is in a position or not to engage a lawyer. If not, then the accused must be provided a lawyer at State cost."

A Legal Aid and Counselling Centre is functioning from the Jail Complex which is headed by a retired Additional Sessions Judge to supervise the Legal Aid Activities in the Prisons. This Centre was inaugurated by Mr. Justice Ashok Bhan, Judge of Hon'ble Supreme Court of India. The following are the features of Legal Aid Activities in the Jails:

a) A free Legal Aid Cell in each jail in which the stationary, typing material, reading material etc. are provided by the Jail Department.
b) Delhi Legal Services Authority deployed 26 advocates who are visiting the Legal Aid Cells of the Jail and giving Legal Aid. The NGO advocates also help.
c) Regular drafting of application/ petition/ appeal of the prisoner by the advocates and Legal Panchayat formed by the legal literate petitioners.

[155] Francis Collarie Mullin
[156] AIR 1997 SC 1548

d) The matter for release of sick, infirm or old aged inmates is taken up with Court.
e) Custody parole is given to the convicts on the instance of marriage, demise, grave illness etc. by the Superintendent Jail.
f) Special Courts organized on monthly basis at Tihar Court Complex for the minor offenders languishing in jail. Till date Ninety Seven Courts have been organized and cases of 4486 prisoners settled.
g) Plea Bargaining Courts were organized for the first time in. any Prison in India and cases of 666 prisoners were disposed of. During the year 2008, 26978 male prisoners and 233 female prisoners were provided Legal Aid.

5.1.10 Right to Meet Family and Friends

In *Frances Coralie Mullin v. Union Territory of Delhi*, Supreme Court held that a necessary component of the right to life that the prisoner must be allowed is to have the interview with members of his family and friends under the scope of Article 14 and 21 of the Constitution of India. The right to freedom of speech and expression enshrined in Indian Constitution is indispensable for the development and protection of the creative faculties of human beings.

Prison visits fall into three categories: (1) relatives and friends; (2) professionals; and (3) lay people. The very first category comprises of spouse. Visit by spouse has distinct implication because, majority of the Indian prisoners lie in the age group of 18 to 34 as per a recent study, which clearly gives an idea that majority of Indian prisoners are young and were perhaps having a married life before their imprisonment. For young people, rejection of conjugal life during the entire period of incarceration creates emotional problem also.

As to visits by professionals like lawyer, the right has been given to the requisite limit, suppose if any convict is a pre-trial detainee, the right is provided by Article 22 (1) of the Constitution of India.[157]

Mr. Mir Mehral-ud-din in his book "Crime and Criminal Justice System in India" has dealt with different aspects of prison visits in Chapter VI headed "Resocialization: Search for Goals". The author has stated that frequent jail visits by family members go a long way in

[157] *Rama Murthy v. State of Karnataka*, AIR 1997 SC 1739 at 1748: 1997 Cri LJ 1508: 1997 (1) SCJ 172: 1997(2) SCC 642: 1997 SCC (Cri) 386

acceptance of the prisoner by his family and small friendly group after his release from prison, as the visits endure the personal connection during the term of imprisonment, which maintains an emotional closeness between him and other members of the family.[158]

The horizon of human rights has been expanding with the decisions of Apex Courts given from time to time. Prisoners' rights have been recognized not only to protect prisoners from physical discomfort or torture in the prison but also to save them from mental torture. The Supreme Court in the case of Francis Coralie v Union of India,[159] held that the expression "Personal Liberty" occurring in Article 21 includes the right to socialize with the members of family and friends subject to any valid prison regulation and under Article 14 and 21, such prison regulations must be reasonable and non-arbitrary. Keeping this in mind the State Governments, have been operational on providing the best 'mulaqaat'[160] services.

The Office of the Central Public Relation Officer of Tihar Prisons for conducting the interview of visitors with their prisoners in a hassle free environment as per international norms has · been awarded an ISO - 9001:2000 certifications.

Most of the newly constructed jails follow this pattern of visitor services; where the prisoners meet their relatives/ friends separated by see through toughened glass and m a soundproof environment. Each cubical room is ear maked for a prisoner where he/she can converse with his/her relatives/friends through a one to one microphone system. The Halls have sufficient lighting and ventilation facility. This system facilitates visitors to see and converse with their prisoner in a proper manner.

Along with this many states have provided special facilities to prisoners to meet their relative and friends on festivals like Raksha Bandhan and Karva Chauth. In the, year 2008 Tihar Prison almost 18000 sisters/brothers visited about 440 brothers/ sister inmates to celebrate these festivals. Some sisters were seen taking pledges from their brothers not to commit crime again. Special stalls were setup making available sweets and rakhis.

5.1.11 Right to Legal Aid

[158] Ibid.
[159] AIR 1981 SC 746
[160] Urdu word meaning “meeting”

It was held in *Hussainara Khatoon's Case (II)*[161] that "right to free legal aid as given under Article 39-A was contained in Article 21 because a procedure which does not make available legal services to an accused person, who owing to his poverty cannot afford a lawyer and have to go through the trial without legal assistance cannot possibly be treated as just, fair and reasonable process and is thus, violative of Article 21."

5.1.12 Right to Compensation

In the famous *Bhagalpur Blinding Case*[162] the question that the Court addressed was whether the Court which can certainly injuct a State from taking any action in contravention of Art. 21 could give compensation as a form of relief when the State has already infringed upon the person's rights to life?

The Court taking resort to vibrant Constitutional Jurisprudence held that it was not helpless and can certainly devise new tools and new remedies and hence, can compensate.

This view of the Court was reinforced in *Rudul Shah v. State of Bihar*,[163] where the Court held that award of Rs. 35,000/- as reimbursement for illegal detention for 14 years. It pointed out that "under Article 32 the Supreme Court could pass an order for the payment of money in the nature of compensation that would be one of the effective ways by which the SC could prevent gross violation of the Fundamental Rights by the administrators."

5.1.13 Right to information

The right of a detune to send his book, which was written during detention, for publication has been recognized[164]. The press may also interview prisoners though it is established that the right to information is not an absolute right[165].

