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ADR	Alternate Dispute Resolution
AIR	All India Reporter
Amd.	Amendment
Art.	Article
Bom.	Bombay
CAD	Constitute Assembly Debate
CJ	Chief Justice
Co.	Cooperation
CPC	Civil Procedure Code
Cr.PC	Criminal Procedure Code
DB	Division Bench
Dec.	December
e.g.	Example
Edn.	Edition
Govt.	Government
HC.	High Court
Jan.	January
Mad.	Madras
No.	Number
O.	Order
Ori.	Orissa
P.	Page
PC	Privy Council
PM	Prime Minister
Prof.	Professor
R.	Rule
Raj.	Rajasthan
S.	Section
SC	Supreme Court
SCC	Supreme Court Case
SCR	Supreme Court Reporter
U.O.I.	Union of India
U.S.	United State
USA	United States of America
V.	Verses
Vol.	Volume

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Human Rights Of Prisoner

Vikas Kaushik

CHAPTER 1

INTRODUCTION

“It is not the prisoners that need reformation, it is the prisons” – Oscar Wilde

1. Introduction

Prisoner’s Rights Law manages the privileges of detainees while in the slammer. Large numbers of these laws identify with crucial common freedoms and common freedoms.

All prisoners denied of their freedom will be treated with mankind and with deference for the intrinsic respect of human individual. All individual denied of freedom will have a sufficient way of life, including satisfactory food, drinking water, convenience garments, and bedding. Detainees needed to share dozing convenience will be painstakingly chosen and administered around evening time. Attire as a part of the privilege to a satisfactory way of life is a basic freedom.

Article 20(3) of the Constitution gives that no individual blamed for any offense will be constrained to be an observer against himself. Also, Sections 25 to 27 of the Evidence Act guard against this risk. Segment 25 gives that no admission made to a cop will be demonstrated against an individual blamed for any offense. Area 26 gives that no admission made by any individual while he is in the care of the police will be utilized as proof against him. In any case, Section 27 gives that when any reality is found in result of data got from a blamed in care for the police, such a large amount of such data, if it adds up to an admission, as relates particularly to the reality

along these lines found, might be demonstrated.

One casualty of the twisted disappointment of lawful and corrective administration was a man called Ram Chandra. He was captured in 1952 for riding on a train without a ticket and went through thirty years in a Bihar prison anticipating preliminary. The police had overlooked him. His case papers were lost... Had his case not been uncovered by a common freedoms gathering, and his delivery requested by a high court judge, he would be secured right up 'til today.

A main Indian legal dispute managing torment is *Sunil Batra (II) v. Delhi Administration*¹, in which a detainee was tormented by the inclusion of a mallet in his butt. The casualty was tormented due to an unfulfilled interest for cash. As he would see it for the Supreme Court, Justice Krishna Iyer composed that this proposed: that pay off, at the place of barbarity, is a prospering exchange inside the place of discipline itself.

Principal privileges of a prisoners :

- Right to shield from Cruel and Unusual Punishments
- Right to shield from Sexual Harassment or Sex Crimes
- Right to Complain About Prison Conditions and Access to the Courts
- Rights of Disabled Prisoners
- Rights of Medical and Mental Health Care
- Right to shield from Discrimination
- Rights to good and actual Integrity
- Right to sufficient Standard of living

¹ 1978 AIR 1675

- Health privileges of detainees
- Prisoners contact with the rest of the world
- Complaints and Inspection Procedures

Prison is where the criminal equity framework put its whole expectations. The correctional mechanism, if falls flat will make the entire criminal methodology futile. The regulation behind discipline for a crime has been changed considerably by the advancement of new human rights statutes. The idea of transformation has turned into the watchword for prison organization. Human rights statutes advocate that no crime ought to be punished in a pitiless, corrupting or in a cruel way. Despite what might be expected, it is held that any discipline that adds up to remorseless, humiliating or brutal ought to be dealt with as an offence by itself. The change caused to the criminal equity framework and its correctional mechanism has been embraced around the world and question of incorporation of the same in Indian scenario remains unanswered.

Internationally, it turns into an all-round acknowledged decision that the correctional mechanism in criminal equity organization ought to agree to reformative arrangements. It is likewise announced that all prisoners might be approached with deference because of their innate respect and incentive as human beings. There is an arrangement of rights distinguished by the international legal framework to spare the human poise and estimation of prisoners and thereby the reformative topic of rectification. It is additionally emphatically contended that the group can never endure a plan of adjustment that does not keep up an association with the evilness of the crime done. This discipline dependably keeps up a subjective point of view. The privileges of the imprisoned individuals must be perused regardless of this observation. It is genuinely implied that there can be changed disciplines for the same offence; however, one ought not to be dealt awfully while the sentence once pronounced by the Court goes on. In this domain, the rights ensured under the

international legal framework are to be investigated and are to be incorporated in India.

1.1 Concept of Prison

Prisons serve as an arm of criminal justice system to punish the deviant behavior of a miscreant. John Locke, the great English political theorist of seventeenth-century expressed that men were basically good, but laws were still needed to keep down 'the few desperate men in society'.

The Online Oxford English dictionary defines prison as, A building to which people are legally committed as a punishment for a crime or while awaiting trial². In our country Prison falls under State subject in List II of the Seventh Schedule to the Constitution of India. The administration of Prisons falls under the ambit the State Governments and is administered by the Prisons Act, 1894 and the Prison Manual of the respective State Governments. Thus, States have the preliminary responsibility and authority to change the current prison laws, rules and regulations.

In most States of India, prisons are facing issues such as overcrowding, discrimination, inhuman treatment, corruption, inequality, sanitation and food related problems, etc. The issues of Prison reform came into light during the early 80s when KF Rustamji, only police official of our country awarded Padma Vibhushan highlighted the poor conditions of prisons in India and led his experience in the reformation of police and prisons. Just after the emergency period ended, a new era of PIL was born where the tormented conscience of a few people adopted an individual's suffering who voiced the suffering of the weak. The *Maneka Gandhi*³ judgement laid down procedures for a 'fair, reasonable, and a just', trial which sprouted a seed for liberal interpretation of statutes.

² Prisons <<http://Oxforddictionaries.com/definitions/english/prison?q=prison>> last seen on 04/10/2021

³ Maneka Gandhi v. Union of India [1978] AIR SC 597

Owing to the great deeds of KF Rustamji, a PIL in the name of *Hussainara Khatoon v. State of Bihar*⁴ was filed against illegal detention and for the implementation of speedy trials. His painstaking efforts led to the release of about 40,000 prisoners that were under trail. The **Sunil Batra case**⁵ in the year 1978 was decided against solitary confinements, legal aid was laid great stress on in the case of *Hoskot*⁶. Usage of handcuffs on arrested persons were barred unless the court grants permission in the case of *Prem Shankar Jha*⁷. In the year 1981, custodial violence was said to be hazardous and emphasis was laid on the same in the case of *Bhagalpur*⁸. Solitary confinement, excessive labor, decrease in quantity of food and punitive cells were made illegal in the year 1981 as ruled by the *Rakesh Kaushik case*⁹. This was the first wave towards the reforms in prison.

The second wave of the same came after the establishment of two committees to look into the prison reforms in India headed by two retired judges of the Supreme Court. Justice Mullah committee gave several recommendations such as transferring this subject into concurrent list instead of State list as the central government has a very little say in these matters. They also said that a National Policy should be brought on the matter of prisons. It laid great stress on the establishment of a National Commission on Prisons and to introduce a Department of Correctional Services. They considered speedy trial for under trial inmates and a simplified bail process extremely vital. An interesting recommendation by the Mullah committee was to create a separate institution for the young offenders. They recommended that the children below the age of 18 should not be sent to prison with the adult offenders as there might as well be a chance of a bad influence over the young offenders which might turn them into hardened criminals.¹⁰

⁴ *Hussainara Khatoon v. State of Bihar* [1979] AIR SC1360,1369,1377, 1819

⁵ *Sunil Batra v. Delhi Administration* [1978] AIR SC 1675

⁶ *Hoskot case* [1978]AIR SC 1548

⁷ *Prem Shankar Jha v. Delhi Administration* [1980] AIR SC 1535

⁸ *Bhagalpur (Blinding case): Khatri v. State of Bihar* [1981] AIR SC 928

⁹ *Rakesh Kaushik v. Supdt. Tihar Jail* 1980 SCR (3) 929

¹⁰ PS Bawa, 'Towards Prison Reforms' [2000] <<https://www.jstor.org/stable/23005498>> as

Conditions in the Indian prisons are very poor and they are facing a lot of problems. As Fyodor Dostoyevsky, author of *Crime and Punishment*, rightly pointed out, The degree of civilization in a society can be judged by entering its prison One such problem is serious overcrowding in prisons. Growth in the number of short-term convicts, pre-trial detainees, delay in delivering justice by the courts and the increase in the number of criminal sanctions are a few factors leading to the massive overcrowding of prisons in India. A report by the National Human Rights Commission in the year 2004 stated that in 1315 jails with a maximum capacity of 2,38,855 contained about 95,257 prisoners more than the total capacity and about 70% of these inmates were at a pre-trial stage. As reported by the Times of India in the year 2007, Tihar jail suffered serious issues of overcrowding as it had almost two times more inmates than the sanctioned maximum.

The Asian Legal Resource Centre stated prolonged detention of pre-trial inmates, unhygienic environment and overcrowding are one of the main characteristics of prisons in India. It has also been brought to notice that as a result of overcrowding, there is no barrier between the criminals who have committed major and minor crimes. This particular issue leads to a bad influence on minor offenders. Speedy trials, bails, imposition of fine, releasing the inmates on parole can be a hack to tackle the issue of overcrowding. Looking at this issue through the current scenario where a deadly virus, COVID-19 is spreading through human contact, highly populated prisons might as well become hotspots for the spread of such deadly diseases.

Another pertinent issue in prisons is that of the inhuman treatment of the inmates by the staff members of a prison. There are several instances where human rights violation of prison inmates has taken place. This beats the purpose of prisons as a whole as, prison is a place for reformation and rehabilitation and human rights violation, depriving inmates of their rights will not help in changing the individual

and making him fit for the society. Just because prisoners have broken rules or committed crimes doesn't mean that their rights are of no value at all. Quoting Mahatma Gandhi, 'Hate the crime, not the criminal' which means that resistance towards a crime is more fruitful rather than inhuman and indifferent treatment of the criminals by the prison staff.

Health risks in the prison is one worrisome concern as the medical conditions provided to the prisoners is extremely dissatisfactory. Giving and taking bribery by the prison staff too is one such concern that is still prevalent. Despite rules against discrimination, the prisons are said to have had many cases where there was a certain discrimination. Since, the states handle prisons there are allegations wherein affluent and influential politicians have fixated Televisions, air conditioners in the prison.

Existence of prisons dates back to ages with the prime motive to punish the offenders and wrongdoers. Prisons are considered to be an essential part of the criminal justice system. Prisons were to be a place of reformation to the perpetrators. A chance to reform, amend through detention and rigorous isolation from family. However, self-reformation is not possible in such dilapidated conditions. Despite the setting up of committees and introduction of various policies, it is important to note whether such policies have been put to practice.

2. Statement of the issue

The terms jail and prison are utilized conversely in India, maybe mirroring the way that no critical exertion is made to isolate undertrials, as those anticipating preliminary are known, from convicts. Division of undertrials from convicts is needed by a choice of India's Supreme Court, yet this choice is broadly overlooked by and by.

