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Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

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Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi.Formerly Assistant professor of Law,Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.

Avinash Kumar

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship.He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi.Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi.He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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ABOUT US

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HUMANISING CRIMINAL JUSTICE RESPONSE AND PUNISHMENT FOR THE OFFENDER

Authored By: Anantha Narayanan B
Roll No.: 20191BBL0114
Semester: 9th
Name of the Program: 5 year (BBA, LL.B Hons.)
PRESIDENCY UNIVERSITY
BENGALURU - 560064

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SYNOPSIS

ABSTRACT

The purpose of this article is to contribute to a new reflection on the position of the convicted person: humanization. Humanization is thought to discourage punitive criminal punishment and mechanical case processing by making human crimes more understandable. However, this paper makes a compelling argument that “humanization work” often achieves profound potential results. It removes a possible danger to the individual himself that seems at odds with his formal admission of guilt. Humanizing work succeeds in the case by removing the possible danger that a person’s own account seems to contradict his formal admission of guilt (e.g., a guilty plea). I apply Douglas’s work on purity and contamination and use empirical illustrations to show how the "dirty work" of humanizing the person to be punished clears the case of troubling ambiguity and makes the punishment more reliable for execution.

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OBJECTIVE

Understand the problems faced by prisoners and defendants and the shortcomings of the criminal justice system.

RESEARCH QUESTION

- Are there shortcomings in the criminal justice system that result in the violation of the human rights of the accused?
- Can the punishment imposed on the accused be humanized?

RESEARCH METHODOLOGY

- This study is of the doctrinal type and relies on a variety of articles, books, journals, and some Internet resources. The nature of the study is descriptive, explanatory, analytical and comparative.

Primary sources - The primary sources for the study are:

- The Constitution of India
- The Indian Penal Code
- Secondary sources - The secondary sources include various Journals, Research Papers and Internet Resources.

SCOPE

This study extends to most problems faced by prisoners and the accused in prisons in India.

SIGNIFICANCE

This research paper is important for bringing out reforms in the criminal justice system.

TABLE OF CASES

- A.K. Gopalan v. Madras, AIR 1950 SC 27
- Maneka Gandhi v. UOI, AIR 1978 SC 597.
- Satish v. Sharma, AIR 1954 SC 300
- Mohd Dastagir v. Madras, AIR 1960 SC 756.
- State of Bombay v. Kathi Kaiu Oghad, AIR 1961 SC 1801.
- Raja Narayanlal Bansilal v. Mistry, AIR 1961 SC 29

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- RC Mehta v. West Bengal, AIR 1970 SO 940
- Hussainara Khatoon & Ors vs Home Secretary, State Of Bihar, AIR 1979 SC 1360
- Kadra Pahadiya v. Bihar, AIR 1982 SCU 67.

CHAPTER I

INTRODUCTION

Introduction Law often reflects a duality: in attempting to protect one interest, it negatively affects other interests. Nowhere is this functional duality of law more evident than in criminal law. While the purpose of criminal law is to protect society from criminals, an overemphasis on this protection tends to result in an infringement of the interests of innocent people. In authoritarian societies, the first aspect takes precedence, but in democratic societies such as India and the United States, with their traditions of individual liberty and the establishment of fundamental rights, the two interests must be balanced.

However, this is not an easy task. The judiciary is struggling to find the line between these two interests. The contrast between the American and Indian experience is very instructive in this complex and delicate task of justice. Both are governed by the rule of law. The constitution of each country enshrines fundamental human rights. Both countries have a common law tradition.

And authoritarianism is anathema to the people of both countries. A fertile ground for socio-legal analysis lies in the realm of criminal justice. The judiciary is not always on the same page as the police in its all too simple task of reading the law and filling in the gaps in it. Factual or sociological evidence is essential for the courts to chart their course and leave to others the validity of their suggestions. Unfortunately, in India, with the exception of a few. Unfortunately, in India, except for a few recent studies and exposés, there is no socio-legal angle in this area. Such research is sorely needed because human freedom depends most on how the criminal law works.