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[161] 1980) 1 SCC 98 : AIR 1979 SC 1369 *See also*, *Hussainara Khatoon (V)* v. *State of Bihar*, (1980) 1 SCC 108 : AIR 1979 SC 1377 and *Hussainara Khatoon (V)* v. *State of Bihar*, (1980) 1 SCC 115 : AIR 1979 SC 1819

[162] AIR 1981 SC 928

[163] 1983) 4 SCC 141: AIR 1983 SC 1086. *See also*, *Sebastian M. Hongray* v. *Union of India*, (1984) 1 SCC 339 : AIR 1984 SC 571

[164] *State of Maharashtra v Prabhakar Pandurang Sanzgiri* AIR 1966 SC 424, *State of Maharashtra v Prabhakar Pandurang Sanzgiri* [1966] 1 SCR 702

[165] *Prabha Dutt v Union of India* AIR 1982 SC 6; *Prabha Dutt v Union of India* (1982) 1 SCC 1 (the representatives of a few newspapers were allowed to interview two death sentence convicts in Tihar Jail under

5.1.14 Right of Children in jails with their prisoner mothers, or as under trial prisoners or convicts

Supreme Court of India held in *R. D. Upadhyay v. State of Andhra Pradesh*[166], a child with his/her mother in jail is entitled to food, shelter, medical care, clothing, education and recreational facilities as a matter of right.[167] Such a child, held, shall not be treated as an under trial/convict. Explaining the need for implementing these welfare measures in the context of constitutional and statutory provisions as well as recommendations of various studies, committees and international conventions, the Apex Court issued specific and elaborate guidelines narrating measures to be adopted. Directions issued also to suitably amend jail manuals and/or other relevant rules, regulations, instructions, etc. within three months complying with these guidelines. The said welfare schemes and laws were directed to be implemented in letter and spirit. The court also directed State Legal Services Authorities to take measures to periodically inspect jails to monitor implementation of welfare measures. Courts, held, that there is an urgent need to expeditiously decide cases of women prisoners whose children are with them in prison.

The following guidelines were issued by the court[168]:

1. A child shall not be treated as an under trial/convict while in jail with his/ her mother. He/she is entitled to food, shelter, medical care, clothing, education and recreational facilities as a matter of right.
2. Pregnancy:
    a) Before sending a pregnant woman to jail, the authorities must ensure that the jail has the basic minimum facilities for child delivery and for providing pre and post-natal care for the mother and the child.
    b) When a woman prisoner is found or is suspected to be pregnant at the time of her admission or thereafter, the lady Medical Officer shall report the fact to

the Constitution of India 1950, Article 19(1) a though with the observation that the right under the Constitution of India 1950 Article 19(1)(a) is not an absolute right, nor indeed does it confer any right on the press to have an unrestricted access to means of information.

[166] (2007) 15 SCC 337; (2010) 3 SCC (Cri) 704; (2006)43 AIC 75 (SC); Air 2006 SC 1946

[167] *R.D. Upadhyay vs State Of A.P. & Ors*

[168] Ibid.

the Superintendent. The arrangement shall be made to get the prisoner medically examined at the female wing of the District Government Hospital in soonest possible time. After determining the needed details, a report will be directed to the Inspector General of Prisons, mentioning the time and day of admission, date of release, term of sentence, possible date of delivery, duration of pregnancy and so on.

c) Gynecological examination of female prisoners shall be performed in the District Government Hospital.

3. Childbirth in prison:
    a) As far as possible and provided she has a appropriate possibility, preparations for temporary release/parole (or suspended sentence in case of minor and casual offender) should be made to enable an expectant prisoner to have her delivery out of the prison. Only extraordinary cases comprising of high security risk or cases of equivalent grave descriptions can be denied this facility.
    b) Births in prison, shall be recorded in the local birth registration office. But the details of child birth in the prison shall not be recorded in the certificate of birth. Only the address of the locality shall be mentioned.
    c) As far as conditions allow, all amenities for the naming rituals of children born in prison shall be extended.
4. Female prisoners and their children:
    a) Female prisoners shall be allowed to keep their children with them in jail till the children attain the age of six years.
    b) No female prisoner shall be allowed to keep a child who has completed six years. On attainment of the age of six years, the child shall be given to a appropriate surrogate as per the desires of the female prisoner or shall be sent to a suitable institution run by the Social Welfare Department. To lessen excessive adversities to both mother and child due to physical distance, as far as possible the child shall not be transferred to an institution outside the town or city where the prison is located.

c) Such children shall be kept in protective custody until their mother is released or the child attains such age as to earn his/her own livelihood.

d) Children kept under the protective custody in a home of the Department of Social Welfare shall be allowed to meet their mother at least once a week and the Director of Social Welfare Department, shall make sure that such children are brought to the prison for this purpose on the date fixed by the Superintendent of Prisons.

e) When a female prisoner dies and the child is left all alone, the Superintendent shall notify the District Magistrate concerned and he shall arrange for the proper care of the child. If the relatives are reluctant to bring up the child, the District Magistrate shall either send the child in an appropriate institution run by the State Social Welfare Department or hand the child over to a responsible person for care and maintenance.

5. Food, clothing, medical care and shelter:

a) Children in jail shall be provided with adequate clothing suiting the local climatic requirement for which the State/UT Government shall lay down the scales.

b) State/UT Governments shall lay down dietary scales for children keeping in view the calorific requirements of growing children as per medical norms.

c) A permanent arrangement needs to be evolved in all jails so as to provide separate food with ingredients to take care of the nutritional needs of children residing in jails on a regular basis.

d) Separate utensils of suitable size and material should be provided to each mother prisoner to feed her child.

e) Clean drinking water must be provided to the kids. This water must be occasionally tested and checked.

f) Children shall be regularly examined by the lady Medical Officer to monitor their physical development, and shall also be given proper vaccination from time to time. The vaccination charts of every child shall be kept in the records. Extra cloths, proper diet and so on may also be provided on the recommendation of the Medical Officer.

g) In the event of a woman convict being ill, substitute arrangements for looking after any child falling under her care must be made by the jail staff.

h) Sleeping facilities provided to the mother and her child, should be adequate, hygienic and germ-free.

i) Children of prisoners shall be given right to visit their parents in prison.

j) The Prison Superintendent shall be empowered in special cases and where circumstances warrant, of admitting children of women prisoners to prison without court orders provided such children are below 6 years of age.

6. Education and recreation for children of female prisoners:

   a) The children of female prisoners living in the jails shall be given proper education and recreational opportunities and while their mothers are at doing labour in jail, the kids shall be kept in creches under the care of a female warder. This facility shall be given equally for the children of warders and other female prison staff.

   b) There shall be a creche and a nursery attached to the prison for women where the children of women prisoners will be taken care of. Children who areless than three years of age shall be allowed in the creche and those between three and six years shall be looked after in the nursery. The prison administration shall run these creche and nursery outside the prison premises preferably.