3. Research Hypothesis

1. Is prisoners aware about their fundamental rights or not?

2. Is Indian judicial system take care the prisoners' rights or not?

4. Objectives of the research

Followings are the objectives of the present study :

- What are the fundamental rights of a prisoner?
- What are the legal rights of a prisoner?
- What is the right to livelihood of a prisoner?
- To know about that prisoners know there fundamental rights or not?
- What is the judicial approach towards the prisoners' rights in India?

5. Research Methodology

The primary focal point of study is on the hypothetical perspective which has been examined based on material gathered from various sources. This examination is led in different libraries. It comprises of examining different writings accessible in this field. As essential sources Constitution of India Act of Parliament and Judicial declarations have been taken and as optional sources various writings, that is, books, articles, case remarks, reference books and papers, have been counseled. Further, to streamline and bring together the reference framework, a similar framework has been embraced as it is coordinated by and large for cases in various nations law reports.

6. Chapter scheme

Chapter 1 : Introduction

Chapter 1 discuss about the topic. Background of the subject, objectives of the study, hypothesis and methodology applied is the prime focus of Chapter 1.

Chapter 2 : Historical background of human rights

This chapter discuss about the past history of the prisoners' rights in India and evaluation in the laws.

Chapter 3 : Rights of prisoners in national and International perspective

This chapter discussed about the human rights of the prisoners in National and International level.

Chapter 4 : Right to livelihood of a prisoner

This chapter discuss about the basic human right of a prisoner i.e. livelihood of a prisoner.

Chapter 5 : Judicial approach towards the prisoners human rights

This chapter deals with the decisions made by the Indian court to protect the human rights of the prisoners.

Chapter 6 : Conclusion and suggestions

In this chapter researcher gives their concluding remark with various suggestions.

CHAPTER 2

HISTORICAL BACKGROUND OF HUMAN RIGHTS OF PRISONERS

2.1 Introduction

The word prisoner means any person who is kept under custody in jail or prison because he/she committed an act prohibited by law of the land. A prisoner also known as an inmate is anyone who against their will is deprived of liberty. This liberty can be deprived by forceful restrain or confinement. Prisoners rights deal with the rights of the inmates while behind bars. Prisoners have basic legal rights that can't be taken away from them.¹¹ The basic rights include right to food and water, right to have an attorney to defend himself, protection from torture, violence and racial harassment. Section 1 of the Prison Security Act 1992, defines the term prisoner. The word prisoner means any person for the time being in a prison as a result of any requirement imposed by a court or otherwise that he be detained in legal custody. This paper presents the rights of the prisoners in detail with related case laws.

2.2 International Human Rights Law:

International human rights laws protect people from racial discrimination, from torture and from enforced disappearances. They also recognise the rights of specific groups of people, including women, children, and people with disability, indigenous peoples and migrant workers. Some of these treaties are complemented by optional protocols that deal with specific issues or allow people to make complaints.

2.2.1 UN Charter:

The charter of the United Nations was signed on 26 June 1945, in San Francisco, at the conclusion of the United Nations conference on international

¹¹ <https://www.legalservicesindia.com>

organization, and came into force on October 24 1945.

Basic Principles For The Treatment of Prisoners¹² was adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990. The principles are as follows:

- No discrimination on the grounds of race, sex, colour, language, religion, political, national, social origin, property, birth, or other status.
- Respect the religious beliefs and cultural precepts of the group to which the prisoners belong.
- The responsibility of the prisons for the custody of the prisoners and for the protection of the society against crime and its fundamental responsibilities for promoting the well-being and development of all members of the society.
- All prisoners shall retain the human rights and fundamental freedoms set out in UDHR, ICESCR, ICCPR and the optional protocol as well as such other rights as are set out in other United Nations covenants.
- Right of the prisoners to take part in cultural activities and education aimed at the full development of the human personality.
- Abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken or encouraged.
- Prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the country's labour market and permit them to contribute to their own financial support and to that of their families.
- Access to health services without discrimination on the grounds of their legal situation.

With the participation and help of the community and social institutions and with regard to the interest of victims, favourable conditions shall be created for the reintegration of the ex-prisoner into society. The above principles shall be applied impartially.

¹² <https://www.un.org>

2.3 International Bill of Rights:

2.3.1 Universal Declaration of Human Rights:

In 1948 a movement was started in the United Nations in the form of Universal Declaration of Human Rights which was adopted in the General Assembly of the United Nations. This organic document is also called as Human Rights Declaration. This important document provides some basic principles of administration of justice. Among the provisions in the document are follows:

- No one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment¹³.
- Everyone has the right to life, liberty and security of person.
- No one shall be subjected to arbitrary arrest, detention or exile.
- Every one charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2.3.2 The International Covenants On Civil And Political Rights, 1966:

The ICCPR remains the core instrumental treaty on the protection of the rights of the prisoners. Following relevant provisions of the covenants are as:

- No one shall be subjected to cruel, inhuman or degrading treatment or punishments.
- Everyone has the right to liberty and security of person. No one shall be subject to arbitrary arrest or detention.
- All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person¹⁴.
- No one shall be imprisoned merely on a ground of inability to fulfil a contractual obligation.

¹³ UDHR, 1948, Article.1

¹⁴ ICCPR, 1966, Article.10

2.3.3 UN Core Conventions And Specific Instruments:

Standard Minimum Rules For The Treatment of Prisoners:

- Amnesty International in 1955 formulated certain standard rules for the treatment of prisoners. Some important relevant rules are as follow:
- Principle of equality should prevail; there shall be no discrimination on grounds of race, sex, colour, religion. Political or other opinion, national or social origin, property, birth or other status among prisoners¹⁵.
- Men and women shall so far as possible be detained in separate institution;
- Complete separation between civil prisoners and persons imprisoned by reason of criminal offence; young prisoners should be kept separate from the adult prisoners.
- All sorts of cruel inhuman degrading punishments shall be completely prohibited.
- Availability of at least one qualified Medical officer with the knowledge of psychiatry.
- Convention Against Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment:
- State party has to take effective legislative, judicial and other measures to prevent acts of torture.

2.3.4 Regional Law:

European Convention On Human Rights (1953-69):

This convention has its own history in the importance of human rights. Some of the important provisions of this convention are as follows:

¹⁵ Standard minimum rules for treatment of prisoners, adopted by Aug.30,1955 Rule 6(1).

- No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
- No one shall be subject to inhuman treatment or degrading treatment or punishment.
- Everyone who is deprived of his liberty by arrest shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release be ordered if the detention is not lawful.
- Everyone who has been the victim of arrest in contravention of the provisions shall have an enforceable right to compensation.

2.4 Indian Law:

The Prisons law of India is amongst the forgotten laws of this country which has lost its existence so significantly that neither the law makers of this country nor the mighty political system gives it any value in order to get reformed within today age and time. There is lacuna of stringent legislation for prisoners who also deserve life to be led with the basic human respect which we all are entitled to being citizens of this country despite the wrongdoings they have committed. The prisoners kept in jails are kept in inhuman conditions and are deprived of even basic human amenities like healthy sanitary conditions and lack of proper food, bedding and clothing facilities. The real pragmatic change in criminals kept in prisoners and solitary confinements can be brought by using reformatory measures in prisons rather than trying to tame them by authoritative means like animals kept in zoo.

- No state party shall expel, return or extradite a person who is in danger of being subjected to torture.
- State party should ensure that all acts of torture are offences under its criminal law.

2.4.1 Constitution:

The rights guaranteed in the part III of Indian Constitution are available to prisoners; because a prisoner is treated as a person in prison. ¹⁶

Article 14 contemplated that like should be treated alike, and also provided the concept of reasonable classification. This article provides the basis for prison authorities to determine various categories of prisoners and their classification with the object of reformation. Indian constitution guarantees six freedoms to citizens of India, among which certain freedom can't be enjoyed by the prisoners. They are freedom of movement, freedom to residence and to settle and freedom of profession. But other freedoms conferred in this article are enjoyed by the prisoners. Moreover, constitution provides various other provisions though cannot directly be called as prisoner's rights but may be relevant. Among them are Article 20(1), (2), and Article 21 and Article 22(4-7).

2.4.2 The Prisons Act, 1894

The Prisons Act 1894 is one of the oldest piece of legislation in India dealing with laws enacted in relation to prisons in India. This Act was enacted on 22nd March, 1894 and enforced on 1st July, 1894. This act contains 62 sections and XII Chapters and it is an exhaustive act which contains law relating to smooth functioning of prisons.

This act defines the term prison inclusively as buildings maintained by state governments with the purpose to detain prisoners. The act also categorizes prisoners as criminal, civil and convicted prisoners.

The Chapter II of the Act deals with maintenance and officers of prison. It deals more with appointment of staff including superintendent, medical officer, jailer and officer like inspector general under whose charge the prison will work efficiently. The inspector in – charge will be bound to carry the functions to run the prison in manner as directed by the state authorities. The state authorities have to make proper

¹⁶ Prison Laws In India: A socio-legal study by Mudasir A. Bhat

arrangements for accommodation of prisoners and this act also make provisions to deal with natural calamities like epidemics wherein the prisoners are provided safe custody and temporary shelter during that period on directions of inspector- in charge.

The Chapter III of the Act deals with duties of officers of the prison as enumerated under Section 8 to 20. Superintendent, jailer and medical officers shall constitute officers of the prison who all are responsible to run the prison in an efficient manner. Superintendent of the prison who is ought to comply orders of Inspector General shall look into matters relating to labour, discipline, punishment, expenditure of prison as well has to maintain records of prisoners. Medical officer of prison shall be in subordination to superintendent and is responsible to carry out following functions with respect to sanitary conditions, health, treatment of prisoners, reporting to superintendent with respect to prisoners seriously affected with a disease etc. Apart from this medical officer shall also keep record of all particulars such as health, diet, diseases and date of death of deceased prisoner. Jailer of the prison who is subordinate to Superintendent shall maintain all records and shall be in-charge of prison and documents. Jailer shall also be assisted by deputy or assistant jailer. The Jailer of Prison is also responsible to always reside within the premises of prison and shall not leave prison without prior intimation.

The Act also creates posts for prisoners such as convict prisoners who shall function and carry responsibilities within prison premises and shall deemed to be public servants. Section 9 of the Act strictly prohibits jail officers to carry commercial activities within jail premises.

The Chapter IV of the act deals with admission, removal and discharge of prisoners. The essentials of this chapter covers that convicts entering into prison shall be thoroughly checked and all their belongings shall be kept in custody of jailer and the female convicts shall be checked only by female officers. The criminal convicts shall be examined by medical officer and marks and wounds on his body shall be

recorded. Prisoner shall only be removed from prison premises if in the opinion of medical officer he suffers with acute disease.

Chapter V deals with discipline of prisoners, it lays few essentials i.e. that male prisoners shall be separated from female prisoners, convicted prisoners from under trial prisoners, prisoners under age of 21 shall be kept separately, prisoners sentence with death sentence shall be kept separately from all others.

Civil or an under trial prisoner shall have an access to commodities from outside the prison subject to examination of the goods being received. Such prisoners shall provide themselves with clothing's and bedding's. No part of food, bedding or clothing belonging to civil and under trial prisoner shall allow to be transferred to convicted prisoners.

Chapter VII deals with employment of prisoners. Civil prisoners are permitted to work after permission from superintendent and shall receive earnings for the work done. A criminal prisoner shall not work for more than nine hours and shall work only in case of emergency. All prisoners convicted for simple imprisonment shall be made to work within the premises.

The Act also lays directions as to taking care of health of prisoners within the prison premises. Prisoners shall be subject to regular medical check-up and sick prisoners shall be provided with proper medical care and attention.

