Prisoner's rights in India and International scenario: A demanding change and perspective

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ABBREVIATION

1. **ACHR:** Asian Centre for Human Rights
2. **AIR:** All India Reporter
3. **AJIL**: American Journal of International Law.
4. **CEDAW**: The Convention on the Elimination of all Forms of Discrimination against Women
5. **ECOSOC**: United Nations Economic and Social Council
6. **HC**: High Court
7. **ICC:** International Criminal Court
8. **ICCPR**: International Covenant on Civil and Political Rights
9. **ICESCR**: International Covenant on Economic, Social and Cultural Rights
10. **ICJ**: International Court of Justice
11. **ICRC**: International Committee of the Red Cross
12. **MCOCA:** Maharashtra Control of Organised Crime Act
13. **NCRB**: National Crime Record Bureau
14. **SC:** Supreme Court
15. **SCC**: Supreme Court Cases
16. **U.P**: Uttar Pradesh
17. **UDHR**: Universal Declaration of Human Rights
18. **UN:** United Nations
19. **UOI**: Union of India

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Chapter - 1

Prisoners' Rights in India- Human Rights Perspective

1.1 Human Rights:

"India shares the universally held view that a sentence of imprisonment would be justifiable only if it ultimately leads to the protection of society against crime. Such a goal could be achieved only if incarceration motivates and prepares the offender for a law-abiding and self-supporting life after his release. It further accepts that, as imprisonment deprives the offender of his liberty and self-determination, the prison system should not be allowed to aggravate the suffering already inherent in the process of incarceration."[1]

Human Rights are those rights which are essential for every human being either a normal being or a prisoner. It can be said that human rights rests upon the idea that every human being is entitled to enjoy his or her rights without any distinction or discrimination of any kind such as on the basis of caste, religion , race, nationality etc.

The protection and respect for these rights of a person depends upon his status, whether he is a citizen or non-citizen, a freeman or a prisoner, child or an adult, male or female, meaning the enjoyment of some rights are not absolute but can be interfered by the State.

Although the penal reforms in India during the past few decades have brought about a remarkable change in the attitude of people towards the offenders. The old concept about crime, criminal and convicts have fundamentally changed but there still a lot that have to be done in executing those rights and providing the same. All these changes in terms are now just in talk but not in actual reality.

It is said that a prison today serves three purposes which may be described as custody, care and correctional but 'care' is far from reality. There are plethora of cases where prisoners are treated inhumanly, cruel and are also molested and tortured daily.

The penal reforms in India during the past few decades have brought about a change in the attitude of people towards the offenders which is remarkable.

[1] Government of India regarding prison management in the form of Model Prison Manual 2016, a "Perspective"

The old perception of crime, criminal and convicts have radically changed. The emphasis has now shifted from deterrence to reformative of the criminal. The old discriminatory and punitive punishments no longer find place in the modern penal system. Indian penologists are greatly influenced by the recent Anglo-American penal reforms and have adopted many of them in the indigenous system.[2]

In its inception prison provides only the custodial functions; it was a place in which an alleged offender could be kept in lawful custody until he could be tried, and if found guilty punished.[3] India's the Central Government constituted a number of committees on prison reforms and introduced the reformation and rehabilitation methods for the prisoners, providing rights to them. An individual being a prisoner, cannot lay hold of all his rights by the authority, even though he is convicted as he is having fundamental rights guaranteed by the Art.21 of the Constitution and save guard by the Supreme Court and High Courts under Art.32 and Art.226 of the Constitution. In this back ground the rights of the prisoners gained importance and have become the study of this research work.

As far as the rights are concerned, they are legal, social, or ethical principles of freedom or entitlement, rights are the fundamental normative rules is allowed of people, according to some legal system, social convention, or ethical theory.

The rights of man have been a matter of concern of all civilizations from time immemorial. The concept of the rights of man and other fundamental rights was not unknown to the people of former periods.[4]

A right is the legal or moral entitlement to do or abstain from doing something, or to obtain or abstain from obtaining an action, thing or recognition in civil society in the jurisprudence and the Law. There are essentially two main contemporary conceptions of rights; on the one hand, the idea of natural rights holds that there is a certain list of rights enshrined in nature that cannot be

[2] Prof. N.V. Paranjape, Criminology and Penology, Central Law Publications, Allahabad, 12th Edition, 2006, p.21
[3] Frank New Sam, " The Home Office" Allen and Unwin, London, 1954, p.144
[4] Attar Chand, Politics of Human Rights and Civil Liberties - A Global Survey , UDH Publishers, Delhi 1985,p. 45

legitimately alter by any human power. While, on the other hand, the idea of legal rights holds that rights are human made, created by society, enforced by governments and subject to change. It is not necessary that a right should be understood by the holder of such right, thus rights must be recognized on behalf of another, such as children's rights or the rights of people who are mentally incompetent to understand their rights.

Every individual are having certain basic rights, equal to man and women and with regard to the rights, it is the state obligation to implement the rights and if there's any violation, the courts are observant over its violations.

The existence and validity of human rights are not written in the stars as said by Albert Einstein while addressing at Chicago. The idealistic conduct of men towards each other and the desirable structure of the community have been formulated and taught by learned individuals in the course of history. The existence and validity of human rights are not written in the stars as said by Albert Einstein while addressing at Chicago. A large part of history is therefore jammed with the grapple for those human rights, an everlasting struggle in which a final victory has never seen the light. 'But to tire therein that struggle would mean the ruin of society'.[5]

Human rights are the rights that every human being is entitled to celebrate and to have protected. The primary idea of such rights are fundamental principles that should be respected in the treatment of all men, women and children exists in in all cultures and societies. The modern international statement of those rights is the Universal Declaration of Human Rights. It's the duty of governments to protect the human rights proclaimed by the declaration. Under the provisions of Civil and Political Rights, all governments are directed to protect the life, liberty and security of their citizens. They guarantee that no-one is enslaved and that no-one is subjected to arbitrary arrest and detention or to any form of torture and that everyone is entitled for a fair trial. The

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

protection of right to freedom of thought, conscience, religion, and to freedom of expression are important to be protected.[6]

'Human rights are fundamental freedoms to completely develop and use the human qualities, intelligence, talents, and conscience and to assure physical, spiritual and other needs. Human rights called fundamental rights or basic rights or natural right'.[7]

Human rights could also be categorized because the fundamental rights to each man or women living in any part of this world are entitled by virtue of getting been born as a human being, the rights are required a complete development of human personality. Human rights are derived from the dignity and value inherent in human person. The courts in India are recognizing and enforcing the human rights as natural rights of mankind or as Constitutional mandates or as rights of an Indian in an independent polity.[8]

The human rights aren't created by any legislation; rights resemble considerably the natural rights. Civilized country just like the United Nations must recognize them. They can't be subjected to the method of amendment. The duty to guard human rights includes the duty to respect them. Members of U.N. committed themselves to market respect for and observance of human rights and fundamental freedoms. Human rights represent affirmation which individuals or groups make on the society. They include the proper to freedom from torture, the rights to life, cruelty, freedom from slavery and made labour, the proper to liberty and security, freedom of movement and selection of residence, right to fair trail, right to privacy, freedom of thought, conscience and religion, freedom of opinion and expression, the proper to marry and from freely elected representatives, the proper to nationality and equality before the law. These rights can't be compromised universally. These rights are natural because they were derived from nature and will not be legally alienated by the

[6] S. Radhakrishnan, Judge, Bombay High Court, Global Challenges & the Indian Legal System, Development of Human Rights in an Indian Context, International Journal of Legal Information the Official Journal of the International Association of Law Libraries, Volume 36, Issue 2 Summer 2008

[7] Dr. S.K.Kapoor, Human Rights under International Law and Indian Law, Central Law Agency, 3rd Edition, 2005.

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

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

1.2 Human Rights of Prisoners that cannot be overlooked

Where individuals are physically confined and are deprived of personal freedom to a certain extent such place is considered as a prison and is an integral part of the criminal justice system of any country.

It may be meant exclusively for adults, children, females, convicted prisoners, under-trials etc. The objective of imprisonment may vary from country to country. It may be: a) punitive b) deterrence c) reformative or d) rehabilitative etc. The initial purpose of imprisonment is to safe guards society against crime. Punitive methods of treatment of prisoner's alone cannot achieve the goal of reformation of prisoners. Several human rights approaches and human rights legislations as well as judiciary have facilitated a change in the approaches of criminal justice system. The UN has also stated certain guidelines for the treatment of prisoners. The State is under legal obligation for protecting its subjects and for the compliance of which citizens are given certain basic privileges recognized by the Constitution of India and other legislations.

However, the amplification of rights of the prisoners raises a question as to what extent it is viable under Article 21 to incorporate within its ambit, the access to conjugal rights to the prisoners within the jail premises. Besides, the rights of the victims upon whom they had committed the offence and to what extent the arena of rights of the prisoners can be enhanced in the equivalent of human rights so as not to violate the human rights of the victims who were the primary sufferers of the offence committed upon them.

The main human rights issue of under trials is delay in trial of cases. Right to speedy trial is said to be a right to life and personal liberty of a prisoner guaranteed under article 21 of the Constitution, which ensures just, fair and

reasonable procedure. However, eighty present prisoners are under trials, and some of them are not released even after granting bail as they are unable to furnish surety bonds due to lack of money or verification of addresses, as some prisoners don't have houses. It has always known that the speedy trial of offences is one of the basic objectives of the criminal justice delivery system. Once the cognizance of the accusation is taken by the court then the trial has to be conducted efficiently so as to punish the guilty and to declare free to the innocent, everyone is presumed to be innocent until the guilt is proved. So, the quality of innocence of the accused has to be determined as quickly as possible. It is therefore, obligatory on the court to see that no guilty person escapes, it is still more its duty to see that justice is not delayed and the accused persons are not indefinitely harassed. It's relevant to mention that delay in trial by itself constitutes denial of justice which is said to be justice delayed is justice denied. It is of the absolute importance that the persons accused of offences should be speedily tried so that in cases where the bail is refused, the accused persons have not to remain in jail longer than what is necessary. The right to speedy trial has definitely become a universally recognized human right[9].

1.3 Issues pertaining to violation of prisoner's rights :

Various international instruments have been formulated for the prisoners. Speaking of India, apart from the Constitution of India that confers a number of fundamental rights upon its citizens, various legislations dealing with rights of prisoners have been enacted.

In spite of having so many legislations various issues enlisted below pertain to the violation of prisoners 'rights

- 80 per cent prisoners are under trials
- Even though bail is granted, prisoners aren't released.
- Insufficient provision of medical aid to prisoners.
- Insensitive attitude of jail authorities

[9] supra

- Punishment administered by jail authorities not coherent with punishment given by court. Harsh mental and physical torture.
- Huge amount of surety ordered by courts which indigent prisoners can't pay.
- Rejection of surety bonds because of lack of money or verification of addresses, as indigent prisoners don't have houses.

1.3.1 Solitary Confinement: The Hole

Solitary confinement—"the hole" as it is referred to in jails—has been internationally recognised as a form of torture and experts, legal, behavioural and medical, believe it can lead to more problems rather than remedies. Now India, too, is taking steps to abolish the appalling practice.

In a landmark judgment, the Uttarakhand High Court on April 28, 2018, abolished the practice of keeping death row convicts in isolation immediately after their sentencing. The division bench of Justices Rajiv Sharma and Alok Singh noted that solitary confinement was an "anarchic and cruel practice which amounts to torture and can cause immense pain, agony and anxiety" to inmates. Also says that, "convict shall not be separated till the sentence of death has become final, conclusive and indefeasible which cannot be annulled or voided by any judicial or constitutionally." It's further said that the time duration to keep a convict sentenced to death in isolation should be for the shortest possible time i.e. two to three days before execution of the sentence and should be done only after the convict has exhausted all the possible options to the highest levels including an appeal in the Supreme Court and a mercy petition to the president.

Just a week earlier, in another case involving solitary confinement, Neeraj Bawana, an undertrial gangster, was shifted from solitary confinement to a regular ward under a Delhi High Court order. The Court on April 20, 2018 directed the Tihar Jail administration to shift Bawana as it felt that complete and constant isolation of a prisoner could drive him to total insanity.

Additional Sessions Judge Tarun Sherawat noted that Bawana had been kept in "the hole" for more than six months without any order from competent authorities. "It's a matter of common knowledge that complete and constant isolation of a prisoner may lead his mind to total insanity, and it can actively cause disaster to their physical and mental-health…" He directed the jail

administration to shift "the accused immediately from his separate confinement to some other secure ward, so that he could move, talk and share company with other co-prisoners."

Mohammad Aamir Khan was just 18 years old when the police in Delhi picked him up. They slapped 19 cases against him; the charges included murder, terrorism and waging war against the nation. It wasn't until 14 years later that Khan was able to prove his innocence and walk out of the prison a free man. He was often placed in solitary confinement in the Tihar and Ghaziabad jails; his only encounters with the outside world were when he was escorted out of the prison for court hearings.

Khan writes in his book that he was tortured and was not allowed to meet anybody for months while in solitary confinement. Bawana, who has been charge sheeted in various cases including offences under the Maharashtra Control of Organised Crime Act (MCOCA), has also alleged being kept in inhuman conditions in the prison.

The National Human Rights Commission, in a report on allegations of torture of SIMI men by officials in Bhopal jail, said that "the prisoners testified to being kept in solitary confinement in size of 8x5 feet cells without fans, from where they were let out for only a few minutes a day for filling water and cleaning the area outside. This leads to behavioural disorders like anxiety, depression and frustration, resulting in some of them turning aggressive." These incidents point to gross violation of the fundamental rights of the prisoners.

Nelson Mandela Rules for solitary confinement

The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), adopted by the UN General Assembly on December 17, 2015, after a five- year revision, states:

- In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, shall be prohibited:

1. Indefinite solitary confinement;
2. Prolonged solitary confinement (confinement for a time period in excess of 15 consecutive days);
3. Placement of a prisoner in a dark or constantly lit cell.

- Solitary confinement shall be used in exceptional cases as a last resort, for as short a time as possible, subject to independent review, and only pursuant to authorisation by a competent authority. It shall not be imposed by virtue of a prisoner's sentence.
- The imposition of solitary confinement should be prohibited for prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures.

Sana Das, coordinator of the Prison Reforms Programme at the Commonwealth Human Rights Initiative, wrote in a newsletter: "Solitary confinement is a shortcut to the socio-psychological 'death' of prisoners. It has severe, adverse and irreversible psychological impact. It induces a psychiatric disorder characterized by hypersensitivity to external stimuli, hallucinations, panic attacks, cognitive deficits, obsessive thinking, paranoia, and a list of other physical and psychological problems… It's inefficacious to the purposes of both prison discipline and correction. Inmates become more aggressive and are more prone to commit violent crimes post-confinement, thus increasing recidivism. Moreover, it undoes the correctional spirit by which modern prison systems are to conduct themselves."

In a report in the *Economic and Political Weekly* on April 7, 2018, the Persecuted Prisoners Solidarity Committee (PPSC) condemned the arbitrary and illegal manner in which the undertrials arrested following the crackdown on the Mazdoor Sangathan Samiti (MSS) were kept in solitary confinement in Giridih Central Jail. The MSS, a registered trade union, was banned on December 22, 2017 by Jharkhand, following which people were arrested and kept in solitary confinement since March 23, 2018. The prisoners went on a hunger strike following which the jail authorities have allowed them to mingle with others twice a day for two hours. "This continues to be in violation of the constitutional and statutory rights of prisoners as guaranteed by the law of the land" states the report. According to information received from the relatives of these prisoners, the cells in which they have been kept are unclean and without any basic facilities. Relatives have been prevented from giving them basic items like mosquito repellents, food and clothes. The number of visitors and frequency of visits have also been arbitrarily curtailed."

Internationally, solitary confinement is recognised as a form of torture and India is a signatory to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1987. In 2011, United Nations experts called on all the countries to ban solitary confinement of prisoners except in very exceptional circumstances and for as short a time as possible. But the practice continues unabated around the world.

Convicts are kept in solitary confinement under Sections 73 and 74 of the Indian Penal Code under the order of a court

"The offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in total, according to the furthering scale, that is to say—a time not exceeding one month if the term of imprisonment shall not exceed 6 months; a time not exceeding two months if the term of imprisonment shall exceed six months and shall not exceed one year; a time not exceeding three months if the term of imprisonment shall exceed one year" states section 73.

Section 74 states the limit of confinement: "In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the time-period of solitary confinement of not less than such periods; and when the imprisonment awarded shall exceed 3 months, the solitary confinement shall not exceed 7 days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods."

In 2016, the then President of the United States, Barack Obama, wrote in *The Washington Post*: "The United States is a nation of second chances, but the experience of solitary confinement too often undercuts that second chance. Those who does make it out often have trouble holding-up jobs, reuniting with family and becoming productive members of society. Imagine being served your time and then being unable to hand greed over to a customer or look your wife in the eye or hug your children. How can one subject prisoners to unnecessary solitary confinement, knowing its effects, and then expect them to return to our communities as whole people? It doesn't make us safer. It's an affront to our common humanity."

It is high time prisoners are treated as human beings and given the freedom to live their lives with dignity in jail.

1.3.2 Compulsory Hard Labour

Prison labour also involves certain human right issues. The extention of labour given for a prisoner will vary depending upon the punishment and nature of imprisonment. Anyhow prison labour must be understood as a tool for reformation instead of taking it as a form of punishment. Legal system of India always measures it as method to implement rigorous imprisonment made by the court. The issue in relation to improper remuneration was raced before Indian judiciary. Accommodating the prisoners for the most suited job was well identified in the early periods itself. Following this doctrine Krishna Iyer, J. in a landmark case law directed the prison authorities to engage a convict in agriculture as he traditionally belongs to that sector of the society.[10] The Court further concluded the objective of prison labour as:

When prisoners are made to work, a small amount by way of wages could be and should be paid so that the healing effect on their minds is fully felt. However proper utilization of services of prisoners in some meaningful employment, whether as cultivators or as craftsman or even in creative labour will be good from the society's angle as it reduces the burden on the public exchequer and the tension within.

The above approach of the court has been criticized as the argument supports the use of income of a prisoner against his expenses inside the prison. On the other side the state should not take anything from the income of a prisoner as it can be used for the well-being of his family or according to his lawful aspirations. The previous position was based on the conviction that the man who broken the law has placed himself in debt of society for which he have to compensate[11]. This would also work in creating earning habits and making a prisoner self-confident. Need for adequate wages by prisoners were again raised before the Supreme Court and where the court held the application of Minimum Wages Act, will be of great use.[12] The real message to be conveyed by prison labour was made herein as:

Prisoner reformation should be dominant objective of a punishment and during incarceration every effort should be made to re-create the good man out of

[10] Darambir & Another v. State of Uttar Pradesh, (1979) 3 S.C.C. 645.
[11] Frank Pakenham, Lord Longford, The Idea of Punishment (1961), Geoffrey Chapman Publication, London, p. 60.
[12] State of Gujarat and another v. Hon. High Court of Gujarat, A.I.R. 1998 S.C. 3164.

convicted prisoner. A guarantee to him that his hard labour would eventually turn-up into handsome saving for his own rehabilitation would help him to get stripped of the moroseness and desperation in his mind while working with the rigorous of hard labour during the period of his jail life. Thus reformation and rehabilitation of a prisoner are known to be a great public policy. Hence they serve a public purpose.

In this judgment, the court recommended to the State concerned to make law for setting apart a portion of wages earned by the prisoners to be paid as compensation to the worthy victims, of the offence, the commission of which entailed the sentence of imprisonment to the prisoner either directly to through a common fund to be created for this purpose or in any other feasible mode.

In inclusion to the above rights, judiciary had glorified more rights which constitute certain new rights for prisoners. Under the paragraph 873 of the Punjab Jail Manual, body of the condemned convict, after it falls from the scaffolds is required to remain suspended for a period of half an hour. This practice was contested to be violative of right to dignity and fair treatment continues in respect of the dead body of the condemned man[13]. Glorifying the extent of right to dignity the Court observed that:

Right to dignity and of fair treatment under Art. 21 of the Constitution of India are not only available to a living man but also to his body after his death. The jail authorities in the country shall not keep the body of any condemned prisoner suspended after the medical officer has declared the person to be dead.

The inherent quality of every human life is there with the prisoners. Judiciary cannot give any ultimate protection to the prisoners as it can only look upon the matters made to them. Nation should develop a new legal framework within which the prison administrations enhance. The so developed national law should encompass all the above mentioned legal rights propounded by the judiciary along with the international human rights guarantee. National Human Rights Commission had made some unsuccessful attempts to this regard.

[13] Paramanand Katara v. Union of India and another, (1995) 3 S.C.C.248

1.3.3: Conjugal Rights of prisoners: An evolution through cases

In the case of Francis Coralie Mulin vs. the Administrator, Delhi, the Court held that prisoners are entitled to the enjoyment of all fundamental rights that are available to any free person, apart from those barred by the reason of incarceration. Whether the conjugal rights to prisoners is a right available to prisoners was an issue placed before the Court. The answer to this question has evolved through the years through a few cases.

G. Bhargava, president m/s. Gareeb guide (voluntary organisation) vs. State of Andhra Pradesh[14]

In this case, there was a Public Interest litigation (PIL) filed by the petitioner before the Andhra Pradesh High Court seeking immediate action to permit conjugal visits to the spouses of prisoner in the jails throughout the State. However, the Court responded to the PIL in the negative holding that if such conjugal rights are allowed to certain prisoners, then it would be unfavourable to the other prisoners, to whom such right is not extended. The Court further stated that the issue relating to conferring conjugal rights is a policy decision within the domain of the State and not within the power of the Court to do so.

Jasvir Singh and anr vs. State of Punjab and others[15]

In this case, the petitioners were a couple, guilty of kidnapping and murdering a sixteen year old for ransom. The couple was awarded a death sentence by the Trial Court and their further appeal to the Supreme Court was dismissed. However, the Apex Court commuted the sentence of the wife to imprisonment for life. The petitioners prayed for the enforcement of their conjugal rights and their right to procreate during incarceration. They also petitioned that the Court should direct the jail authorities to permit to them to stay together for the sake of procreation. They also requested for artificial insemination as an alternative.

The principal issue involved in this case is whether ‘right to life’ available to prisoners includes ‘right to conjugal visits’ and ‘right to procreate’. The Punjab and Haryana High Court held that the right to procreation is available to prisoners as well. This right can be traced to fall under the ambit of Article 21 of the Constitution read with the UDHR. The Court stated that only the

[14] PIL No.251 of 2012 decided on 16th July, 2012
[15] CWP No. 5429 of 2010

rights ancillary to incarceration will not be available to prisoners and since there is no nexus between conjugal rights and incarceration, the prisoners are entitled to the enjoyment of such rights, subject to reasonable restrictions. The Court finally established that Article 21 that is available to prisoners includes their right to conjugal visits or artificial insemination (alternative). Also the Court held that the exercise of these rights shall be in consonance with the procedure laid down by the State.

Meharaj v State of Tamil Nadu and others[16]

In this case, the Petitioner (wife of the convict) has filed a petition before the Madras High Court seeking grant of leave for her husband who is a life convict. The leave is sought for the purpose of assisting the petitioner in the infertility treatment to be undergone by her. The Court in this case, emphasised on the significance of family bonds and relation with spouse in the reformation of a prisoner and opined that, just because a person is a prisoner he cannot be overlooked of his right to dignity in a society. The Court stated that conjugal rights are a very important aspect of a man's right to life. The court upheld that the right to conjugal visit is within the ambit of the right to life of prisoners and therefore prisoners are entitled to the same.