CONSTITUTIONAL RIGHTS OF THE ACCUSED: AN EXPANDING FIELD

The specific constitutional rights given to the accused are only few. They are contained in articles 20, 21 and 22. These rights deal with

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a) Ex-post facto criminal laws.
b) Double jeopardy.
c) Privilege against self-incrim¡nation.
d) Right of the accused to be informed of the grounds of his arrest and to consult his lawyer.
e) Right of the accused to be produced before a magistrate within 24 hours.
f) Right of a person not to be deprived of his life or personal liberty except according to "procedure established by law".

In the process of judicial interpretation, courts have granted many rights to the accused. This process began with the decision in Maneka Gandhi v. India.[1] After the traumatic experience of the 1975-1977 Emergency, the Supreme Court of India became more sensitive to the arbitrariness of the executive and the protection of people from arbitrary laws and procedures. India's Supreme Court has shown great sensitivity to the arbitrariness of the executive and the protection of people from arbitrary laws and procedures. The most landmark decision in this regard was the Maneka Gandhi case, which brought about a fundamental change in constitutional jurisprudence on fundamental rights by inserting the three-letter word 'due' in Article 21 of the Constitution. A literal reading of Article 21 shows that for depriving a person of life and personal liberty, an administrative authority needs only the support of the law. It is not for the courts to decide whether the law provides fair and reasonable procedures. The Supreme Court specifically addressed this issue in one of its earliest cases[2] and held that in light of the express language of Article 21 (deprivation of personal liberty by "procedure prescribed by law") there is no room for the application of "due process of law" to personal liberty. in 1978 when Gopalan dominated the Maneka case, the decision was reversed. when Gopalan had dominated the field for nearly 30 years. In Article 21 the term 'due process of law' has given life to the fundamental right to individual liberty granted to the people by the Constitution.

It is not the intention of this article to overburden itself by discussing all the rights mentioned above, but only those which are controversial or those not expressly mentioned but which the Supreme Court has derived from Article 21 and which have led to important reforms in the administration of criminal justice. When it was upset by Maneka in 1978, Gopalan held the field for almost 3 decades. In Article 21, the reading of the word "due" has given life to the otherwise

[1] AIR 1978 SC 597.
[2] A.K. Gopalan v. Madras, AIR 1950 SC 27.

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lifeless fundamental rights of personal liberty granted by the Constitution to a citizen.

It is not proposed to overload this paper by discussing all the aforesaid rights, but only to take up such rights which are controversial and debatable and also such rights which are not expressly mentioned but which the Supreme Court has inferred from article 21 and which have brought about significant reforms in the criminal justice administration. We basically discuss the following (i) self-incrimination; (ii) bail and undertrial prisoners; (iii) legal aid; (iv) bar fetters; (v) prison reform and (vi) exclusion of illegally obtained evidence.

PRIVILEGE AGAINST SELF-INCRIMINATION

Article 20 of the Constitution of India provides for a privilege against self-incrimination. Since the adoption of the privilege as a principle of criminal jurisprudence, the common law world has debated two issues: whether individuals should be afforded some protection from State repression and abuse of power, and whether the State should be prevented from arresting criminals and undermining the public interest in punishing them and achieving justice. For many years, there has been a debate on the question. This debate is far from over. However, the fact remains that the Constitution of India recognizes it as part of the jurisprudence of the country. However, the fact remains that the Constitution of India recognizes it as part of the jurisprudence of the country. The International Commission of Jurists regards privilege as an integral part of the rule of law[3].

It is not satisfied with the manner in which the judiciary has responded to privilege. There has been a tendency to dilute rather than improve privilege and this was the case until 1978 when the Supreme Court of India held in a case that privilege was not an integral part of the rule of law4. The scope and applicability of the privilege has been limited in various cases decided by the Supreme Court of India. As a result, it has been held that the privilege does not extend to administrative searches and investigations[4] and that it applies to police investigations only when a person has been formally charged with a crime[5].