Sections 42 to 54 deals with offenses relating to prison. Section 42 lays out that any person who being into or removes from prison prohibited articles, abets offenses prohibited under act or communicates with convicted prisoners shall be punished with imprisonment of six months or with fine of rupees two hundred or with both.

Prison offence are enumerated under section 46, which shall include wilful disobedience of prison rules, use of criminal force or threatening language, indecent

behaviour, refusal to work, causing damage to prison property or documents, preparation or conspiring for escape etc, offenses committed under the section shall be punishable under sections 46 and 47 of the Act.

Section 52 lays out that in case a prisoner is in a habit of committing heinous crime time and again, he shall be forwarded to District Magistrate or any other Magistrate of first class by superintendent.

The act under section 54 lays punishment for offenses committed by prison subordinates.

2.4.3 The Prisoners Act, 1990:

It is the duty of the government for the removal of any prisoner detained under any order or sentence of any court, which is of unsound mind to a lunatic asylum and other place where he will be given proper treatment.

Any court which is a high court may in case in which it has recommended to government the granting of a free pardon to any prisoner, permit him to be at liberty on his own cognizance.

2.4.4 The Transfer of Prisoners Act, 1950:

This act was enacted for the transfer of prisoners from one state to another for rehabilitation or vocational training and from over-populated jails to less congested jails within the state.

2.4.5 The Prisoners (Attendance in Courts) ACT, 1955:

This Act contains provisions authorizing the removal of prisoners to a civil or criminal court for giving evidence or for answering to the charge of an offence.

2.4.6 Policy Documents, Government Schemes

Government of India appointed a National Expert Committee on women

prisoners (1968-87) under chairmanship of Justice Krishna Iyer to examine the conditions of women prisoners.

National Conference on Human Rights of Prisoners on 14th Nov. 1995, consensus was emerged to work out the draft law on prisons. A Core Group has prepared a Draft Bill namely, the Indian Prisons Act, 1995 which was circulated to State Governments for their consideration and also to the Ministry of law. But the bill is still pending under consideration of the Government of India.

2.5 Conclusion:

The Supreme Court in US in *Manna v. people of Illinois* said that life is not merely animal existence. The souls behind the bar can't be denied the same. The rights guaranteed by Art.21 are for every person and not even the state could deny it. Prisoners also have all the rights which a free man has under some restrictions. Just being in prison doesn't deprive them from their fundamental rights.

CHAPTER 3

RIGHTS OF PRISONERS IN NATIONAL AND INTERNATIONAL PERSPECTIVE

3.1 Introduction

The law on the rights of prisoners has been an evolving one. It is a matter of utmost shame that a country like India doesn't have codified law on the rights of prisoners. There is also no comprehensive legislation to deal with prisoner's rights and regulate their conduct while in jail. However, the judiciary of the country has given due recognition to the convicts and held their fundamental rights time and time again. In the absence of thorough legislation, it has managed to set precedents and principles upholding the various rights of prisoners that not only guide but also bind all the courts in India. All human beings are born independent, free and equal in dignity and rights. They are endowed with reason and conscience and should act accordingly, living in a high spirit of love and brotherhood.

Human rights are rights inherent to all human beings, irrelevant to our nationality, place of residence, sex, national or ethnic origin, color, religion, language, or any other status. We are all equally entitled to our human rights without discrimination as these rights are fundamental to us because we are human. These rights are all interrelated, interdependent and indivisible.

Universal human rights are often expressed and guaranteed by law, in the forms of treaties, statutes, customary international law, general principles and other sources of international law for example 'The Universal Declaration of Human Rights'. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.

Non-discrimination is a sine-qua-non principle in international human rights law. The principle is present in all the major human rights treaties and provides the central and particular theme of some of the international human rights conventions such as the Convention on the Elimination of All Forms of Discrimination against Women.

The principle applies to everyone in relation to all human rights and freedoms and it prohibits discrimination on the basis of a list of never-ending categories such as sex, race, color and so on. The principle of non-discrimination is complemented by the principle of equality¹⁷, All human beings are born free and equal in dignity and rights. Also, at the individual level, while we are entitled our human rights, we should also respect the human rights of others.

As emphasized earlier, the conviction of a human does not render him non-human. He still remains a human who should be treated like one. He should be given the basic human rights available to every man walking on the earth. But at the same time, he should not be treated as a free man with all absolute rights and luxuries. His freedom should be subject to certain limitations and legal restrictions. These restrictions, in addition, should be reasonable.

The apex court of the USA in the case of *Charles Wolff v. McDonnell* and the Supreme Court of India in its famous cases like *DBM Patnaik v. State of Andhra Pradesh* and, *Sunil Batra v. Delhi Administration* has emphatically stated that it must be realised that a prisoner is a human being as well as a natural person or a legal person. If a person gets convicted for a crime, it does not reduce him to the status of a non-person whose rights could be snatched away at the whims of the prison administration. Therefore, imposing any major punishment within the system of prison is conditional upon the absence of procedural safeguards.

The Supreme court of India has been deliberating with the central and state

¹⁷ Article 1 of the Universal Declaration of Human Rights

governments since a long time to improve the deteriorating condition of the prisoners which is fundamental because of the overcrowding of prisons, lack of training facilities, personnel and poor infrastructure, etc. Therefore, it is mandatory to invoke the rights and constitutional safeguards of the prisoners. Such rights of, unless they are propagated and implemented in each corner and the entire perimeter of the prism, are a nullity and betrayal of human faith on the criminal justice delivery system.

Who are Prisoners

“In our world prisons are still laboratories of torture, warehouses in which human commodities are sadistically kept and where spectrums of inmates range from driftwood juveniles to heroic dissenters”

“Convicts are not by mere reason of the conviction denuded of all the fundamental rights which they otherwise possess.”¹⁸.

The word ‘prisoner’ means any person who is kept under custody in jail or prison because he/she committed an act prohibited by law of the land. A prisoner also known as an inmate is anyone who, against their will, is deprived of liberty. This liberty can be deprived by forceful restrain or confinement.

3.2 The Universal Declaration of Human Rights

The General Assembly of the United Nations started a movement in the form of the Universal Declaration of human rights in the year 1948. It lays down principles of administration of justice. Following are few important provisions which have been embedded in the draft-

- (1) No one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment.¹⁹

¹⁸ Justice V.R. Krishna Iyer.

¹⁹ Universal Declaration of Human Rights, 1948, Art 1

- (2) Everyone has the right to life, liberty and security of person.²⁰
- (3) No one shall be subjected to arbitrary arrest, detention or exile.²¹
- (4) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.²²

3.2.1 The International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights (ICCPR) remains the core international treaty on the protection of the rights of prisoners. India ratified the Covenant in 1979 and is bound to incorporate its provisions into domestic law and state practice.²³

3.2.2 The International Covenant on Economic, Social and Cultural Rights (ICESR)

The International Covenant on Economic, Social and Cultural Rights (ICESR) states that prisoners have a right to the highest attainable standard of physical and mental health.²⁴ Apart from civil and political rights, the so called second-generation economic and social human rights as set down in the ICESR also apply to the prisoners.

3.2.3 Declaration on Protection from Torture, 1975

The UN General Assembly by consensus adopted a declaration on the

²⁰ Ibid., Art 3

²¹ Ibid., Art 9

²² Ibid., Art 11

²³ U.N. General Assembly, *The International Covenant on Civil and Political Rights, 1966*, Res. 2200, Sess. 22, U.N. Document A/RES/2200XXI

²⁴ U.N. General Assembly, *The International Covenant on Economic, Social and Cultural Rights, 1966*, Res. 2200, Sess. 23, U.N. Document A/RES/2200XXI.

protection of torture. This declaration acts in tandem with the human rights principles of an individual and protects that person from any kind of torture, or inhuman and cruel behaviour.²⁵

3.2.4 General UN directives

The UN standard Minimum Rule also made it mandatory to provide separate residence for young and child prisoners from the adult prisoners. Subsequent UN directives have been the Basic Principles for the Treatment of Prisoners (United Nations 1990)²⁶ for the Protection of All Persons under Any Form of Detention or Imprisonment (United Nations 1988).²⁷

3.2.5 Convention against Torture and other Cruel, Inhuman or Degrading Treatment

The UN Assembly adopted, a document called Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment wherein the responsibility is shouldered on the state to take steps for effective judicial, legislative and administrative methods. Further, it clearly lays down the rules for interrogation and certain other instructions have been enumerated.²⁸ Though this is a concrete piece of legislation but unfortunately India has yet not ratified to it.

As mentioned earlier, the rights of the prisoners have been a developing one. From the case of *Platek v. Aderhold* (USA) where the courts ruled that it has no power to interfere with the conduct of prison or its rules and regulations to the case of *Johnson v. Avery* wherein the court recognised certain rights of the prisoners, the change has been a progressive one. In the Indian sphere, the judiciary of the country

²⁵ The Declaration on Protection from Torture, 1975, Art 2 and 3.

²⁶ U.N. General Assembly, Res 45/111 (14th December 1990), UN Document A/RES/45/111.

²⁷ U.N. General Assembly, Res 43/173 (10th December 1984) UN Document A/RES/43/173.

²⁸ U.N. General Assembly, *Convention against Torture and other Cruel, Inhuman or Degrading Treatment*, Res 39/46 (1984), UN Document A/RES/39/46.

has invoked Fundamental Rights of the Constitution repeatedly to the rescue of the prisoners. In the famous case of Charles Sobraj through Marie Andre's v. The Superintendent, Tihar Jail, the Supreme Court Judge Justice Krishna Aiyer held that:

“..imprisonment does not spell farewell to fundamental rights although, by a realistic re-appraisal, Courts will refuse to recognise the full panoply of Part III enjoyed by a free citizen”.

He further stated that the imprisonment of a prisoner is not merely retribution or deterrence but also rehabilitation.

3.3 United States of America

Tele Medicine Technology

Tele-medicine is a practice where two health professionals, or a health professional and a patient, are in long-distance communication with each other. This may be helpful in cases where it is difficult to transport prisoners, or in far-away rural prisons, or in difficult-to-reach places. Tele-medicine can provide improved security, personal safety, cost savings and access to specialists, which might otherwise be impossible.

3.4 United Kingdom

Prison and Probation Ombudsman (Grievance Redressal)

A specialized inspection of prisons takes place every year in the UK. A routine Government follow-up takes place every year. This makes for greater accountability and increased system transparency.

3.5 Singapore

Yellow Ribbon Project (Community Involvement)

The goal of the yellow ribbon project is to reintegrate and rehabilitate

prisoners. It involves prisoners voluntarily giving up all gang associations (including having tattoos removed). Part of the challenge prisoners faces after being released is that of the social stigma of having been in prison. Its objectives are:

- (a) Creating awareness of the need to give ex-offenders a second chance;
- (b) Generating acceptance of ex-offenders and their families in the community;
- (c) Inspiring community action to support the rehabilitation and reintegration of ex-offenders.

The Indian socio-legal is based on non-violence, mutual respect and human dignity of the individual. By committing a crime, a person does not change from being human and still is endowed with all the aspects which demand him to be treated with human dignity and respect that a human being deserves.

Human rights are necessitated because of the reason of human life. Being in civilized society organized with law and a system as such, it is essential to ensure for every citizen a reasonably dignified life²⁹. Even if the person is confined or imprisoned because of his wrong, he is entitled to their rights unaffected by the punishment for wrongs, simply because if a person under trial or a convict, his rights cannot be denuded.

“No one shall be subject to torture or cruel, inhuman or degrading treatment of punishment”³⁰

Prisoners Have Basic Legal Rights That Can't Be Taken Away From Them.