Conjugal Rights: Assessment of pros and cons

In the movie "Sanju", there is a scene that depicts the living conditions of prisoners at the Yerwada Jail. That scene shows how untidy the loo in the jail was. The movie just highlighted the fact that provision of basic living conditions to the inmates is not the priority of prison authorities. Right to life includes right to lead a dignified life. A little effort to improve the living conditions is required and providing for marital rights to the prisoners might be one step towards it. Since ages, it is believed that the love and affection of family reforms the character of a person. It helps him rehabilitate himself to coexist in the society once he is out of the prison. This helps in mitigating the violent behaviour of the prisoners in the jails. Also, it can be contested that why should the spouses of inmates lead a non- conjugal life due to a wrongful act committed by the prisoner. Another advantage of permitting conjugal rights to prisoners is that it helps in reducing non-consensual homosexual

[16] Petition No.1837 of 2017

intercourse. Being confined in a room for days incites the prisoner to engage in homosexual activities, out of frustration. The advocates of conjugal rights to prisoners use this as weapon to state that this results in homosexual rape which has increased to a great extent especially in the prisons.

In a study published by the American Journal of Criminal Justice, it was observed that the four states in America that provided for conjugal rights had lower rates of sexual assault among the inmates in comparison to the other states that did not permit conjugal visitation. The issue of engagement in homosexual activities by juveniles had come into light only in the case of Sunil Batra v Delhi Administration. In the case of G. Bhargava v Secretary, State of Andhra Pradesh, a petition was filed to seek for marital rights to the inmates on the ground that it might help in the reduction of homosexual activities which would in turn help in reducing HIV-AIDS. Recently, this issue has been in limelight and the courts have agreed that allowing for such a right would help the inmates relieve sexual frustration and reduce non-consensual homosexual activities. There are other factors like incentive for quick rehabilitation and right to procreation that stand strong and promote the need for provision of conjugal rights to prisoners.

The judiciary is slowly stepping into the forum and helping in improving the conditions of the prisoners. It is upholding the principles of Article 21 at every step of its job. It is argued that, though allowing for conjugal rights upholds the right to live with dignity of the prisoners, it is difficult to implement such rights in India where the prisons are always overcrowded and there are no basic amenities available to the inmates. In the case of Meharaj v State of Tamil Nadu and ors, the probation officer rejected the plea of the petitioner because the rule book governing the suspension of sentences did not explicitly mention about the marital rights of the inmates. An argument against the conjugal rights is that if such rights are permitted, then the cells might turn into prostitution centres. Also, sexual intercourse is a private act between married couples and engaging in sexual activities in the cells would be a breach of their privacy.

In Jasvir Singh's case, the court ordered for a Reforms Committee to be formed so as to recommend the implementation of such rights and lay down a reasonable classification as to who should be granted the conjugal rights. The

prison authorities are concerned about the safety of the inmates because there are high chances of escape attempts by the inmates. As a solution to this problem, the security supervising the inmates during conjugal visitation could be tightened as seen in Meharaj's case. Thus, some justify it to be a part of right to life under Article 21, while the others evade it on the grounds of it being immoral and impractical. It is the job of the legislature to explicitly lay down the rights available to the prisoners and the judiciary has to ensure that the rights are properly implemented to deliver proper justice to the situation.

Conjugal Rights in other jurisdictions

(A) United States

There are only 4 states in the U.S. that permit conjugal rights to prisoners- California, Connecticut, New York, and Washington. The rights are not formally established by law but the practice has been accepted by all the prisons. The inmates get to meet their spouses twice in every week. Most of the times, a lot of inmates are placed in the same room and the visitation happens in overcrowded conditions. In New York, extended family visits are allowed only to those inmates who have been in their best behaviour and whose period of sentence is only one year. For conjugal visitations, an apartment is given for the couple to stay and spend time in. The rationale behind providing for conjugal rights to prisoners is that it helps them in rehabilitation and relieving stress and frustration. Here, the laws on punishment are valued more than the institution of marriage.

(B) Canada

The concept of conjugal visitation started in the year 1980 as a pilot project and since then it has been adopted by the country as a regular practice since it has played a significant role in rehabilitating the prisoners. The results of conferring such a right has been positive and it is important to make this process successful as it is a welfare measure for the prisoners.

(C) Europe

In Europe, the conjugal rights are dependent on the European Convention on Human Rights that assures right to marriage and privacy. Most of the European countries consider the right to marry and have children to be a scared obligation. The conjugal rights in these countries are more liberal and promising. For instance, France allows for conjugal visitation twice every

week and New Zealand allows spouses to visit their inmates for an hour every week. Sweden is considered to be the most liberal country providing for visitation rights to spouses on one Sunday every month without any supervision. It also allows for home leaves and private visits.

India has taken a lead from the laws of such countries where the rights of citizens are given the highest priority. Since India is an active signatory to most of the human rights treaties, it is desired that it will soon provide for such rights to the prisoners and thus uphold the basic constitutional principles.

In India, we have adopted a penal system, reformatory in nature wherein the system incorporates practices that are conducive to reformation and recognizes rights which purport a decent standard of living to the prisoners. Psychologists say that contact with family and spouse is an important aspect of a man's life and helps him feel stress-relieved and happy. The institution of family is deeply rooted in the Indian sentiment. One of the most fundamental arguments raised by the exponents in support is that through providing for conjugal rights, the family ties do not fade away and remain strong. To uphold a fair system of incarceration, it is important that conjugal rights to prisoners are provided because it helps in reformation and rehabilitation of prisoners which is in tandem with the nature of India's penal code.

The Indian Judiciary has played an exemplary role in recognizing the conjugal rights of prisoners. The landmark judgment of Jasvir Singh v State of Punjab has introduced a new dimension of 'right to procreate' and 'right to conjugal visits' to the right to life. This judgment took a step forward towards recognizing the rights of prisoners. Taking a lead from the rights of prisoners in the international jurisdictions, the Indian Courts are gradually moving towards transforming the living conditions of the prisoners.

The present legal framework governing the prisoners does not have any provision for conferring conjugal rights to prisoner and thus such a drawback needs to be immediately addressed. Assessing the boons and banes of vesting conjugal rights to prisoners, we conclude that such rights are a desideratum.

1.3.4. Parole and Furlough ; Privileged class?

Parole and furlough mean a temporary release from jail or a prison. While the time period of parole is not deducted from period of sentence, the time spent on furlough is as it is a reward given for good conduct.

The Delhi Government pronaunced a Bench of Justices Hima Kohli and Subramonium Prasad that it was going to amend its prison rules to provide the options of special parole and furlough.

The other proposal mooted was to amend the prison rules and introduce the expression of 'emergency parole' which shall authorise the government to grant parole for up to eight weeks in one time, in furtherance to the regular parole of one month, subject to conditions, Delhi Government's additional standing counsel Anuj Aggarwal said.

A notice would be issued within a day to amend the prison rules to include the new provisions.

Parole, within the existing prison rules, means releasing a prisoner for not more than a month to maintain social ties after he or she has served minimum one year of their awarded jail term. But the problem stands still; that was are those good grounds and who shall be responsible? The privileged class owns them all.

The actor Sanjay Dutt was sentenced to five years in jail for possessing an AK-56 supplied by gangsters involved in the serial blasts that rocked Mumbai in 1993.

Out of the 1,825 days he was directed to spend in jail, Sanjay Dutt finally spent 1,445 days in prison. Dutt walked free after being given a remission of 60 days for good conduct and having earned 156 leave while in jail. Both were deducted from his jail term.

Furlough means 14 days leave annually that prisoners are eligible for provided the police give a no objection certificate. It is generally given for attending urgent work and also done to keep the prisoner in touch with the outside world and his family.

A parole is awarded to a prisoner in case of an emergency like attending the funeral of a family member.

According to Critics, Dutt was given repeated paroles and furloughs because of his celebrity status, entitlements that are normally not extended to a vast majority of convicts crowding the country's jails.

Judicial Attitude on Human Rights of Prisoners in India

The Indian struggle for freedom played a pertinent role in initiating the process of recognizing certain rights for the prisoners. Post-independence, the Constitution of India conferred a number of fundamental rights upon the people. The Constitution guarantees the right of personal liberty under Article 21 and thereby prohibits any inhuman, cruel or degrading treatment to a person whether he's Indian national or foreigner. It states as, "No person shall be deprived of his life or personal liberty except according to procedure established by law". Through interpretation of Article 21 of the Constitution, the Supreme Court has developed human rights jurisprudence for the preservation and protection of prisoners' rights for the maintenance of human dignity. Deprivation of life and liberty is justifiable consistent with procedure established by law but the procedure can't be arbitrary, unfair or unreasonable.

In Maneka Gandhi Vs Union of India[17] the Apex Court laid down that the procedure cannot be arbitrary, unfair or unreasonable. This was further endorsed in Francis Cora lie Mullin Vs The Administrator, Union Territory of Delhi and Others, when the court held that Article 21 requires that no one shall be bereft of his life or personal liberty except by procedure established by law and this procedure must be reasonable, fair and just and not arbitrary, whimsical or fanciful. The judiciary in India has been very active and observant in protecting the human rights of the prisoners. Certain very pertinent rights of the prisoners recognized by they are as follows:

Compensation

An under trial or a detainee or a prisoner can approach the Supreme Court under Article 32 and High Court under Article 226 and claim for

[17] AIR 597, 1978 SCR (2) 621

compensation for the violation of their rights while in custody of the police. In Rudul Sah Vs State of Bihar and Others[18] the petitioner was released from Tihar jail after a span of fourteen years on the excuse of insanity following when he was acquitted. The Court finds out that there was no data of any kind that was produced to show that the prison authorities had a basis for either declaring the prisoner insane or for detaining him on that account. No measures were taken to cure him. Insanity was clearly alleged as an afterthought. The Court observed that if a prisoner was at all insane, it must have been caused by the jail conditions itself. The Court awarded a compensation of rupees 35000 to the petitioner and specifically directed that a suit for compensation exceeding above this amount would lie in an appropriate Court. Article 21 will be deprived of its significant content if the powers of the Court were limited to passing orders merely of release. While in Sebastian Hongray's case[19] it was a habeas corpus petition. Sebastian a Naga Priest who was a Head Master of the school. His school was visited by the army. It was alleged that the army had engaged in certain atrocities and took away certain persons including the petitioner. He was last seen alive in an army camp. A petition for habeas corpus was filed, but the State refused too bay. The Court seek a question in this matter as "What is the appropriate method for enforcing complience to a writ of habeas corpus?" The Court ordered that the State has to pay one lakh each to the wives of the missing persons. Whereas, a compensation of rupees 50000 was awarded in Bhim Singh's case,[20] for imprisonment with mischievous or malicious intent. In this case an MLA was kept in police custody and remand orders were obtained without his production before a magistrate. The Supreme Court in Nilabati Behera's case[21] expressed the need of the Court to evolve new tools to give relief in public law by moulding it accordingly to the situation with a vision to preserve and protect the rule of law. In Peoples Union of Democratic Rights vs. State of Bihar,[22] the Supreme Court enhanced the amount of compensation from rupees 10000 to

[18] AIR 1086, 1983 SCR (3) 508
[19] Sebastian M. Hongray vs Union Of India And Others on 24 November, 1983, AIR 571, 1984 SCR (1) 904
[20] Bhim Singh, Mla vs State Of J & K And Ors. on 22 November, 1985, AIR 1986 SC 494, 1986 CriLJ 192, 1985 (2) SCALE 1117, (1985) 4 SCC 677, 1986 (1) UJ 458 SC
[21] Nilabati Behera Alias Lalit Bahera vs State Of Orissa And Ors on 24 March, 1993, AIR 1993 SC 1960
[22] AIR 355, 1987 SCR (1) 631

20000 to be paid to the twenty one person's belonging to backward classes who died in indiscriminate firing by the police while holding a peaceful meeting in the District of Gaya, Bihar, and rupees 5000 each to the persons injured. The Court held that payment of such compensation does not absolve the liability of the wrong-doer but such compensation is being paid as a working principle and for convenience and with a view to rehabilitating the dependants of the deceased.

Fair Procedure

The Constitution of India recognizes principles of natural justice and they have been incorporated in Part III of the Constitution of India. In Abdul Azeez vs. State of Mysore the Karnataka High Court held that in cases where the accused refuse legal aid and is not represented by an advocate, the Court ought to, in the interest of justice, either question the witness himself, or appoint a competent counsel to assist the Court. The Court remitted the matter for retrial in accordance with its directions. In Shivappa Vs State of Karnataka[23] the Supreme Court held that the Magistrate recording confessional statements of accused should strictly comply with the rules and ensure that the confessions are voluntary. In Jayendra Vishnu Thakur Vs State of Maharashtra and Another[24], the Supreme Court held that an accused would not be presumed to have waived his right and that procedural principles like estoppel and waiver would not be attracted where an order is passed without jurisdiction, as it would then be anullity, because of which the order cannot be brought into effect for invoking the procedural principles mentioned above.

Humane Sentencing

It is the consecrated duty of judiciary to look at every aspect of the case and to award proportionate quantum of punishment depending upon the gravity of the offence. A sentence that's passed after considering the important circumstances which resulted into the illegal act drawing imprisonment of the accused is called a humane sentence. In Laxman Naskar (Life Convict) Vs State of West

[23] AIR 1995 SC 980
[24] 2009 (7) SCC 104

Bengal and Another[25], the Supreme Court issued certain guidelines as to the basis on which a convict can be released pre-maturely:

1. Whether the offence is a private act of crime of an individual without affecting the society at large?
2. Whether there is any chance of future recurrence of committing crime?
3. Whether the convict has lost his potentiality in committing crime?

In Zahid Hussein and Others Vs State of West Bengal[26], the Supreme Court observed that the conduct of the petitioners while in jail is an important factor to be considered as to whether they have lost their potentiality in committing crime due to long period of detention or not.

Parole:

In Sunil Fulchand Shah Vs Union of India and Others[27], the Constitutional Bench of the Supreme Court observed that parole is a form of temporary release from custody, which doesn't suspend the sentence or the amount of detention, but provides conditional release from custody and changes the mode of undergoing the sentence. Parole is granted and governed by the following conditions:

(a) A member of the prisoner's family has died or is seriously ill or the prisoner himself is seriously ill; or

(b) The marriage of the prisoner himself, his son, daughter, grandson, granddaughter, brother, sister, sister's son or daughter is to be celebrated.

International Obligations:

Among the main reasons for the foundation of state and establishment of government; safeguarding peace and security and respecting law and order come to the forefront. The idea of social contract theory says that people agreed for the foundation of a state and government for the sake of better protection and have forfeited some of their rights for its effectiveness.

[25] 2000 (7) SCC 626
[26] CrLJ 1692, 2001 AIR (SC) 1312, 2001 (2) SCR 442
[27] AIR 1529, 1989 SCR (2) 867

Therefore, the obligation of securing law and order and punishing individuals during violations of the law remain in the hands of the state. Hence, administration of criminal justice in general is the power of the state. Likewise, the practice of how state treats its citizens or subjects was exclusive power of the individual state concerned. This includes Human rights and treatment of prisoners. However, later on issues of human rights and treatment of prisoners by states in particular draw the attention of many activists and was included in the international and regional human rights documents.

Similar to the fact in the research project, addressing prisoners' rights in the UN and regional human rights treaties is a result of the shift of public power of the 1940s. In addition to this, the UN and the other regional human rights systems have established adjudicating bodies which are empowered to settle disputes on the interpretation and application of the treaties concerned. Human rights committees, particularly the general comments of the ICCPR and IESCR committees on the rights of prisoners are one of the sources to be consulted in my research. Though there is no separate binding treaty on the rights of prisoners there are normative standards adopted by United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

In one fold we can say that, a person does not lose his human rights merely because he has committed some offence as he also has some dignity which must be protected. However, at the same time conferring conjugal rights to the prisoners within the jail premises requires re-consideration of a larger bench of the High Court or the Supreme Court as far as the concept of human rights is involved. By giving more weightage to the prisoners, the balance of criminal justice system may get disturbed and a situation may arise when one day jails would become resting centres or the victims may stop reporting the matter to the police and start taking law in their own hands to punish the guilty.

1.4 Historical Evaluation of Prisons:

According to the Bhagavad Gita; he who has no ill will to any being, who is friendly and compassionate, who is free from ego and selfishness and who is even look after in pain and pleasure, and patient is dear to God. It also says that sanctity in humans is represented by the virtues of non-violence, truth,

freedom from anger, renunciation and aversion to fault finding, compassion to living being, freedom from covetousness, gentleness, modesty and steadiness the qualities that an honest person need to have.[28] The historical account of ancient Bharat proves definitely that human rights were manifest within the ancient Hindu and Islamic Civilizations as within the European Christian civilizations. Ashoka, prophet Mohammed and Akbar can't be excluded from the genealogy of human rights.[29]

The social environments and the stages of societal developments helped to shape the penal institutions for a systematic description of jails, the indirect reference to the judicial aspect of state craft will help to know something about the prison system and its evolution.[30]

Prisons in the shape of dungeons had existed from time immemorial in all the old countries of the world. The punitive imprisonment used extensively in Rome, Egypt, China, India, Assyria and Babylon and firmly established in Renaissance Europe.[31] In India, prisons are even today are deemed to be created merely to maintain law and order. Bu it has to be viewed as an essential means of preserving and raising the quality of human life. Investment on prisons is still considered as non-developmental. Indian's attitude is greatly ambivalent. As most of the prisoners in India are themselves a victim of stark deprivation and of forced induction into criminogenic culture, they hardly have an advocacy of their own or on their behalf. Rationalization of prison reformation is not in India. As a consequence, prisons received the lowest priority within the criminal justice system in India.[32] The Prison conditions under various dynasty's is barbaric and inhuman methods were prevailed, the man became prisoner, all his rights are curtailed and he became slave. In those periods, different types of punishments were there. After independence, the prison conditions were changed from barbaric to reformation and rehabilitation methods.

[28] S. Radhakrishnan (trans.) The Bhagavadgita, George Allen and Unwin, London: 1958.p 276.
[29] Yogesh K. Tyagi, "Third World Response to Human Rights," Indian Journal of International Law, Vo .21, No.1 (January March 1981)
[30] M.B. Mahaworkar, Prison Management, Problems and solutions, Kalpaz Publications, Delhi. 2006, p.43
[31] Norval Morris, The Future of Imprisonment, University of Chicago Press, Chicago, 1974.
[32] Narayankar B.D, The New Indian Express, 2nd April 2001, p.9

1.4.1 Ancient Period:

The ancient Indian society exhibited all the characteristics of a scriptive social system. Many crimes and wrongs were sins and entailed secular punishments and also religious sanction. A well-organized system of prisons is known to have existed in India from the earliest times. It is on record that Brahaspathi laid greater stress on imprisonment of convicts in closed prisons. In Vedic period, administration of justice did not form a part of the state duties. Offences like murder, theft and adultery are mentioned but there is nothing to produce that the king or an authorized officer as a judge, either in civil or criminal cases, passed any judicial judgment. Some critics have suggested that Sabhapati of the later Vedic period may have been a judge.[33]

The Dharma Sutras and the Dharma Shastras (the earliest is that of Manu and other important Dharma Shastras are those of Yagnavalkya, Vishnu and Narada), reveal a more or less full-fledged and well-developed judiciary. Law or dharma was not a measure passed by legislature in Ancient India, it was based upon Shrutis (hearings) and Smritis (remembrance). It was enforced by social approval or the dread of hell and not by the force of the state. King was at its head and it was his pious duty to punish the wrong doers, if he fails from discharging it, he would go to hell.[34] Sutras and Shastras, we rarely come across the words prison or jailor. The prisons back then were only places of detention where an offender was detained until trial and judgment and the execution of the latter happens. The structure of society in Ancient India was founded on the principles enunciated by Manu and explained by Yiijnu Valkya, Kautilya and others.[35] Among various types of corporal punishments are branding, hanging, mutilation and death, the imprisonment was the mild kind of penalty known prominently in ancient Indian penology. Imprisonment occupied an ordinary place among the penal treatment and the type of Corporal punishment was suggested in the Hindu scriptures. The evildoer was put into prison to segregate him from the society. The main aim of imprisonment was to keep away the wrongdoers; they might not defile the

[33] M.B. Mahaworkar, Prison Management, Problems and solutions, , Kalpaz Publications, Delhi. 2006, p.43
[34] Basham, A.L: The Wonder That Was India, Macmillan Company, New York, 1959, pp.133,247
[35] K.V.R. Aiyanger, "Some Aspects of Ancient Indian Polity" Madras, 1935, p. 94

members of social order.[36] These prisons were totally dark dens, cool and damp, unlighted, and unwarmed. There was not proper arrangement for the sanitation and no means of facility for human dwelling.[37] To maintain law and order in society, to remove the criminals or wrongdoers by using force and punish the accused in public places, it will create fear among members of the society. At the time punishment is very cruel, inhuman treatment like as bounded labour and slavery.

Kautilya stated in his Arthashastra, that the prison should be constructed in a capital and provide separate accommodation for men and women. He was personally of the view that as far as possible the prisons should be constructed road side so that monotony of prison life can be reduced to a considerable extent, the problems of prisoner's life and their welfare. He is of the opinion that every fifth day some prisoner's should be made free who pay some money as fine or undergo some other mild corporal punishment or promise to work for social uplift. He has also suggested that general amnesty on the birth of a prince or coronation of a royal heir. Kautilya has said that, the duties of the jailor who always keeps eyes on the movement of the prisoner's and the proper functioning of the prison authorities. Kautilya has gone deep to jail life and opines that the prisoner escaping after breaking the prison walls, must be put to death. This shows that the jail authority called Bandhanagaradhyaksa was always vigilant and alert and no evil action could escape his eyes.[38] Kautilya stated that in his Arthasastha, the duties of the jailer are to provide facilities to prisoners and imposed fines for misconduct in their duties. He further explains the condition of prisoner's stringent fines are imposed when the prisoners tried to escape.

The prisoners of the Pre Buddhist times were terrible indeed. There were dangerous and the prisoners were kept under chains and heavy loads, and whipped on the slightest pretext. Whipping was a principle punishment in Europe and in India in the ancient times and in even the Middle Ages the prisoners were brutally chained and whipped every now and then. In the early

[36] Vasudev Upadhya, "A Study of Hindu Criminology", Chawkhambha Orientalia, Varanasi, 1978, p. 322
[37] S. Prakash, "History of Indian Prison System", the Journal of Correctional Work, No. XXII, Lucknow, 1976, p. 89.
[38] Amerndra Mohanty, Narayan Hazary, Indian Prison System, 1990, Ashish Publications House, New Delhi.

years of Ashoka, there was an unreformed prison in which most of the traditional fiendish tortures were inflicted and from which no prisoner came out alive.[39] But from his moral edicts which belong to his later period of rule was influenced by Buddhism. It appears that many reformatory measures were taken. Professor Ram Chandra Dikhitar in his book entitled 'Mauryan Polity', has suggested that Ashoka was familiar with the Arthashastra, for Ashoka speaks of as much as twenty five jail deliveries effected by him in the course of twenty six years since his appointment to the throne.[40] After the Mouryan dynasty, Jatakas given clear picture on crime and punishment, in this time, the release of political prisoners at the time of war and employed in their army. Emperor Ashoka constructed twenty five jails in his period and implemented reformative measures in prisons, because Ashok followed Buddhism. Later in jatakas period they used the prisoners as army in war times. From Harshacharita it projects that the condition of the prisoners was far from satisfactory. The life of Hiuen-Tsang records, prisoners generally received harsh treatment. They were not allowed to shave. They had hairy faces and matted beards. They were, however, occasions when prisoners were released. Kalidasa records when the constellation on which a King was born in evil aspect, astrologers advised release of all the prisoners. At the time of Royal Coronation all prisoners were released. The Bharat Samhita adds that release of prisoners could even be ordered when the king took the pusyasnana (as auspicious bath).[41] The prison system was not regular, the conditions of the prisoners changed basing on the rulers attitude and the treatment of political prisoner was different when compared to the other prisoners. The rulers used inhuman methods on prisoners and the conditions of prisons were inhumane in olden days.