7. Unless proper facilities can be ensured so as to make a conducive environment for proper biological, psychological and social growth, women prisoners with children should not be kept in those sub-jails which are not equipped to keep small children.

8. Children deserve to be separated on a priority basis from an environment where barracks are crowded with women convicts, under trials and offenders relating to all types of crimes including violent crimes.

9. Diet: Since exclusive breastfeeding on the demand of the baby day and night is recommended by various dietary guidelines, if for some reason, the mother cannot feed her kid, unadulterated fresh milk can be given to the baby. Dilution is not recommended. The child should be provided with at least 600 ml of undiluted fresh milk over 24 hours if the breast milk is not available.

It is essential that the undernoted food groups be provided in the following portions for children in the age of 6-12 mon, 1-3 yrs and 4-6 yrs respectively: cereals and millets: 45, 60-120 and 150-210 grams respectively; pulses: 15, 30 and 45 gm respectively; milk: 500ml (unless breastfed, in which case 200 ml); roots and tubers: 50, 50 and 100 gm respectively; green leafy vegetables: 25, 50 and 50 gm respectively; other vegetables: 25, 50 and 50 gm respectively; fruits: 100 gm; sugar: 25, 25 and 30 gm respectively; and fats/oils (visible): 10, 20 and 25 gm respectively. One portion of pulses may be exchanged with one portion (50 gm) of egg/meat/chicken/fish.[169]

10. Jail Manual and/or other relevant rules, regulations, directions, etc. shall be appropriately modified within three months so as to comply with the above instructions. If in some prisons, improved facilities are being provided, such facilities shall continue.
11. Schemes and laws relating to welfare and development of such children shall be implemented in letter and spirit. Having regard to what is noticed in this judgment, the State Legislatures may consider passing of legislations wherever necessary.
12. The State Legal Services Authorities shall take necessary measures to periodically inspect jails to monitor that the directions regarding children and mothers are complied with in letter and spirit.
13. The courts dealing with cases of women prisoners having children with them in prison, are directed to give priority to such cases and decide them expeditiously.
14. Copy of the judgment shall be sent to all State Governments, Union Territories and the High Courts.
15. Compliance report stating the steps taken by the Union of India, the State Governments, the Union Territories and the State Legal Services Authorities shall be filed within four months where after the matter shall be listed for directions. (Para 45)

[169] Ravi Kant, *Children Of Women In Jails – Guidelines Of The Supreme Court*, http://nlrd.org/childs-rights-initiative/supreme-court-latest-orders-and-judgements-child-rights-initiative/children-of-women-in-jails-guidlines-of-the-supreme-court

5.1.15 Conjugal Rights of Prisoners

Conjugal rights of prisoners have become a burning issue in recent years. In many countries of the world there have been reform movements in several countries to improve prison conditions by facilitating conjugal visits. Few states in America, such as California, Connecticut, Missippi, New Mexico and New York permit conjugal visits to prisoners.[170] The issue of right to conjugal visits in India has recently arisen in the application for a 30-day bail filed by Firozkhan Zafarkhan, an accused in the Godhra train carnage case. His unique plea to the court trying the case is that because of his imprisonment for 30 months, he has been unable to have a sexual outlet, which is causing him and his wife immense stress. Allowing such visits will release the pressure off the prisoners mind and help them in their reformation. It will also give relief to the agony of the spouses' of such prisoners who remain a silent sufferer throughout.

In a recent landmark ruling given by High Court of Punjab and Haryana on the rights of Indian prisoners, the humble court held that "right to procreation" of prisoners fall within the ambit of right to life and personal liberty[171] guaranteed by Constitution of India. Justice Surya Kant stated that convicts have the right to conjugal visit and artificial insemination in alternate. However, the court also stated that this right is not absolute and it is the whole sole discretion of State Government to allow these rights to selective category of prisoners. The court also gave directions for constitution of a Jail Reforms Committee which shall analyze the scheme for conjugal visits. The committee shall also examine the scope and reach of open prisons, where certain category of prisoners can stay with their family for longer period of time.[172]

5.1.16 Analysis of Judicial Trend

An analysis of some of the landmark judgments of the Supreme Court of India and different High Courts illustrate the fact that judiciary has not only been recognizing a broad range of rights of the prisoners in the light of recent human right initiatives, but it has also has reiterated its voice against unnecessary restriction on the prisoners right to personal liberty.

[170] C. CAMP AND G. CAMP, CORRECTIONS YEARBOOK 1997, 105 (1997)
[171] Constitution of India, Part III, Article 21
[172] Raghav Ohri, *Conjugal rights for prisoners to be a reality in jails*, The Economic Times, Jan 7, 2015

Some of the important rights of the prisoners are like right to fair treatment and dignity, right to equality, right to basic human needs, and right to the principles of nature justice, etc. In the cases *of Citizens for Democracy v. State of Assam, Kewaal Pati v. State of UP, Murrti Devi v. State of Delhi*, and *R.D. Upadhyaya v. State of Andhra Pradesh*[173], the Supreme Court of India identified the right to judicial remedy for prisoners. The court observed that, the authorities are required to act according to the law but the law has been unfortunately respected in its breach. It said that, the history of liberty is the history of procedural safeguards and hold that, the right to judicial remedy flows from the constitutional guarantee enshrined in Article 14, 20, 21 and 22 of the constitution. Apex court has also observed that the right to dignity and fair treatment under Article 21 of the Constitution of India is not only available to a living person but also extends to his body after his death also[174]. In *A.K. Gopalon v. State or Maharashtra*[175]*, Prabhakar Pandunga v. State of Maharastra*[176] *and Prabha Dutta v. Union of India*[177], the court has recognized his right in favor of prisoners under the scope of the Article 14 and 19 of the Constitution of India. Hence forward, the inmates get an exclusive right to read, right, publish books, articles and journal and to give interviews to journalists and legal advisors. In *Rudal Shah v. State of Bihar*[178], the Supreme Court while broadening the doctrine of "Act of State" (the defense available in favor of the State not to pay compensation to victims due to State action) recognized the right of compensation to prisoners against arbitrary arrest and detention. In present case damage by way of compensation was awarded to a victim for wrongful imprisonment. The prisoners right to basic human needs has been recognized by the Kerala High Court in the case of a *Convict Prison v. State of Kerala*[179], in which the court issued direction to the State to build sufficient number of prisons for proper accommodation to effectively implement segregation, to appoint proper prison staff; payment of wages to the prison labour, free legal aid, to rationalizing parole and remission policy, and to broaden the scope of educational

[173] (1991) 4 SCC 39, (1955) 2 SCC 743, (1955) 3 SCC 800, (1998) 9 SCC 604, (2001) 1 SCC 437.