These Include:

- The right to food and water.
- Protection from torture, violence and racial harassment.
- Being able to get in touch with an attorney to defend himself.

²⁹ Article 21 of the Constitution of India

³⁰ Universal Declaration of Human Rights, 1948

3.6 Fundamental Rights

Fundamental rights form the core of human rights in India. They are the basic rights of the citizens which cannot be taken away under any circumstances. The law of the country also guarantees some of these rights to the prisoners too like Article 14, 19, 21. However, it cannot impose the fundamental rights in its full panoply to the advantage of the prisoners. Giving prisoners Right to Fair procedure forms the soul of Article 21. Levying reasonableness in any restriction is the essence of Article 19(5) and sweeping discretion degenerating into arbitrary discrimination is anathema for Article 14.

3.7 Human Rights in India

Human rights are those rights that are fundamental to the human life. Human rights are rights to certain claims and freedoms for all human beings all over the world. These rights, besides being fundamental and universal in character, assumed international dimension. These rights ensure to make man free. Universalization of Rights without any distinction of any kind is a feature of human rights. These rights recognize the basic human needs and demands. Every country should ensure human rights to its citizens. The Human rights should find its place in the Constitution of every country.

Human rights in India is an issue complicated by the country's large size, its tremendous diversity, its status as a developing country and a sovereign, secular, democratic republic. The Constitution of India provides for Fundamental rights, which include freedom of religion. Clauses also provide for freedom of speech, as well as separation of executive and judiciary and freedom of movement within the country and abroad. The country also has an independent judiciary and well as bodies to look into issues of human rights.

The 2016 report of Human Rights Watch³¹ accepts the above-mentioned

³¹ <https://www.hrw.org/publications>

faculties but goes to state that India has serious human rights concerns. Civil society groups face harassment and government critics face intimidation and lawsuits. Free speech has come under attack both from the state and by interest groups.

The problem about human rights varies from society to society in India. The entitlement of civil, political, economic, and social right of individuals varies from country to country according to the laws governing these rights of the citizens of that country.

It is the duty of every nation to create such laws and conditions that protect the basic Human rights of its citizens. India being a democratic country provides such rights to its citizens and allows them certain rights including the freedom of expression. These rights, which are called 'Fundamental Rights' form an important part of the Constitution of India.

These rights are fundamental in three different ways, first, these are basic human rights as human beings and secondly, our Constitution gives us these fundamental rights and guarantees because these rights are necessary for the citizens of our country to act properly and live in a democratic manner and thirdly, the procedure for the effective enforcement of these guaranteed Fundamental Rights has been mentioned in the constitution itself. Every citizen of India has the right to move to a court of law if he/she is denied these rights. The Constitution is there to safeguard her/his rights.

The Constitution guarantees to us six Fundamental Rights. The six Fundamental Rights as mentioned in our Constitution are, The Right to Equality³², The Right to freedom³³, The Right against Exploitation³⁴, The Right to Freedom of Religion³⁵, The Cultural and Educational Rights³⁶ and The Right to Constitutional

³² Article 14-18 of The Constitution of India, 1950.

³³ Article 19-22 of The Constitution of India, 1950.

³⁴ Article 23-24 of The Constitution of India, 1950

³⁵ Article 25-28 of The Constitution of India, 1950

Remedies ³⁷.

3.7.1 Right to Privacy

The Right to Privacy is one of the very significant rights available to the citizens of India. They form an intrinsic part of Right to Life and Personal Liberty under Article 21 of the Indian Constitution. They have also been made applicable to the prisoners and convicts through various judgements passed by courts over the years.

In India, however, this right is perhaps the most violated. The right to privacy in respect to search and seizure was first raised in the 1950s, where the apex court ruled that search and seizure cannot be seen as violative of Article 19 (1)(f) of the Indian constitution and a mere search by itself does not nullify or harm an individual's right to property. Even if search or seizure affected such right then its effect is temporary and is to be construed as a reasonable restriction on the rights of individuals.

The concept of right to privacy has evolved over the years. In recent time, its scope has been widened to benefit people in the most possible way. A distinction between physical privacy and mental privacy is also being drawn.

In the case of *Rohit Shekha v. N.D Tiwari*, the court held that nobody should be compelled to be subjected to any techniques in question at any circumstances, even when it is in the context of an investigation in a criminal case. Proceeding with such acts would result in an unwarranted intrusion into an individual's personal liberty. It is equally important that adequate space is provided for the voluntary administration of the impugned techniques in the context of criminal justice on conditions that certain safeguards are in place. The court also did a brief examination of the jurisprudence

³⁶ Article 29-30 of The Constitution of India, 1950

³⁷ Article 32 of The Constitution of India, 1950

that permits compulsory testing or involuntary drawing of samples and stated that judicial precedents in such cases emerge in criminal prosecution related to serious offences like those involving narcotic substances, manslaughter, murder or sexual offences. In all of these cases, the court has carefully weighed the interest of justice in the context of public policy and privacy of an individual while examining the permissibility of compulsory testing.

3.7.2 Right to Privacy of prisoners and their spouses

In *Rahmath Nisha v. Additional Director General of Prisoner and Others*, the accused was given 10 days leave to visit his wife. But, due to serious illness, his wife was transferred to the hospital in ICU by the time he reached home. However, the police escort that accompanied the accused refused to let him visit the hospital citing that permission has been granted to visit home only. The Madras Court held that the prisoner should be allowed to visit his wife in hospital and that the meeting between him and his wife should not be monitored.

The court stated that when a prisoner is united with his wife, he might like to hold her the hands of his partner. It's natural that his emotions would find physical expression. Therefore, the right to privacy and dignity of the prisoners should be scrupulously safeguarded. It is also important that the conversation between the prisoner and his partner or spouse should go unmonitored.

3.7.3 Right against solitary confinement and bar fetters

Solitary confinement is a kind of imprisonment in which the convict or prisoner is kept in a different cell with little or no contact from other inmates. In addition to that strict monitoring is done on the habits and behaviour of the person. The idea behind solitary confinement is to teach notorious convicts discipline and

provide safety to other inmates from them.

The validity of solitary confinement was considered by the Supreme Court in the famous case of *Sunil Batra v. Delhi Administration* wherein the honourable court highlighted that imposition of solitary confinement is only to be made in exceptional cases where the prisoner is of such violent or dangerous nature that his segregation becomes an utmost necessity. The court also observed that keeping prisoners in bar fetters day and night reduces them to the level of an animal and deteriorates their mental health. The courts, therefore, have presented strong resentment against solitary and stated its confinement as highly dehumanizing and derogatory in nature. They have also held such confinements to be against the spirit of the Constitution of India.

3.7.4 Right to Life and personal liberty

The Hon'ble Supreme Court has repeatedly applied the rule of Article 21 in numerous cases and asserted its significance in several other. It has expanded the connotation of the word life given by Field J. in the much-known case of *Kharak Singh v. State of UP*. In the said case, the court ruled that the term "life" connotes more than mere existence like that of an animal. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye or the destruction of any other organ of the body through which the soul communicates with the other world. It can be said that right to live is not restricted to a mere animal existence. It connotes something more than just the physical survival of a being.

3.7.5 Right to live with human dignity

The right of a human being to live with dignity is protected by the constitution. This right is also given to the prisoners as their mere conviction does not render them inhuman. This right forms a significant part of right to life guaranteed under the constitution of India. The idea behind is that every person's life is precious

and irrespective of the circumstances, he should be given a sense of dignity to help him continue living. The courts have enlarged the scope of Article 21 to include this right. Its occurrence could be noted in many cases. Some of them are enumerated below:

In the case of *Maneka Gandhi v. Union of India*, the apex court propounded a new dimension of Article 21 wherein it stated that “right to life or live” does not confine itself to mere physical existence but also includes right to live with human dignity.

Further, in *Francis Coralie v. Delhi Administration*, while expanding the aforementioned concept, the court held that the word ‘life’ includes everything that it goes along with it, namely the bare necessities of the life such as adequate nutrition and food, clothing and shelter over one’s head, facilities for reading, writing (education), ability and opportunity of expressing oneself in diverse forms, moving freely, mixing and commingling with fellow human beings.

Thereafter, the apex court in *Pandit Parmanand v. Union of India* expanded the concept of life and ruled that the word “life” is not just limited up to the period of death but even after that. Therefore, when a person was executed with the death penalty (as in this case) but the dead body was not lowered even after half an hour, in spite of the fact that the doctor already gave the death certificate, the court held that it amounted to a violation of Right to life under Article 21. It can be concluded that Right to live continues even after death and includes in its ambit the right to proper handling of the dead body or right to a decent burial.

The Supreme Court in *State of Andhra Pradesh v. Challa Ramakrishna Reddy* held that the right to life is one of the basic human rights which is guaranteed to every person by Article 21. It is so fundamental that even the State has no authority to violate it. A prisoner does not cease to be a human being even when lodged in jail. He continues to be a human and therefore is entitled to enjoy all the fundamental rights

including the right to life.

3.7.6 Right to health and medical treatment

Right to health is an important right. The Constitution of India incorporates provisions guaranteeing every individual the right to the highest attainable standard of physical and mental health. In a series of judgements, the highest court of the land has held that the right to health care is a crucial element of Article 21. Article 21 of the Constitution imposes an obligation on the State to safeguard an individual's life.

In the case of *Parmanand Katara v. Union of India*, the court held that a doctor working at a Government hospital is bound by duty to extend any type of medical assistance for preserving life. In fact, every doctor has a professional obligation of extending his services to the patients (be it anyone) with due diligence and expertise in order to protect his life. Therefore, any legal body cannot intervene to cause a delay in the discharge of obligations and duties cast upon the members of the medical profession. The court also reiterated in *Paschim Bengal Khet Mazdoor Samiti v. State of West Bengal*, that a government hospital cannot deny any patient the right to treatment on the grounds of non-availability of beds. Doing so would amount to a breach of Article 21 that highlights the 'right to life'. This article imposes strict obligations on the State to make available the necessary medical assistance to an aggrieved person as protection of human life is of utmost significance.

The Gujarat High Court in *Rasikbhai Ramsing Rana v. State of Gujarat* held that the right to medical treatment is one of the basic human rights that should be made available to every person. The court further guided the concerned jail authorities to take proper mental and physical health care of the prisoners which were suffering from any type of disease.

The same court, in a suo moto writ, issued guidelines to the Central government to equip all Central and District jails with facilities such as ICCU, pathology lab, proficient doctors, sufficient staff including nurses and latest

instruments for medical treatment.

3.7.7 Right to a speedy trial

It is very well said that justice delayed is justice denied. Every prisoner has a right to a speedy trial irrespective of the crime he is convicted of. Speedy trial is considered as an integral part of the criminal justice delivery system. Once a person is accused, he must be subject to speedy trials so as to punish him from the crime he committed or absolve him from it, if not proven guilty. No one should be subject to long, pending and tiresome trials as it not only violates the rights of an individual but is considered to be the denial of justice altogether. The right to a speedy trial, therefore, has become a universally recognized human right. Moreover, the right to a speedy trial is also contained under Section 309 of the Code of Criminal Procedure. If this provision of the Cr.PC is followed and implemented in its true spirit, all the grievances and queries of prisoners could be resolved.

3.8 Human Rights of Prisoners in India

The practice of torture in prison has been widespread and predominant in India since time immemorial. Unchallenged and unrestricted, it has become a 'normal' and 'legitimate' practice all over. In the name of investigating crimes, extracting confessions and punishing individuals by the law enforcement agencies, torture is inflicted not only upon the accused but also on bona fide petitioners, complainants or informants amounting to cruel, inhuman, barbaric and degrading treatment, grossly derogatory to the individual dignity of the human person. Torture is also inflicted on women in the form of custodial rape, molestation and other forms of sexual torture.