1.4.2 Medieval Period:

The legal system of Medieval India resembled that of ancient India. The contemporary Muslim sovereigns seldom attempted to tamper with the day to day administration of justice. During Mughal period sources of law and its

[39] Basham, A.L: The Wonder That Was India, Fontana, Calcutta, 1975, pp.119
[40] V.R.Ramachandra Dikhistar, The Mauryan polity, Madras University Historical Series, No.21, 1953, pp. 173-176
[41] Sukla Das, Crime and Punishment in Ancient India, Abhinav, New Delhi, 1977, p.74

character were essentially Quaranic. The crudeness and insufficiency of the judicial systems were aggravated by the fact that only law recognized by the emperor and his judge was the Quaranic law, which had originated and grown to maturity outside India. Brahmanic Courts and Gentoc Code a loose mass of Sanskrit legal rules and sacred injunctions survived Emperor Akbar. During Mughal period sources of law and its character essentially remained Quranic. Crimes were divided into three groups, namely offences against God, offences against the State, offences against private persons. The punishments for these offences were hadd, tazir, quisas, and tashir.[42]

There were three main prisons in Mughal India. One was at Gwaliar, second at Ranthambore and the third was at Rohtas. Criminals condemned to death punishment were usually sent to the fort of Ranthambore. They met their death two months after their survival there. The Gwaliar Fort was reserved for the nobles that offend. To Rohtas were sent those nobles who were condemned to perpetual imprisonment, from where very few return home. Princes of Royal Blood were often sent to this place.[43] The release of prisoners was that, the orders for their release were issued on special occasions. These occasions were birth of crowned prince, recovery of the Emperor or any of his sons from long illness, or some occasional Royal visit to a prison fortress. In Mughal period, the prisons were overcrowded and inhuman treatment to the prisoners. The prisoners were sent to different prisons, the prisoners died within two months of their prison life. The offences were of different types and the punishments were mutilation, branding, whipping and etc. and the kings released prisoners on the happiest occasions in their life.

The prisoners were taken to the prison; they were usually loaded with iron fetters on their feet and shackles on their necks.[44] Ancient and Medieval period imprisonment was considered to be a form of punishment and the same features of the prison system prevailed in pre British period. The conditions of the prisons were degrading; solitary confinement was given to the prisoners

[42] Sarkar Jadunath; Mughal Administration in India, Calcutta, 1935, pp. 114-117
[43] Satya Prakash Sagar, Crime and Punishment in Mughal India, sterling, Delhi, 1967,p. 47
[44] Amerndra Mohanty, Narayan Hazary, Indian Prison System, 1990, Ashish Publications House, New Delhi

and not allowed to meet their families. It was no uniformity in treating the prisoners and the conditions in the prisons was deplorable.

1.4.3 British Period:

Under the shed of British rule, human rights and democracy was suspect and socialism was an anathema. The British colonial period remains the Indian analogous of the Dark Ages. Lord Macaulay renounced the ancient Indian legal political system as dotages of Brahminical superstition, and condemned ancient legal heritage and its inner care as an immense apparatus of cruel absurdities. The Britishers passed Laws like The Regulating Act which was passed in 1773, established the Supreme Court at Calcutta to exercise all civil, criminal, admiralty and ecclesiastical jurisdiction and indicated the intention of the British Government to introduce English Rule of laws and English superintendence of law and justice.[45] The British colonial rule in India marked the beginning of penal reforms in the country. The British prison authorities made demanding efforts to improve the condition of Indian prisons and prisoners. They introduced absolute changes in the post existing prison system keeping in view the sentiments of the indigenous people.[46]

In 1835, Under East India Company Rule, 143 civil jails, 75 criminal jails and 68 mixed jails, with a total accommodation for 75, 100 had been built in Bengal, North-Western Provinces, Madras and Bombay.[47] Reforms in prison administration came to occupy public attention; the British Parliament passed an enactment in 1824 in regard to the essentials of prison administration.[48] In 1836, the East India Company constituted committee for modern administrative structure of prisons. Lord Macalay is the member of that committee. The committee criticized that the corruption of prison staff and laxity of discipline. The main recommendation of the committee was Central Jails should be built to accommodate not more than 1000 prisoners each. Inspector General of Prisons should be appointed in all provinces. Sufficient buildings should be provided in all jails to accommodate prisoners

[45] Vidya Bhushan, Prison Administration in Uttar Pradesh, 1953, P.12
[46] Prof. N.V.Paranjape, Criminology and Penology, Central Law Publications, 12th Edition, 2006, p. 359
[47] Devakar, Prison and prison Reforms in British India, Social Defence, Vol.xx, January 1985.
[48] Orissa Jail Reform Committees Report (chairmen- Justice Harihar Mahapatra), 1981, p.1

comfortably. The First committee which has been setup on prisons conditions in India constituted by the East India Company. Basing on that committee recommendation, the first central prison was constructed in Agra in 1846. The recommendations of the first Committee could not be implemented, the East India Company rule ended in 1858 and the rule of British Crown started in India. During this period, The Indian penal code, 1860 and code of criminal procedure came into force. The Indian Prison System changed from barbaric to modern but not fully equipped to meet the prisoner's needs. The British rulers were sent as prisoners to the Andaman Islands. In 1858 to 1860 up to 2000 to 4000 prisoners were sent to Andaman Celluer Jail and many of them died. A second committee was constituted in 1864 to consider the deaths in prison and prison management. The committee came to the conclusion and submitted a report that due to overcrowding, bad conservancy, bad drainage, insufficient food, and insufficient medical facility. In 1877, the third jail committee was constituted entirely officials; it reviewed conditions of prisons and general administration.

In 1888, the Fourth Committee was appointed on an all India basis. This Committee was expressly directed towards the routine working of the prisons. The report covered nearly the whole field of internal management of jails and laid down elaborate rules for prison management. The Committee recommended the separation of under trial prisoners and the classification of prisoners into casuals and habitual. Most of the recommendations of the Committee were incorporated in the jail manuals of various provinces. In 1892, the fifth all India jail committee was appointed and it reviewed total prison administration in India and recommended that the punishments of prison offences and separate under trails from the other prisoners and classification of prisoners like offenders and habitual. Britishers accepted the committee report and passed The Prisons Act, 1894. The act provided classification of prisoners and important aspect to be considered is the sentence of whipping was abolished. The medical facilities made available to the prisoners in 1866 were further improved and better amenities were provided to women inmates to protect them against contagious disease.

Despite those changes, the prison policy as reflected through the Act.[49] In 1897, the Reformatory School Act was passed, that was the landmark in the history of prison reforms in India. The court directed to the prison authorities, to separate the youth offenders from the other prisoners. The Prisoners Act was passed in the year 1900, incorporated prisoner's rights and duties in prisons.

After the First World War, the revolutionary changes came in to Indian prison system. The sixth Jail Committee was appointed in 1919 under the chairmanship of Sir Alexander G Cadrew. The process of review of prison problems in India continued the enactment of Prisons Act, 1894. The first ever extensive study was launched on this subject with the appointment of All India Jail Committee (1919-1920). This finds its place as landmark in the history of prison reforms in India and is appropriately called the corner stone of modern prison reforms. The prison administration, reformation and rehabilitation of offenders were identified as one of the objectives of prison administration. The care of prisoners should be entrusted to adequately trained staff drawing sufficient salary to render faithful service. The separations of executive/ custodial, ministerial and technical staff are in prison service. It is ironical that the recommendations made by this Committee could not be implemented due to disadvantageous political environment.[50]

The All India Jail Committee (1919-1920) played a significant role in the prison reforms under British rule and that the committee was introduced reformation and rehabilitation methods for the prisoners to deter them after release from prisons and also suggested that to classify the prisoners under various categories and provide minimum facilities to them. The categories are classified into habitual offenders, offenders, under trial, convicted and women prisoners. The provincial governments of India appointed number of committees on prison reforms after the All India Jail Committee (1919-1920).

[49] Vidya Bhushan: Prison Administration in India, p.21
[50] Draft National Policy on Prison Reform and Correctional Administration, Historical Review of Prison Reforms in India

1.4.4 Post Independence Era:

The first decennary after independence was marked by arduous efforts for improvements in living conditions in prisons. A numerous of Jail Reforms Committees were set by the State Governments, to achieve a certain measure of humanization of prison conditions and to put the treatment of offenders on a scientific footing. Mentioning few are the East Punjab Jail Reforms Committee, 1948-49, the Madras Jail Reforms Committee, 1950-51, The Jail Reforms Committee of Orissa, 1952-55, The Jail Reforms Committee of Travancore and Cochin, 1953-55, The U.P. Jail Industries Inquiry Committee, 1955-56.

In Nijam's state of Hyderabad, having imprisoned an estimated 17,550 people who entered the territory, the Government of India left all the prisoners rounded up in the upheaval, and to relieve the problem of overcrowded jails.[51] In Hyderabad, British rulers inherited a criminal justice system that had been paralysed by the conflict, and could not process any significant number of cases. As in British India, politics came to determine was subjected to formal punishment, and escaped. Nehru government was different from those of the British: they were not spending money could otherwise be used for development projects, on expensive legal proceedings; and they were sensitive to the importance of political parties in a democratic. Many members of the public contain in their insistence that, the government punished participants in communal violence; these only worsened relations between those communities were perceived to be at loggerheads with one another though thousands were originally detained; only a few exemplary persons remained in jail by 1953. The constraints of governance in a democratic state had an impact in three rather contradictory ways on the decisions which the government made about these prisoners. They had been detained for several months without trial, the International Committee for the Red Cross was pressing Nehru to see that those detained were either prosecuted or released. Nehru had long since realized that the eyes of the world were on Hyderabad, and wished to prove that the new Indian government could be balanced in its approach to both

[51]Indian Economic Social History Review 2007

Hindus and Muslims. It was the widely accepted amongst the new rulers of the state that the communist and 'communalist' parties in the state remained popular because the state Congress Party was weak. Chaudhuri, therefore, hoped that setting free prisoners would 'rehabilitate the prestige of the Hyderabad State Congress' Party in the eyes of the public in Hyderabad, and improve relations between the state and national sections of the party. There could be no general liberty because the Military Governor still wished to prosecute prominent Razakars such as Kasim Razvi. The Govt. of India invited Dr. W.C.Reckless, United Nations Technical Experts on Crime prevention and treatment of offenders, to make recommendations on prison reforms in 1951. Later on, a committee was appointed to prepare an All Indian Jail Manual in 1957 on the basis of the suggestions made by Dr.W.C.Reckless. An All India Conference of Inspector General of Prisons of the Provinces was also convened. Consequent of these efforts, the following major policy guidelines regarding reformation and rehabilitation of prisoners were unanimously accepted. The correctional services should form an integral part of the Home Department of each state and a Central Bureau of Correctional Services should be established at the Center. The reformative methods of probation and parole should be used to lessen the burden on prisons. State run after-care units should be set up in each state. Solitary confinement as mode of punishment should be abolished. Classifying the prisoners for the purpose of their treatment was necessary. The State jails manuals should be revised periodically.[52]

On the recommendations of the Pakwasa committee a Model Prison was constructed at Lucknow in 1949. In 1951, Dr.W.C.Reckless was appointed by the Govt. of India for the recommendations of the prison reforms in India. He made several recommendations to relate juveniles, undertrail prisoners, convicted prisoners and their facilities, suggested to enact statutes relating to probation and after care schemes for the welfare of the prisoners. In 1961, The Govt. of India developed Central Bureau of Correctional Services and that was the first Central Agency to undertake research, training, education and documentation on the matters relating to Social Defence. The Government of

[52] Prof. N.V.Paranjape, Criminology and Penology, Central Law Publications, 12th Edition, 2006, p. 361

India constituted Working Group on Prisons in 1972, which submitted its report in 1973. The committee made a number of recommendations and the State Governments were asked by Central Government to implement such recommendations. It recommended for the establishment of a Research Unit at the headquarters of the Inspector General of Prisons in each State. The setting up of a training institute in each State as well as of Regional Training Institute, diversification of the Institutions, accommodation and other connected matters, etc., formed the contents of its report.[53]

In 1979, a Conference of Chief Secretaries made a number of recommendations to reduce the overcrowding in Jails. This included the establishment of an effective system of regular review of cases of under-trials, appointment of part-time or whole-time law officers in jails to enable the under-trials to contest their cases in courts, setting up of new Courts and amendment of the law relating to the transfer of prisoners. The other recommendations made by this conference were; creation of separate facilities for the care, treatment and rehabilitation of women offenders, segregation of juveniles, improving the system of inspection and supervision in jails so as to avoid indiscipline and malpractices, strengthening of training facilities for jail staff, work programme for all able bodied persons, setting up of State and national boards of visitors and revision of State Jail Manuals on the lines of the Model Prison Manual.[54] This conference accepted various rights to the prisoners, their protection measures and development of prison conditions. The Govt. of India requested to the State Governments and Union Territory Administrations for the protection of prisons and prisoners and which is considered as on important document for prisoners regulating and prison reforms, to revise their prison manuals on the lines of the Model Prison Manual by the end of the year, to appoint Review Committees for the under trial prisoners at the district and state levels, to provide legal aid to indigent prisoners and to appoint whole time or part-time law officers in prisons, to enforce existing provisions with respect to grant of bail and to liberalize bail system after considering all its aspects, to strictly adhere to the provisions of

[53] C.S.Malliah, Development of Prison Administration in India, Social Defence, Vol. XVII, No.67, Ministry of Social Welfare, Government of India, Jan. 1982.p.40
[54] Amerndra Mohanty, Narayan Hazary, Indian Prison System, Ashish Publications House, New Delhi, 1990.

the Code of Criminal Procedure, 1973, with regard to the limitations on time for investigation and inquiry, to ensure that no child in conflict with law be sent to the prison for want of specialized services under the Central Children Act, 1960, to have at least one Borstal School set up under the Borstal Schools Act, 1929 for youthful offenders in each State, to create separate facilities for the care, treatment and rehabilitation of women offenders, to arrange for the treatment of lunatics in specialized institutions, to provide special camp accommodation under conditions of minimum security to political agitators coming to prisons, to prepare a time bound programme for improvement in the living conditions of prisoners with priority attention to sanitary facilities, water supply, electrification and to send it to the Ministry of Home Affairs for approval, to develop systematically the programmes of education, training and work in prisons, to strengthen the machinery for inspection, supervision and monitoring of prison development programme and to ensure that the financial provisions made for up gradation of prison administration by the Seventh Finance Commission are properly utilized, to organize a systematic programme of prison personnel training on State and Regional level, to abolish the system of convict officers in a phased manner; to mobilize additional resources for modernization of prisons and development of correctional services in prison; to set up a State Board of Visitors to visit prisons at regular periodicity and to report on conditions prevailing in the prisons for consideration of the State Government; to examine and furnish views to Government of India on proposal for setting up of the National Board of Visitors.[55]

The Committee had, therefore, formulated the draft of a National Policy on Prisons and recommended for its adoption by the Government of India in consultation with the State Government and Union Territory Administrations. The goals and objectives of prisons in India, according to the proposed National Policy on Prisons, were to protect society and to reform and re assimilate offenders in the social milieu by giving them appropriate correctional treatment. The Committee strongly recommended that the

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

protection and caring of prisoners is the duty of the states and also to create a regular plan aiming at creating a rehabilitation culture towards prisoners. Among the important suggestions made by the Committee are Directive Principle of National Policy on Prisons had to be formulated and embodied in Part 4 of the Indian Constitution. The subject of Prisons and allied institutions were to be included in the Concurrent List of Seventh Schedule of the Constitution. A Provision of an uniform framework for correctional administration by a consolidated, new and uniform comprehensive legislation to be enacted by the Parliament for the entire country was also recommended Revision of Jail Manuals was to be given top priority and suitable amendments in IPC. The follow up action on the report had been initiated by the Ministry of Home Affairs in consultation with concerned ministries and department of the Central and State Governments.[56]

The committee suggested that the national prison policy was necessary for uniform rules and regulations to the prisoners though out India, to review existing laws and Manuals relating to the prisoners and amendment to the Indian Penal code.

In 1980, the Central Government of India appointed committee under the chairmanship of Justice A.N. Mulla on All India Jail Reforms, his recommendations has great impact on prison reforms in India as that committee examined all areas of the prison and prisoners, suggested to amend legislations relating to prisoners, to enact separate statutes for the protection of prisoners, facilities for the women prisoners, free legal aid to the undertrail prisoners, to construct separate jails for women and also for the improvements of prison conditions like sanitation, diet and medical care in prisons. A gross number of 658 proposals made by this committee on various issues on prison management were circulated to all States and UTs for its implementation, because the responsibility of managing the prisons is that of the State Governments as ‘Prisons’ is a ‘State’ subject under the List II State List of the Seventh Schedule of the Constitution of India. The Committee has suggested that there is an immediate need to have a national policy on prisons.

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

The Prisons shall endeavor to reform and reassimilate offenders within the social milieu by giving them appropriate correctional treatment. The federation of the principles of management of prisons and treatment of offenders within the Directive Principles of the State Policy embodied in part IV of the Constitution of India; Insertion of the topic of prisons and associated institutions within the Concurrent List of the Seventh Schedule to the Constitution of India. Enactment of uniform and comprehensive legislation is embodying modern principles and procedures regarding reformation and rehabilitation of offenders. There shall be in each State and Union Territory a Department of Prisons and Correctional Services handling adult and young offenders their institutional care, treatment, aftercare, probation and other noninstitutional services. The State shall endeavour to evolve proper mechanism to make sure that no undertrial prisoner is unnecessarily detained and achieved by speeding up trials, simplification of bail procedures and periodic review of cases of undertrial prisoners. Prisoners those are under trial should, as far as possible, be confined in separate institutions. Imprisonment isn't always the simplest road to the punishments the Govt. shall endeavour to practice in law new alternatives to imprisonment like community service, forfeiture of property, payment of compensation to victims, public censure, specially make sure that the Probation of Offenders Act, 1958, is effectively implemented throughout the country. Living conditions in every prison and allied institution meant for the custody, care, treatment and rehabilitation of offenders shall be compatible with human dignity in like accommodation, hygiene, sanitation, food, clothing, and medical facilities[57].

All factors liable for vitiating the atmosphere of those institutions shall be identified and addressed effectively. In conformity with the goals and objectives of prisons, the State should provide appropriate facilities and professional personnel for the classification of prisoners on a scientific basis. Diversified institutions shall be provided for the segregation of various categories of inmates for correct treatment.

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

The State shall endeavour to develop the sphere of criminology and penology and promote research on the typology of crime within the context of emerging patterns of crime within the country, Proper classification of offenders and in devising appropriate treatment for them. A system of graded custody starting from special security institutions to open institutions shall be provided to supply proper opportunities for the reformation of offenders consistent with the progress. Programmes for the treatment of offenders shall be individualized and shall aim at providing them with opportunities for diversified education, development of labour habits and skills, change in attitude, modification of behaviour and implantation of social and moral values. The State shall endeavour to develop vocational education and work programmes in prisons for all inmates eligible to participate. The aim of such training and work programmes shall be to equip inmates with better skills and work habits for his or her rehabilitation. Payment of fair wages and other incentives shall be related to work programmes to encourage inmate participation in such programmes. The incentives of leave, remission and premature release to convicts shall even be utilized for improvement of their behaviour, strengthening, of family ties and their early return to society. Custody being the essential function of prisons, appropriate security arrangements shall be made in accordance with the necessity for graded custody in several sorts of institutions. The management of prisons shall be characterized by firm and positive discipline, with due regard, however, to the upkeep of human rights of prisoners. The State acknowledges that a prisoner loses his right to liberty but maintains his residuary rights. It shall be the endeavour of the State to guard these residuary rights of the prisoners. The State shall provide free legal aid to all or any needy prisoners. Prisons aren't the places for confinement juvenile. Children those are under 18 years of age shall in no case be sent to prisons. All children confined in prisons shall be transferred forthwith to appropriate institutions, meant exclusively juvenile with facilities for his or her care, education, training and rehabilitation.[58] Advantage of non-institutional facilities shall, whenever possible, be extended to such children.

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

Offenders who are young (between 18 to 21 years) shall not be confined in prisons meant for adult offenders. There shall be separate institutions for them where, in sight of their young and impressionable age, they shall tend treatment and training suited to their special needs of rehabilitation. Women offenders should, as much as possible, be confined in separate institutions specially meant for them. Wherever such arrangements aren't possible they shall be kept in separate annexes of prisons with proper arrangements. The working staff for these institutions and annexes shall be comprised of women employees only. Women prisoners shall be protected against all exploitation. Work and treatment programmes shall be arranged for them in consonance with their special needs. Unsound prisoners shall not be confined in prisons. Proper arrangements shall be made for the care and treatment of unsound prisoners. Persons courting arrest during non-violent socio, political, economic agitations are declared as public cause who shall not be confined in prisons alongside other prisoners. For such nonviolent agitators a separate prison camp with proper and adequate facilities shall be provided.[59] The persons sentenced to life imprisonment have to undergo at least 14 years of actual imprisonment. Prolonged incarceration has a degenerating effect on such persons and is not necessary either from the point of view of individual's reformation or from that of the protection of society. The term of sentence for life in such cases shall be made flexible in terms of actual confinement so that such a person may not have necessarily to spend 14 years in prison and may be released when his incarceration is no longer necessary. Prison services shall be developed as a professional career service. The State shall endeavour to develop a well-organized prison cadre based on appropriate job requirements, sound training and proper promotional avenues. The efficient functioning of prisons depends undoubtedly upon the personal qualities, educational qualifications, professional competence and character of prison personnel. Emoluments and other service conditions of prison personnel should be commensurate with their job requirements and responsibilities. An All India Service namely the Indian Prisons and Correctional Service shall be constituted to induct better qualified and talented persons at higher echelons.

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

Proper training for prison personnel shall be developed at the national, regional and state levels.