[174] *Paramananda Katra v. Union of India*, (1995)3 SCC 248
[175] AIR 1950 SC 27
[176] AIR 1966 SC 424
[177] SCC 1982 p.1
[178] AIR 1983 SC 1096
[179] 1994 CrLJ 3242

and recreational facilities in the Jail. In *Joginder Kumar v. State of UP*, (1994) 4 SCC 260 the Court held that it was inherent in Art 21 and 22 that the police must if they arrest a person; inform a relative or friend of the fact of his arrest and also inform them of the place where he has been detained. That this was done must be recorded in the Station dairy. The Magistrate before whom he/she is produced must satisfy himself that these duties are properly discharged. Administration of prison institutions and maintenance of discipline in jails is subject to the Principle of Natural Justice[180]. The prison authorities should take action and issue order only with the· due compliance of the principles of Natural Justice. Time and again, the Indian Judiciary has recognized the natural rights of prisoners as inalienable right and compelled the government authorities to act and practice accordingly, but unfortunately papers speak differently and reality with regards to prisoners speak differently.

[180] *Keemat Singh v. I.G., Prison Chandigarh*, 1994, CrLJ 1884; *Ranaswamy v. The Govt. of A.P.*, 1997

6. Reforms in Prison Policies: Contemporary Scenario

Dr. W.C. Reckless report on 'Prison Administration in India' submitted to the Government of India in 1952 is marked a turning point in the history of prison reforms in post-independence period. In pursuance of the recommendations of Dr. Reckless, a conference of IG Prisons of various States was conveyed in Bombay at the instance of Government of India in 1952. This conference provided on excellent forum for exchange of views to evolve prison correctional policies based on reformation and rehabilitation of convicts. As a consequence of IG Prisons Conference, the Ministry of Home Affairs, Government of India (GoI), appointed an All India Jail Manual Committee in 1957 with IG prisons, correctional administrators and social scientists. The Committee Submitted a Comprehensive report in 1959 along with a "Model Prison Manual" containing elaborate standards and guidelines on the subject. It has also recommended that Acts relating to prison be revised.

All India Committee on Jail Reforms, 1980-83 has analyzed in detail the basic problems confronting the system and identified areas of concerted action. The Supreme Court is *Rama Murthy v. State of Karnataka*[181], besides others, has specifically directed the central Govt. to enact a new Prisons Act to replace the century old Prison Act, 1894, and also prepare a new all India Jail Manual as a concrete plan for prison restructuring. Accordingly, Bureau of Police Research and Development (BPR and D) Ministry of Home Affairs, Government of India[182] , has prepared a Model Prison Manual on 31-1-2004 and appealed to States and UTs for in adoption to promote:

[181] (1997) 2 SCC 642: AIR 1997 SC 1739.

[182] Bureau of Police Research and Development (BPR and D) has been mandate by the Government of India to undertake studies on police and prison issues: review the arrangements for police and prison training; formulate and coordinate training policies and programs; and promote application of science and technology in police work, etc. It is noteworthy to mention that since 1995, the BPR&D has been mandated nodal agency on behalf of the Central Government in the field of Correction Administration (vide GO No. VII 11018 114 192 GPA IV dated 16-11-1995) to perform the following functions in the field of correction administration in the country:

I. Analysis and study of prison statistics and problems of general nature affecting prison administration;
II. Assimilation on and dissemination of relevant information to the States in the field of Correctional Administration;
III. Coordination of research studies conducted by RICAs and other academic/Research Institutions in Correctional Administration and to frame guidelines for conduct of research studies/surveys in consultation with State Governments;

I. Basic uniformity in the legal framework in the administration of prisons all the country; and

II. To lay down the framework for custody and treatment of prisoners.

In this context, the National Human Rights Commission has also been involved, since its commencement in 1993, in building a national consensus for the rationalization of prison legislation as the starting point towards a thorough restructuring of the prison system in consonance with its cherished goal. With the assistance of a core group of leading prison administrators and experts, an outline of the proposed Prison Bill has been prepared and circulated among the Chief Ministers for consideration. Besides taking into account the suggestions emanating from national forum the provisions of the relevant United Nations instruments especially the Standard Minimum Rules for the treatment of prisoners have also been drawn up to the extent consistent with the indigenous milieu. The State Governments have been requested to move their respective legislatures to pass a resolution for a central law and the subject as required under the Constitution[183].

More recently, the Ministry of Home Affairs, Government of India has prepared a draft Nation Policy on Prison Reforms and Correctional Administration in 2007 and the same has been circulated to all States/UTs for comments in order to evolve nation consensus. The draft policy document contains various recommendations for structuring the prison management in the country in the light of Supreme Court rulings and recommendations made by expert committees constituted so far on prison reforms. Academics and field practitioners in Criminology and Correction Administration consider this as a positive move to evolve a nation policy on prisons, however, they strongly feel that wide consultation with other Stakeholders (other than Governments) would have made the draft policy paper more inclusive and participative in nature.

IV. To review training programs keeping in the view the changing social conditions, introduction of new scientific techniques and other related aspects;

V. To prepare uniform Training Module including Courses, Syllabi for providing training at various levels to prison staff in the field of correctional administration;

VI. Publication of report, newsletter, bulletin and prepare of audio-visual aids, etc. in the field of Correctional Administration; and

VII. To set-up an Advisory Committee to guide the work relating to Correctional Administration.

[183] Annual Reports and other publication, National Human Rights Commission, New Delhi. www.nhrc.nic.in.

Despite the Court rulings on several aspects of prison administration, including the human rights of prisoners and initiatives taken by BPR&D and RICAs, NHRC and SHRCs, academic institutes and Civil Society Organizations (CSOS) to sensitize prison staff on Human rights issues, prisons are still effectively screamed from public visibility and accountability, and the predictable abuses continue to take place[184].

6.1 Role of prison administration

In India it is the lower judiciary that is assigned the primary task of ensuring the enforcement of the provisions under CrPC[185], prison authorities and prison monitors also have a significant role to play to ensure justice to under trial prisoners as has been made clear in the abovementioned judicial pronouncements.