The Hon'ble Supreme Court of India in the case of Joginder Kumar v. State of UP and Ors. said that the 'the quality of a nation's civilization can be largely measured by the methods it uses in the enforcement of criminal law. The horizon of human rights is expanding. At the same the time, the crime rate is also increasing. the

court has been receiving complaints about violation of human rights because of indiscriminate arrests. A realistic approach should be made in this direction. The law of arrest is one of balancing individual rights, liberties and privileges, on one hand and individual duties obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first -- the criminal or society, the law violator or the law abider. ³⁸

Article 21 of the Constitution guarantees the right of personal liberty and thereby prohibits any inhuman, cruel or degrading treatment to any person whether he is a national or foreigner. No person shall be deprived of his or personal liberty except according to procedure established by law. This Article also protects people for being retrospectively punished for activities which were given a status of crime after they committed the act. ³⁹

The Hon'ble Supreme Court of India had occasion to deal with the rights of prisoners in the case of *Sunil Batra v. Delhi Administration*⁴⁰. In that decision, this Court gave a very obvious answer to the question whether prisoners are persons and whether they are entitled to fundamental rights while in custody, although there may be a shrinkage in the fundamental rights. This is what this Court had to say in this regard:

“Are ‘prisoners’ persons? Yes, of course. To answer in the negative is to convict the nation and the Constitution of dehumanization and to repudiate the world legal order, which now recognizes rights of prisoners in the International Covenant on Prisoners’ Rights to which India has signed assent.

In Batra case, the Hon'ble Court has rejected the hands-off doctrine and it has

³⁸ (1994) 4 SCC 260

³⁹ Selvi v. State of Karnataka; (2010) 7 SCC 263

⁴⁰ (1980) 3 SCC 488 W.P. (C) No. 406

been ruled that fundamental rights do not flee the person as he enters the prison although they may suffer shrinkage necessitated by incarceration.”

To handcuff is to hoop harshly and to punish humiliatingly. The minimum freedom of movement, under which a detainee is entitled to under Article 19⁴¹, cannot be cut down by the application of handcuffs. Handcuffs must be the last resort as there are other ways for ensuring security.

Article 14⁴²; gives the right to equality and equal protection also to the prisoners. If any excesses committed on a prisoner, by the police is considered as a violation of rights and it warrants the attention of the legislature and judiciary. The right to meet friends, relatives and lawyers are provided under article 14 and article 21. Such rights are pretty reasonable and non-arbitrary. Even prison regulations recognize the right of prisoners to have interview with a legal adviser necessary, in a reasonable manner. Right to free legal aid is also provided under this article 14 and 21⁴³.

3.8.1 Right to legal aid

Legal assistance plays a significant part in the life of an accused awaiting trial or any prisoner or convicts, for that matter. The 42nd Amendment to the Constitution (1976) of India incorporated services of free legal aid as Article 39A under the head Directive Principles of State Policy. Though this article is part of the directive principles of state policy and hence, not enforceable, the principles underlined therein are of utmost importance. It is incumbent upon the State to keep this article in mind while framing rules and regulations for prisoners, criminals or convicts.

The parliament has enacted the Legal Services Authorities Act in 1987

⁴¹ The Constitution of India, 1950

⁴² Ibid

⁴³ The Constitution of India, 1950

wherein it guaranteed legal Aid. It also directed various state governments to set up Legal Aid and Advice Boards, and frame schemes aiming to provide Free Legal Aid. This was done so that the Constitutional mandate of Article 39-A could be given an effect. If we look into the jurisprudence of Indian Human Rights, it can be said that legal aid is of wider dimension and it is available in civil, administrative or revenue cases other than just criminal cases.

In the case of *Madhav Hayawadanrao Hoskot v. the State Of Maharashtra*, the three-judge bench of the Supreme Court of India read Articles 21 and Articles 39-A along with Article 142 and Section 304 of CrPC together emphasized that the government of the country is under a duty to aid and provide legal services to the convicted or accused individual.

3.8.2 Right against Inhuman treatment

It is the right of every prisoner to be protected against any type of cruel or inhuman treatment. The Supreme Court of India in several cases has highlighted the harsh treatments faced by prisoners and directed state and prison authorities to check and regulate the same. The court also prohibited the use of instruments such as handcuffs, chains, irons and straitjackets in punishing the prisoners. Some other instruments of restraint are permissible but only under certain circumstances. These circumstances are mentioned hereunder:

- Using instruments of restraint for precaution during the transfer of prisoners against escape, conditional upon the fact that it shall be removed while producing the prisoner before an administrative or judicial body.
- If the medical officer permits the same on certain medical grounds;
- In cases wherein it is difficult to prevent a prisoner from self-harm or damaging the property around, the director in consultation with the medical officer and after reporting the higher administrative authority may order the prisoner to be put in instruments of restraint.

- The patterns and manner of use of instruments of restraint shall be decided by the central prison administration. Such instruments must not be applied for any longer time than is strictly necessary.

3.8.3 Right to Education

Right to education is a Fundamental Right and therefore it should be given to every citizen of the country. Along with education, it is compulsory that the right type of education should be imparted. In *Mohammad Giasuddin v. State of AP*, the court tried to regulate the manner of work and education provided to the inmates of the jail. It directed the state government to look into the nature of work and education given to the prisoners and check that the work provided is not of a monotonous, mechanical, intellectual or like type mixed with a little manual labour.... The court further stated the facilities of liaison through correspondence courses must also be given to the prisoners who are interested in doing higher or advanced studies. Moreover, basic learning such as tailoring, embroidery, doll-making should be extended to the women prisoners. In addition to that, the well-educated prisoners should be given the opportunities to engage in some sort of mental-cum-manual productive work.

3.8.4 Right to receive books/magazines

In *George Fernandes v. State*, the court took cognizance of the case wherein the Superintendent of the Nagpur Central Jail had fixed the number of books to be allowed to the inmates to be 12. However, the power to take such decisions was not vested in him, though being a superintendent he could disallow a book terming it as unsuitable. This was stated in consonance with the Bombay Conditions of Detention Order, 1951.

3.8.5 Right to publication

The Supreme court held in a case wherein the prisoner was not allowed to read a scientific book that there was nothing in the Bombay Detention Order, 1951

that prohibits a prisoner from writing or publishing a book. It stated that the book prisoner wanted to read was merely a work of science, (Inside the Atom) and it could not be regarded as detrimental to public interest or safety as provided under the Defence of India Rules, 1962.

Further, in *State of Maharashtra v. Prabhakar Pandurang Sanzgir* wherein an accused detained under preventive detention was not allowed to hand over his unpublished book to his wife for publication, the court termed such an act as violative of Article 21.

In yet another case of *Rajgopal v. State of Tamil Nadu*, the Supreme Court held that there was no authority in law that could priorly deny the permission to publish the autobiography of Auto Shanker (prisoner) under the fear or impression that it would cause defamation of prominent IAS and IPS officers. The concerned officials can take action after the publication and only if the publications are false.

3.9 Role Played By The Indian Judiciary

The Indian Supreme Court has been active in responding to human right violations in Indian jails and has, in the process, recognized a number of rights of prisoners by interpreting Articles 21, 19, 22, 32, 37 and 39-A of the Constitution in a positive and humane way.

Justice V.R. Krishna Iyer in the case of *State of M.P. v Shyamsundar Trivedi*⁴⁴ said that Convicts are not by mere reason of the conviction denuded of all the fundamental rights which they otherwise possess

“Like you and me, prisoners are also human beings. Hence, all such rights except those that are taken away in the legitimate process of incarceration still remain with the prisoner. These include rights that are related to the protection of basic human dignity as well as those for the development of the prisoner

⁴⁴ (1994) 4 SCC 395

into a better human being.”⁴⁵

If a person commits any crime, it does not mean that by committing a crime, he/she ceases to be a human being and that he/she can be deprived of those aspects of life which constitute human dignity.

Disturbing conditions of the prison and violation of the basic human rights such as custodial deaths, physical violence/torture, police excess, degrading treatment, custodial rape, poor quality of food, lack of water supply, poor health system support, not producing the prisoners to the court, unjustified prolonged incarceration, forced labor and other problems observed by the apex court have led to judicial activism.⁴⁶ Overcrowded prisons, prolonged detention of under trial prisoners, unsatisfactory living condition and allegations of indifferent and even inhuman behavior by prison staff has repeatedly attracted the attention of critics over the years. Unfortunately, little has changed. There have been no worthwhile reforms affecting the basic issues of relevance to prison administration in India. – (Justice A N Mulla Committee, 1980-83).

3.9 Issues of concern regarding prisoners in India

The Hon’ble Supreme Court Of India In The Case Of *Rama Murthy V State Of Karnataka*⁴⁷ Specified 9 Problems That The Indian Prisons Are Afflicted With. Those Being:

- 80% prisoners are under trials
- Delay in trial.
- Even though bail is granted, prisoners are not released.
- Lack or insufficient provision of medical aid to prisoners
- Callous and insensitive attitude of jail authorities

⁴⁵ Charles Shobraj vs. Superintendent, 1978

⁴⁶ NHRC, 1993

⁴⁷ (1997) 2 SCC 642

- Punishment carried out by jail authorities not coherent with punishment given by court.
- Harsh mental and physical torture
- Lack of proper legal aid
- Corruption and other malpractices.

3.10 Solution to those problems

A sentence of imprisonment constitutes only a deprivation of the basic right to liberty. It does not entail the restriction of other human rights, with the exception of those which are naturally restricted by the very fact of being in prison. Prison reforms are necessary to ensure that this principle is respected, the human rights of prisoners protected and their prospects for social reintegration increased, in compliance with relevant international standards and norms.

In order for a prison system to be managed in a fair and humane manner, national legislation, policies, and practices must be guided by the international standards developed to protect the human rights of prisoners. Prison torture in all forms is banned by the 1948 Universal Declaration of Human Rights (UDHR), the 1949 Geneva Conventions (signed 1949), the American Convention on Human Rights (signed 1977), the International Covenant on Civil and Political Rights (signed 1977), and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (signed 1988).

Prison authorities have a responsibility to ensure that the supervision and treatment of prisoners is in line with the rule of law, with respect to individuals' human rights, and that the period of imprisonment is used to prepare individuals for life outside the prison following release. But often national legislation and rules relating to the management of prisons are outdated and in need of reform.

3.11 Prison Welfare Schemes

Prison welfare schemes should be introduced in prisons all around the world so that some productive work is done by the prisoners so that they do not indulge in other nefarious activities while they are in jail and utilize their time in doing some erstwhile activity. The jail authorities help the prisoners or inmates, as referred by jail authorities, to conduct themselves in a better way which helps them lead a better life after their release. The atmosphere provided by the jail authorities compels the prisoners to work which diverts their mind from other mischievous things.

The prisoners can also participate in games and sports activities within the. For example, sports fest is organized during winter sports festivals, which are popularly known in the jail as Tihar Olympics. Drug de-addiction centers can be opened up in every prison so that the drug abuse and drug addiction of the inmates can be curbed so that they can live a better life after prison.

Prisoners can be made to work in various factories so they understand the importance of work and inculcate these principles in their life outside prison too.

Recreational facilities can be given to the inmates such as vocational training, education both for adults and formal education, computer courses, games and competitions are held every now and then, also yoga and meditation, creative art therapy, painting etc. These recreational facilities help the inmates to change their behavior and become good citizens.

Job Placement should be provided to the prisoners so that they can earn their dignity back in the society which they lost when they were arrested.