The State shall endeavour to secure and encourage voluntary participation of the community in prison programmes and in non-institutional treatment of offenders on an extensive and systematic basis. Such participation is necessary in view of the objective of ultimate rehabilitation of the offenders in the community. The government shall open avenues for such participation and shall extend financial and other assistance to voluntary organizations and individuals willing to extend help to prisoners and ex-prisoners. Prisons are hitherto a closed world. It is necessary to open them to some kind of positive and constructive public discernment. Selected eminent public-men shall be authorised to visit prisons and give independent report on them to appropriate authorities. In order to provide a forum in the community for continuous thinking on problems of prisons, for promoting professional knowledge and for generating public interest in the reformation of offender, it is necessary that a professional non-official registered body is established at the national level. It may have its branches in the States and Union Territories. The Government of India, the State Governments and the Union Territory Administrations shall encourage setting up of such a body and its branches, and shall provide necessary financial and other assistance for their proper functioning. Probation, aftercare, rehabilitation and follow up of offenders shall form an integral part of the functions of the Department of Prisons and Correctional Services. The development of prisons shall be planned in a systematic manner keeping in view the objectives and goals to be achieved. The progress of the implementation of such plans shall be continuously monitored and periodically evaluated. The governments at the Centre and in the States / Union Territories shall endeavour to provide adequate resources for the development of prisons and other allied services. Government recognizes that the process of reformation and rehabilitation of offenders is an integral part of the total

process of social reconstruction, and, therefore, the development of prisons shall find a place in the national development plans[60]

In view of the importance of uniform development of prisons in the country the Government of India has to play an effective role in this field. For this purpose the Central Government shall set up a high status National Commission on Prisons on a permanent basis. This shall be a specialized body to advise the Government of India, the State Governments and the Union Territory Administrations on all matters relating to prisons and allied services. Adequate funds shall be placed at the disposal of this Commission for enabling it to play an effective role in the development of prisons and other welfare programmes. The Commission shall prepare an annual national report on the administration of prisons and allied services, which shall be placed before the Parliament for discussion. As prisons form part of the criminal justice system and the functioning of other branches of the system, the police, the prosecution and the judiciary have a bearing on the working of prisons, it is necessary to effect proper coordination among these branches. The government shall ensure such coordination at various levels. The State shall promote research in the correctional field to make prison programmes more effective.[61]

The draft of the proposed National Policy on Prisons, quoted above, would require some changes in view of the developments that have taken place in the intervening period. For instance, the present committee is of the opinion that the enactment of a uniform and comprehensive legislation on prisons would be possible within the existing provisions of the Constitution of India, as India is a party to the International Covenant on Civil and Political Rights, 1966. Thereafter, Government of India has constituted another committee on 26th May, 1986, namely, National Expert Committee on Women Prisoners under the chairmanship of Justice V.R. Krishna Iyer who has submitted its report on 18th May, 1987. This report has also been circulated to all States for taking necessary follow-up action. Provision of a national policy are relating to the women prisoners in India and for formation of new rules and regulations

[60] Dr.Gurubax Singh, Law Relating to Protection of Human Rights and Human Values, Vinod Publications (P).Ltd, 2008
[61] Justice A.N.Mulla Committee on All India Jail Reforms Report, (1980-1983)

relating to their punishment and conduct for Maintenance of proper coordination among the police, law and prison for providing justice to women prisoners. Provisions are legal-aid for women. A recommendation was made for Construction of separate prisons for women prisoners. Proper care of the baby born in jail to a woman prisoner and provision of nutritious diet is for the mother and the child.[62]

The Government of India has shown serious concern over the growing threats to the security and discipline in prisons posing a challenge as how to make prisons a safe place. Consequently, the Ministry of Home Affairs, Government of India has constituted an All India Group on Prison Administration-Security and discipline on 28th July, 1986 under the chairmanship of Shri R.K. Kapoor who submitted their report on 29th July, 1987. In pursuance to the recommendations made by the All India Committee on Jails Reforms, the Government of India identified Bureau of Police Research & Development (BPR&D) as a nodal agency at the national level in the field of Correctional Administration on November 16,1995 with specific charter of duties. Analysis of Prison statistics and problems are of general nature affecting Prison Administration. Assimilation and dissemination of relevant information is to the States in the field of Correctional Administration. Coordination of Research Studies conducted by Regional Institutes of Correctional Administration (RICAs) and other Academic/Research Institutes in Correctional Administration and to frame guidelines for conducting research surveys in consultation with State Governments. To review Training Programmes keeping in view the changing social conditions, introduction of new scientific techniques and other related aspects in the field of correction administration. To prepare uniform Training Modules, including courses, syllabi, curriculum are providing training at various levels to the Prison Staff in the field of Correctional Administration. Publication of reports, newsletters, bulletins and preparation of Audio Visual aids etc. in the field of Correctional

[62] Supra p.27

Administration. To set up an Advisory Committee is to guide the work relating to Correctional Administration[63]

1.4.5 Development of Human Rights Jurisprudence in India:

A man on becoming a prisoner, whether convict or under trial, does not cease to be human being. Though the prisoners can't be treated as animals yet the barbarous treatment sometimes given to them in prisons is not qualitatively human compared to the one given to the caged inmates. The grim scenario of prison justice assumes in human misanthropic fragrance when the intellect of prisoners is blemished, personhood of prison is fortified and they are forced to lose their integrity and individuality and thereby compelling them to become the right less slaves of the of the state It become gruesome indeed and calls for interference of judicial power as constitutional sentinel, when the jurisprudence of prison justice becomes an escalating torture and the violent violation of the human rights is perpetrated by agencies of the state. The mandates of preamble, fundamental rights and Directive Principles Provisions of the Indian Constitution seem to be outlawed from the security bound prohibited areas of high walled jails.[64] A man whether undertrail or convicted prisoner is having all fundamental rights like human being residing in society except some restrictions imposed by his incarceration. The Constitution of India in its preamble clearly states that, justice social, economic and political should be given to the people. The prisoners also cannot be deprived of those rights basing on the fact that he is undertrail or prisoner. India is a secular country. The concept of the administration of justice in India had been influenced for centuries by different age-old religious beliefs. For instance, under the Hindu Jurisprudence, the administration of criminal justice was carried out in accordance with the socio-religious doctrines coming from Vedic revelations like the Srutis, Smritis, Puranas, Nibandh and Granthas. The judicial functions were conducted by the village assemblies (assemblies of seniors and leaders of villages), or the Kings themselves. The Hindu doctrine of criminal justice administration, both in the Vedic and post-Vedic

[63] Justice V.R.Krishana Iyer, National Expert Committee on Women Prisoners, (1986-1987)
[64] Bansal . V.K. Right to Life and Personal Liberty in India, Deep and Deep Publications, New Delhi, ed I (1987).

communities and kingdoms paid little or no attention on the right of the accused because the accused was not recognized as an individual who could claim to have any right. In other words, once an individual was accused of committing a crime, he lost all the rights he could claim before the accusation. Another instance comes from the Muslim concept of the administration of justice, based upon the scriptures and principles of the Quoran. The Muslim philosophy of the administration of justice looked upon the accused as a sinner; consequently, the sinner had to be subjected to social deprivation (Mehraj-UdDin, 1985).[65] In pre- Vedic period, there was no judge for administration of judiciary but the village heads solve the problems by group assembling. There was no accusation and what village head says is final. The kings imprisoned only the war victims and who committed heinous crimes. The prisoners lose all his rights and live like a slave or bonded labour is accused of a crime.

The modern version of human rights jurisprudence may be said to have taken birth in India at tile time of the British rule. When the British ruled India, resistance to foreign rule manifested itself in the form of demand for fundamental freedoms and the civil and political rights of the people; Indians were humiliated and discriminated against by the Britishers. The freedom movement and the harsh repressive measures of the British rulers encouraged the fight for civil liberties and fundamental freedoms.[66] Prison is a place where the criminal justice system put its entire hopes. The correctional mechanism, if fails will make the whole criminal procedure in vain. The doctrine behind punishment for a crime has been changed a lot by the evolution of new human rights jurisprudence. The concept of reformation has become the watchword for prison administration. Human rights jurisprudence advocates that no crime should be punished in a cruel, degrading or in an inhuman manner[67] The punishment amounting to cruel, degrading or inhuman should be treated as an offence by itself.[68] The transition caused to the criminal justice system and its correctional mechanism has been adopted worldwide. The inquiry is made to

[65] Sudipto Roy, violations of the rights of the accused and the convicted in India I, Department of Criminology, Indiana State University, Terre Haute, IN 47809
[66] N.Ravi, Human rights scenario in India -an overview, Lap Lambert Academic publishing,2013
[67] ibid
[68] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, Art. 4

know the extent of inclusion of these human rights of prisoners into Indian legislations.[69] Judicially nonenforceable rights in Part IV of the Constitution are chiefly those of economic and social character. However, Article 37 makes it clear that their judicial nonenforceability does not weaken the duty of the State to apply them in making laws, since they are nevertheless fundamental in the governance of the county. Additionally, the innovative jurisprudence of the Supreme Court has now read into Article 21 (the right to life and personal liberty) many of these principles and made them enforceable[70] According to Human rights jurisprudence no prisoners should be punished in a cruel, degrading or in an inhuman manner, this type of punishment should be treated as an offence by itself. The correctional systems and criminal justice system have been adopted worldwide.

The judiciary must therefore adopt a creative and purposive approach in the interpretation of Fundamental Rights and Directive Principles of State Policy embodied in the Constitution with a view to advancing Human Rights jurisprudence. The promotion and protection of Human Rights depends upon the strong and independent judiciary. The Apex judiciary in India has achieved success in discharging the heavy responsibility of safeguarding Human Rights in the light of our Constitutional mandate. The major contributions of the judiciary to the Human Rights jurisprudence have been twofold: the substantive expansion of the concept of Human Rights under Article 21 of the Constitution, and the procedural innovation of Public Interest Litigation. The Supreme Court of India is taking more steps to prevent the violations on human rights of prisoners and for the protection of prisoners is done through Public Interest Litigation almost all the basic rights are identified to come under Art 21 of the Constitution. The three organs of Government, the judiciary has become a vanguard of human rights in India. It performs this function mainly by innovative interpretation and application of the human rights provisions of the Constitution. The Supreme Court of India has in the

[69] P. C. Harigovind, The Indian Jurisprudence on Prison Admistration and the Legislative Concerns, IOSR Journal Of Humanities And Social Science , Volume 9, Issue 5 (Mar. - Apr. 2013), PP 24-29
[70] Justice Sujatha V. Manohar, "Judiciary and Human Rights," Indian Journal of International Law ,Vol. 36,1996,p, 39-54

case Ajay Hasia v. Khalid mujibe[71] declared that it has a special responsibility, to enlarge the range and meaning of the fundamental rights and to advance the human rights jurisprudence. The judgment given in the Chairman, Railway Board and others v. Mrs. Chandrima das[72] the Supreme Court observed that the Declaration has the international recognition as the Moral Code of Conduct having been adopted by the General Assembly of the United Nations. The applicability of the Universal Declaration of Human Rights and principles thereof may have to be read, if need be, into the domestic jurisprudence. In a number of cases the Declaration has been referred to in the decisions of the Supreme Court and State High Courts. The Indian Judiciary identified certain rights of Part IV of the constitution and implemented those rights under Part III of the Constitution of India and has given several directions to the Central as well as State Governments. This can be attributed as a success to Indian Apex Court. This humanitarian attitude of the judges has helped the poor, illiterate and needy victims who were victimized by the acts of the authorities.

1.4.6 Juvenile Justice :

The Delhi Gang rape have triggered many major changes in the criminal system if India. Rajya Sabha has passed the Juvenile Justice Bill in 2014 after the post of many people in the case of Nirbhaya where the juvenile convict was released. The Government of India replaced the Juvenile Justice Act 2000 in January 2016. This Act Consolidates and amend the law relating to children in need of care and protection, by catering to their basic needs through development, treatment, and social re-integration, by adopting a child friendly approaches. One of the main aim to pass the amendment was that the minor of age 16-18 years were committing heinous crimes such as rape, etc. The structure of the Juvenile Justice Act divided the crimes into three different categories i.e. the petty offence, serious offences and heinous offences with Juvenile Justice Board to be constituted in every district to deal with children in conflict with the Law. The board compromises of a metropolitan judge and judicial magistrate with two social workers along with women. Excluding the

[71] A.1.R .I981 S.C. 487 at 493
[72] A.I.R. 2000 (I) S.C. 265

offences of heinous crimes, for all other cases, the juvenile will get the institutional care for a maximum of three years by the Juvenile Justice Board.

"A Children's Court is a Sessions Court notified under the Commissions for Protection of Child Rights Act, 2005. For this Bill, once a juvenile is referred by a Juvenile Justice Board to a Children's Court it will determine whether to try him as an adult or else recommend counselling, stay at observation home, etc."[73]

The Juvenile Justice Act 2015 brought other major changes such are:

Firstly, the minor accused of age more than 16 should present before the Juvenile justice board and then the board will decide whether to send the juvenile for trial as an adult or to send an accused to the rehabilitation center. This method is judged on the mental and physical ability of the child. Thus making the process more time taking.

Secondly, the act of juvenile justice treats a minor of age sixteen-eighteen years as an adult if he has committed any heinous crime in a conflict of the law. Minor who have committed a serious offence may be tried as an adult only if he is apprehended after the age of twenty-one years.

If a minor of age seventeen years or more committed a serious offence and had been apprehended before twenty-one years of age, then the prescribed punishment is maximum three years in a special home with counselling.

If a minor who commits a serious crime who is apprehended after the age of twenty-one years then the punishment will be tried as an adult and the imprisonment of three to seven years have been prescribed.

If the minor of age seventeen have committed a heinous crime and has been apprehended below the age of twenty-one year then the prescribed punishment is based on evaluation of mental and physical capacity, etc., may be tried as a child (max. three years) or adult (more than seven years)

[73] http://www.prsindia.org/uploads/media/Juvenile%20Justice/Legislative%20Brief%20Juvenile%20Justice%20Bill.pdf

If the minor committed heinous offence and apprehended after the age of twenty-one year, then the case will be tried as an adult and imprisonment of 7 years and above is prescribed.

Thirdly, "A new clause on fair trial is added, under which the assessment will look into the special needs of the child, under the tenet of a fair trial under a child-friendly atmosphere."

Fourthly, no life-imprisonment or death sentence to a juvenile.

Fifthly, the inquiry of the case should be completed within four months of the first production of the child in the Juvenile Justice Board. This can be extended for the maximum of two more months by recording the reason in writing.

Sixthly, the assessment of the heinous crime should be disposed of within 60 days from the first production of the child before the juvenile justice board.

Seventhly, "inter-country adoption allowed if adoption cannot take place within the country, within 30 days of the child being declared legally free for adoption."

Eighthly, if the biological parents want to give their child for adoption, then they have given a chance to rethink about their decision for three months instead of one month.

Ninthly, "any child who has been abandoned by biological parents due to unavoidable circumstances will not be considered to be willfully giving up the child."

1.4.6.1: Comparison of penalties in Juvenile Justice Act 2015 to Juvenile Justice Act 2000:

Firstly, for giving a child alcohol or any intoxicating liquor or narcotic drug, the punishment up to seven years and penalty up to one lakh rupees.

Secondly, for buying or selling of a child have a prescribed punishment of five years of punishment and a fine up to one lakh rupees.

Thirdly, for employing a child for begging in streets or train would amount to imprisonment up to five years and fine up to one lakh rupees.

Fourthly, for subjecting a child to cruelty would lead to the punishment up to three years of imprisonment and a fine of amount one lakh.

After amendments to the Juvenile Justice Law, is India in violation of the Child Rights Convention?

The United Nations Convention on Child Rights defines a 'child' as any human being under the age of 18 years and thereby forbids any capital punishment inflicted on them. Article 37 (a) obliges all the member countries to prohibit as well as eliminate corporal punishment, including any other form of punishment that is cruel and degrading in nature on children below 18 years.

The increased public pressure post the horrific Delhi Gang rape case (Nirbhaya case), led to the amendment to the Juvenile Justice (Care and protection of Children) Act, 2000 act. The amended act (Juvenile Justice (Care and Protection of Children) Act, 2015) proposes the trail of juveniles in the age group of 16 to 18 years, who are involved in horrifying crimes and offences.

Indian Juvenile Act – Violation of the UN Convention on Child Rights

India ratified the convention in the year 1992, and after introducing these new amendments to the Justice Juvenile Act, 2015, it is contravening the said part of UN Convention by not treating all the children equally as mandated, under the age of 18. Thus the amended act stands in complete violation to the UN Convention on Child Rights.

Implications of the amended Juvenile Justice Act, 2015 on Child rights

Adolescents who are in the age of 14 to 17 are still not mature enough to be considered as adults. But, the introduction of this new Juvenile Justice Act is reducing the age of juvenile by treating their act of engaging in high risk crimes under Indian Penal Code. The enactments have been construed on growing misconceptions, un-consolidated statistics and public pressure. There is a misconception that a large proportion of juvenile population is accused of

committing rapes. Psychologists and Neuro-scientists inform that this phase of age undergoes numerous changes in body and mind which includes physiological, hormonal, emotional as well as structural changes. Amendments will misdirect the thought process of children in the age of 16-18 and close the doors of their better reformation. The proposed enactment is going to affect India's international reputation and its committed vision to contribute in making the world a safe place.

The need of the hour is to create a reformative environment for adolescent but the Act has been criticized and opposed by several women right groups, NGOs working on child rights, Pro-child Network etc. on the ground that it is disadvantageous to the rights of Indian children especially children from poor societies or illiterate families.

1.5 Objective:

The objective of this research is to find the answers to various questions as briefly discussed and to determine the idea of Human right which is free from all restrictions and everyone has an inherent right to use of Human rights whether he will be prisoner or a freeman. A prisoner is a person who has a conflict with law with the availability of all kinds of Human rights and restricted legal rights. Our nation has a rich history and culture of slavery and lack of slave rights and now day's conditions of prisoners are almost similar to slaves. Our Government and judiciary need to take some serious steps to protect the rights of prisoners who are under judicial custody or under trial convicts and this has been completely discussed and analysed.

The study shall focus on the changing meaning of Constitutionalism in India with regards to the judgments of Supreme Court in recent times. Along with this, the study is also focused on the analysis of laws passed by the parliament that abridges with the fundamental rights of the citizens of India and therefore, violates the principles of Constitutionalism. This shall be done by comparing the laws of other Countries falling under the same legal principles and the decisions of International Courts on the same subject matter. The purpose is to make an analysis after comparing the national laws with international views to

be certain about the possible views on how the whole scenario can be understood.

1.6 Research Questions:

1. What is the meaning of Human Right with respect to Prisoners in India and under International Law?

2. Is India Faking Democracy? What regards to voting rights of prisoners?

3. How far women prisoners and protection of their rights and security has been attained?

4. What is the status of Human rights of prisoners under International law?

1.7 Hypothesis

The researcher seeks to identify human right violation of Prisoners either men or women at the present scenario and their place in the society as a citizen. Whether the present national and international laws have achieved their objectives in providing them a respectful or dignified life? From comparing and analysing the status of prisoners in ancient history to present scenario, the researcher further analyses the role and response of Indian judiciary.

1.8 Research methodology

The methodology adopted by the researcher is Doctrinal research and Non Doctrinal i.e., empirical. The doctrinal study includes the jurisprudence of the basis of rights of prisoners, international initiatives, through resolutions, declarations, conventions and also examining the various legislations and policy measures. For this purpose and for obtaining the primary sources international and regional documents, treaties declarations, provisions of the Constitution of India, Indian Penal Code,1861, reports of the various committee for the protection of women prisoners will be studied and examined. Further, decisions given by the Supreme Court and various High courts for the protection of women prisoners will be examined.

As far as the secondary source are concerned, books, journals, relevant information collected through various media that includes print media has

been examined. Sources in the internet which is so authoritative has also been examined along with these, reference is also made to various other sources including documents and reports including national and international sources.

1.9 Chapterization :

The Study is entitled as "**Prisoner's rights in India and International scenario: A demanding change and perspective**". The study has been divided into five chapters including conclusion and suggestions.

The **First chapter** is the Introduction which explains the concept of **Human rights of Prisoners,** history and present situation. The aim and objective of the study, the methodology adopted by the researcher and the hypothesis which should be proved.

The second chapter is titled as "**Faking Democracy with prisoners, 'Voting Rights**'." In this chapter the researcher has tried to explain the concept of compulsory voting and why is it important to give prisoners their right to vote.

The Third chapter titled as "**Evolution of Women prisoners**" the researcher has discussed factors contributing and rights of women prisoners. With their conditions in prison and unfair means to violate their human rights, several cases and idea for its improvement.

The Forth chapter is titled as "**Comparative study of protection of Human Rights of Prisoners: International Scenario**" in this chapter the researcher discussed the definition of human rights, international conventions which protects rights of prisoners.

The Fifth chapter is titled as "**Conclusion and Suggestions**" this chapter explains the suggestions to cure. It is a critical analysis of the state of law and its implementation in today's international scenario.

Chapter 2:

Faking Democracy with Prisoners' Voting Rights?

2.1 Present Scenario:

When around 90 crore Indian citizens[74] were set to vote in the 2019 Lok Sabha elections, approximately four lakh Indian citizens (NCRB 2016) were not given a chance to vote. These prisoners are citizen, denied of their right to franchise based on Section 62(5) of the Representation of Peoples Act, 1951:

No person should vote at any election if he is detained in a prison, whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police: Given that nothing in this sub-section shall be applicable to a person subjected to preventive detention under any law for the time being in force.

India, who has often referred to have 'largest democracy,' has been denying the most fundamental right of the suffrage to its four lakh eligible voters. India is one of the very few countries to have a blanket ban on all prisoners. Such a ban affects detainees, under-trial and convicts alike, and only those who are out on bail can vote[75]. The convicted populations within most countries are often given bare minimum rights and treated like second class citizens by virtue of their incarceration.

Thus, this does not mean that the law is in direct breach of the constitution? "The Constitution clearly declares that the right to vote in India should only be decided through suffrage and nothing else."[76]

The success of democracy lies in the way it treats the weakest and most marginalised of its participants. "It's a test of democracy," also this does not mean that the convicts should enjoy general freedoms and comforts that legal incarceration denies. Inclusive of all the right to vote is essential to human equality and equity. It cannot be avoided that the lack of prison reforms and the lack of general awareness regarding the rights and condition of prisoners went largely unnoticed and unreported due to lack of political representation.

Those who are under preventive detention are allowed by law to cast votes. In fact, the EC even allows those serving sentences less than two years to contest

[74] Economics Times 2019
[75] Election Commission of India 2019
[76] Article 326

elections from prison. What is stopping them from extending the right to vote? Thus, from this view point sec. 62(5) was further at odds with section 21 of the Universal Declaration of Human Rights and thus in violation of section 51 of the constitution that mandates respect for international treaties.

Major problem that cause issue like overcrowding, institutional violence, lack of facilities like sanitation, hygiene, food and amenities like books, newspapers, etc. can never see the light of day if prisoners don't become the stakeholders, all these problems could never be improved unless those living in prisons could themselves become a part of the democratic voting process and represent their own problems with or through their elected representatives.

As released by the Election commission in 2014, excluded under-trial prisoners from voting even if their names are on electoral rolls[77]. According to the National Crime Records Bureau's 'Prison Statistics India, 2014', there were 2,82,879 under-trials and 1,31,517 convicts lodged across 1,387 prison in India. These also include those who did not or could not make bail for themselves, thus pointing to a system that favours those with power and money.

"If one has the money to pay for your bail, you'll vote. But if you don't, you can't? How is that democratic?"

Moreover, according to Section 62(5) if the Representation Act, those being held under preventive detention can participate in elections and cast their vote via postal ballots. The Election Commission in 2014, also confirmed that detainees had the right to vote, but not under-trials and convicts. However, no vote till date has been cast from inside a prison or by a prisoner.

Australian prisoners serving sentences of three-year or less can cast their vote via post. Whereas, in Canada, they can do it by mail or by choosing to vote inside jail on pre-selected days before the beginning of polls. There are several examples of countries that have laws denying felons from voting were successfully amended.

[77] Chapter 43 of the Reference Handbook on the General Elections

Provisions in the law allow prisoners and convicted person to have jobs and occupations. They are allowed to read books and opt for education as well as given vocational and skill building course. In fact, now they are even working on allowing married inmates in the same prison to have intercourse. It is irrational to not to allow them vote then.