The right did not extend to searches and arrests pursuant to search warrants. This right naturally

[3] Human Rights 27 (1966).
[4] For instance, Raja Narayanlal Bansilal v. Mistry, AIR 1961 SC 29; RC Mehta v. West Bengal, AIR 1970 SO 940.
[5] Satish v. Sharma, AIR 1954 SC 300; Mohd Dastagir v. Madras, AIR 1960 SC 756.

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included oral testimony, but did not extend to documentary evidence[6] (unless the documents were based on the personal knowledge of the accused) or to physical examination of the accused's fingerprints, signature, or handwriting samples.[7] There was no presumption that an offender made involuntary statements only while in custody.[8] For many years, this right in the hands of the courts was so stifled that it can be considered, without much discussion, to have been properly or even unceremoniously buried In 1978, in Nandini Satpathy v. P.L. Dani,[9] the Supreme Court rediscovered and revived it. This decision gave vitality to the Indian privilege of secrecy. The Supreme Court of India followed the famous American case of Miranda v. Arizona[10]. In the Nandini case, the main issue was whether coercion could be contemplated in police custodial interrogations. The Court held that it must be provided. The Court suggested a number of measures to ensure the safety of arrested persons in police custody. As in Miranda, the Court held that the police, if they can afford it, may permit an attorney to assist his client, but that the police are not required to wait more than a reasonable time for the attorney to arrive. However, the court did not follow the Miranda statute that the state must provide counsel if the defendant is indigent.

The court held that a person's "economic capacity is irrelevant to the scope of the rights at issue here." The Court ignored Miranda's instruction that "the constitutional privilege against self-incrimination extends to all persons." The second liberal view of the privilege adopted by the court was that police must always warn and document the truth "about the right against self-incrimination." However, this warning is of a slightly different kind than in the US.

In the US, the accused has the right to remain completely silent, whereas under the jurisdiction of Indian courts, the accused has the right to refuse to answer only incriminating questions. In other words, the court holds that questions that are not incriminating can be asked and that the accused is obliged to answer as long as they do not have a strong incriminating tendency. The court distinguishes between the concepts of relevancy and criminality. Relevancy is a tendency to increase the probability of a fact." There is no basis for this distinction. If a person is charged with a crime, all "relevant" facts must be considered in terms of criminality; there are no facts

[6] State of Bombay v. Kathi Kaiu Oghad, AIR 1961 SC 1801.
[7] Ibid.
[8] Mohd. Dastagir v State of Madras, AIR 1960 SC 756.
[9] AIR 1978 SC 1025.
[10] 3844. S. 436 (1966).

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devoid of this element. The American point of view is certainly a better one.

The police are unhappy with a court decision which they feel interferes with their investigative powers. However, the procedures followed in this case do not seem to be affected by that decision. A sophisticated police machinery is necessary to comply with the decisions of the court that are not present. Nevertheless, the principles laid down by the Court are perfectly reasonable and should be preserved because it is one way to civilize the police in the long run.

CHAPTER II

UNDERTRIALS AND BAIL

One unfortunate aspect of the administration of criminal justice in India is the disproportionate number of non-custodial inmates in prisons. Thus, the unsentenced prisoners account for 54.9% of all prisons; in 1975, the unsentenced prison population was 57.58%.[11] The figures for 1981 were also depressing: there were 1,262 prisoners in prisons who had served three years and 76,022 prisoners who had served less than three years. In 1981-82, a total of 137 prisoners who had not served their sentences died in various parts of the country. As of June 30, 1981, out of a total prison population of 1,41,761, 87,144 (61.5%) had not been sentenced to imprisonment. This situation is a gross violation of human rights. These prisoners who have not been sentenced fall into the following categories:

1. those who have been denied bail by the courts because of their involvement in serious crimes; and
2. those for whom bail could not be granted for any reason. These unsentenced prisoners fall into two categories: those held for investigative purposes and those awaiting trial. The majority of prisoners who have not been sentenced fall into these two categories.
3. others[12]

Unconvicted prisoners suffer not only from deprivation of personal liberty, but also from depressing prison conditions, overcrowding, extremely poor working conditions and living with prisoners. However, were it not for the two innovations, the plight of prisoners without

[11] Information given to the Rajya Sabha by the Minister for Home Affairs, Amrit Bazar Patrika, Calcutta, dated July 22, 1982.
[12] See Infra

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conviction would not have changed. The Law Commission of India took up the issue in its 78th Report on the Custody of Unconvicted Prisoners in Jails (February 1979). The issue was brought to the doorstep of the Supreme Court by Ms. Kapila Hingorani, a dedicated public interest lawyer1.[13] In a series of cases known as Hussainara Khatoon,[14] The court investigated the matter and gave different remedies. In these The Court was clearly concerned about the condition of the prisoners held in Bihar jails during the trial and the Maneka judgment formed the basis of these orders.

The Court was saddened and shocked by the plight of the unsentenced prisoners who have been in Bihar jails for three to ten years. These unsentenced prisoners fall into the following categories:

1. those who are detained beyond the maximum period prescribed under the sentence of the court; and
2. those who have been detained for more than half of that period; and
3. who, pursuant to section 468(2) of the Crimes Act, have had the statute of limitations for trial expire; PC;
4. in respect of whom the investigation of the case has lasted more than six months (see Art. 167(5) of the Crimes Act; PC);
5. who are victims and have been detained for more than half that period; PC
6. women prisoners who are victims and in need of "protective custody" or as witnesses;
7. women prisoners who are victims and in need of "protective custody" or as witnesses;
8. women prisoners who are victims and in need of "protective custody" or as witnesses; PC
9. the insane and insane.

Most of the above prisoners are held in jail due to non-payment of bail. The courts, on finding this circumstance, take upon themselves the task of providing remedies. With respect to criminal justice, the court has drafted several new bills and issued a number of orders to provide relief to prisoners.

[13] See Baxi, The Crisis of the Indian Legal System 227-28 (1982).
[14] AIR 1979 SC 1360 at 1369, 1377, and 1819. Also Kadra Pahadiya v. Bihar, AIR 1982 SCU 67.

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This paper discusses these ideas here and elsewhere as appropriate. In the court's view, it is inhumane to keep people convicted of crimes in prison for long periods of time without trial. The court's interpretation of "speedy trial" in Maneka implied the broad scope and content of Article 21. The Court ordered the release of all prisoners who had been held in prison beyond the full term for the offense for which they were convicted. Similarly, the Court released persons who were detained despite the expiry of the limitation period for prosecution under Article 468(2). The Court has ordered compliance with section 167(5) Cri in respect of prisoners detained in summons cases where the investigation has not been completed.

PC (the judge shall order their release unless he or she considers that the interests of justice require that the investigation be continued).

According to the court, the normal time required for "speedy trial" is six months. The court ordered the High Court to provide the necessary information to achieve this quality. The court ordered the state to provide legal aid for the bail of prisoners who are in jail for half of their entire sentence. The court did not take into account that mentally ill and insane people "may be kept in the same jail with other prisoners who have not been sentenced". Women prisoners who were victims of crime and detained to testify were to be housed in social welfare institutions, and the state was obliged to establish a sufficient number of such institutions.

As noted by the International Commission of Jurists, there are four grounds for the detention of accused persons in prison:

a) Where particularly serious offenses have been committed;
b) If the accused is likely to interfere with witnesses or obstruct the course of justice; or
c) if the accused is likely to commit the same or another offense; or
d) the accused may fail to appear in court[15].