The inmates can not only prepare eatable goods but also shirts, carpets, khadi clothes, etc. Other than this a few inmates can be allocated creative work like making furniture, showpieces like small temples, flower vases, braille books for the blind, wooden chairs, tables etc. These goods can not only be sold but can also be used by the inmates.

Such types of programs should not be optional and this should be strictly enforced by the jail authorities. Every inmate has to be involved in it. This motivates the inmates to live a better life after the end of their term and also these programs help in bringing out gems from people who had sunk into the deep coal mine of crime.

3.12 Healthcare

Equivalence of healthcare and the right to health is a principle that applies to all prisoners, who are entitled to receive the same quality of medical care that is available in the community. However, this right is rarely realized in prisons, where usually healthcare services are extremely inadequate. Prison health services are almost always severely under-funded and understaffed and sometimes non-existent.

The right to health includes not only the access to preventive, curative, reproductive, palliative and supportive health care but also the access to the underlying determinants of health, which include: safe drinking water and adequate sanitation; safe food; adequate nutrition and housing; safe health and dental services; healthy working and environmental conditions; health-related education and information and gender equality.

Improved prison management and prison conditions are fundamental to developing a sustainable health strategy in prisons. In addition, prison health is an integral part of public health, and improving prison health is crucial for the success of public health policies.

Thus, we should, in confluence with advocates and social activists working all across India aim at getting prisoners released, especially indigent ones, who are or have been undergoing trials and have been languishing in the prison for a long period of time. For this purpose, we can help the poor prisoners in economic and social ways by filing bail applications, filing for surety bonds and in cases where the indigent prisoners are unable to pay for the same, by providing for monetary assistance in collaboration with NGO initiatives all over India.

3.13 Conclusion

The prisoners who are in prison for long periods of time need constant care and support because they do not lose their humanity by committing a crime. They are endowed with and deserve an equivalent amount of human dignity and respect. The prisoners need to be visited regularly to ease them of their rigorous prison life and need to be talked to about the problems that they are facing. Also educational, rehabilitation and mental health counselling can be provided to the prisoners.

The prison is supposed to be for a reformatory purpose. However, the entire purpose fails when the prisoners are denied the very rights that are fundamental to their being a human being. Thus, we should take steps to ensure that their basic human rights are not infringed and that they live with dignity, because, after-all, they are humans too. Prisoners do not cease to be human beings when put behind bars. The Supreme Court and many other courts of India have reiterated this position in several cases so that prisoners do not become a victim themselves. And are provided with a proper rehabilitative environment to help them improve and become better beings. It is incumbent upon the Central and State governments to not only provide the prisoners with humane conditions for a living but also educate them about their rights so that it is not abused by the powerful inside the prison.

It could be said that the judiciary of the country has played a crucial role in safeguarding the rights of prisoners whenever the legislative and executive have erred. It has acted as the saviour of the convicts and upheld their fundamental rights time and time again. It has thoroughly exercised its powers through judicial activism and has repeatedly devised new remedies and tools to protect the human's right to life and personal liberty. However, much still needs to be done. In this regard, the wide circulation of human rights' available to prisoners, vast publicity of prisoners right in media and corner to corner surveillance in prisons could be some of the keys for upholding the rights of prisoners and ensuring their safe space in the prison.

CHAPTER 4

RIGHT TO LIVELIHOOD OF A PRISONER

4.1 Introduction

Judiciary in every country has an obligation and a Constitutional role to protect Human Rights of citizens. As per the mandate of the Constitution of India, this function is assigned to the superior judiciary namely the Supreme Court of India and High courts. The Supreme Court of India is perhaps one of the most active courts when it comes into the matter of protection of Human Rights. It has great reputation of independence and credibility. The independent judicial system stems from the notion of the separation of powers where the executive, legislature and judiciary form three branches of the government. This separation and consequent independence is key to the judiciary's effective in upholding the rule of law and human rights.

Since every society has a judicial system for the protection of its law-abiding members, it has to make provisions of prisons for the law breakers. But it doesn't mean that the prisoners have no rights. The prisoners also have their rights. The Supreme Court of India, by interpreting Article 21 of the Constitution, has developed human rights jurisprudence for the preservation and protection of prisoner's rights to maintain human dignity. Any violation of this right attracts the provisions of Article 14 of the Constitution, which enshrines right to equality and equal protection of law. In addition to this, the question of cruelty to prisoners is also dealt with, specifically by the Prison Act, 1894 and the Criminal Procedure Code (CRPC). Any excess committed on a prisoner by the police authorities not only attracts the attention of the

legislature but also of the judiciary. The Indian judiciary, particularly the Supreme Court, in the recent past, has been very vigilant against violations of the human rights of the prisoners. The Supreme Court and the High Courts have commented upon the deplorable conditions prevailing inside the prisons, resulting in violation of prisoner's rights. Prisoners' rights have become an important item in the agenda for prison reforms. The need for prison reforms has come into focus during the last three to four decades.

The Supreme Court of India in the recent past has been very vigilant against encroachments upon the Human Rights of the prisoners. Article 21 of the Constitution of India provides that 'No person shall be deprived of his life and Personal Liberty except according to procedure established by law'. The rights to life and Personal Liberty is the back bone of the Human Rights in India. Through its positive approach and Activism, the Indian judiciary has served as an institution for providing effective remedy against the violations of Human Rights. By giving a liberal and comprehensive meaning to "life and personal liberty," the courts have formulated and have established plethora of rights. The court gave a very narrow and concrete meaning to the Fundamental Rights enshrined in Article 21. In A.K.Gopalan's case, the court had taken the view that each Article dealt with separate rights and there was no relation with each other i.e. they were mutually exclusive. But this view has been held to be wrong in Maneka Gandhi case and held that they are not mutually exclusive but form a single scheme in the Constitution, that they are all parts of an integrated scheme in the Constitution. In the instant case, the court stated that 'the ambit of Personal Liberty by Article 21 of the Constitution is wide and comprehensive. It embraces both substantive rights to Personal Liberty and the procedure prescribed for their deprivation' and also opined that the procedures prescribed by law must be fair, just and reasonable.

Article 21 of the Constitution of India, 1950 provides that, 'No person shall be deprived of his life or personal liberty except according to procedure established by law.' 'Life' in Article 21 of the Constitution is not merely the physical act of

breathing. It does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to live with human dignity, right to livelihood, right to health, right to pollution free air, etc.

4.2 Right To Livelihood

To begin with, the Supreme Court took the view that the right to life in Art. 21 would not include the right to livelihood. In *Re Sant Ram*⁴⁸, a case which arose before Maneka Gandhi case, where the Supreme Court ruled that the right to livelihood would not fall within the expression 'life' in Article 21. The court said curtly:

“The right to livelihood would be included in the freedoms enumerated in Art.19, or even in Art.16, in a limited sense. But the language of Art.21 cannot be pressed into aid of the argument that the word 'life' in Art. 21 includes 'livelihood' also.”

But then the view underwent a change. With the definition of the word “life” in Article 21 in a broad and expansive manner, the court in *Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nandkarni*⁴⁹, came to hold that ‘the right to life’ guaranteed by Article 21 includes ‘the right to livelihood’. The Supreme Court in *Olga Tellis v. Bombay Municipal Corporation*⁵⁰, popularly known as the ‘Pavement Dwellers Case’ a five-judge bench of the Court now implied that ‘right to livelihood’ is borne out of the ‘right to life’, as no person can live without the means of living, that is, the means of Livelihood. That the court, in this case, observed that:

“The sweep of the right to life conferred by Art.21 is wide and far-reaching. It does not mean, merely that life cannot be extinguished or taken away as, for

⁴⁸ AIR 1960 SC 932

⁴⁹ AIR 1983 SC 109; (1983) 1 SCC 124

⁵⁰ AIR 1986 SC 180

example, by the imposition and execution of death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of the right to life is the right to livelihood because no person can live without the means of livelihood.”

If the right to livelihood is not treated as a part and parcel of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation ⁵¹.

In the instant case, the court further opined:

“The state may not by affirmative action, be compelled to provide adequate means of livelihood or work to the citizens. But, any person who is deprived of his right to livelihood except according to just and fair procedure established by law can challenge the deprivation as offending the right to life conferred in Article 21.”

Emphasizing upon the close relationship of life and livelihood, the court stated:

“That, which alone makes it impossible to live, leave aside what makes life livable, must be deemed to be an integral part of the right to life. Deprive a person from his right to livelihood and you shall have deprived him of his life⁵².”

Art. 21 does not place an absolute embargo on the deprivation of life or personal liberty and for that matter on right to livelihood. What Art. 21 insists is that such deprivation ought to be according to procedure established by law which must be fair, just and reasonable. Therefore anyone who is deprived of the right to livelihood without a just and fair procedure established by law can challenge such deprivation as

⁵¹ Ibid

⁵² <http://rshrc.nic.in/07%20Human%20Right%20Article-21.pdf>

being against Art. 21 and get it declared void ⁵³.

In *D.T.C. v. D.T.C. Mazdoor Congress*⁵⁴, a regulation conferring power on the authority to terminate the services of a permanent and confirm employee by issuing a noticing without assigning him any reasons and without giving him a hearing has been held to be a wholly arbitrary and violative of Art. 21.

In *M. Paul Anthony v. Bihar Gold Mines Ltd*⁵⁵, it was held that when a government servant or one in a public undertaking is suspended pending a departmental disciplinary inquiry against him, subsistence allowance must be paid to him. The Court has emphasized that a government servant does not his right to life and other fundamental rights.

However, if a person is deprived of such a right according to procedure established by law which must be fair, just and reasonable and which is in the larger interest of people, the plea of deprivation of the right to livelihood under Art. 21 is unsustainable. In, *Chameli Singh v. State of Uttar Pradesh*⁵⁶, it was held by the Hon'ble Supreme Court that when the land of a landowner was acquired by state in accordance with the procedure laid down in the relevant law of acquisition the right to livelihood of such a landowner even though adversely affected, his right to livelihood is not violated.

The Court opined that the state acquires land in exercise of its power of eminent domain for a public purpose. The landowner is paid compensation in lieu of land, and therefore, the plea of deprivation of the right to livelihood under Art. 21 is unsustainable.

In *M. J. Sivani v. State of Karnataka & Ors*⁵⁷, the Supreme Court held that

⁵³ M.P. Jain, Indian Constitutional Law, Wadhwa, 5th Ed. (2003), p. 1315

⁵⁴ AIR 1991 SC 101

⁵⁵ AIR 1999 SC 1416 : (1999) 3 SCC 679

⁵⁶ AIR 1996 SC 1051 : (1996) 2 SCC 549

⁵⁷ AIR 1995 SC 1770, JT 1995 (4) SC 141, (1995) 2 MLJ 38 SC

right to life under Article 21 does protect livelihood but added a rider that its deprivation cannot be extended too far or projected or stretched to the avocation, business or trade injurious to public interest or has insidious effect on public moral or public order. It was, therefore, held that regulation of video games or prohibition of some video games of pure chance or mixed chance and skill are not violative of Article 21 nor is the procedure unreasonable, unfair, or unjust.

4.3 HIV Not A Sound Ground For Termination

In *MX of Bombay Indian Inhabitants v. M/s. ZY*⁵⁸, it was held that a person tested positive for HIV could not be rendered “medically unfit” solely on that ground so as to deny him the employment. The right to life includes the right to livelihood. Therefore, the right to livelihood cannot hang on to the fancies of the individuals in authority. Even though the petitioner might have been a nuisance to others and conducted themselves either in a disorderly way or unbecoming on their profession but, that in itself, it is not sufficient for the executive to take away their source of livelihood by executive fiat.