This issue has not been given much attention or discussed too often in the last many years. Although, in 1997, the Supreme court of India while rejecting the petition seeking the right to vote for prisoners provided some reasons for why such ban was in place:

(i) Resource crunch as permitting everyone in prison also to vote would require deployment of a much larger police force and greater security arrangements.

(ii) A person who is in prison as results of his own conduct cannot claim equal freedom.

(iii) To keep persons with criminal background far away from the election scene.

However, many of our politicians, ironically, have criminal cases registered against them (Beniwal and Kumaresan 2019). In 2018, a nation-wide strike was organised by prisoners in the United States (US), and one of their demands was they are given the right to vote (IWOC 2018). “The rights voting of all detained citizens serving prison sentences, pretrial detainees, and so called 'ex-felons' must be counted. Representation is demanded. All voices count.” One of the prisoners was quoted saying: “I will pay taxes but I won’t be able to vote…It lets me know that I’m not truly a citizen ... I will have no say in the political process or the direction of the nation” (Pilkington 2018).

In India on April 2019, three law students filed a public interest litigation (PIL) in the SC, seeking right to vote for the prisoners and an amendment to the Representation of Peoples Act, 1951. While this case will take its course in the coming months, it is important for us to reimagine the future of the criminal justice system in our country. Do we want a retributive system, where citizens are condemned and forgotten, or should we aim for a reformative

system which aims to improve the structure of society, nurturing the law-breakers and integrate them back to the society? Right to vote for prisoners is one step towards shaping our criminal justice system into a caring, and reform-oriented institution, one that abides by the universally accepted human rights values.

The condition of Human Rights in India is a very complex, rigid and spiral. It is so because of the country's large size, immense diversity, its grading as a developing country and its history as a former colonial territory. The substantial discrimination suffered by minorities and marginalised sections of the societies like Dalits, Tribes, and other backward classes of religions can be easily traced. Though, on a large scale India is not considered as Human Rights violated country because of its profound constitution. But today, the sense is very serious and fragile as Thousands of Human Rights violations have been reported in the country.

2.2 National Human Rights Commission (NHRC):-

India under its constitution provides a functional framework on how the country should function. As we have several legislations and institutional mechanism that serves to promote and protect Human Rights. Along with this we have, International conventions, which also partly forms the basis of Human Rights Commission for India.

2.2.1 Few Statistics regarding Prisoners and NHRC:

Among the whole prisoners in jails in India, majority of them are under trials prisoners. About 72% of the prison population isn't even convicted of any crimes. Among the convectors itself, an outsized number of them are first time offenders involved in technical or minor violations of law. It must be also noted that a majority of them are from the under privileged sections of the society. There are some cases were these marginalized sections of the society doesn't have access to law and justice and hence they remain behind the bars for the rest of their lives.

Considering to the data of NHRC, about 15024 deaths took place in judicial custody and 2222 while in police custody have been reported since 1/9/1993.

Among these about 10658 deaths happened in judicial custody which are due to natural causes. Around 153 deaths happened in police custody, NHRC has recommended interim relief, prosecution and departmental action against defaulting personnel.[78]

Necessity regarding prison reforms came into limelight from preceding few decades. A lot of initiatives have been taken by different organizations for the reforms of prisons. The Supreme Court as well as High courts have commented on the dreadful environment existing in the prisons which resulted in the human rights breach of prisoners. There were several expert committees which studies about the prison administration. One of the most crucial of those committees which worked on the problem of prison administration is done by the All India jail reforms committee of 1980-83, which is popularly known as the Mulla Committee. The National and the State Human Rights commissions have given their recommendations for prison reforms through their annual reports.

2.3 Prisoners and prison reforms:

Prisoner's rights have evidently placed strong position and an important aspect of the prison reforms. These are fundamentally acknowledgment by two significant doctrines:

•The prisoner should not be considered as an object, a ward or a slave of the state, who the law would leave at the prison entrance and who would be condemned to civil death'.[79]

•The persons who are convicted go to prisons as punishment and not for the punishment.[80]

It is widely noticed that a prisoner is no more considered as a citizen of the country because he has turn into a prisoner. It has been made very evident by

[78] "Report of National Human Rights Commission of India", (13 Asia Pacific Forum Meeting 28-31 July 2008)
[79] Dr. Kurt Neudek The united Nations in Imprisonment Today and Tomorrow - International Perspectives on Prisoner's Rights and Prison Conditions eds., Dirk van Zyl Smit and Frieder Dunkel; Kluwer Law and taxationPublishers, deventer, Netherlands, 1991
[80] https://nhrc.nic.in/documents/LibDoc/Prisons_Prisoners_A.pdf last visited 03 April 2020.

the supreme that a prisoner should be given the rights which the constitution enables him% except for right to move freely or practice a profession of his or her choice. In similar way, prison authorities don't have any right to give additional punishments to a prisoner without the sanction of the authorities.[81]

2.4 Why voting is necessary for stable Democracy in India?

India represents as a model for many emerging democracies around the world. Free and fair elections stands as the hallmark of a well-functioning democracy. While we are probably proud of our democracy, there are a number of areas which need to be strengthened for us to realise the true potential of a well-functioning democracy. Our system of election, from the selection of candidates, to the manner in which funds are raised and spent in election campaigns, are in dire need of significant changes. There's having been a growing concern over the years in India about several aspects of our electoral system. The Election Commission has made several changes in different areas to answer to some of the concerns. There have been a number of committees which have examined the major issues pertaining to our electoral system and made a number of recommendations. Still here remain some critical issues that might need legislative action to bring about the required changes. In that the voters turnout into negative aspects.

2.4.1 The Value if the Vote

Political participation can be considered as 'lifeline of democracy.' representative government proves obsolete without the consent of the citizens through their electoral voice: the vote. The struggle for universal franchise utilizes a long history, with battles continually fought in several corners of the world today. The permit is the first 'liberty' failure to exercise our voting rights imperils all of our rights including the right to vote itself".[82]Therefore, through voting, democratic ideals of freedom, liberty and equality are continually sustained.

[81] http://hrln.org/hrln/prisoners-rights/the-initiative.html
[82] Hill, 2010, p.921

The value of the vote may appear insignificant, subsequently deterring individuals from believing they have any actual impact on political outcomes. It has said that "the franchise represents may just be a drop in the ocean in a mass electorate, but it is the core from which other rights of citizenship and community flow".[83] An individual's voice is pivotal, not merely because it expresses their own political interest, but when connected to the wider electorate aids in protecting a society where electoral participation is sustained. The vote is an instrument of political power, instigating a check on the supremacy of elected officials.

2.4.2 Concept of compulsory voting:

Compulsory voting is the duty to participate in the electoral process. As many commentators point out, compulsory voting is a misnomer because what it actually means is compulsory attendance at the polling station. With reference to Australia,

Hill states that it "is only registration and attendance at a polling place … that is compulsory."[84]

Furthermore, compulsory voting does not mean that people have to vote for one of the parties. You would also have the option of ticking a box stating "none of the above". This could, in fact, give us more of an indication of levels of dissatisfaction with the current state of Indian politics than we have at the moment.

2.4.3 Voting - A civic duty:

Compulsory voting classifies universal suffrage as not merely an equal right, but as a civic duty responsible to the political community. The duty to vote has transformed from a philosophical question, to an icon "ingrained in our political tradition".

Legal sanctions have generated cultural values; a legal duty to attend the polls is often rejected as a severe contradiction of individual liberty. Yet, a minor

[83] Orr, Mecurio & Williams 2003
[84] Hill, L. (2001) "A great leveller: compulsory voting", in M. Sawyer (ed.) Elections: full, free and fair, Sydney: the Federation Press

burden on autonomy can serve the wider community. As philosopher John Stuart Mill (1861) stated:

"His vote is not a thing in which he has an option… It is strictly a matter of duty; he is bound to give it according to his best and most conscientious opinion of the public good"[85]

Mill's ideal suggests the duty of voting sustains the good of a democratic, and just, society. Article 29 of the United Nation's Universal Declaration of Human Rights upholds that freedoms are subject to "duties to the community," that maintain the welfare of democratic society. Lastly, voting can be seen as parallel to other duties, society requires of its citizens.[86] As citizens pay taxes, serve on juries and attend school, compulsory voting is perceived as another responsibility of the polity.

This leads us with a question, i.e. why India is in need of compulsory voting.

2.5 Why India needs compulsory voting?

India, the largest democracy in the world with 814 million eligible voters and successfully held 16 parliamentary elections so far. The contest covers 28 states and 9 Union territories. In India compulsory voting during the general debate on the Peoples Representation Bill in the Provisional Parliament in 1951. Dr. Ambedkar who was piloting the Bill while expressing sympathy for the idea felt it might be a great burden. The Country should not shy away from necessary changes, be it basic or normal legislation. For instance, in a direct election through territorial constituencies the voting 50 to 60% only. Does a Parliament constituted in the above manner can be called truly democratic? The Parliament itself represented only a minority of votes cast at the general election. A vote is the symbol of the political affinity of the citizen. It is not a chattel to be transferred with or without its consent.

The effect on voter turnout is measured by comparing countries with and without compulsory voting, by comparing voter turnout within states before

[85] http://www.opendemocracy.net/articles
[86] Jackman, Simon (s.d.) "Compulsory Voting", To appear in the International Encyclopedia of the Social and Behavioral Sciences.

and after abolishing or introducing compulsory voting and by public opinion surveys that assess if voters would turn out in case voting would no longer be obligatory. The studies show that compulsory voting has a direct impact on voter turnout. A recent cross-country analysis by the International Institute for Democracy and Electoral Assistance (IDEA) shows that the 24 nations that have compulsory voting have a higher voting turnout (69 per cent of potential voters) compared to the 147 nations without (63 per cent of potential voters). In sheer numerical terms, studies have shown that compulsory voting does increase electoral turnout. So India need compulsory voting for stable democracy and turnout the percentage of voting in positive sense.

2.5.1 Analysis of compulsory voting in Gujrat:

The Gujarat Local Authorities Laws (Amendment) Bill

•While there are good arguments for and against the bill, at present only some of the details have been worked out.

•All eligible voters in Gujarat must cast their ballot in Municipal, Nagarpallika and Panchayat elections or be subjected to punishment.

•Non -voters would have 30 days to explain their absence to avoid punishment.
• If voters don't like any of the candidates they have the option of a "none of the above" vote.

On 14th January 2010, RFGI hosted an informal discussion and information session on the Gujarat Local Authorities Laws (Amendment) Bill of 2009. The debate aimed to inform the public of the pros and cons of compulsory voting and provide a forum for discussion between ordinary citizens.

It also conducted a cross -sectional survey on over 260 subjects covering all educational and socio -economic backgrounds in an attempt to assess what the citizens of Gujarat think about the Compulsory Voting Bill.

Majority of the participants seemed to agree that voter engagement in local and state elections is a problem. It results in politicians being less accountable to the public (as gaining votes becomes less important), and governments having smaller mandates. Though all seemed to agree that there were clear

problems with the public attitude towards voting, questions remained whether these could be solved through compulsory voting.

Those in favour of the Bill suggested that citizens remain largely disinterested in local politics. Compulsory voting will enable people to be more aware about their local bodies. Compulsory voting will force people to take the time to think about the political process and educate themselves about their choices.

Positives of compulsory voting:

- It will be easier for political parties to campaign on issues, since they will no longer have to spend funds simply trying to encourage people to vote.
- Because the entire population – or at least, a vast majority – are voting, the resulting government would have a stronger mandate.

Problems with implementation

Many are also skeptical of how this law would be implemented. If the political establishment has a hard time getting their message out to the population today, how can they be sure they can inform the entire population of their new obligation to vote?

• If a million people fail to vote in upcoming elections, does the State Election Commission have the capacity to apply some punishment to each and every one of them?

• There are issues with the registration process and electoral rolls. Many rolls are still filled with errors. If the government can't even sort out who can vote, can they really sort out who must vote?

• The Bill is also silent on 'Samras' (the Government scheme whereby voting with consensus is encouraged at the Panchayat level)

Legal and constitutional Aspects:

Voting is not a duty as per the 'Fundamental Duties' of the Constitution.

• Forcing a person to vote is against his Fundamental Right of Expression under Article 19 of the Constitution.

• The Bill does not prescribe any penalty for non -voting and instead, delegates the power to the State Government – what exactly is a law without any sanction?

• Supreme Court precedents suggests that only the Legislature and not the State Government can decide the scope of a ′crime′. Bureaucrats cannot have this power in their hands.

• The term ′eligible voter′ is not defined - Does that mean an adult who is registered to vote or just any adult residing in the area regardless of whether or not he is registered? If it is the first then in that case what is the basis for punishing only those who are registered and not the others.

Effect on Citizenship and Democracy:

Perhaps the most important thing about this bill is the precedent it sets for both voting and citizenship.

• Compulsory voting reshapes our view of democracy – no longer is it a right, but a duty to be involved with the political process.

• No longer is it enough to simply be a citizen of India to access the benefits promised by the constitution – you must also take part in elections.

2.6 Suggestions for Implementation of compulsory voting in India

- Government is democratic means majority rule and the expression of an opinion by a majority of electors.
- Voting is equivalent to other duties society requires of citizens, such as giving evidence in court proceedings, jury service, paying rates, compulsory education or military service.
- Voting must mandatory formally requiring citizens to participate in elections is to embed in the constitution a provision that voting as fundamental duty.
- Provisions for NOTA.

- Election Commission send notice to non-voters and asked to justify their nonparticipation before a decision is made whether or not to impose a fine,
- Issued personally to the voter is a public notification that an individual has failed to carry out his or her civic duty. Such ‘name and-shame’
- Non-voters must punishable. It should be fine or Imprisonment
- Use biometric E-Voting system with help of EVM which helps to vote from any polling Booth.
- Exclusions to non-voters from the right to participate in elections.
- Non-voters have their names automatically removed from the electoral register and must pay a fee to have them reinstated unless they can produce a valid and sufficient reason for not having participated.
- To gain any accumulations from government must produce voting proof.
- The quality of legislation coming from legislatures elected by a minority vote would deteriorate
- Compulsion would emphasize the responsibilities of electors.

Chapter 3:

Evaluation of Women Prisoners

3.1 Status of Women in History:

Indian society gives honourable status to the women. The position of a woman within the Vedas and therefore the Upanishads is that of a mother (mata) or goddess (Devi). Within the Manusmriti, woman is taken into account as a precious being or be projected first by her father, then by her brother and husband and eventually by her son. Currently, women represent 48.2 percent of the country's population. Several developmental programmes are implemented by the Five Year Plans. In 1985, a separate Department of Women and Child Development was found out. The programmes mainly include Support to Tanning-cum- Employment Programme (STEP) for women, Mahila Kosh, Women's Development Corporation, etc. In India there's also need of the programmes for solving the acute problems of women prisoners inside or outside the prisons.

On July 13, 2010, the Delhi Higher Court ruled that a pregnant woman student can't be barred from taking examinations in any semester, because of attendance shortage. The court directed the Delhi University and Bar Council of India, to relax the strict attendance rules, for students who are unable to attend classes, because of pregnancy.

In Indian Patriarchal society, women often face discrimination. A numerous of crimes also are being committed against the women within the society. Women are exploited within the society at different levels due to their unawareness about their legal rights. Condition of the women prisoners is additionally not good. They're being oppressed and tortured in the prisons. Custodial horror may be a daily occurrence for women prisoners in India. What can a woman do when her 'custodians' become her violators? The question is extremely intimidating and frightening but this is often actually happening to women in India. There are innumerable cases where 'men-in-khaki,' as we usually refer to the police as, often are caught outraging the

women prisoners' modesty, inside and outdoors of the jail. Worse, women prisoners in India aren't just raped but even murdered by policemen.

Majorly, women in Indian jails are of poor background. A woman of sound background whatever could be the ground, generally avails all the privileges within the jail as Rajya Sabha member K. Kanimozhi was sent to Tihar jail on the very basis of involvement in high profile 2G spectrum case. She pleaded within the court that she should get bail on the grounds that she is a woman and a mother and was granted bail on November 28, 2011. In judicial custody for over six months, she was given a separate cell within the women's section, equipped with abed, a television and a restroom.

Moreover the Prison Act, 1894 is just too old. It consists of no provisions regarding welfare of the women prisoners. Dr. Upneet Lalli, Deputy Director, Institute of Correctional Administration, Chandigarh mentioned that the Prisons Act, 1894 focuses only on prison security, offence and punishment and not on correction, reformation and rehabilitation of prisoners. She felt that problems still existed and changes were required within the areas of overcrowding, delay in trial and legal aid, health and hygiene, prison visits-procedure, food-hygiene, quality, service, poor living conditions, women and children-drugs, mobiles, security issues, lack of educational, vocational education, lack of reformation and slow pace of modernization. She stated that as about 4.1% of prison population consisted of women, the issue of women prisoners should even be given ordinary care[87].

3.2 Constitutional status of women in India:

Constitution of India doesn't provide specific guarantee to the women prisoners. However, the Indian Constitution gives the status of equality to the women. The Founding Fathers of the Indian Constitution gave serious thought to guard and promote the rights of Women and Children. This is often amply reflected within the Preamble which contains "the ideals and aspirations of the people of India". One among the golden ideals is "the equality of status and of opportunity". India under Article 14 of the Constitution provides equal

[87] Manual for the Superintendence and Management of the Prisons in Punjab, 1996, Para (xvi)

protection of laws to the women in India and Article 15 prohibits the discrimination on grounds of sex. But still Indian women prisoners face variety of problems. The Protection of Human Rights Act, 1993 was passed by Government of India and constituted a body referred to as the National Human Rights Commission for promotion and protection of human rights. Part IV of the Constitution of India sets out the Directive Principles of State Policy which give direction to the State to provide economic and social rights to its people in specified manner.

India has also ratified various International Conventions and Human Rights Instruments committing to secure equal rights of women. Key among them is that the ratification of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1993. Article 12 (2)of this Convention provides that States Parties shall ensure to women appropriate services in reference to pregnancy, confinement and therefore the post-natal period, granting free services where necessary, also as adequate nutrition during pregnancy and lactation.

Article 3 of the Universal Declaration of Human Rights states that everybody has the right to life, liberty and security of person and Article 5 states that nobody shall be subjected to any form of torture or cruel, inhuman or degrading treatment or punishment.

Article 10 (1) of the United Nations Covenant on Civil and Political Rights states that “All persons bereft of their liberty shall be treated with humanity and with respect for the dignity of the human person” and Article 6(1) states that each person has the inherent right to life. This right shall be protected by law. Nobody shall be arbitrarily bereft of his life.

Therefore, both under National and also as International Human Rights Laws, inhuman and degrading treatment to women prisoners is prohibited and therefore the State is under obligation to uphold and ensure observances of basic human rights and constitutional rights of women prisoners within the prisons. Inspite of the several constitutional provisions providing status of equality to the women in India, the condition of the poor women prisoners isn’t good. They are being ignored and tortured in the prisons. Imprisonment

doesn't mean goodbye to fundamental rights, the Supreme Court of India has made it very clear in many judgements that except for the fact that the compulsion to live in a prison entails by its own force the deprivation of certain rights, like the right to move freely, a prisoner is otherwise entitled to the basic freedoms guaranteed by the Constitution.

Prisoners cannot be treated as animals and are not to be punished except in accordance with Laws.

3.3 Women prisoners' rights:

Women prisoners have many rights. They cannot be debarred from their basic human rights and freedoms guaranteed by the Constitution of India. The Supreme Court in the case of Sunil Batra vs Delhi Administration held that whether inside prison or outside, a person shall not be deprived of his guaranteed freedom save by methods 'right, just and fair'. The process of courts casts the convict into the prison system and the deprivation of his freedom is not a blind penitentiary affliction but be lighted institutionalisation geared to a social good. The courts are having continuing responsibilities to ensure that the constitutional purpose of the deprivation is not defeated by the prison administration. There're several of rights of women prisoners which are provided by different committees appointed for prison reforms and also by United Nations. These rights should be incorporated in the Prison Act 1894. Since, Prisons is a State subject under Entry 4 of the State Subjects List of the Seventh Schedule to the Constitution of India. Hence, the management and administration of prisons come under the domain of the State Governments. Therefore, the governments while making Prison Manuals should consider all the provided guidelines.

The various types of human rights, constitutional rights and statutory rights of women prisoners are discussed as under:

1. The female prisoners have the right to live separate from the male prisoners. The Prison Act 1894 under section 27(1) provides that in a prison containing female as well as male prisoners, the females shall be imprisoned in separate buildings or separate parts of the same building, in such a manner as to prevent

their seeing or conversing or holding any intercourse with the male prisoners; this right is also provided by Standard Minimum Rules for the Treatment of Prisoners under Rule 8(a).

2. About the maintenance of certain prisoners from private sources, section 31 of Act 1894 provides that a civil prisoner or an unconvicted criminal prisoner shall be permitted to maintain oneself, and to buy, or receive from private sources at proper hours, food, clothing, bedding or other necessaries, but subject to examination and to such rules as may be approved by the Inspector General.
3. About supply of clothing and bedding to civil and unconvicted criminal prisoners section 33 (1) of the Prison Act, 1894 provides that every civil and unconvicted criminal prisoners are unable to provide themself with sufficient clothing and bedding shall be supplied by the Superintendent with such clothing and bedding as may be necessary.
4. All the prisoners have the basic human rights such as hygienic food, shelter, medical facilities and facilities of reading and writing. They must be treated with dignity in the custody and cannot be isolated in a separate cell, except on medical grounds or if he/she has proven to be dangerous to other prisoners. That is the human right of a pregnant women to have full facility (medical and personal) at the time of delivery. Women prisoners who are pregnant are not provided the full facilities during the pregnancy. Hence at the time of delivery they can be released on bail for the delivery.
5. The Standard Minimum Rules for the Treatment of Prisoners provide under- Rule 53(1) that in an institution for both men and women, the part of the institution set aside for women must be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution. Rule 53(2) states; No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer. Rule 53(3) states; women prisoners shall be attended and supervised only by women officers. This doesn't, anyway, prevent male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women.
6. Rule 23 (1) provides that in women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment.

Arrangements must be made that wherever practicable for children to be born in a hospital outside the institution. When a child is born in prison, this fact should not be mentioned in the birth certificate. As per 23(2) of Rule where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.

7. Rule 24 that the medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the findings of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects that may hinder rehabilitation, and the determination of the physical capacity of every prisoner for work.
8. Rule 25 (1) that the medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who make complain of sickness, and any prisoner to whom his attention is specially directed. (2) A report shall be made by the medical officer to the director whenever he considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment. The medical officer shall under Rule 26(1) regularly inspect and advise the director upon: (a) The quantity, quality, preparation and service of food; (b) The institutions hygiene and cleanliness and the prisoners; (c) The sanitation, heating, lighting and ventilation of the institution; (d) The suitability and cleanliness of the prisoners 'clothing and bedding; (e) The observance of the rules focusing physical education and sports, in cases where there is no technical personnel in charge of these activities. (2) The director shall take into consideration the reports and advice that the medical officer submits according to rules 25 (2) and 26 and, in case he concurs with the recommendations made, shall take immediate steps to give effect to those recommendations; if they are not within his competence or if he does not concur with them, he shall immediately submit his own report and the advice of the medical officer to higher authority.
9. The National Commission for Protection of Child Rights (NCPCR) has recommended that women in jail who are pregnant, ill or have children

dependent on them should be considered for early release on personal bonds. The guidelines prepared by NCPCR state that while the nature of the crime cannot be overlooked, the condition of women prisoners could be considered when they have few means and are responsible for young children.