6.2 Prison authorities

The custody and security of prisons and prisoners within it are the fundamental duties and responsibilities of every member of the prison staff[186]. The executive personnel in prison i.e. the Superintendents, Additional Superintendents, Assistant Superintendents, Deputy Superintendents and the guards' staff are entrusted with the primary responsibility to ensure that the human rights which the prisoners are entitled to are not impinged upon and restricted beyond the limit inherent in the process of incarceration itself[187].

[184] BPR and D is regularly sponsoring courses on Human Rights and Prison Management through RICA and academic institutions for middle rung prison personnel. The training programs aim to raise awareness of human rights amongst prison officials, and improve prison management system with special reference/promoting good practice and gender sensitivity in prison management. The protection of the human rights of the prime concerns of the National Human Rights Commission (NHRC) even since it was established in October 1993. Visits to jail on behalf of the NHRC are undertaken by the members, special rapporteur and officials of the Commission on orders are passed and recommendations are made to the Government for improvement in the living conditions, hygiene and sanitation, medical care, etc. besides, structural reforms in the prison system. This aside, the Commission in collaboration with the governments, academic institutions and civil society organizations also organizes seminars/workshops to sensitize prison staff on human rights issues in prison settings. NGOs working in the field of prison reforms, such as Commonwealth Human Rights Initiative (CHRI), PRAYAS, Mumbai, etc. are also engaged in sensitization of prison staff on various issues pertaining to prison administration including human rights.

[185] S.S Upadhyay, *"Role of subordinate judiciary in the protection of Human Rights"* http://www.ijtr.nic.in/webjournal/6.htm

[186] Rule 4.05 of the Model Prison Manual, 2003, as prepared by the All India Model Prison Manual Committee and approved by the Central Government in 2004.

[187] Rule 4.07.1 of the Model Prison Manual, 2003.

Under the Prisons Act, 1894, the Superintendent must maintain a register of all prisoners admitted and a book showing when each prisoner is to be released[188]. The Superintendent has easy access to information relating to the period of detention of each under trial prisoner under his custody, and hence it should be his duty to inform the prisoner when she/he might become eligible to apply for bail under the various provisions of CrPC. Indeed, the Patna High Court seems to agree with this contention and has directed the Superintendent to inform the prisoners of the benefits of Section 436-A[189].

Arguably, the prison staff are the primary custodians of prisoners, and have the advantage of being in direct contact with them. They should undertake the responsibility of making prisoners aware of the benefits that might accrue to them under these provisions. They should impart legal information in all forms, written or oral among under trial prisoners to make them aware of their right of release under the relevant provisions of CrPC[190]. The prison authorities should also encourage and assist the dispatching of applications for free legal aid to the competent authorities in cases where the prisoner cannot afford expenses.

6.3 Prison Staff: Facilitators for Realization of Prisoners Rights

Several court rulings and media reports have already highlighted the situation, however, many revelations and writings on the subject do not go deep into the prison malaises and hardly report on why human rights abuses take place in prison? This is an area on which very less authentic literature is available. With this view in mind we will examine the role of prison staff in creating an enabling environment in the prisons.

The protection of human rights of prisoners and inculcating a culture of human rights in prison setting is heavily dependent on the quality, caliber and competence of the staff engage in the care, management and treatment of prisoners. Prison staff carry act out of the most difficult tasks of a civilized society. Prisons are part of criminal justice system. The international instruments stress that the best security is in the establishing, by all the prison

[188] Section 12 of the Prisons Act, 1894 (Act 9 of 1894).

[189] *Supra*, n. 27

[190] The Patna High Court is also in agreement with this argument, *see*, *In the Matter of News Report Published in The Times of India dated 26-6-2006* v. *State of Bihar*, CWJC No. 7363 of 2006.

staff, of good working relationship with prisoners. Hence, the manner in which they are treated depends primarily on the attitude, capacity, competence and motivation of the middle and cutting edge prison staff. The international instrument has, laid down the adequate provisions in the Standard Minimum Rules for the development and growth of prisoners and the prison personnel. Unfortunately, the rights of prison staff who actually implement the human rights of the prisoners, have not been recognized after 62 years of independence and the policy of the British Raj of running the prisons in as cheap a manner as possible still continues.

An assessment of the working and service conditions of prison staff shows that the conditions in which the lower echelons of the prison staff lived are in some cases worse than those of the prisoners. This is an important factor contributing to the poor functioning of prisons, apathy of the prison staff towards the plight of prisoners, corruption and all over deprivation of prisoners of their basic amenities. Such sub-standard conditions of service produce a culture of frustration and dehumanization in the service which often spills over and gets translated into aggression on prisoners. Thus, the conditions of work create an environment that discourages initiative, leadership qualities and an enlightened rights based approach.[191]

Another impediment for creating and enabling environment in prisons relates to the quality of leadership at management level. It is noteworthy to mention that the Jail Officers at the management level, (DG/IG/DIGs) majority of whom are on deputation from the police service, consider this as punishment posting and are generally too demoralized to contribute significantly to the building up of the department. Many of them are merely time servers. The supervisory level (the Superintendents/Deputy Superintendents and Assistant Superintendents Jailors, etc.), consisting of staff belonging to the prison services, too is demoralized because of poor service conditions, lack of career opportunities and public esteem. At the grassroots level (Head Warders/Warders, etc.) the department has people who remain inside the jail walls, communicating with convicts most of the time. This factor

[191] Report of the Proceedings of the workshop on Prisons and Human Rights held on 25-4-1998 - 26-4-1998, at Bhopal. This was jointly organized by M.P. Human Rights Commission, Bhopal and Commonwealth Human Rights Initiative, New Delhi

combined with their pathetic service conditions, has the effect dehumanizing them. Some of them develop vested interest and join hands with the criminals.

This aside, most of the prisons are having the problem of under staffing. This would result in pressure on the staff already posted leading to deterioration in the quality of facilities for the inmates.[192]

The ground realities of Indian prisons require a thorough restructuring of the system. This include rationalizing policies for staff recruitments, deployment and development, working and service conditions and adequate training which could cater effectively to the requirements of both custody and correction.

6.4 Prison visitors

The concept of the prison visiting system is found accepted under the Prisons Act, 1894[193]. The system was introduced to provide transparency within the prisons and bring some degree of accountability to the prison management. Prison visitors can be classified as either official or non-official. Other than this, additional external visitors to prisons can also be appointed by the courts and the Human Rights Commissions. This system is an effective tool to improve prison conditions as well as ensure observance of prisoners' legal rights.