Denial of bail and detention of the accused in pre-trial detention have serious consequences for

[15] The Rule of Law and Human Rights 29 (1966).

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the persons concerned. First, pre-sentence detention has a punitive content. Second, it disrupts family life and can be financially devastating to the family. Third, it is noted that:[16]

"For those who are detained while awaiting trial, the chances of acquittal are certainly slim." According to a study by the Home Office in England (Table 6, p. 9), about 9.5% of those tried in 1956 were acquitted, of whom 8% were on bail and 1.5% were in custody.

1.5% were in custody. Unfortunately, bail as a subject of study in criminology has been neglected, as no useful study seems to have been done in India, though such studies are constantly being done in other countries. Michael Zander in his excellent article on bail mentions the following.

The possibility that prisoners in custody are less likely to be found not guilty than prisoners on bail is supported by findings in both the United States and Canada."
Fourth, "a study in the UK found that a higher proportion of unconvicted prisoners plead guilty than prisoners on bail. Similar studies should be conducted in India to bring back to the courts the effects of indiscriminate detention. The fact that so many people are forced to plead guilty to end their suffering is nothing short of the melancholy of detention." A study in the UK found that a higher proportion of prisoners on remand plead guilty than those on bail. Similar studies should be conducted in India too so that courts can visualize the consequences of indiscriminate detention. The depressing nature of detention alone should compel many to plead guilty to end their suffering.
The bail system is closely linked to the issue of unsentenced prisoners. It is a question of a liberal or rigid approach to bail. Considerable progress has been made on these two issues.

In Hussainar[17] the court insisted on a liberal approach to the issue as a feature of the bail system. The court found monetary security for bail to be archaic. The court stated:
"It is time for our Parliament to recognize that not only is the possibility of financial loss the only deterrent to flight from justice, but that there are other factors which play an equally important role as a deterrent. Our country is a socialist republic committed to the principles of social justice, and according to our Constitution and the document signed by the Parliament, in

[16] Balsara, supra note 14 at 343.
[17] AIR 1979 SC 1360.

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granting bail, it is not so much the risk of financial loss but other important considerations such as family ties, roots in the community, job security and membership in stable organizations that should be the determining factor, and where appropriate, the accused should be released on personal bail without financial obligation, and whether personal bail without financial obligation will not be a deterrent.[18]

Even under the current law, it has been held that the accused should be released without bail if the court is satisfied that the accused is rooted in the community and is not going to abscond. In order to assess The issue of "roots in the community": (a) length of residence in the community; (b) job situation, history, and financial status; (c) family ties; (d) reputation and character; (e) prior convictions; and (f) risk of failure to appear, taking into account the nature of the offense and likelihood of conviction.

In addition, in determining the duration of personal bond, the court indicated that the availability of amnesty was not the only factor; other important factors were the defendant's financial situation and the likelihood of kidnapping. The court ordered the release without financial obligation of a number of prisoners who had been in jail for years on personal bail (as an exceptional measure in view of the fact that these persons had moved from one jail to another without trial).

The Law Commission of India has also advocated liberalization of the law on bail. It (a) punishes bailable offenses with imprisonment for a term not exceeding three years unless the nature of the offense otherwise requires; (b) in case of bailable offenses, empowers the court to release the surety on personal bail if he is unable to furnish bail within one month; and (c) does not retain the person beyond the amount of bail, support the following.

The trend toward liberalizing bail for arrestees is vividly reflected in the anticipatory bail provision in Article 438 of the Criminal Code. The validity of this provision was recognized by the Supreme Court in Balchand v. State of Madhya Pradesh[19] as follows:
'The Legislature should have enshrined in Section 43S of the Act a beneficial provision applicable only to non-bailable offenses so that the liberty of the subject is not jeopardized on

[18] Id. at 1363.
[19] AIR 1977 SC 366.

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frivolous grounds at the behest of unscrupulous and irresponsible persons or officers...' [emphasis mine].