10. Article 39 A of the Constitution of India empowers the women prisoners to secure free legal aid. It provides that the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. But the question arises whether the legal aid provided is sufficient. Every prisoner has the right to seek legal aid if needed. Just because a person has been sentenced to imprisonment doesn't mean his rights can be violated.
11. The report of Dr. (Miss) A.R. Desai, Director of the College of Social Work, Nirmala Niketan, Bombay in the case of Sheela Barse vs State of Maharashtra stated among other things that there was no adequate arrangement for providing legal assistance to women prisoners and that two prisoners who were foreign nationals complained that a lawyer duped and defrauded them and misappropriated almost half of their belongings and jewellery on the plea that he was retaining them for payment of his fees. Supreme Court in Sunil Batra vs Delhi Administration held that Lawyers nominated by the District Magistrate, Sessions Judge, High Court or the Supreme Court will be given all facilities for interviews, visits and confidential communication with prisoners subject to discipline and security considerations. The lawyers so designated shall be bound to make periodical visits and record and report to the concerned courts, results which have relevance to legal grievances. The Legal assistance to a poor or indigent accused, arrested and put in jeopardy of his life or personal liberty, is a constitutional imperative mandated not only by Article 39A but also by Articles 14 and 21 of the Constitution. It is a necessary sine qua non of justice and where it is not provided, injustice is likely to result and undeniably every act of injustice corrodes the foundations of democracy and rule of law.
12. Section 303 of the Criminal Procedure Code, 1973 empowers the prisoners to be defended by the pleader of their choice and Section 304 of this code

provides that in certain cases legal aid is to be provided at state expense. 309 (1) of the criminal procedure code provides that in every inquiry or trial, the proceedings shall be held as expeditiously as possible. Similarly, mere sentence does not restrict the right to freedom of religion.

13. Women prisoners have the right to speedy trial. There is an undoubted right of speedy trial of undertrial prisoners, as held in a catena of cases of Supreme Court. The Supreme court of India in the case of Hussainara Khatoon vs Home Secretary, State of Bihar held that speedy trial is a fundamental right implicit in the guarantee of life and personal liberty enshrined in Article 21 of the Constitution.

    Section 54 of the Code of Criminal Procedure 1973 provides for examination of body of an arrested person by a registered medical practitioner at the request of the arrested person in case of torture and maltreatment in lock ups. But generally women prisoners are not aware about this right.

    Before sending a woman who is pregnant to a jail, the concerned authorities must ensure that jail in question has the basic minimum facilities for child delivery as well as for providing pre- natal and post-natal care for both, the mother and the child. Gynaecological examination of female prisoners shall be performed in the District Government Hospitals.

    The Articles 72 and 161 of the Indian Constitution add a human touch to the country's judicial process by conferring powers on the President and the Governors of States, respectively to grant pardon or show mercy to the prisoners.

3.4 Problems of women prisoners:

The substantial condition of a large number of prisons in India continues to be bad, dehumanising and violative of the residuary rights of inmates. Over the years, prisons have become place of low visibility where inhumane and even cruel conditions have prevailed.

The possibility of inflicting injury and injustice on inmates has always lurked in these closed institutions. Unfortunately the state's supervision over day to day happenings within such institutions has become a mere formality and

surveillance of society is conspicuous by its absence. There has been a plethora of recommendations for the improvement of these conditions both from recommendatory bodies and from the apex judiciary but a large chunk of these recommendations has not seen the light of the day. Women prisons in India are not sufficient in number. According to the Prison Statistics India 2010 the number of total prisons is 1393, the classification of which is shown in the below mentioned Table:

Name of Jail	**No. of Jail**	**Name of Jail**	**No. of Jail**
Women jails	18	Open jails	44
Central jails	123	Borstals school	21
District jails	322	Special jails	26
Sub jails	836	Other jails	03

This table shows that there are only 18 women prisons in the country and jails exclusively for women prisoners exist only in 12 States/UTs. Women prisoners are facing a number of problems in the jails. The problems they are facing can be discussed as under:

i) Shortage of Women Prisons:

In India, there is shortage of women prisons. Women prisoners are facing the problem of overcrowding in the prisons. Overcrowding itself is a generator of many problems. In such circumstances, it becomes impossible to perform day to day activities of the life. The data of Tihar Jail (as on 30 April 2012) only demonstrates the problem of overcrowding of prison in Table:

Total Capacity of the Women Prison in Tihar Jail	Number of women prisoners in the Prison
400	516

Table shows that in the Tihar jail the capacity of the women jail is of 400 but the total number of women prisoners who are staying there is 516. It means 116 more women prisoner are staying without any capacity of their accommodation. Out of 516 women prisoners, 121 are convicted and 395 are under trials. If we look towards India as a whole, as per available statistics the capacity of 18 women jails is only of 3600 female prisoners. But the total female jail inmates as on 31.12.2010 were 15037 which is 4.1% of the total prisoners. Out of which 4632 female prisoners were convicts, 10252 females were under trial prisoners, 106 females were detenues and 47 other women inmates. Out of the total women prisoners i.e. 15037 only 2799 female prisoners are living in the women prisons.

In a National Seminar on Prison Reforms on 15th April, 2011 at Jacaranda Hall, IHC, New Delhi, at the time of welcoming the participants, Director General (Investigation), NHRC, Sri Sunil Krishna, said that overcrowding in prisons is one of the reasons for the unhygienic conditions prevailing in prisons. The strength of undertrial women prisoners is also a considerable problem to which they are facing and sometimes they face the custodial torture. According to the National Crime Records Bureau's (NCRB) prison statistics, till the end of 2010, 34 deaths of female inmates were reported in 2010, out of which 5 deaths were suicidal in nature.35 In some cases women prisoners have been spent more time in the jail than the punishment may be awarded for their committed offence. Only in Tihar Jail as on 30 April 2012, 76.55% women prisoners were undertrial. The data of classification of women undertrial prisoners in Tihar Jail as per the length of stay in Jail is shown in table:

Period of stay in the prison of Tihar jail	Number of women prisoners
Up to 01 month	57
01 – 03 months	68
O3 – 06 months	39
O6 – 12 months	82
12 – 24 months	76
24 – 36 months	25
36 – 48 months	20
48 – 60 months	17
Above 60 months	11
Total	**365**

The Supreme Court of India is also taking in consideration the problem of prolonged detention of undertrial prisoners. In, "Common Cause" a Registered Society through its Director vs UOI and Ors, the supreme court in regard to the release of undertrial prisoners held that it is a matter of common experience that in many cases where the persons are accused of minor offences punishable not more than three years or even less, with or without fine, the proceedings are kept pending for years together. If they are poor and helpless, they languish in jails for long periods either because there is no one to bail them out or because there is no one to think of them. The very pendency of criminal proceedings for long periods by itself operates as an engine of oppression. Even in case of offences punishable for seven years or less with or without fine, the prosecutions are kept pending for years and years together in criminal courts. It appears essential to issue appropriate directions to protect and effectuate the right to life and liberty of the citizens guaranteed by Article 21 of the Constitution. Court also clarified that in such cases, the criminal proceedings have remained pending despite full cooperation by the concerned accused to get these proceedings disposed of and the delay in the disposal of these cases is not at all attributable to the concerned accused, nor such delay is caused on account of such accused getting stay of criminal proceedings from higher courts.

ii) Lack of Necessities:

Women prisoners in India do not even have proper accommodation or recreation. Basic facilities are lacking for the women and their children. Women prisoners are also visibly scared of the prison staff. There is scope for vast improvement, on all levels, particularly in the attitude of the prison staff that need to learn to respect the human rights of women prisoners.

Most of the women prisoners are also mothers and their children are staying with them in the prison but the prison is not a place for healthy growth of a child. Prison environment affects the growth, survival and development of the children. Children who stay with their mothers in prisons are denied their basic rights to pre-school education. While in jail, communication with outside world gets snapped with a result that the inmate does not know what is happening even to his near and dear ones. This causes additional trauma.

In Francis Coralie Mullin vs The Administrator, Union Territory of Delhi and others[88], The Supreme Court held that the power of preventive detention has been recognised as a necessary evil and is tolerated in a free society in the larger interest of security of the State and maintenance of public order. It is a drastic power to detain a person without trial and in many countries it is not allowed to be exercised except in times of war or aggression. The Indian Constitution does recognise the existence of this power, but it is hedged-in by various safeguards set out in Articles 21 and 22. The prisoner or detenee has all the fundamental rights and other legal rights available to a free person, save those which are incapable of enjoyment by reason of incarceration. As a necessary component of the right to life, he would be entitled to have interviews with the members of his family and friends and no prison regulation or procedure laid down by prison regulation regulating the right to have interviews with the members of the family and friends can be upheld as constitutionally valid under Articles 14 and 21, unless it is reasonable, fair and just. Moreover, medical facility in the prison is not satisfactory. It is poor. The inadequacy of medical services in prisons, often resulting in the death of prisoners has been much in evidence. Statistics in the Annual Reports of the

[88] AIR 1981 SC 746

NHRC reveal that there are a much larger number of deaths in judicial custody than there is in police custody. Given the frequency and seriousness of the complaints about medical services in prisons, it would bear investigation to find out how many of the deaths in judicial custody are, in fact, occasioned by medical negligence.

iii) Torture in Custody:

Sexual assault to the women prisoners is also a major problem which they are facing. There are horror stories about the torture in custody to the women prisoners. Asian Centre for Human Rights (ACHR) stated that custodial rape remains one of the worst forms of torture perpetrated on women by law enforcement personnel and a number of custodial rapes of women take place at regular intervals. The NHRC recorded 39 cases of rape from judicial and police custody from 2006 to 28 February 2010.Citing the case of Maloti Kalandi, wife of Badal Kalandi who along with children was rescued from being trafficked, was handed over to the Tamulpur police station, Baksa district of Assam for safe custody. Instead of providing safety, Sub-Inspector Sahidur Rahman summoned the victim to his official quarter and raped her A few women who served prison terms have alleged torture and inhuman treatment within the prisons across Tamil Nadu. They say that they were stripped naked and abused verbally and physically and not provided even basic facilities. Parameswari of Annaiyur in Madurai said I was stripped naked by convict wardens in the presence of the jail wardens and other prisoners and abused both verbally and physically. Similarly two more prisoners, Munniammal who had been lodged in the Nilakottai sub-jail for robbery and M Muthulakshmi who had been arrested by the police for illicit brewing of liquor, said they were never given anything but gruel in the prison. They also said that four to eight prisoners were crammed into a cell and they were forced to use a small corner as their toilet, without even a curtain to provide them privacy.

A Tihar Jail's woman prisoner, facing trial in cases of cheating and forgery, has accused the jail warden of torturing her with the help of HIV positive woman inmate for extorting money from her. She alleged that she was beaten

up for an hour in front of the deputy superintendent and the jail staff who remained mute spectators. Women prisoners are not safe in lock ups. Ms. Saradha was brought to Special Prison for Women, Vellore, Tamil Nadu, as a remand prisoner having been remanded by the Judicial Magistrate. She was undressed totally and dragged nude for quite some time till they reached the entrance of her cell and was put in solitary confinement and she was never given back her clothes and no official in the prison bothered about her. She was awarded 50000/- as compensation by the court Supreme Court judge Ranjana P. Desai at the conference of All India Federation of Women Lawyers in Chennai said that the criminal justice system has failed to protect the rights of women, who are often victims of violence and discrimination. Soni Sori a 35 year old Adivasi schoolteacher, warden and mother, subjected to sexual violence while in custody in the Dantewada police station in Chhattisgarh under directions of the Superintendent of Police (SP) says in her letter to the Supreme Court advocate that "After repeatedly giving me electric shocks, my clothes were taken off. I was made to stand naked. SP was watching me, sitting on his chair. While looking at my body, he abused me in filthy language and humiliated me.

Custodial violence has always been a matter of great concern for all civilized societies. Custodial violence could take the form of third degree methods to extract information – the method used need not result in any physical violence but could be in the form of psychological violence. Custodial violence could also include a violation of bodily integrity through sexual violence – it could be to satisfy the lust of a person in authority or for some other reason. The 'Mathura Rape Case' is one such incident that most are familiar with. Custodial violence could, sometimes, lead to the death of its victim who is in a terribly disadvantaged and vulnerable condition. All these forms of custodial violence make it abhorrent and invite disparagement from all sections of civilized society.

Chief Justice R. C. Lahoti highlighted one aspect of custodial deaths, namely, unnatural deaths in prisons and had drawn attention to four issues regarding prisons. The four issues are: (i) Overcrowding in prisons; (ii) Unnatural death of prisoners; (iii) Gross inadequacy of staff, and (iv) available

staff being untrained or inadequately trained. Further decided to issue directions.[89]

In 2019 Ashwini Kumar case[90] on the right to life and liberty and judgments of the Court had argued that custodial torture being crime against humanity which directly infracts and violates Article 21 of the Constitution, the Court should invoke and exercise jurisdiction under Articles 141 and 142 of the Constitution for the protection and advancement of human dignity, a core and non- negotiable constitutional right. The SC reasoned "that directions can be given to the executive to ratify the UN Convention. We do not think that any such direction can be issued for it would virtually amount to issuing directions to enact laws in conformity with the UN Convention, a power which we do not 'possess', while exercising power of judicial review" and decided to issue appropriate guidelines/directions to elucidate, add and improve upon the directions issued in D.K. Basu[91] case.

iv) Inaccessibility of Legal Services:

Women prisoners are not getting satisfactory legal aid in the prisons. Inaccessibility of legal services is a major problem which needs to be resolved. Final Annual Report 2008-2009 of National Human Rights Commission provides that in most of the jails visited in India, there is need to strengthen the legal aid system so that the qualified lawyers are provided to all those who cannot afford their services.

Unawareness about the law and procedure amongst the women prisoners is also a major problem. According to "Progress of the World's Women" a report by the Assistant Secretary General of United Nation Women, uneducated women have lack of awareness about the judicial system and their rights. Women, due to their ignorance, are not even getting the benefit of proviso to Section 437 Cr.P.C, according to which they may be released on bail even in non-bailable cases. Bail, in non-bailable offences, is not a matter of right of the accused person. Section 437 of the Code of Criminal Procedure envisages the

[89] In Re: V. Inhuman Conditions in 1382 Prisons (2017)
[90] Dr Ashwini Kumar v. union of India ministry of home affairs (2019)
[91] D.K. Basu v. State of West Bengal, (1997) 1 SCC 416

provision as regards bail in case of non-bailable offences, which may or may not be granted depending on the discretion of the court. But proviso to this provision exempts women, and empowers court to grant bail to a woman irrespective of the gravity of the crime.

The present study reveals that separate women prisons are essential to keep the women prisoners. The number of women prisons is not sufficient in India and it should be increased. Women prisoners being women have special requirements which should be necessarily fulfilled. The number of undertrial prisoners should be reduced to the maximum extent to reduce the burden over jails. Prisons should be converted into correctional homes. It is essential for the women prisoners for their reformation and rehabilitation. To fulfil this purpose it is compulsory that they should be provided basic facilities in the prison. There is need of special training programme for the prison officials so that their behaviour towards the women prisoners can be changed and they can give importance to the basic human rights of the women prisoners.

In the case of pregnant women prisoners they can be granted bail and in case the children are dependent on the women prisoners, their mercy application should be considered sympathetically and released accordingly. Most of the women prisoners are not aware about the complexity of judicial process. Legal awareness programmes should be launched on war footing in the jails so that women prisoners should be made aware of their legal rights and about the complexity of judicial process. Sufficient lady doctors should be appointed in the prisons. Mulla Committee had recommended the appointment of full time lady medical officer in case women prison contains 25 or more women prisoners and in case of fewer women prisoners lady medical officer should be appointed on part time basis.

The efforts should be made on war footing to reduce the strength of women undertrial prisoners and for this purpose the procedure of plea bargaining can be adopted. Lok Adalats should be organised frequently. Fast track courts should be established to reduce the burden of undertrial prisoners over jails. The Prison Act 1894 which regulates the prison administration is too old and it requires to be substantially amended in the present scenario. Panels of visitors

should be appointed on a permanent basis to all prisons as recommended and emphasised by National Expert Committee on women prisoners and apex court in various observations.

3.4.1 Pregnancy and women prisoners:

When a woman prisoner is found, or suspected, to be pregnant at the time of admission or later, the lady Medical Officer shall report the fact to the Superintendent. Arrangements shall be made at the earliest to get her medically examined at the female wing of the District Government Hospital for ascertaining the state of her health, pregnancy, duration of pregnancy and the probable date of delivery. After ascertaining all necessary particulars, a detailed report shall be sent to the Inspector General of prisons. Gynaecological examination of the female prisoner shall be performed in the District Government Hospital. Proper pre-natal and ante-natal care shall be provided to the prisoner as per the advice of qualified medical officer.

The Supreme Court in R.D. Upadhyay v. State of Andra Pradesh[92] has formulated guidelines regarding pregnancy, antenatal, child-birth and post-natal care and child The Apex court has clearly stated guidelines regarding Gynaecological examination, regarding Pregnancy, regarding Child birth in prison and regarding child care

Succinctly, it can be said that the goal or aim behind awarding the punishment to the women offenders should be the reformation and the rehabilitation of women prisoners and for achieving this goal the jail manuals should be prepared in consideration with minimum standard of human rights.

[92] AIR 2006 SC 1946

Chapter – 4

Comparative study of protection of Human Rights of Prisoners: International Scenario

4.1 International status :

It is universally settled that punishment is to reform the convicts mentally, physically, socially, economically and psychologically by adopting therapeutic and human approach at prison. The present chapter deals with human rights or prisoners in United States of America and United Kingdom[93]. The human rights of prisoners are protected by the several amendment legislations in U.S.A and the Common of England also taken much interest on prisoner's rights, for this implemented various prison reforms in England.

The roots of the concern for human rights by the international community can be traced to humanitarian traditions of ancient times and the struggle for freedom and equality in all continents and to the English, American, French, and Russian[94] Most importantly, it was the World War II, which immediately acted as a catalyst for the protection of human rights through the instrumentality of United Nations. The United Nations Charter placed human rights on the international agenda.[95]

The post-World War II, era has been rightly termed as "the Human Rights Era."[96] A world jolted by large-scale violations of human rights by the inhuman acts of genocide and other atrocities committed by the Nazis and the Fascists "became acutely alive to the necessity of limited state sovereignty to the extent possible in the interest of protecting human rights and human dignity"[97]

The concept of "limited State sovereignty" has led to the enactment of laws setting forth specific standards of treatment, which reflect the customary norms of conduct established in the international community.[98] As a natural corollary, "the existence of these laws and customs has prompted universal

[93] Dr.N. Maheswara Swamy, Criminology and Criminal Justice System, Asia Law House, Hyd. 2013
[94] It was the holocaust of the large scale violation of human rights during the II World War which was immediately responsible for the inclusion of promotion and encouragement of respect for human rights and fundamental freedoms for all in the purposes and principles of the U.N" Bhagawati Id, at 9.
[95] G.Tunkin, Theory of International Law 10 (1974) cited
[96] T.S.Rama Rao, Human Rights- Problems of developing Countries.
[97] ibid
[98] Leach, Effective Enforcement of the Law of Nations: A Proposed International Human Rights Organisation 15 CAL W.l. LJ 705 (1985) at 705.

recognition of a minimum standard of treatment due to all persons."[99] This minimum standard defines fundamental rights from which no derogation is permissible.[100]

4.1.2 United States of America:

During the medieval period, American colonies had witnessed barbaric and deterrent punishments for criminals. Torture was the order of the day. Even for minor offences, criminals were imposed the punishment of death, public humiliation, branding, whipping etc. Imprisonment was used only in rare cases. Political and war offenders were kept in prison as under trial Prison life was unbearable and painful. Because of the public pressing Penn's Charter of 1862 was passed providing certain reforms in prison administration, such as, releasing of prisoners on bail, payment compensation for wrongful imprisonment, permission to prisoners to have food and lodging of their choice, abolition of punishments in public places. They are different types of Prison System of United States of America are The Philadelphia System, The Pennsylvania Prison System, The Auburn Prison System, Elmira Reformatory System and The Illinois Prison System was prevailed in U.S.A.[101] In The Philadelphia System the prisons was remodeled from its earlier stage, envisaging classification of prisoners into incorrigible or hardened criminals and corrigible or ordinary airninals. The first category of prisoners was subjected to solitary confinement in cells without any labour. The second categories of criminals were considered to be reformable. Due to overcrowding, the Philadelphian prison deteriorated, thereby resulting in the establishment of two new model prisons, one at Pennsylvania and the other at Auburn. These prisons were started simultaneously. In Pennsylvania Prison System, this system was first introduced in the Valnet State prison in Philadelphia in 1790.

Under this system, prisoners were kept in complete isolation in separate cells during day and night, and food was supplied in cells only, with a view to bring quick reforms among them. But this was leading to the death of number of

[99] ibid
[100] ibid
[101] Vold G.B, Theoretical Criminology, (1958)

inmates. Those who survived their term of solitary confinement were either returned mad or became irresponsible. To meet the situation, the system of "labour and work" was introduced but to be performed only in their cells. While transporting prisoners from one place to another, their faces were covered by hoods, so as to prohibit them from seeing each other. The inmates were permitted to do prayers so that they behave themselves with propriety. Later on this system also failed giving place to the Auburn system.

The Auburn Prison System, Auburn, a new prison modeled on the Pennsylvania pattern, was built in New York State during 1818-1819. prisoners were required to work in shops under silence. This experience showed that severity of solitary confinement had fatal consequences on physical and mental health of the inmates. Many of them either suffered mental disorder or committed suicide. Therefore, a large number of prisoners were pardoned and released in 1823.[102] Elmira Reformatory System, as both the above systems failed, a new era of revolutionary change took place in the history of American prison system, when the Elmira Reformatory System was introduced in New York. It provided for indeterminate sentence, parole and probation. Criminals were categorised as hardened and incorrigible for the purpose of treatment. In and around 1930 individualization of prisoners was introduced under which criminals were graded not based on their age, sex or dangerous nature, but on their individual needs and reliances of rehabilitation. In Illinois Prison System, under this system, Reception centers were opened in 1933 as a beginning of the reformative era in America. The cells in the prison were airy, well ventilated and provided with adequate lighting. Health and sanitation facilities were improved considerably. Inmates were provided with reading, writing and schooling facilities including physical exercise and recreation. Inmates were allowed group together, and meet their friends and relatives on fixed days. Solitary confinement was completely abolished. In the United States, perhaps no modern legal scholar has made as significant an impact on the Sixth Amendment's speedy[103] trial clause than Professor Akhil

[102] Supra
[103] ibid

Amar of Yale Law School[104] In his work, Amar uses detailed, historical legal analysis to make a provocative argument concerning the rights of defendants who failed to receive a speedy trial. Amar contends that in such cases the remedy of "dismissal with prejudice" the standard set-forth by the Supreme Court as early as 1972[105] can perversely serve as a "windfall" for defendants and place society in danger, especially when there is overwhelming evidence that the pre-trial detainee is guilty.