Prison visitors stand at a unique place within the prison system wherein they have a twofold role to discharge. On the one hand, they act as the eyes and ears of the prisoners to the outside world by providing the prisoners knowledge about their permitted legal rights. They also act as the eyes of the outside world to scrutinize what goes on within the prison walls. Thus a prison visitor not only acts as an accountability mechanism but also as a custodian for prisoners and their rights.

Prison visitors act as guardians to ensure that humane conditions prevail within the prison walls. They are[194] well placed to ensure that the directions issued by the courts, the

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[192] Standing Committee on Home Affairs*, Report on "Implementation of Central Scheme of Modernization on Prison Administration",* (Feburary 26, 2009), http://rajyasabha.nic.in.

[193] Section 59(25) of the Prisons Act, 1894.

[194] Commonwealth Human Rights Initiative, *"Prison Visiting System in India"*, http://www.humanrightsinitiative.org/publications/prisons/prisons_visiting_system_in_India.pdf;
"Association for the Prevention of Torture, Monitoring Places of Detention — A Practical Guide", http://www.apt.ch/component/option.com_docman/task,cat_view/gid,58.Itemid,59.lang,en/

Government and (HRC) Human Rights Commissions are properly implemented within the prison. They could enquire into the complaints of the prisoners and assist them in taking remedial action. They may periodically check the register enlisting the period of detention of prisoners, which is maintained by the Superintendent under the Prisons Act, or they may ask for such information specifically. Where they find that there are prisoners who can be released under the provisions of CrPC, they can take steps to assist such prisoners in search of discharge. The prison visitors can either enlighten the prisoner of his rights and ways in which he may apply for release or ask the prison authorities to take appropriate action. In future visits, the prison visitors can follow up these cases to ensure that no under trial has been unnecessarily detained in prison. Prison visitors can also help to create awareness of legal rights and procedures among both the prisoners and prison staff.

The growing concern to safeguard the rights of prisoners in different walks of life and a completely changed concept of punishment keeping in view the provisions of United Nations Standard Minimum Rules for the Treatment of Prisoners (1955) and the International Covenant on Civil and Political Rights (1977) have invoked all the nations in general and India in particular to take appropriate action so as to provide certain minimum facilities to the prisoners. No one challenges the point that even a little shortcoming in introducing any changes is bound to affect the society at large. But there is no way out as the present penal system is full of flaws. There is very limited number of punishments available which calls for new forms of punishment which could root out the shortcomings of the prevalent system.

7. Draft Policy on Prison Reforms in India

In December 2005, the government of India constituted a committee under the chairmanship of the director general of the Bureau of Police Research and Development (BPRD) to prepare a draft policy paper on the strategy relating to prison reforms and correctional administration. Though the recommendations of the various earlier committees on prisons have not been implemented in total, it was a welcome move. The government had decided to consider the plight of the people behind prison bars: the most neglected section of our society.

This also leads to speculation on whether the government is planning to bring about drastic changes in the criminal justice system in India. The committee responsible for the draft policy on criminal law in India was set up under the chairmanship of Madhava Menon in May 2006. The process was complete by 2007 and the draft model police bill is being circulated to all states, with the request that each state implement the changes set out in it. The committee submitted its report to the government in July 2007. It is largely concerned with the victim-oriented criminal justice system, which waters down the time-tested basic principles of criminal jurisprudence. The attempt is to move towards an inquisitorial system rather than an adversarial system. The model police bill gives enormous and unchecked powers to the police force which would enable it to act with impunity.

Meanwhile, the Draft National Policy on Prison Reform and Correctional Administration is also ready and will be presented to the government soon. Prima facie, the draft policy seems to be very liberal and considerate towards the plight of the prisoners but it is doubtful whether this is enough to bring in drastic and positive changes in the prison administration and consequently in the conditions that prisoners face.

7.1 Terms of Reference

To review the present status of the legal position and suggest amendment if required on the prison-related laws enacted by the Centre and States, to review the recommendations made by various committees and choose tangible recommendations which are required to be implemented by the Centre and States, and to review the status of implementation of these recommendations with reference to the following: physical conditions of prisons, condition of prisoners, correctional administration, prison personnel, any other issues related to

modernization of prisons and correctional administration and suggestions regarding alternatives to imprisonment.

7.2 Important Recommendations

One of the important recommendations is that principles of management of prisons and treatment of offender should be incorporated in the directive principles of state policy embodied in part IV of the Constitution of India. Although this does not give any direct right to the prisoners, it is a huge step forward in the scheme of prison reforms in the country.

a) New Bodies: The committee has also recommended setting up a department of prisons and correctional services to deal with adult and young offenders, and also the setting up a full time national commission on prisons.
b) Alternatives to Prison: The committee has also recommended alternatives to imprisonment and extensive amendments to the Prisons Act of 1884. One of the most commendable recommendations of the committee is that young offenders (between 18 and 21 years) should not be confined in prisons meant for adult offenders. In addition, persons arrested for political-economic agitations for declared public cause shall not be confined in prisons along with prisoners either. Also, that the term of "sentence for life" should not be "at least" 14 years of incarceration and persons should be released before the 14- year period is over.
c) Rehabilitation: There are also certain good recommendations regarding the correctional administration and the rehabilitation of prisoners. One example of this is the recommendation to provide group insurance to the prisoners and to make the procurement of loans easier for rehabilitated prisoners. The committee also discusses placing the rehabilitated prisoners with industries in order to facilitate the process of rehabilitation.
d) Reducing the Prison Population: It has suggested several methods to reduce the prison population in the country. The emphasis is on reducing the population of under trial prisoners by speedier trials, trials in fast track court, special courts in jail and trial by video conferencing.

e) Prison Personnel: It has suggested that senior level police officers from the police department should be taken in fair numbers who will be in a better position to secure a relationship of cooperation and collaboration with the police department.

f) Prisons: The committee speaks of modernizing the prisons in the country and also renovating the present prisons so that adequate sanitation facilities are provided to the prisoners. It has also recommended that there is a need for new prisons to be built with all the modern facilities.