Looking at the problem holistically, it is correct to take a liberal approach to the question of bail for the accused and to deny bail only in the four situations mentioned earlier. If the court denies bail, it is obliged to give reasons for the denial.

The judgment in Husaynara's case received an encouraging response from the Central Government. The central government agreed to the various suggestions of the court[20].

But on the other hand, in order to combat social evils like dowry, Magistrates (in collaboration with the police) are misusing the Bail Act by denying bail in cases where the victim has died due to suicide. In such cases, the husband and/or in-laws are charged with abetment of suicide under Section 306 of the Penal Code. In such cases, the husband and/or in-laws are charged with assisted suicide under Section 306 of the Penal Code. In all probability, the accused can be charged with abetment because the suicide was caused by the emotional state of the victim's husband and the violence in the relationship due to inadequate dowry. It is common knowledge that charges of abetment do not stand up in court, but when a person or persons are imprisoned for some time (after denial of bail), the public mind is soothed by the fact that such a person has been punished in some way. This may be true, but it is a perversion of the law.

Power of arrest: it is the arrest of a person that gives rise to the question of detainees and the need for bail. It is necessary for the police to exercise their power of arrest judiciously. However, the police are not performing well in this matter.

Police powers of arrest are powerful and generate a lot of violence. According to the National Police Commission, this is a major cause of police misconduct and misconduct. Despite the fact that the power of arrest is discretionary in criminal investigations, "some police officers give the impression that arrest is coercive." The Commission stated:
"Fear of the police essentially stems from a fear of being caught by the police in some way. It is widely understood that false criminal cases are often simply invented for the purpose of making arrests to humiliate and embarrass some of the complainant's real enemies who have colluded

[20] See the statement of the Minister of Home Affairs in Rajya Sabha on July 19, 1982, 123 Rajya Sabha Report 219.

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with the police for unethical purposes."[21]

The Commission recognizes that "the police are now practicing indiscriminate arrests in the course of investigations." One researcher noted that "the arrest law seems to have moved away from its purpose of allowing the police to make arrests in respect of all imputable offenses and obliging the police to arrest all those whom they are legally entitled to arrest."

Objective". The National Police Commission supports the development of guidelines for police making arrests of persons in the context of crimes under investigation. The Commission recommends that an arrest during the investigation of a criminal offense should be justified in the following cases:

(i) The case involves a serious crime such as murder, dacoity, robbery or rape and it is necessary to arrest the accused and restrain his behavior to instill confidence in the frightened victim

(ii) The accused is likely to abscond and evade due process; and

(iii) The accused is prone to violent behavior and may commit new crimes if his or her behavior is not restrained.

(iv) The defendant is a hardened criminal and is likely to reoffend with similar offenses if not taken into custody.

LEGAL AID

There is no clear statutory right for an accused person to seek legal assistance. Article 22 only allows for the right of the accused person to be informed and defended by a lawyer. Even the Forty-Second Constitution adopted in 1976, merely requires the addition of Article 39A to the chapter on Directive Principles of Public Policy, which orders the State to provide 'free legal assistance.' This is merely a directive and does not in any way give a legal right to the accused to secure free legal aid.

This constitutional gap, however, has been filled up by the court holding free legal aid as an essential requisite of the "due procedure" for depriving a person of his personal liberty. In M.H. Hoskot v. State of Maharashtra,[22] emphasising this aspect, The Supreme Court held that a

[21] R.V. Kelkar, "Law of Arrest: Problems and Incongruities," 22 JILI 314, 316 (1980). Also D.C. Pandey,- Search for an Action Against Illegal Arrest", ibid, at 328.

[22] AIR 1978 SC 1548.

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prisoner who has been convicted by a court but is entitled to appeal against the verdict could assert the right of counsel to argue his appeal, and it was the responsibility of the state to provide him with legal assistance if he could not afford the counsel, being indigent. In such a case the court must appoint the accused to a lawyer and the state must pay a resonable amount that can be set as remuneration by the court.