Thus, the concept of human rights, embodying the minimum rights of an individual versus his own state, is an old as Political Philosophy. It assumed a concrete and justiciable shape when these individual rights came to be guaranteed against the State in written constitution adopted since the constitution of the U.S.A in 1787, to which the Bill of Rights was formally added in 1791. The effect of incorporation of individual rights in the form of a Bill of Rights in a written constitution is to incorporate human rights into the municipal law of a state, and to make them legally enforceable by an aggrieved individual against his state to invalidate any state act, legislative or executive, which is found by a court of law to have violated any of the constitutionally guaranteed human rights belonging to the aggrieved individual.[106] Human rights are guaranteed by a written constitution, they are called fundamental rights because a written constitution is the fundamental law[107] of the state. The Right to fair hearing by an independent and impartial Court, in U.S.A., this right is in reduced form the comprehensive guarantee of Due Process, Right to speedy trial or hearing within a reasonable time and the right is specifically guaranteed by the 6th amendment to the constitution of the U.S.A.[108] The Prisoners having rights of speedy trail, fair trail protection against cruel, inhuman treatment and degradation of prisoners by the authorities. The constitution is the supreme law of the land in every country. The constitution guaranteed several rights to the prisoners and that they are protected and enforced by the judiciary of United States of America.

[104] Akhil Amar, the constitution and criminal procedure: first principles (1997).
[105] Barker v. Wingo, 407 U.S. 514 (1972)
[106] D.D.Basu, Human Rights in Constitutional Law, , Wadhwa and Company Nagpur, 2nd Edition, 2005
[107] D.D.Basu, Comparative Constitutional Law., Wadhwa and Company Nagpur,pp. 15-60.
[108] Moore Vs Dempsey, (1923) 261 U.S 86;

Article 5 of the Universal Declaration specifically states that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment[109] Although neither of these initial human rights documents was legally binding, they were generally accepted as part of customary international law.[110] In terms of prisoners' rights specifically, the Universal Declaration served to bring international attention to issues of torture and punishment, upon which further developments on protecting individuals could be established. The United States ratified the ICCPR in 1992, and the Convention Against Torture in 1990, with reservations on specific articles.[111]These reservations present perhaps the greatest obstacle to prisoners' rights in the United States[112] The reservation on ICCPR Article 7 binds the United States only to the extent that the "cruel, inhuman or degrading treatment" means such treatment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution.[113] Similarly, the U.S. reservation on the Convention against Torture Article 16 makes sure to clarify that the treatment prohibited is only treatment which is cruel, inhuman, or degrading punishment as interpreted via the Fifth, Eighth, and Fourteenth Amendments to the U.S. Constitution.[114]

The international conventions relating to civil and political rights gives the minimum stranded rules for treatment of prisoners, Geneva Conventions relating to prisoners were meant for promoting prisoners' rights and are being administered by member states for the protection of human rights of prisoners.

The Court changed a bit in its standards for finding an infringement of prisoners' rights in Helling v. McKinney, where it was found that the 8th

[109] Universal Declaration of Human Rights, G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810.
[110] Suzanne M. Bernard, An Eye for an Eye: The Current Status of International Law on the Humane Treatment of Prisoners, 25 RUTGERS L.J. 759, 769 (1994),
[111] International Covenant on Civil and Political Rights: Hearing Before the Senate Comm. on Foreign Relations, 102d Cong. (1991)
[112] John Henry Stone, The International Covenant on Civil and Political Rights and the United States Reservations: The American Conception of International Human Rights, 7 U.C. DAVIS J. INT'L L. & POL'Y 1, 9-10 (2001)
[113] ICCPR Hearing, (describing other U.S. reservations, such as those involving free speech, capital punishment, criminal penalties and juveniles).
[114] Miller, Article 30(1) requiring parties to submit disputes to arbitration and, if no change, to the International Court of Justice. (1990)

Amendment protects against future harm.[115] By looking at objectivity slightly differently, inhalation of second hand smoke from being involuntarily placed with an inmate with excessive smoking habits was determined to be an infringement of a prisoner's rights. While showing real possibilities that the injury will occur, a prisoner must also show that society would find the risk so grave as to violate contemporary standards of decency. The Supreme Court of United States of America is playing an important role for the protection of human rights of prisoners by constitutional amendments and started protecting the rights of the prisoners through its cases for implementation and interpretation of these rights of prisoners.

4.1.3 United Kingdom:

The common law of England, which has no written constitution, because, historically, the concept of each of the human rights has its origin in the ordinary law of England, and those rights enforced as such by the courts of law, as a part of what is known as the common law. Of decisions underwritten constitutions, primacy should be given to the American Constitution which is the acknowledge matter of modern written constitution.[116] In England, the unwritten constitution is prevailing, the implementation of rights of the individual is based on common law of England and also the rights of the prisoners are protected by the legislations. During the early period of civilization in England and elsewhere, the philosophy of 'laisses faire' was prevailing in all socio-economic walks of the society. 'Hire and Fire' was a most common practice in dealing with labour management relations and economic aspects of life. During the 12th Century, in England, compensation was payable to the victims of crime by the wrong doers. When crown took up administration of the country, the rule of payment of compensation to the Crown, was introduced as a source of income to the Government. Later, imposition of fines was practiced to increase the income of the Government in 18th Century, imposition of death sentence for certain offences was introduced, before which torture, mutilation of limbs were modes of Punishment. There was no scope for reformative approach. Jails were and all

[115] Helling v. McKinney, 509 U.S. 25, 35 (1993).
[116] Bell Vs D.P.P., (1986) LR.C(Const.) 392(401) P.C (From Jamaica)

types of criminals including men and women were kept in same jail. Jails were in the control and management of private persons. Inmates were required to pay charges for all supplies and services provided by the management of prisons. Later on transportation of criminals was introduced in England. Transportation of criminals was meant sending them to unsettled continent of then to Australia. According to Lord Ellenborough, transportation was like the summer excursion to enjoy a happy and better climate.

In the 12th century, in England, compensation was payable to the victims of crime of the wrong doers. Later, the Crown Changed the system of the payment of compensation to him and imposition of fines was practiced to increase the income of the Government. Jhon Howard, a High Sheiff, in British Government was considered to be the pioneer of prison reforms in England during 1773. He wished that good sanitary conditions should be provided to inmates. The act of 1778 passed by the British Parliament was another milestone in the evolution of prison reforms in England. The act contained elaborate provisions relating to prison reforms and remodelling of the prisons. In half part of the 19th century, the system of release of prisoners which is popularly known as ticket on leave was introduced on the conditions that the prisoners should not resort in criminal activities. The Prisons Act was passed in 1898. The prisons reforms started in England in half of the 18th century and the conditions of prisons changed from old traditions to modern reformative pattern. The pre mature release of prisoners started in 1778 by the Act of England Parliament.

Sir Lionel Fox, the Secretary of the Prison Commission during 1925-1934 and chairmen of the Commission during 1942-1960 emphasized that public should always be kept well informed about the working of the prisons through intensive reporting. Press man and Social Workers should be permitted to make frequent visits for that purpose. Prison Administration should aim at reconciling the conflicting objectives of deterrence and reformation. According to him, the deterrence inside the prison had to be found in the fact, by imprisonment and not in severity of the prison regime.[117] In U.K., The

[117] Studies in Penology, International Penal and Penitentiary Commission, (1964). P. 184

English Criminal Justice Act of 1982 provides for a scheme of liberalized parole system because of the increasing number of inmates to cope-up with the situation. It was proposed to release prisoners on license after serving 1/3rd of the sentence without the discretion of the Parole Board. Deduction of minimum period for release on parole greatly reduced the pressure of administration. In the existing British prison system, the prisoners are classified into different categories by applying group therapy method. They are provided vocational training for physical, moral and mental upliftment the system of reforming prisoners within the community is permitted. Rehabilitation and socialization of prisoners after release is entrusted to after care institutions or voluntary social service organizations. Basic rights of prisoners are duly recognized by treating the prisons as minimum security institutions.[118] The recently introduced The Human Rights Act, 1998 is the most important legislation to give further effect to the rights and freedoms which were guaranteed under the European Convention on Human Rights and thus makes the convention rights enforceable in the courts of United Kingdom.[119] The enactment of the Human Rights Act marks a turning point in the legal and constitutional history in U.K. it provides explicit constitutional underpinning for the fundamental rights of the citizen. In the existing British prison system, the prisoners are classified into different categories by applying group therapy method. They are provided vocational training Constitutional for physical, moral and mental upliftment. The system of reforming prisoners within the community is permitted. Rehabilitation and socialization of prisoners after release is entrusted to after care institutions or voluntary social service organizations. Basic rights of prisoners are duly recognized by treating the prisons as minimum security institutions.[120] Under the British Prison System, the prisoners were classified and for the protection of human rights of prisoners the British Parliament enacted several statues and the judiciary also protected the prisoner's rights from violations by the authorities by rendering land mark judgements. For, the welfare of the prisoners after their release

[118] Dr. N. Maheswara swamy, Criminology and Criminal Justice system, Asia Law House, Hyd
[119] Reforms in United Kingdom: Practice and Principles by Lord LESTER, Hart Publishing, 1998
[120] Supra: 91

innovative programmes were chalked out and they were initiated by the non-Governmental Organizations and Social Institutions in England.

4.1.4 Canada:

Prisoners are among the most vulnerable categories of citizens in every country, due to the large amount of control of the state has over them. Enforcing Human Rights Law is a challenge in all areas that it covers. However, ensuring human rights for those behind bars sometimes seems nearly impossible because of the isolation, the lack of interest of the outside world and mostly because of the sometimes conflicting goals that Correctional Law and Human Rights Law seem to have. Canada is not part of any regional conventions against torture or that could be applied to torture. There are several Inter-American Conventions (Inter-American Convention to Prevent and Punish Torture, Inter-American Convention on Human Rights etc), but Canada has chosen to regulate this matter through national avenues, with the consideration of the International bodies which it recognized as binding. Canada has a federal legal system. The Constitution Act, 1867 divides the legislative and executive powers between federal and provincial spheres.[121] While criminal law falls under federal jurisdiction and it is applied uniformly all over Canada, imprisonment falls under either federal or provincial jurisdiction, depending upon certain criteria. Penetary is under federal authority, they are governed by the Corrections and Conditional Release Act and are administered by the Correctional Service Canada (CSC). People receiving two years or more of imprisonment will serve time in a federal institution. However, every province and territory has its own correctional system, created to fit the needs of their offenders and depending completely on the local budget. Prisons, reformatories, local jails and detention centers fall under provincial jurisdiction. The standards for health are perhaps higher in Canada, Canada Correctional Services have often been criticized for the severe failure to provide adequate health services. At the national level in Canada, there is legislation protecting the rights at issue. There is also a body of case

[121] Adelina Diana Iftene, Convicts and Human Rights: A Comparative Study on Prison Treatment in Europe and Canada, Queen's University Kingston, Ontario, Canada, 2011

law, which more or less covers aspects related to the protection of inmates' right to be free from torture and cruel and unusual punishment or treatment.[122]

4.2 International Human Right Instrument:

4.2.1 United Nation Charter:

The protection and promotion of human rights has, in fact, become one of the main objectives of the United Nations. The Charter of the United Nations contains a number of references for the promotion of human rights. The Charter clearly states -"we the peoples of the United Nations, determined... to reaffirm faith in fundamental human rights; in the dignity and worth of the human person, in the equal rights of men and women and of nations, large and small... have resolved to combine our efforts to accomplish these aims."[123]

Among the purposes of the United Nations set out in Article 1, "the promotion of respect for human rights and fundamental freedoms for all" is prominent. Equally important are Articles 55 and 56.[124] Article 55 provides that the United Nations shall promote, inter alia, universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion, Article 56 states that all members pledge themselves to take joint and separate action in co-operation with the organisation for the achievement of the purposes set forth in Article 55.[125]

The attainment of the objectives set out in the above provisions was thought to be very important for permanent peace and security in the world However, in view of the fact that a number of delegations and influential non-governmental organisations considered that the human rights provisions of the Charter were too week, it was agreed that a Bill of Rights should be drawn up separately.[126]

[122] Supra: 102
[123] Preamble to U.N.Charter.
[124] The most important provisions are probably those contained in Articles 55 and 56 of the U.N.Charter"- A.H.Robertson Human rights in the World, Manchester: Manchester University Press, 1972 at 23.
[125] United States President Mr.Truman in his closing speech to the Conference stated: "The Charter is dedicated to the achievement and observance of human rights and Fundamental Freedoms. Unless we can attain those objectives for all men and women every-where without regard to race, language, or religion - we cannot have permanent - peace and security" cited in Robertson,
[126] ibid

Since the signing of the United Nations Charter the virtual equivalent of new academic discipline has emerged, to champion the idea that international law gives individual rights against the state.[127]

4.2.2 Universal Declaration of Human Rights, 1948:

The international standards of fundamental freedoms for all peoples were formulated and approved by the United Nations in the Universal Declaration of Human Rights.[128] This document is one of the most important and basic documents on human rights, as, it "gave substance to the human rights commitment contained in the United Nations Charter and provided the normative pattern for future human rights conventional law."[129] The Declaration for the first time recognised certain basic rights of man, as an individual, as fundamental human rights which the subscribers to the Charter of the United Nations must always respect and honour.[130] The Preamble to the Universal Declaration of Human Rights declared that the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.[131] The General Assembly of the United Nations proclaimed this Declaration of human rights as a common standard of achievement and it is the duty of everybody to strive to promote respect for these rights and freedoms. The Declaration might eventually become the Magnacarta of all mankind.[132]

The Declaration provides, "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."[133] The Declaration provides for various other basic rights, which have a direct bearing on the protection of prisoners' rights. However, the Declaration is merely a statement of principles and is devoid of any obligatory character. Therefore, in view of a

[127] Anthony D' Amato The Concept of Human Rights in International Law, 82 COLUML.REV. 1110(1982) at1110.
[128] Adopted by the U.N.General Assembly on Dec. 10 1948 G.A.Res. 217A U N Doc. A/810, at 71 (1948).
[129] ibid
[130] AK.Sen, The Universal Declaration of Human rights in Venkataramaiah, Justice E.S (ed) Human Rights in The Changing world, New Delhi International Law Association, 1988, at 255.
[131] The Preamble, the Universal declaration of Human Rights
[132] ibid
[133] Universal Declaration of Human rights, Article 1.

belief that the cause of fundamental rights would be promoted by an obligation of binding force, the General Assembly made a provision in 1951 for two separate conventions: a Covenant on Political and Civil Rights, embracing the traditional rights, and Covenant on Economic, Social and Cultural Rights.[134] After considerable deliberations, the two Covenants on Human Rights were adopted by the United Nations General Assembly in 1966. These Covenants came into force in 1976 together with the Optional Protocol.[135]

The same factors which prompted the United Nations to concern itself with the protection of human rights produced a similar result in Europe.[136] The Statute of the Council of Europe, 1949 attested in Article 1 to the commitment of western Europe to the "maintenance and further realization of human rights and fundamental freedoms," and specifically defined in Article 3 as a prerequisite to membership, each state's obligation to accept the principles of the rule of law and the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms.[137]

To reinforce this commitment, the European Convention on Human Rights came into force creating an European system of protection of fundamental freedoms. The most significant and revolutionary feature of that system was the unique procedure created in the Convention whereby the individual, who traditionally had no locus standi in the law of nations to espouse his international claims against a sovereign state, has been given the right to lodge with the Commission an application against the state having jurisdiction over him alleging violations of his freedom.[138]

Similarly, another international human rights instrument at the regional level - The American Convention on Human rights - was adopted in 1969 at an inter-governmental conference convened by the Organisation of American States. The American Convention was patterned on the European Convention on

[134] U.N. Year Book on Human rights 1951-52
[135] 'Although they differ to some extent, the instruments taken together provide a fairly clear survey of the freedom rights which international law seeks to present", Wilhelm Karl Geek, International Protection of Fundamental Freedoms,21 LAW AND STATE 7 (1980) at 10.
[136] ibid
[137] Statute of Council of Europe, 1949, 87 UNTS, 103
[138] ibid

Human Rights.[139] The states, parties to the American Convention, undertook to respect and to ensure the free or full exercise of these rights to all persons subject to their jurisdiction.[140] The states, parties to the American Convention have an obligation not only to respect the rights guaranteed in the convention, but also to ensure the free and full exercise of those rights.[141]

In all these international instruments namely The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European convention and the American Convention of Human Rights setting human rights standards, there are provisions laying down basic human rights which have a direct bearing on prisoners and their protection. They are:

4.2.2.1 Right to life, liberty and security of a person:

The essential rights which give rise to various other rights are contained in Art.3 of the Declaration of Human Rights, Article 3 provides that 'everyone has the right to life, liberty and security of person.' Right to life, "is a basic human right, because only through it can a human being enjoy other rights".[142]

Similar provisions guaranteeing these rights are also found in the Political Covenant Article 6 (1) provides,' every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life Further, Article 9(1) reads: "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." Similarly, Articles 2(1) and 5(1) of European Convention on Human rights and Articles 438 and (I) and 7(2) of the American Convention on Human Rights guarantee right to life, liberty and security of the person.

[139] The American Convention is longer than most international human rights instruments. Thus, it was said that, "the catalog of rights which the American convention Proclaims is longer than that of the European Convention and many of its provisions establish more advanced and enlightened guarantees than does its European counter part, or for that matter, the Political Covenant."- Thomas Buergenthal, The Inter-American System for the Protection of Human Rights cited in Meron, Theodor, Human Rights. Law making in the United Nations, Oxford: Clarendon Press, 1986 at 442.

[140] American Convention on Human Rights, Article 1 (1).

[141] "A Government consequently has both positive and negative duties under the American Constitution" See Buergenthal, at 442.

[142] "The enjoyment of the right to life is a necessary consideration of the enjoyment of all other human rights." Prezetacznik, The Right to life as a Basic Human Right, at 140

4.2.2.2 Freedom from torture and inhuman treatment or Punishment:

Another basic right guaranteed by the international instruments is the protection from torture, cruel, inhuman or degrading treatment. This right has a direct bearing on the protection of prisoners against torture. Article 5 of the Universal Declaration States: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Article 7 of the Political Covenant repeats this language verbatim. Similarly Article 3 of European convention and Article 5 of the American Convention guarantee this protection.[143]

Article 5(2) of the American convention provides: "All persons deprived of their liberty shall be treated with respect to the inherent dignity of the human person" This is a very important right of persons under confinement which secures them a humane treatment respecting the human dignity of such persons. Article 5 and other provisions seek to humanize prisons by providing several rights to prisoners. Thus, Article 5 (4) provides: "Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subjected to separate treatment appropriate to their status as unconvicted persons". For the protection of minors subject to criminal proceedings, Article 5(5) provides that, they shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors. Regarding the aims of punishment, Art. 5 (6) provides that punishments consisting of deprivation of liberty shall have, as an essential aim, the reform and social re-adaptation of the prisoners. Thus, the treatment of prisoners in prisons is mandated to be humane.

The provisions of Political Covenant, the European Convention and the American Convention which prohibited 'torture' were criticised as they do not contain the definition of 'torture' and do not distinguish it from cruel, inhuman, or degrading treatment.[144] The Declaration defines 'torture' as "any act by which severe pain or suffering, whether physical or mental, is intentionally

[143] European Convention, Article 3 and American Convention Article 5 (2).
[144] ibid

inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed or intimidating him or other persons."[145] 'Torture" is defined as constituting an aggravated and deliberate form of cruel, inhuman, or degrading treatment or punishment.[146]

The Declaration emphatically declared that any act of torture or other cruel inhuman or degrading treatment or punishment was an offence to human dignity and should be condemned as a denial of the purpose of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration human rights.[147] States are mandated that in exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may not be invoked by the state as a justification of torture or other cruel, inhuman or degrading treatment or punishment.[148]

The Declaration emphasized the need to include the prohibition against torture in the training of law enforcement and other public officials who may be responsible for the persons deprived of their liberty. Further, this prohibition was also required to be included in such general rules or instructions as one issued with regard to the duties and functions of any one who may be involved in the custody or treatment of such persons.[149]

The Declaration provides that each state shall keep under systematic review interrogation methods and practices as well as arrangements for the custody and treatment of persons deprived of their liberty with a view to preventing any cases of torture or other cruel, inhuman or degrading treatment or punishment. The victim of torture or other cruel, inhuman or degrading treatment or punishment may complain and have his case impartially examined by the competent authorities. Upon proof of torture, criminal proceeding shall be instituted against the alleged offender in accordance with

[145] Meron supra note 144, at 110
[146] Id. Article 1(2)
[147] Id. Article 2.
[148] Id. Article 3.
[149] ibid

national law of the concerned state. Victims shall be afforded redress and compensation in accordance with national law.[150]

4.2.2.3 Right to legal Recognition:

Article 6 of the Universal Declaration states that everyone has the right to recognition everywhere as a person before the law.' with minor changes, the right is guaranteed by Article 16 of the Political Covenant and Article 3 of the American Convention.[151]

At the time of the Universal Declaration's adoption the right to recognition 'as a person before the law' was thought to be just as important as those rights safeguarding the physical integrity of the individual. The fact that Nazi Germany had arbitrarily deprived many persons of their juridical personality before subjecting them to assaults on their physical integrity, Article 6 was viewed by its drafters as a key right through which individuals might assure themselves of their fundamental civil rights embodied elsewhere in the Universal Declaration.[152]

4.2.2.4 Right to Remedy:

This is a right guaranteed by all the international instruments, which equips every individual to seek remedy for the violation of his rights. Article 6 of the Universal Declaration guarantees all persons 'the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the constitution or by law. Similar provisions are provided in Article 2(3) of the Political Covenant, Article 13 of the European Convention and Article 25 of the American Convention. Right to remedy has been considered as a very important right, because professor Humphrey had remarked that human rights without effective implementation are like shadows without substance.[153]

[150] Id. Article 11
[151] Richard B. Lillich, Civil Rights in Meron supra note 144. at 130
[152] Persons before the law- Personalite Juridigue - has legal connotations in civil law, i.e., it guarantees to every human being the right to exercise rights, to enter into contractual obligations and to be represented in actions at law see Richard B. Lillich
[153] Cited in Lillich Id. at 134.