4.4 Right To Work Not A Fundamental Right Under Art.21

In *Sodan Singh v. New Delhi Municipal Committee*⁵⁹, the five-judge bench of the Supreme Court distinguished the concept of life and liberty within Art.21 from the right to carry on any trade or business, a fundamental right conferred by Art. 19(1)(g) and held the right to carry on trade or business is not included in the concept of life and personal liberty. Article 21 is not attracted in the case of trade and business.

The petitioners, hawkers doing business off the paved roads in Delhi, had claimed that the refusal by the Municipal authorities to them to carry on the business of their livelihood amounted to the violation of their right under Article 21 of the

⁵⁸ AIR 1997 Bom. 406

⁵⁹ AIR 1989 SC 1988

Constitution. The court opined that while hawkers have a fundamental right under Article 19(1) (g) to carry on trade or business of their choice; they have no right to do so in a particular place. They cannot be permitted to carry on their trade on every road in the city. If the road is not wide enough to be conveniently accommodating the traffic on it, no hawking may be permitted at all or may be permitted once a week.

In *L.I.C. of India v. Consumer Education and Research Centre*⁶⁰, it was further held that right to life and livelihood included right to life insurance policies of LIC of India, but that it must be within the paying capacity and means of the insured.

In *Essar Oil Ltd. v. Halar Utkarsh Samiti*⁶¹, the Supreme Court said that there was a strong link between Art.21 and Right to know, particularly where secret government decisions may affect health, life, and livelihood.

4.5 Conclusion

The Supreme Court has taken the view that this article read as a whole is concerned with the fullest development of an individual and ensuring his dignity through the rule of law. Every procedure must seem to be ‘reasonable, fair and just.’ The right to life and personal liberty has been interpreted widely to include the right to livelihood, health, education, environment and all those matters that contributed to life with dignity.

The test of procedural fairness has been deemed to be one that is commensurate to protecting such rights. Thus, where workers have been deemed to have the right to public employment and its concomitant right to livelihood, a hire-fire clause in favor of the State is not reasonable, fair and just even though the State cannot affirmatively provide a livelihood for all.

⁶⁰ AIR (1995)1811 :(1995) SCC (5) 482

⁶¹ [2004] 2 S.C.C. 392

CHAPTER 5

JUDICIAL APPROACH TOWARDS THE PRISONERS HUMAN RIGHTS

Legal executive in each nation has a commitment and a Constitutional job to ensure Human Rights of residents. According to the command of the Constitution of India, this capacity is doled out to the unrivaled legal executive in particular the Supreme Court of India and High courts. The Supreme Court of India is maybe a standout amongst the most dynamic courts when it comes into the matter of insurance of Human Rights. It has extraordinary notoriety of autonomy and believability. The preface of the Constitution of India epitomizes the goals of the Constitution-producers to manufacture another Socio-Economic request where there will be Social, Economic and Political Justice for everybody and uniformity of status and open door for all. This essential target of the Constitution commands each organ of the express, the official, the assembly and the legal executive working agreeably to endeavor to understand the goals concretized in the Fundamental Rights and Directive Principles of State Policy.

The legal executive should in this way embrace an inventive and purposive methodology in the understanding of Fundamental Rights and Directive Principles

of State Policy encapsulated in the Constitution with the end goal of propelling Human Rights law. The advancement and insurance of Human Rights is relies on the solid and free legal executive. The fundamental investigation here would be given wide inclusion to the utilitarian part of the legal executive and perceive how far the Apex legal executive in India has made progress in releasing the overwhelming obligation of protecting Human Rights in the light of our Constitutional order. The significant commitments of the legal executive to the Human Rights statute have been two overlap:

- (1) the substantive development of the idea of Human Rights under Article 21 of the Constitution, and
- (2) the procedural advancement of Public Interest Litigation.

5.1 WRIT JURISDICTION OF THE SUPREME COURT AND THE HIGH COURTS

The most critical of the Human Rights is the elite ideal to Constitutional cures under Articles 32 and 226 of the Constitution of India. Those people whose rights have been damaged have ideal to legitimately approach the High Courts and the Supreme Court for legal amendment, redressal of complaints and implementation of Fundamental Rights. In such a case the courts are enabled to issue proper bearings, requests or writs incorporating writs in the idea of Habeas Corpus, Mandamus, Prohibition, Quo-warranto, and Certiorari. By righteousness of Article 32, the Supreme Court of India has extended the ambit of Judicial Review to incorporate audit of every one of those state measures, which either abuse the Fundamental Rights or violative of the Basic Structure of the Constitution. The intensity of Judicial Review practiced by the Supreme Court is proposed to keep each organ of the state inside its cutoff points set somewhere near the Constitution and the laws. It is in exercise of the intensity of Judicial Review that, the Supreme

Court has built up the procedure of Public Interest Litigation.

The privilege to move to the Supreme Court to implement Fundamental Rights is itself a Fundamental Right under Article 32 of the Constitution of India. This healing Fundamental Right has been portrayed as the Cornerstone of the Democratic Edifice as the defender and underwriter of the Fundamentals Rights. It has been portrayed as a vital piece of the Basic Structure of the Constitution. At whatever point, the authoritative or the official choice outcome in a rupture of Fundamental Right, the purview of the Supreme Court can be summoned. Consequently the legitimacy of a law can be tested under Article 32 in the event that it includes an issue of authorization of any Fundamental Rights.

The Right to Constitutional cure under Article 32 can be suspended as gave under Articles 32(4), 358 and 359 during the time of declaration crisis. As needs be, if there should be an occurrence of infringement of Fundamental Rights, the solicitor under Article 32 for implementation of such right can't be moved during the time of crisis. In any case, when the request stops to be usable, the encroachment of rights made either by the authoritative sanctioning or by official activity can be tested by a resident in a courtroom and the equivalent may must be taken a stab at benefits, on the premise that the rights affirmed to have been encroached were in task notwithstanding During the pendency of the presidential declaration of crisis. On the off chance that, at the termination of the presidential request, the parliament passes any enactment to ensure the official move made during the pendency of the presidential request and manage the cost of reimbursement to the execution for that sake, the legitimacy and impact of such enactment may must be painstakingly investigated.

Under Article 226 of the Constitution of India, the High Courts have simultaneous ward with the Supreme Court in the issue allowing alleviation in instances of infringement of the Fundamental Rights, however the High Courts practice purview if there should be an occurrence of some other rights too. The

Supreme Court saw that where the High Court rejected a writ appeal under Article 226 in the wake of hearing the issue on benefits, an ensuing request in the Supreme Court under Article 32 on similar actualities and for a similar alleviation recorded by similar gatherings will be banished by the standard of Res-judicata. The coupling character of the judgment of the court of capable locale is fundamentally, a piece of the standard of law on which, the organization of equity is established⁶². Along these lines the judgment of the High Court under Article 226 go in the wake of hearing the gatherings on benefits must tie the gatherings till put aside in the intrigue as given by the Constitution and can not be allowed to be maintained a strategic distance from by a request under Article 32.

Article 226 considers that despite anything in Article 32, each High Court will have control, all through as far as possible in connection to which it practices locale to issue to any individual or expert including the proper cases, any administration, inside those domains, heading, requests or writs in the idea of Habeas Corpus, Mandamus, Prohibition, Quo-warranto and Certiorari or any of them for the authorization of Fundamental Rights presented by part-III and for some other reason. Subsequently, the ward of a High Court isn't restricted to the insurance of the Fundamental Rights yet in addition of the other legitimate rights as is obvious from the words some other reason. The simultaneous locale presented on High Courts under Article 226 does not infer that an individual who charges the infringement of Fundamental Rights should initially approach the High Court, and he can approach the Supreme Court straightforwardly. This was held in the absolute first case Ramesh Thapper versus Territory of Madras ⁶³.

But in *P.N. Kumar vs. Municipal Corporation of Delhi*⁶⁴ the Incomparable Court communicated the view that a resident should initially go to the High Court and if not fulfilled, he should approach the Supreme Court. Endless occasions of

⁶² *Daryao Vs. State of U.P*, AIR 1961 SC 1457

⁶³ AIR 1950 SC 124

⁶⁴ AIR 1989 SC 1285

Human Rights infringement were brought under the steady gaze of the Supreme Court just as the High Courts. Incomparable Court as the Apex Court conceived new apparatuses and inventive strategies to give powerful redressal.

5.2 RULE OF LOCUS STANDI VIS-À-VIS PUBLIC INTEREST LITIGATION

The traditional standard is that the benefit to move the Supreme Court is only available to those whose Fundamental Rights are infringed. A person who isn't enthused about the point of the solicitation has no Locus Standi to call the domain of the court. Regardless, the Supreme Court has now broadly changed the above standard of Locus Standi. The court at present permits the open exuberant individuals to record a writ offer for the necessity of Constitutional and statutory benefits of some other individual or a class, if that individual or a class is unfit to summon the domain of the High Court in view of poverty or any social and monetary insufficiency. The extending of the regular rule of Locus Standi and the improvement of Public Interest Litigation by the Supreme Court was a colossal stage in the prerequisite of Human Rights.

In *S.P. Gupta versus Association of India and others*, the seven section seat of the Supreme Court held that any person from the open having satisfactory interest can approach the court for executing the Constitutional or real benefits of those, who can't go to the court because of their poverty or various inadequacies. An individual need not go to the court eventually or through a lawyer. He can simply make a letter really to the court whimpering his sufferings. Speaking to the lion's offer Bhagwathi, J. said that any person from the open can approach the court for redressal where, specific legal harm has been caused to a determinate class or assembling of individuals when such a class or individual are unfit to go to the court because of desperation, handicap or a socially or fiscally disadvantageous position. At the time case, the court kept up the benefit of lawyers to be heard on issues affecting the legitimate official. By this judgment Public Interest Litigation transformed into an

amazing weapon for the usage of open commitments where executed inaction or offense realized open solicitation.

While expanding the degree of the Locus Standi, Bhagwathi, J. imparted a note of alarm and viewed anyway we ought to be careful in order to see that the person from the overall public, who systems the court in case of this sort, is acting bonafide and not for individual expansion or private advantage or political motivation or other idea. The court must not empower its method to be abused by legislators and other. Accordingly the court realized that this liberal rule of Locus Standi might be manhandled by close to home stakes.

On account of this wide viewpoint on Locus Standi permitting Public Interest Litigation or Social Action Litigation, the Supreme Court of India has broadly amplified the degree of Article 32 of the Constitution. The Supreme Court has domain to give an appropriate answer for the pestered individuals in various conditions. Affirmation of black-top and ghetto occupants of Bombay, improvement of conditions in detainment facilities, portion of Minimum Wages, protection from Atrocities on Women, Bihar blinding case, Flesh trade guarded home of Agra, Abolition of Bonded Laborers, Protection of Environment and Ecology are the place the court has issued reasonable writs, demands and course dependent on Public Interest Litigation.

The arrangement of Public Interest Litigation has been progressed by this court with the true objective of bringing value inside the straightforward reach of needy individuals and troubled territories of the system⁶⁵. In *Peoples Union for Democratic Rights vs. Union of India*⁶⁶, the Supreme Court held that Public Interest Litigation is brought before the court the court not for purpose of enforcing the right of one individual against another as happened in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that

⁶⁵ *Bihar Legal Support Society vs. Chief Justice of India* (1986) 4 SCC 767

⁶⁶ AIR 1982 SC 1473

violations of Constitutional or legal rights of large number of people who are poor, ignorant or in a socially or economically disadvantageous position should not go unnoticed and unredressed.