Numerous egregious cases demonstrate that, on the one hand, the country's prisons are synonymous with dehumanization and depravity, and on the other, they are a haven for greed, callousness and cruelty. In the face of harsh and inhumane conditions, repeated attempts to reform the penitentiary system have failed to bring it to a halt, let alone a comprehensive reform. Once again, a number of egregious cases demonstrate that some of the country's prisons are synonymous with dehumanization and depravity on the one hand, and cesspools of greed, ruthlessness and cruelty on the other. Under harsh and inhuman conditions, repeated attempts to reform the prison system have failed to take a single step forward, let alone comprehensive reform.

In Husaynara's case, the principle of legal aid was re-emphasized, with the court ruling that legal aid should be available to prisoners who have not been sentenced to imprisonment, for bail, as well as for defending themselves during the judicial process.

PRISON JUSTICE

Shockingly poor and scandalous conditions reign in Indian jails, and the mistreatment of prisoners has attracted the attention of the judiciary, government and journalists in recent years. Conditions in Indian prisons have been highlighted by a group of journalists as follows:
"Many brutal incidents have shown that the country's jails are synonymous with dehumanization and depravity on the one hand and cesspools of greed, callousness and cruelty on the other." In the face of harsh and inhumane prison conditions, repeated attempts to reform the penitentiary system have failed to make a single step forward, let alone a comprehensive reform of the system.

As a result, an experienced prison observer was forced to note that India had developed a "prison subculture" that sanctified barbaric treatment of prisoners, including torture, forced labor, sexual perversion, starvation diets, and widespread abuse and exploitation by petty officials surrounded

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by powerful leaders.[23]

Another journalist paints a similar picture of the capital's main Tihar Jail in Delhi:
"The sprawling Tihar Central Jail complex lurks like a squat beast on the western outskirts of New Delhi. Tihar, like other large jails in poor and overcrowded countries, also bears the grim marks of tyranny, lust, greed and man's perennial attitude towards his fellow human beings. Both prisoners and underclassmen are united by woefully inadequate and inedible food, hard labor, unscrupulous guards, and filthy water. "24

Solitary confinement is sometimes offered by prison authorities as a punishment for death row inmates or other prisoners. Solitary confinement is a perversion of humanity and should be excluded as far as possible. The protections mentioned in the previous paragraph should also be respected in relation to solitary confinement as a punishment. Prisoners sentenced to death have the same life status as other prisoners, except for two details. First, they are under [24]-hour surveillance by guards. In addition to these two restrictions, under the rules of just imprisonment prison officials cannot be denied such amenities as games, newspapers, books, walks except during twilight hours, and visits from inmates and visitors. Finally, in Sunil Batra I, the court made another important suggestion: if prisoners are too poor to afford a lawyer, legal aid should be provided to help them get justice from the authorities and, if necessary, challenge their sentence in court.

Tihar Jail is an environment of stress, trauma, tantrums, abuse, vulgarity and corruption - all of which are crimes. On top of that, the jail holds hardened criminals and "international gang prisoners" pending trial. To make matters worse, prison officials themselves are rumored to be in solitary confinement in collusion with criminals. In other words, there is an extensive network of criminals, officials and nonofficials operating in correctional facilities. Drug racketeering, alcoholism, smuggling, violence, theft, and unconstitutional punishments of solitary confinement and transfers to other prisons are not uncommon.[25]

Until now, prisons have not been viewed as correctional treatment centers, but simply as places

[23] Life Behind Bar, Times of India, dated May 23,24 and 25, 1983
[24] Kumkum Chadha, The Indian Jail 9-10 (1983).
[25] AIR 1980 SC 1576, 1586.

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of detention. The Commission emphasizes the need to establish correctional treatment services in prisons.