7.3 Concerns with the Policy

Some of the suggestions of the committee are laudable but if we look at the policy overall it fails to be comprehensive and does not take the conditions of prisoners and prisons into proper consideration. The inherent problems with the draft policy begin with the constitution of the committee itself. It consists of only high ranking prison officials or officials working on correctional administration. There is no representative from the judiciary, the bar, or organizations working with prisoners for many years, researchers and academics who have worked extensively on the issue of prisons and prisoners. These persons and organizations could have given valuable inputs on improving the conditions of the prisons and the prison administration. The entire exercise of drafting the policy was a very discreet one. Many voluntary groups which work with prisoners met recently in Delhi and were unaware about such a policy being drafted. Though the policy talks about participation of nongovernmental organizations (NGO's), there is little evidence from the report that this took place in practice.

7.4 Loopholes in the Draft Policy

The committee has suggested wide ranging changes to the Prisons Act of 1894. It has also suggested that all the states should draft a uniform prison manual on the basis of the model prison manual prepared by the BPRD. Unfortunately, the committee has not looked into the failure of the implementation of the Mulla Committee report, which had given excellent recommendation on improving the prisons in India. The draft policy in this case puts too much emphasis on the model prison manual and many of the recommendations seem to have been simply copied from the model prison manual.

In terms of physical conditions of prisons the committee has .stressed mainly on building new modern prisons using the latest technology. The policy also speaks of easier bail

provision and the using of Section 436-A of the criminal procedure code and use of the Probation of Offenders Act 1958. Contrary to the fears sought to be raised by bureaucrats that prisoners will go scotfree due to this section, it actually waters down the earlier provisions of bail laid down by the apex court in the case of Rajdeo Sharma.

The committee has also put too much emphasis on speedier trials in order to reduce the under trial population in prisons. It goes so far as to state that video conferencing technology should be used even for trials. This is a serious concern: video conferencing cannot substitute the production of the accused in court. Being produced in court is the right of the accused and a trial conducted by video conferencing cannot be termed afree and fair trial. It is a basic right of the accused to have a confidential consultation- with his lawyer. To conduct atrial through video conferencing would deny him this fundamental right.

The committee has almost neglected to consider the convict population in the prisons. There are a large number of prisoners who are convicted by the lower courts and are awaiting the hearing of their appeals in the higher courts. In many cases the appeal of an accused does not come up for hearing in high court in Mumbai for nearly four to five years. There is also a greater need for expedited appeal hearings. This will be possible only if the number of the judges in the higher judiciary is increased.

The committee also speaks of having special courts/ Lok Adalats in prisons. This is a dangerous suggestion as the prisoners might be forced to plead guilty in the hope of getting a lesser sentence without being fully aware of the consequences of having a conviction against one's name. Recommendations regarding wages say that the wages of the prisoners should be shared with the victim of the crime as compensation. This clearly amounts to punishing a person twice over. The prisoner is serving in the prison as a punishment and taking away his wages will amount to double punishment.

The recommendation on involving high ranking police officials in prison administration is also potentially danger-ridden as far as the independence of the prison administrations is concerned. If this is implemented there would not be any difference between police custody and judicial custody and the torture and harassment of inmates which regularly takes place in the police lock-ups may extend to the prison also. In addition, this measure would allow for too much police interference in the prison administration.

Setting up a prison commission and prison boards in all the states is needed but the drafting committee is silent however, on the powers, functions and structures of these new bodies. The experiences of the functioning of the several commissions how that it is extremely important to discuss all these issues at the policy level and to come to some firm conclusions for action. Otherwise, all we will be left with is just one more recommendatory body which has failed to carry out its mandate.

7.5 Neglected Areas

Though the committee members are high ranking prison officials the policy shows ignorance regarding the present conditions of the prisons and the prisoners and the changes that can be brought about. In terms of the health of prisoners the only recommendation is that there should be a health check-up while the prisoner is being admitted in prison followed by a periodic check-up. Many prisons in the country do not have doctors though they need to be present round the clock. There is need for a dentist and a dermatologist as also for other specialists to visit the prison often. There is no mention of providing proper treatment to the prisoners suffering from HIV/AIDS, no suggestions of special diet for the sick and old prisoners and no mention of preventive measures. The policy on the other hand talks about segregating the prisoners who are HIV +ve.

The policy is as good as silent on the aspect of health and emergency care for prisoners and does not address the particular health aspect of women prisoners and their specific needs including those of pregnant prisoners and lactating women prisoners. It also does not talk about the time line in deciding parole and furlough applications which are extremely important as the authorities often take years to decide on these applications.

Another important aspect the committee has failed to make any comment upon is the prompt release of the prisoner once he or she has been acquitted or discharged from the case by the higher courts. There have been cases where prisoners have languished in jail despite being acquitted for weeks or sometimes months before they are actually set free. There needs to be proper coordination between the court officials and the prison officials for this. Orders passed by the court can be accessed by the prison officials via internet or fax rather than waiting for the certified print copies of the orders to reach the prisons. Many a times it takes weeks for this process to be completed.

Though the committee states that the ties of the prisoner with society should not be broken, there is no mention of conjugal rights of prisoners nor is there any mention of voting rights. Today a person in jail can contest elections but is denied the basic democratic right of casting his/her vote. Improving the modes of communication between the prison inmates and their families is one aspect of prison life that the committee could have looked into. The prisoners and their families have to wait for letters and when they are allowed to meet in prison it is for a very short time. Since there are a number of other prisoners meeting their families at the same time the communication is marked by chaos, noise and a complete lack of privacy. The policy is also completely silent on the quality of food in the prison. Did the committee not realize that these aspects too fall under the ambit of prison administration and prison reform?

Legal aid has been given a token mention in the policy but again there is no comment on why the legal aid system in India has become dysfunctional and what should be the ways and means to improve it. There are several juveniles languishing in prisons in the country. Through our legal aid project we have succeeded in transferring many juveniles to the observation home from jails, yet there is no mention in the policy of what the prison administrations should do, as the policy just mentions that persons below 18 years of age should not be in adult prisons.

Looking at the previous record of the government, there is little hope for change through this policy which fails to address issues of central importance such as a time frame for implementation, and, more importantly, budgetary allocations within the central budget and the state budget for the prisons in India[195].