Article 8 of the Universal Declaration has a very wide scope as its reach extends to those rights granted by domestic constitution and domestic law. On the other hand both the Political Covenant and the European Convention are more restrictive in this regard. Effective remedies are guaranteed by Article 2(3) (a) of the Political Covenant only to vindicate rights or freedoms recognised by the Covenant. Similarly, article 13 of the European Convention guarantees an effective remedy only for rights and freedoms as set forth in the Convention. The American Convention, on the other hand, seeks to provide relief, under Article 25(1), against acts that violate... fundamental rights recognised by the constitution or laws of the state concerned or by the Convention. Thus, the American Convention seeks to provide a double protection.[154]

4.2.2.4 Condition and treatment of prisoners:

A specific concern for the condition and treatment of prisoners is reflected in some of the provisions of the international instruments. Thus, Article 10 of the Political Covenant provides," All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. The accused persons shall, save in exceptional circumstances, be segregated from Convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons". This requirement is necessary to prevent them from being contaminated by the convicted criminals. Further, the juvenile accused persons are sought to be protected by requiring that they shall be separated from adults and brought as speedily as possible for adjudication. Both Political Covenant and American Convention mandate reformation and rehabilitation of the prisoners. Thus Political Covenant provides for the penitentiary system that comprises treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.[155] Similarly, the American Convention provides that the punishments consisting of deprivation

[154] Thus Lillich said, "The American Convention, on the other hand provides the persons seeking relief the best of all possible worlds. . ." Id. at 135
[155] International Convention Civil and Political Rights, Article 10(3).

of liberty shall have as an essential aim the reform and social re-adaptation of the prisoners.[156]

4.3 The United Nations standards of Minimum Rule for the Treatment of Prisoners:

The United Nations Standard Minimum Rules for the treatment of prisoners adopted in 1955 by the United Nations Congress on the prevention of crime and the Treatment of Offenders provide another source of international protection of prisoners' rights. These Rules were adopted in response to the growing worldwide concern for the status of prisoners and prisons. Unlike an international convention, these rules do not have the legal status and they represent a consensus of states on criminal standards. They require formal incorporation and implementation in the legal system of each state before they can provide effective protection for incarcerated individuals. However, these Rules have received lukewarm reception by the states.[157] This may be partly due to a great variety of legal, social, economic and geographical conditions in the world. Hence, not all of the rules are capable of application in all places and at all times. They should, act as stimulants to a constant endeavour to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the minimum conditions which are accepted as suitable by the United Nations. It has been recently advocated that the rules be harmonized with the systems of individual states to implement not the letter but the substance of their provisions.[158]

The Council of Europe has revised recently the Rules for the purpose of adopting them to the framework of European modern correctional policies. The Council of Europe's Standard Minimum Rules, adopted by the Committee of Ministers as regional guidelines in 1973, include such new provisions as the forbiddance of injurious punishment, and the creation of contracts outside the

[156] American Convention, Article I5(6).
[157] "The extent of their incorporation into the legal systems of states... has been, however, rather, limited." See Alessandra supra note 1, at p. See also D.L Skoler, World Implementation of the U.N. Standard Minimum Rules For Treatment of Prisoners, 10 J. INT'L and ECON, 453 (19750; J. Burke, New United Nations Procedure to Protect Prisoners and other detainees 64 CALIF. L. REV. 201 (1976).
[158] ibid

penal institutions to protect prisoners' rights either through judicial supervision or through a permanent visiting body.[159]

4.3.1 Division of Minimum Standard Rules:

The Minimum Standard Rules are organised in three parts. The First part covers rules of general application covering the essential aspects of imprisonment necessary to make the prison a correctional institution. Part II deals with rules applicable to special categories of prisoners.

4.3.2 Rules of General Application:

i) Classification of Prisoners: For a proper organisation of the prison as a correctional institution the first requisite is the scientific classification.[160] Thus Rule 8 stipulates that the different categories of prisoners should be kept to separate institutions taking into consideration their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Further men and women, unconvicted and convicted prisoners, civil prisoners and criminal offenders, young prisoners and adult are to be separated from each other.

ii) Accommodation: If the sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself and if dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another. The accommodation provided for the use of prisoners shall meet all requirements of health with due regard to climatic conditions. The windows shall be large enough to let in sufficient fresh air and light. Sufficiently artificial light shall be provided to read and work comfortably.

iii) Personal hygiene: Adequate sanitary, bathing and shower installations shall be provided and every prisoner may be required to have bath as frequently as necessary for general hygiene keeping the climatic conditions in view. They

[159] Supra note 99
[160] Classification of prisoners.

are to be provided with adequate water and toilet articles for keeping them clean and healthy.[161]

(iv) Clothing and bedding: Every prisoner shall be provided with an out fit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating. All clothing shall be clean and kept in proper condition. Whenever a prisoner is removed outside the institution for an authorized purpose, he shall be allowed to wear his own clothing or other inconspicuous clothing. Every prisoner shall be provided with a separate bed and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness[162]

(v) Food: Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of whole some quality and well prepared and served. Drinking Water shall be available to every prisoner whenever he needs it[163]

(vi) Exercise and Sport: Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily. Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. For this, space, installations and equipment should be provided[164]

(vii) Medical Services: In every prison, there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical service should be organised in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of mental abnormality.

In prison hospitals, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners with

[161] Id. rules 11-16
[162] Id. Rule 19
[163] Id. rule 20.
[164] Id. Rule 21.

adequate number of staff. Prisoners requiring special treatment shall be transferred to specialized institutions or civil hospitals[165]

For women prisoners, there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.

Where infants are allowed to remain in the institution with their mothers, provisions shall be made for a nursery, staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers[166] The medical officer shall see and examine every prisoner after admission and thereafter as may be necessary. The prisoners suspected of infectious or contagious conditions shall be segregated. He must note mental or physical defects, which might hamper rehabilitation and determine the physical capacity of every prisoner for work. The medical officer should make a daily examination of all sick prisoners. The medical officer shall report to the director whenever he considers that a prisoner's physical and mental health has been or will be affected by continued imprisonment[167]

The director shall take the reports of the medical officer in to consideration and if he concurs with them, he shall take immediate steps to give effect to more recommendations. If he does not concur or if they are not within his competence he shall immediately submit his own report and the advice of the medical officer to higher authority[168]

4.4 Implementation of international human rights standards

The international instruments of human rights have created international standards for the promotion and protection of human rights. Surely these international standards are meant not as mere showpieces but for their adoption and enforcement in states to which they are addressed. The

[165] Id. Rule 22 (2).
[166] Id. Rule 24 (2).
[167] Id.Rule 25.
[168] Id. Rule 26.

implementation and enforcement of human rights is an important issue. The noble and lofty terms in which declarations, treaties and conventions are framed for safeguarding human rights and fundamental freedoms are of little value unless they are accompanied by an effective system of implementation. For individuals whose human rights are being violated, and for the groups that seek to defend them, the effectiveness of the United Nations' human rights system depends to an important degree upon its ability to 'enforce' respect for the legal norms that originated within it. In order to achieve this, most of the instruments provide for measures of enforcement. But, the very concept of such international 'enforcement' is controversial. As a result, although the United Nations has been very effective in setting standards in many human rights fields, it has to face rough weather in establishing institutions and procedures capable of securing enforcement.[169]

The Universal Declaration of Human Rights does not impose a legal obligation to respect human rights and fundamental rights. The two Covenants - International Covenant on Civil and Political Rights, and its Optional Protocol and International Covenant on Economic and Social, Cultural Rights - transformed the principles enunciated in the Declaration into treaty obligations establishing legal obligations on the part of each ratifying country. In order to secure compliance with human rights norms, the international Human Rights Movement - Universal, and regional - has developed special 'enforcement machinery.' According to Louis Henkin, the special enforcement machinery has followed two principal tracks. Some have been established by particular human rights agreements, such as Human Rights Committee under the Political Covenant and commissions and courts under the European and American Conventions. They are called as treaty based organs. The second track of enforcement consists of United Nations bodies - the General Assembly, the Economic and Social Council (ECOSOC), and especially the Human Rights Commission, and its subsidiary units. They are called as

[169] Henry Steiner at 347

'charter based organs.' Their activities are sometimes seen as politics, and not as law.[170]

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

The Rules contemplate various provisions laying down procedures for their effective implementation. The General Assembly, in its Resolution 2858 (xxvi) of 20 December 1971, invited the attention of member states to the Rules and recommended that they should be effectively implemented in the administration of penal and correctional institutions and that favourable considerations should be given to their incorporation in national legislation Where states feel that the rules need to be harmonized with their legal system and adopted to their culture, the emphasis is placed on the substance rather than the letter of the Rules.[171] Procedure 3 of the Rules requires that the rules should made available to all persons concerned, particularly to law enforcement officials and correctional personnel, for purposes of enabling their application and execution in the criminal justice system. The Rules as embodied in national legislation and other regulations shall also be made available and understandable to all prisoners and all persons under detention on their admission and during their confinement.[172]

Further, states should inform the Secretary-General of the United Nations every five years of the extent of the implementation and the progress made with regard to the application of rules and of the factors and difficulties affecting the implementation by responding to the Secretary-General's questionnaire. The Secretary- General shall prepare an independent report on the progress made in the implementation of Rules and submit it to the Committee on Crime Prevention and Control for consideration and further action. The states should provide, to the Secretary-General with (a) copies or abstracts of all laws, regulations and administrative measures concerning the application of the Rules to persons under detention and to places and programmes of detention; (b) any data and descriptive material on treatment

[170] ibid
[171] U.N. Standard Minimum Rules, Procedure 2.
[172] Id. Procedure 4

programmes, personnel and the number of persons under any form of detention and statistics; (c) any other relevant information on the implementation of the Rules.[173]

The need for the widest possible dissemination of the Rules is self-evident. For this purpose, the Secretary-General is required to disseminate the rules and the present implementing procedures in as many languages as possible, and make them available to all states and intergovernmental and non-governmental organisations. Also, he shall make analytical summaries of the periodic surveys, reports of the Committee on Crime Prevention and Control, reports prepared for the United Nations congresses on the prevention of crime and the treatment of offenders as well as the reports of the congresses, scientific publications and other relevant documentation as from time to time may be deemed necessary to further the implementation of the rules. The Secretary-General has to ensure the widest possible reference to and use of the text of the Rules by the United Nations in all its relevant programmes, including technical co-operation activities.[174]

As part of its technical co-operation and development programmes the United Nations has to (a) aid governments at their requests, in setting up and strengthening comprehensive and humane correctional systems; (b) make available to governments the services of experts and regional and inter regional advisers on crime prevention and criminal justice; (e) promote national and regional seminars and other meetings at the professional and non-professional levels to further the dissemination of the Rules and the present implementing procedure; (d) strengthen substantive support to regional research and training institutions in crime prevention and criminal justice that are associated with the United Nations. The United Nations regional research and training institutes in crime prevention and criminal justice, in cooperation with national institutions shall develop curricula and training materials, based on the rules and the present implementing procedures, suitable for use in criminal justice educational programme at all levels, as well as in specialized courses on human rights and other related subjects. The purpose of this

[173] Id. Procedure 6.
[174] Id. Procedure 9.

procedure is to ensure that the United Nations technical assistance programmes and the training activities of the United Nations regional institutes are used as indirect instrument for the application of the Rules and for the present implementing procedures.[175]

As most of the information collected in the course of periodic inquiries as well as during technical assistance missions would be brought to the attention of the United Nations Committee on Crime Prevention and Control, ensuring the effectiveness of the Rules in improving correctional practices rests with the Committee, whose recommendations would determine the future course in the application of the Rules, together with the implementing procedures. So, the United Nations Committee on crime prevention control shall (a) keep under review from time to time, the Rules with a view to the elaboration of new rules, standards and procedures applicable to the treatment of persons deprived of liberty; (b) Follow up the present implementing procedures including periodic reporting. The Committee on Crime Prevention and Control shall assist the General Assembly, the Economic and Social Council and any other United Nations human rights bodies, as appropriate, with recommendations relating to reports of Ad-hoc inquiry commissions with respect to matters pertaining to the application and implementation of the Rules.[176]

The Rules have made it very clear that nothing in the present implementing procedures should be construed as precluding resort to any other means or remedies available under international law or set forth by other United Nations bodies and agencies for the redress of human rights, including the procedure on consistent patterns of gross violations of human rights under Economic and Social Council Resolution 1503 (XLVIII) of 27 may 1970, the communication procedure under the Optional Protocol to the international Convention on Civil and Political rights and the communication procedure under the International Convention on the Elimination of All Forms of Racial Discrimination.

Thus, the Standard Minimum Rules have laid down elaborate procedure to ensure their implementation. The member states have to amend their laws to

[175] Id. Procedure 10
[176] Id. Procedure 13.

incorporate the provisions of the Rules which are meant to humanize the prisons. The law enforcement officials and correctional personnel have to be sensitized about the rules. The Secretary-General of the United Nations has to act as a nodal agency to ensure compliance by the member states with the Standard Minimum Rules. If has been reported that the extent of the incorporation into the legal systems of states has been, however, rather limited. This can be attributed to the hesitation of national legislatures to adopt rules somewhat alien to their own socio-legal structure. It has been advocated that the rules be harmonized with the systems of individual states to implement not the letter but the substance of their provisions.[177] Then perhaps, there could be more effective implementation of rules.

4.6 Comparison

Between other countries and India in case of Juvenile Justice Act

- Minimum age for the Juvenile at which he can be charged with an offence:

United States of America: the age ranges from six to ten years

United Kingdom: the age limit is ten years.

South Africa: the age is of ten years.

France: by offence committed

Canada: after the age of twelve years.

Germany: at the age of fourteen years.

India (Juvenile Justice Act 2000): under IPC after the age of seven years.

India (Juvenile Justice Act 2015): same as the J J Act 2000

The age in which Juvenile can be tried as an adult:

United States of America: from the age of 13 years

United Kingdom: 17 years in England, Wales and Northern Ireland, 16 years in Scotland

[177] D.L.Skoler supra note 162.

South Africa: juvenile can be treated as an adult from the age of sixteen years

France: the age of being an adult is sixteen

Canada: the age of the juvenile who will be treated as an adult is fourteen years

Germany: at the age of fourteen years.

India (Juvenile Justice Act 2000): any juvenile cannot be tried as an adult

India (Juvenile Justice Act 2015): from the age of sixteen in the case of heinous crimes

The types of offences for which the minor can be tried:

United States of America: aggravated sexual abuse, murder, assault, robbery, firearms offences, and drug offences

United Kingdom: Murder, rape, causing any explosion likely to endanger life or property.

South Africa: robbery, murder, rape

France: armed robbery, murder, rape and drug offences

Canada: serious bodily harm to any person, murder, and aggravated sexual assault

Germany: abuse of persons who are incapable of resistance, or sexual abuse, or child abuse leading to death

India (Juvenile Justice Act 2000): cannot be trialed

India (Juvenile Justice Act 2015): "Serious offence (punishment 3-7 years e.g. cheating, counterfeiting) or heinous offence, (punishment > seven years e.g. murder, rape, robbery)"[178]

[178] Retrieved on http://www.dnaindia.com/india/report-14-notable-amendments-to-the-juvenile-justice-act-2084147

Chapter 5

Conclusion and Suggestions

Conclusion and Suggestions:

1. It can be said that the prisoners are also entitled to all his fundamental rights while they are behind the prisons. The Constitution of India doesn't expressly provides for the prisoners' rights but Articles 14, 19 and 21 implicitly guaranteed the prisoners' rights and the provisions of the Prisons Act, 1894 consists of the provisions for the welfare and protection of prisoners. As ruled by the Court that it can interfere with prison administration when constitutional rights or statutory prescriptions are transgressed to the injury of the prisoner. In several cases Supreme Court held that prisoner is a human being, a natural person and also a legal person. Being a prisoner he does not mean that the person is not a human being, natural person or legal person. When a person is convicted for a crime, it does not reduce the person into a non-person, whose rights are subject to the whim of the prison administration and therefore, the imposition of any paramount punishment in the prison system is qualified upon the absence of procedural safeguards.

2. As prisoners are legal person and entitled to their legal rights, they should not be restricted from voting rights as the reasons to that effect are already being discussed in chapter 2. The Government should insure and must pursue a larger political reforms agenda with comprehensive re -structuring of relevant facets such as inner - party democracy in political parties, decriminalisation of politics and more accountability from the elected representatives at all levels. Most emphasis should be given by the Government on adequate education and awareness campaigns, or simply to creating better primary education for more people that stressed civic duties.

3. The women fundamental rights violation through physical mental emotional and sexual violence against women has become almost common place in the Indian situation. In the tribal belts and amongst Dalit women populations are already vulnerable. There is therefore a pressing need for the judiciary and legislature to recognise and address the particular forms of violence levied against women who are discriminated by caste class religion or in situations conflict. Customary routinely laws discriminate against women both by denying justice to the victims of violence. There's chance for major

improvement on all levels particularly in the attitude of the prison staff that needs to learn to respect the human rights of women prisoners.

4. The concern of the International Community for the protection and preservation of basic human rights has eventually led to the formulation of appropriate principles, norms, standards, in keeping with certain commonly acceptable human values and standards. The World War II actually acted as a catalyst for the protection of human rights through the instrumentality of the United Nations. The adoption of a number of international instruments like United Nations Charter and Declaration of Human Rights acted as springboards for concrete initiatives. The principles enunciated in them have subsequently been elaborated as principles of criminal justice in the International Covenant on civil and Political Rights. Over 30 specific crime prevention and criminal justice standards have been enumerated in the Covenant.

The Political Covenant is supplemented by a number of regional and international Conventions on human rights. Most importantly, the United Nations Standard Minimum Rules, for the Treatment of prisoners in 1955, accompanied by the Recommendations on the Selection and Training of personnel for penal and Correctional Justitutions have set the agenda for global action. The standard Minimum Rules are most significant as they touch upon the core of the penal policy all over the world. They laydown a comprehensive framework for a fair, just and humane treatment of offenders subject to incarceration.

The other instrument- The Code of Conduct for law Enforcement Officials imposes an obligation on the law enforcement officials to discharge their duties diligently in compliance with the principles of human rights. Similarly, the principles of Medical Ethics have imposed an obligation on the health personnel to act strictly in accordance with the norms of Medical Ethics while dealing with prisoners and detainees. Under the various international instruments, enforcement of human rights norms and standards has received adequate attention. It has been clearly realised that the declarations, treaties and conventions which are framed for protecting human rights are of little

value unless they are accompanied by an effective system of implementation. The Minimum Standard Rules have various provisions to ensure their implementation. Other instruments also provide for measures of enforcement. For the effective humanisation of prisons, sincere efforts at the international level to implement the various human rights norms and standards should be made. For this is required is their proper appreciation and the need to integrate prisons and correctional services into the national development process and the evolving of national policy on prisons in all the countries.

The Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on 25th June 1993 rightly states that every state should provide an effective framework of remedies to redress human rights grievances or violations. Thus, unless the member states of United Nations overhaul their system of administration of Criminal Justice, in conformity with the international human rights standards contained in various instruments, humanisation of prisons would be a distant reality.

Bibliography

PRIMARY SOURCES

1. International Covenant on Civil and Political Rights: Hearing Before the Senate Comm. on Foreign Relations (1991)
2. Model Prison Manual 2016
3. U.N.Charter
4. Universal Declaration of Human Rights

SECONDARY SOURCES

BOOKS

1. Amerndra Mohanty, Narayan Hazary, Indian Prison System, 1990, Ashish Publications House, New Delhi
2. Bansal .V.K. Right to Life and Personal Liberty in India, Deep and Deep Publications, New Delhi, edition I (1987)
3. C.N. Shankarrao, "Sociology of Indian Society" S. Chand & Company Ltd,1ST Edition, New Delhi
4. D.D.Basu, Human Rights in Constitutional Law, Wadhwa and Company Nagpur, 2nd Edition
5. Dr. S.K.Kapoor, Human Rights under International Law and Indian Law, Central Law Agency, 3rd Edition
6. Dr.Gurubax Singh, Law Relating to Protection of Human Rights and Human Values, Vinod Publications (P).Ltd, 2008
7. Jehnagir M.F. Sethna "Society and the Criminal" M. Tripathi Private Limited, 5th Ed. 1989.
8. Kamala "Protection of Human rights of prisoners by Indian Judiciary" International Research Journal, March 2011
9. Lakshmi Devi, " Crimes against women " Anmol Publication Pvt Ltd, New delhi,1st Ed,1977
10. M.B. Mahaworkar, Prison Management, Problems and solutions, Kalpaz Publications, Delhi. 2006
11. Madurima "Women, Crime and Prison Life", Deep and Deep Publication. 1st Ed New Delhi ,2009.

12. N. Ravi, Human rights scenario in India -an overview, Lap Lambert Academic publishing, 2013
13. Prof. N.V. Paranjape, Criminology and Penology, Central Law Publications, Allahabad, 12th Edition
14. Sen., N.B" Progress of Women's Education in Free India." , 1st Edition , New Book Society of India, New Delhi
15. Sharma, A.K "Issues in Social Demography", Mittal Publications, New Delhi.1989

ARTICLES AND JOURNALS

1. Albert Einstein. Ideas and Opinions, New York: Random House (1954).
2. Basham, A.L: The Wonder That Was India, Macmillan Company, New York, 1959
3. C.S.Malliah, Development of Prison Administration in India, Social Defence, Vol. XVII, No.67, Ministry of Social Welfare, Government of India, Jan. 1982
4. Devakar, Prison and prison Reforms in British India, Social Defence, Vol.XX, January 1985
5. Dr.N. Maheswara Swamy, Criminology and Criminal Justice System, Asia Law House, Hyd. 2013
6. Frank New Sam, "The Home Office" Allen and Unwin, London, 1954
7. Frank Pakenham, Lord Longford, The Idea of Punishment (1961), Geoffrey Chapman Publication, London
8. Justice Sujatha V. Manohar, "Judiciary and Human Rights," Indian Journal of International Law ,Vol. 36,1996
9. K.V.R. Aiyanger, "Some Aspects of Ancient Indian Polity" Madras, 1935
10. Leach, Effective Enforcement of the Law of Nations: A Proposed International Human Rights Organisation 15 CAL W.l. LJ 705 (1985)
11. Manual for the Superintendence and Management of the Prisons in Punjab, 1996
12. Norval Morris, The Future of Imprisonment, University of Chicago Press, Chicago

13. P. C. Harigovind, The Indian Jurisprudence on Prison Admistration and the Legislative Concerns, IOSR Journal Of Humanities And Social Science , Volume 9, Issue 5 (Mar. - Apr. 2013)
14. S. Prakash, "History of Indian Prison System", the Journal of Correctional Work, No. XXII, Lucknow, 1976
15. S. Radhakrishnan (trans.) The Bhagavadgita, George Allen and Unwin, London: 1958
16. S. Radhakrishnan, Judge, Bombay High Court, Global Challenges & the Indian Legal System, Development of Human Rights in an Indian Context, International Journal of Legal Information the Official Journal of the International Association of Law Libraries, Volume 36, Issue 2 Summer 2008
17. Sarkar Jadunath; Mughal Administration in India, Calcutta, 1935
18. Satya Prakash Sagar, Crime and Punishment in Mughal India, sterling, Delhi, 1967
19. Sudipto Roy, violations of the rights of the accused and the convicted in India I, Department of Criminology, Indiana State University, Terre Haute, IN 47809
20. Sukla Das, Crime and Punishment in Ancient India, Abhinav, New Delhi, 1977
21. V.R.Ramachandra Dikhistar, The Mauryan polity, Madras University Historical Series, No.21, 1953
22. Vasudev Upadhya, "A Study of Hindu Criminology", Chawkhambha Orientalia, Varanasi, 1978
23. Vidya Bhushan, Prison Administration in Uttar Pradesh, 1953
24. Yogesh K. Tyagi, "Third World Response to Human Rights," Indian Journal of International Law, Vol .21

REPORTS

1. Attar Chand, Politics of Human Rights and Civil Liberties - A Global Survey , UDH Publishers, Delhi 1985
2. Orissa Jail Reform Committees Report (chairmen- Justice Harihar Mahapatra), 1981
3. Indian Economic Social History Review 2007

4. Justice A.N.Mulla Committee on All India Jail Reforms Report, (1980-1983)
5. Justice V.R.Krishana Iyer, National Expert Committee on Women Prisoners, (1986-1987)
6. Report of National Human Rights Commission of India", (13 Asia Pacific Forums Meeting 28-31 July 2008)
7. Hill, L. "A great leveller: compulsory voting", in M. Sawyer (ed.) Elections: full, free and fair, Sydney: the Federation Press, (2001)
8. Narayankar B.D, The New Indian Express, 2nd April 2001

INTERNET SOURCES

1. http://hrln.org
2. http://www.dnaindia.com
3. http://www.opendemocracy.net
4. http://www.prsindia.org
5. https://ijrcenter.org
6. https://nhrc.nic.in
7. https://shodhganga.inflibnet.ac.in
8. https://www.un.org