The government's response to prison reform has been limited to appointing commissions or committees on paper to make recommendations for prison reform. Since 1950, more than 23 such commissions have been set up proposing reforms in prison management; in 1977, the Tekchand Commission produced an extensive volume of papers. And now the Commission on Prison Reforms (Mulla Commission) has released yet another report. However, nothing substantial has come out of the work of these commissions[26].

Nevertheless, it remained for the judiciary to humanize the prison administration to some extent. The Supreme Court did so in Sunil Batra[27] and in Prem Shankar v. Administrator of Delhi. Above all, the court proceeded on the premise that the fundamental rights to which people are entitled do not remain outside the prison door. The punitive, inhuman, scandalous and inhuman treatment of prisoners in custody by the authorities is contrary to Articles 14, 19 and 21 of the Constitution. These human rights are non-negotiable.

(a) handcuffs and shackles; (b) solitary confinement; (c) punishment of prisoners by prison authorities. Handcuffing and shackling are regarded by the Court as inhuman treatment of prisoners. They are humiliating, indecent and cause physical and mental suffering to prisoners. Except to prevent escape or in dangerous and desperate cases, iron fences are irrational.

The imposition of handcuffs or chains on prisoners as punishment may occur either inside the prison or on the prisoner's journey to and from prison to court. In both cases, the courts have condemned the use of handcuffing of prisoners; in Sunil Batra I, it was held that only the prison authorities can punish the use of handcuffs, subject to certain procedural safeguards. The court set out the following safeguards: (a) the use of handcuffing must be absolutely necessary; (b) the reasons must be recorded; (c) the underlying condition of dangerousness must be well founded; and (d) natural justice must be satisfied.

Similarly, if any penalty is to be placed on an inmate, such as placing him in a solitary cell or

[26] See Times of India, dated 25.5.1983.
[27] AIR 1978 SC 1548

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hard labour or denying him the requisite facilities for his misconduct, it was held in Sunil Batra II that this can only be achieved by observing certain procedural safeguards. "a hearing at some stages, a review by a superior, and early judicial consideration"a hearing at some stages, a superior's review and early judicial consideration.[28]

Solitary confinement can be provided by way of punishment to a prisoner who has been sentenced to death or to other prisoners by the jail authorities. Solitary confinement is a perversion of mankind and should be avoided as much as possible. The protections alluded to in the preceding paragraph are to be followed with respect to solitary confinement by way of punishment. The same prison life status as other inmates is to be granted to an inmate serving a death sentence except in two detail. Secondly, these inmates are subject to 24 hours of supervision by guards. With the exception of those two limits, any of the community facilities such as games, newspapers, books, traveling about except between dusk and dawn), and meeting inmates and visitors, subject to fair prison management regulations, should not be denied. Finally, in Sunil Batra I, the court laid down another significant proposal that legal assistance should be provided to inmates to obtain justice from the authorities and also, if need be, to challenge the decision in the court, where the prisoner is too poor to afford a lawyer.

CHAPTER III

CONCLUSION

Each Supreme Court decision is a response to certain sociological facts that have come to light through the efforts of certain journalists and like-minded lawyers. Each of these facts speaks of a too uncomfortable state of affairs in the administration of criminal justice. Another sociological aspect of police activity is related to the previously mentioned "use of third-degree relatives." The findings of a journalist concerned the use of torture by the police in Delhi, where there are at least four interrogation rooms. These are located in the historic Red Fort building, the Central Reserve Police Force hostel Kingsway Camp, the Revenue Intelligence Bureau complex and the basement of Indraprastha Estate.

The case of Sheela Barse v Maharashtra shows that even women are not free from ill-treatment in detention.

[28] AIR 1980 SC 1594

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The court's approach to humanizing the administration of criminal justice has met with strong opposition from the police. The decision has been made and now it is time for a discussion between the police, judges, lawyers and academics. Indeed, such a discussion would be fruitful in addressing the problem.

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