[195] Vijay Hiremath, *Draft Policy on Prison Reforms*, Economic and Political Weekly, Vol. 43, No. 26/27, 29-32, Jun. 28 - Jul. 11 (2008)

8. Conclusion

Law has an important role to play towards achieving the noble goal of maintaining the human right standard in Indian Jail. However, even after 67 years of independence the conditions of prison and prisoners in India appear not to have improved much. In conclusion, what is happening within the four walls of prison remains a mystery for the outside world, as free interaction and visit inside the prison is not permitted due to innumerable explanations, but, does that mean that this sections of the society should be left to themselves only? Although Supreme Court, in its various decisions has developed prison jurisprudence in recent years, and has served to empower prisoners where disempowered. It is the mockery of law and justice that despite a new jurisprudence coming forth from the Apex court articulating new forms of rights and liberties to prisoners, it remains non- existent for a large percentage of uneducated, uninformed and needy masses of this country and it did not change substantially the position of prisoners and prison system in India. The recommendations contained in the reports and judgments had mostly unimplemented. An important factor responsible for lack of follow-up action has been the absence of political determination, leading as a final point to administrative apathy towards the apathy towards the requirements of prison administration. This indifference is replicated in the dearth of resources spared by the Governments out of their annual budgets for prison administration. This lack of political will was due to the fact that the prisoners did not constitute an important constituency for the politicians, as they have no right to vote. It is recommended that the existing laws and arrangements should be reviewed and revised so that, the convicts could make use of their right to vote, like any other citizen. It is over two decades years that the report of the All India Committee on Jail Reforms (1980-1983) headed by justice A.N. Mulla has been submitted, but it has not been implemented till now. Prison administration is the state subject and this is often cited as a main reason for the Centre not been able to implement the recommendations of the Mulla Committee. Inspite of the National Human Rights Commissions strong advocacy for preservation of human rights, verbal abuse and humiliation, denial of basic rights, inaccessibility to ordinary jail facilities are examples of several inhuman atrocities rampant in jails. We talk about their forms and human rights, in spite of excellent court verdict and directions, and innovative interpretations much remain on paper and files only. Real chance is not visible anywhere. Much needs to be done and

that can be effectively done if there is the political will to do so and that judiciary, police and prison staff work hand in glove to curb the violations of human rights of prisoners. Following suggestions may be made:

i. Recommendations of Mulla Committee report must be implemented in Toto.
ii. A proper monitoring mechanism should be established to ensure that guidelines and judicial decisions relating to prisoners are implemented.
iii. Access and interaction with the family the criteria for giving parole should be relaxed. Immediate steps should be initiated to reduce the delays in bringing prisoners to trial.
iv. Comprehensive measures should be adopted to reduce overcrowding in jails.
v. As recommended by Mulla committee, uniformity of standards must be achieved by implementation of New Model Prison manual to entire country. Legal aid should be given to an accused at the first point of contact with the police.
vi. The right of a prisoner to see and meet a lawyer of his/her choice should be ensured.
vii. Human rights education should be compulsory for the prison personnel.
viii. Whenever any rule or law concerning prisoners is to be made the prison officials must be involved in the law making procedure. The purpose for this is that they become aware and face the practical problems regarding suitability of any law with regards to prison. Their involvement in decision making will help in better implementation of rules.
ix. There is an interconnection between the working conditions of jail officials and the treatment meted by. Prisoners in the jails. So, efforts must be made to improve the working hours and conditions, of the prison staff.
x. 'Instances of torture and custodial violence should be dealt strictly and heavy ·fines should be imposed on the person responsible. Such fines must be deducted directly from the salary of that guilty prison official.
xi. Provisions should be made for liaison between NGOs, human rights organizations, jail officials and legal aid committees.
xii. UN Minimum Standard Rules for the treatment of Prisoners should be incorporated in totality.

It is hoped that with the implementation of these suggestions the ultimate objective of improving the plight of prisoners will be achieved. One of the leading examples of modernization of infrastructure and use of technology, as per international standards, in the key areas of operations in 'I'ihar, have made it a flag bearer of Indian Prisons. The State Governments should consider the initiatives taken by Tihar for making the Human Rights of Prisoners more meaningful.

The errand of securing human rights that detainees are qualified for and of actualizing dynamic decision of the Supreme Court and High Courts and proposals made by different commissions and councils on jail changes including radical changes recommended by the National Human Rights Commission require a careful rebuilding and rearrangement of detainment facilities in India. To address human rights issues in jail setting obliges two fold methodology:

- Devise significant methodology for tending to the human rights infringement in jail; and
- Inculcating a society of human rights through rights based way to deal with jail administration.

These two key components need radical changes in jail organization, improvement of intelligible method to handle particular human rights issues in detainment facilities through responsibility and straightforwardness in the routine matters of jail organization, boundless open verbal confrontations and mounting weights from human rights activists, (counting Human Rights Commissions and other Statutory Commissions, for example, Women's Commissions and Child Rights Commissions, and so on.), legal, investigative columnists and forward looking criminologists and restorative social laborers. Likewise there is a pressing need to add to the structure and apparatuses in meeting with key partners for observing, assessment and effect evaluation of human rights modules conveyed by jail preparing establishments.

In this regard, social audit of “Modernization of Prisons” scheme launched by the Central Government in 2002-03, (under a non-plan scheme) should be conducing by independent

researchers so that an impact of this scheme could be evaluated in addressing specific areas of human rights as accommodation, diet, clothing, bedding and medical care, education, work and vocational training programmes, parole and pre-mature release including remission, legal aid, gender and caste specific discrimination in prisons. It is also significant that second phase of prison Modernization scheme (as proposed by the Ministry of Home Affairs, Government of India with the proposed outlay of Rs. 4000 crore and under consideration of the Government of India) should include better service conditions for prison staff so as to create a conducive environment, where the respect of prisoners' rights is possible. Finally, there is a strong need to develop and strengthen interface between prisons and the community including local self-bodies and Panchayati Raj institutions so that prisons are accepted as social development issue and included in their development plans and budget outlays.

The present accent on the protecting of human rights of persons in custody has aggravated the need to restructure the prison and sharpen its role in the context of social and public progress. In respect to this thing, the certain references of the All India Committee on Jail Reforms,[196] deserves attention:

> "Programmes for reformation and rehabilitation of criminals, for transforming them worth countrymen, must find a place in our national plans. These programmes should be included in the plans for the same reasons for which educational and social welfare programmes have been so included. No greater justification need to be adduced in support of our recommendation than the fact that prisons in a welfare State like ours are not merely agencies of law enforcement but are welfare institutions providing correctional programmes for the offenders and social defense programmes for the welfare of the society as a whole."

One must acknowledge that, no person is a born criminal, Crime is a reflection of the failures of society. And by restoring human rights to prisoners and by ensuring proper socialization of prisoners, the society redresses its own wrongs. The physician heals thyself.

Hence, the Hypothesis stands proved.

[196] 1980-83 (Mulla Committee)

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