In *Bandhu Mukti Morcha vs. Union of India*⁶⁷, the Apex Court held that the intensity of the Supreme Court under Article 32 incorporates the ability to designate Commission for making enquiry into realities identifying with the infringement of Fundamental Rights. The Apex Court additionally held that Public Interest Litigation through a letter ought to be allowed, yet communicated the view that, in engaging such petitions, the court must be careful so that, it probably won't be manhandled. The court recommended that every such letter must be routed to the whole court and not a specific judge and besides it ought to be engaged simply after appropriate confirmation of materials provided by the solicitor. This is known as epistolary ward.

The appearance of Public Interest Litigation (here in after alluded to as PIL) is one of the key segments of the methodology of Legal Activism that is ascribed to the higher legal executive in India. The decision of Bhagwati, J. in *M.C.Mehta versus Association of India*⁶⁸, opened the entryways of the Apex Court of India for the abused, the misused and the down – trodden in the towns of India or in urban ghettos. The poor in India can look for implementation of their Fundamental Rights from the Supreme Court by composing a letter to any make a decision of the court even without the help of an Affidavit. The court has carried lawful guide to the entryway ventures of a great many Indians which the official has not had the option to do regardless of that, a ton of cash is being spent on new lawful guide plans working at the focal and state level.

An investigation of the remarkable instances of the Supreme Court discuss the way that the Indian legal executive has received solid assumptions for Public Interest Litigation and the working of legal executive uncovers that it has practiced its

⁶⁷ AIR 1984 SC 803

⁶⁸ AIR 1987 SC 1087

forces in the most innovative way and contrived new procedures to guarantee the security of Human Rights to the general population. The Supreme Court of India has utilized the procedure of Public Interest Litigations as a guide to authorize the privileges of detainees, specialists, retired people, casualties of natural contamination and others. The Public Interest Litigation assumes a significant job in guaranteeing the Principle of Rule of Law by making the organization is responsible to the general population. The Supreme Court of India in *Narmada Bachao Andolan versus Association of India*⁶⁹ held that Public Interest Litigation was a creation basically to defend and secure the Human Rights of those individuals who were unfit to ensure themselves.

In the ongoing past Public Interest Litigation has gained another measurement. Aside from verifying a few non-reasonable financial rights as ensured under the Fundamentals Rights, the Supreme Court has much of the time turned to a novel element in the field of Human Rights law, for example, compensatory statute, legal law making so as to tie down equity to the down-trodden and furthermore to the persecuted individuals. Open Interest Litigation is a weapon which must be utilized with consideration and alert. The legal executive must be amazingly mindful so as to see that whether it contains open intrigue or private personal stake. It is to be utilized as a compelling weapon in the ordnance of law for conveying social equity to residents. The system of Public Interest Litigation ought not be utilized for suspicious results of evil. It ought to be gone for the redressal of authentic open wrong or open damage and not attention situated or established on close to home feud ⁷⁰.

There have been as of late, progressively occurrences of maltreatment of Public Interest Litigations. In this manner there is a need to re-accentuate the parameters inside which Public Interest Litigation can be turned to by a candidate and engaged by the court. It was basically intended to secure essential Human Rights of week and impeded. Open Interest Litigation has not been moved under mask with

⁶⁹ (2000) 4 SCJ 261

⁷⁰ *Ashok Kumar Pandey vs. State of West Bengal* (2004) 3 SCC 349.

some ulterior thought process or some reason. The courts are currently forcing moderate to substantial expenses in instances of abuse of Public Interest Litigation which ought to be an eye opener for non-genuine Public Interest Litigation mover.

The best commitment of Public Interest Litigation has been to upgrade the responsibility of the administrations towards the Human Rights of poor people. Open Interest Litigation grills power and makes the courts as individuals court. The Supreme Court of India in various significant choices has essentially extended the degree and outskirts of Human Rights. Open intrigue matters today center increasingly more around the interests of the Indian white collar classes as opposed to on the abused classes. PIL looking for request to boycott Quran transmission of T.V. Serials⁷¹, implementation of Consumer Protection Law⁷² removal of corrupt ministers⁷³, invalidation of irregular allotment of petrol pumps⁷⁴ and government accommodation⁷⁵ prosecution of politicians and bureaucrats for accepting bribes and Kickbacks through transactions⁷⁶, better service conditions of the members of lower judiciary⁷⁷ or quashing selection of university teachers⁷⁸ are some blatant examples espousing middle class interests. Some initial successes of PIL, however cannot certify that it shall always remain an effective instrument for protection of Human Rights. The future of PIL will depend upon who uses it and for whom.

5.3 PRISONERS AND THE HUMAN RIGHTS

The Supreme Court of India in the ongoing past has been exceptionally careful against infringements upon the Human Rights of the detainees. Around there

⁷¹ *Odyssey Lok Vidyayana Sanghatan vs. Union of India* (1988) ISCC 168

⁷² *Common Cause vs. union of India* (1996) 2 SCC 752

⁷³ *D.Satyanarayana vs. N.T.Rama Rao* AIR 1988 AP 144

⁷⁴ *Centre for Public Interest Litigation vs. Union of India* (1995) (supp) 3 SCC 382

⁷⁵ *Shiv Sagar twari vs. union of India* (1996) 2 SCC 558

⁷⁶ *Vineet Narayan vs. union of India* (1996) 2 SCC 199

⁷⁷ *All India judges association vs. Union of India* AIR 1992 SC 165

⁷⁸ *Bishwajeet serisha vs. Dibrugarh University* AIR 1991 GAU. 27

an endeavor is made to clarify the a portion of the arrangements of the privileges of detainees under the International and National fields and furthermore as deciphered by the Supreme Court of India by summoning the Fundamental Rights. Article 21 of the Constitution of India gives that "No individual will be denied of his life and Personal Liberty with the exception of as indicated by methodology set up by law. The rights to life and Personal Liberty is the foundation of the Human Rights in India. Through its positive methodology and Activism, the Indian legal executive has filled in as an organization for giving compelling cure against the infringement of Human Rights.

By giving a liberal and extensive significance to "life and individual freedom," the courts have detailed and have set up plenty of rights. The court gave a limited and solid importance to the Fundamental Rights cherished in Article 21. In *A.K.Gopalan*'s Case⁷⁹, the court had taken the view that each Article managed separate rights and there was no connection with one another for example they were fundamentally unrelated. Be that as it may, this view has been held to not be right in *Maneka Gandhi* case⁸⁰ what's more, held that they are not fundamentally unrelated but rather structure a solitary plan in the Constitution, that they are for the most part portions of a coordinated plan in the Constitution. In the moment case, the court expressed that "the ambit of Personal Liberty by Article 21 of the Constitution is wide and extensive. It grasps both substantive rights to Personal Liberty and the system recommended for their hardship" and furthermore opined that the methods endorsed by law must be reasonable, just and sensible. In the accompanying cases to be specific *Maneka Gandhi*, *Sunil Batra (I)*⁸¹, *M.H.Hoskot*⁸² and *Hussainara Khatoon*⁸³, the Supreme Court has taken the view that the arrangements of part III ought to be given most stretched out conceivable elucidation. Each movement which encourages the

⁷⁹ *A.K. Gopalan vs. State of Madras* A.I.R 1950 SC P.27

⁸⁰ *Maneka Gandhi vs. Union of India* A.I.R 1978 SC P.597

⁸¹ *Sunil Batra (I) vs. Delhi administration* AIR 1978 SC 1675

⁸² *M.H.Hoskot vs. State of Maharashtra* AIR 1978 SC 1548

⁸³ *Hussainara Khatoons NO. I vs. Home Secretary, State of Bihar* AIR 1979 SC 1360

activity of the named Fundamental Right might be viewed as incorporated piece of the Article 21 of the Constitution. It has been held that privilege to lawful guide, expedient trail, ideal to have meet with companion, relative and legal advisor, security to detainees in prison from debasing, brutal, and savage treatment, ideal to travel abroad, right live with human pride, ideal to business, and so forth however explicitly not referenced are Fundamental Rights under Article 21 of the Constitution. A standout amongst the most dominant measurements that emerged through Public Interest Litigation is the Human Rights of the detainees.

The Supreme Court of India has impressively extended the extent of Article 21 and has held that its security will be accessible for protecting the key privileges of the detainees and for affecting jail changes. The Supreme Court by its dynamic translation made Article 21, which ensures the Right to Life and individual freedom, the store of detainee's rights. Under the seventh calendar of the Constitution of the India, the jail organization, police and peace are to be controlled by the separate states. The states have by and large given low need to jail organization. Truth be told, a portion of the choices of the Supreme Court on jail organization have filled in as eye-openers for the overseers and guided the states to modernize jail organization.

The Human Rights guardian angel Supreme Court has shielded the detainees from a wide range of torment. Legal executive has taken a lead to augment the ambit of Right to Life and individual freedom. The host of choices of the Supreme Court on Article 21 of the Constitution after Maneka Gandhi's case, through Public Interest Litigation have unfurled the genuine nature and extent of Article 21. In this proposition, an endeavor is made to examine the new measurements given by the Supreme Court to Article 21 through Public Interest Litigation to shield the crucial opportunity of the people who are poor, uneducated and unmindful. Open Interest Litigation turned into a point of convergence to set the legal procedure in movement for the security of the residuary privileges of the detainees.

Legal inner voice perceived that Human Rights of the detainees as a result of

its reformistic approach and conviction that convicts are likewise individuals and that the reason for detainment is to change them as opposed to make them solidified hoodlums. As to treatment of detainees, Article 5 of the Universal Declaration of Human Rights, 1948 says Nobody will be exposed to torment or merciless treatment, in human or debasing treatment or discipline. While Article 6 of the Universal Declaration of Human Rights, 1948 considers that everybody has the privilege to acknowledgment wherever as an individual under the steady gaze of law. Article 10(1) of the International Covenant on Civil and Political Rights set out that ‘All people denied of their freedom will be treated with humankind and with deference for the natural poise of the human individual’.

The Supreme Court of India has created Human Rights law for the conservation and insurance of prisoner’s Right to Human Dignity. The worry of the Apex legal executive is clear from the different cardinal legal choices. The choices of the Supreme Court in Sunil Batra was a watershed in the advancement of jail law in India.

5.4 Rights against Solitary Confinement and Bar Fetters

The courts have solid view against isolation and held that inconvenience of isolation is exceptionally corrupting and dehumanizing impact on the detainees. The courts have taken the view that it could be forced uniquely in outstanding situations where the convict was of such a risky character, that he should be isolated from different detainees. The Supreme Court in Sunil Batra (1)⁸⁴ thought about the legitimacy of isolation. The Constitutional legitimacy of isolation endorsed under area 30(2) of the Prisons Act, 1894 was considered. Segment 30(2) of the Act gives the isolation when detainee is under sentence of death, while segment 56 of the said Act allows the utilization of bar shackles for the sheltered authority of the detainees.

The Supreme Court while endorsing area 30(2) of the Prisons Act, 1894

⁸⁴ *Sunil Batra (I) vs. Delhi administration* AIR 1978 SC 1675

pronounced that the inconvenience of isolation on Sunil Batra was illicit on the ground under sentence of death alludes to an at long last executable capital punishment, which implies that the sentence of death has turned out to be conclusive and indisputable, and can't be abrogated by any legal or Constitutional specialist. Sunil Batra was not considered as a detainee under sentence of death, since his allure against capital punishment was pending under the steady gaze of the Supreme Court and in case of its expulsion, he held the privilege to claim for presidential mercy. The court held that Batra was placed in statutory constraint and not isolation.

The Supreme Court has likewise responded emphatically against putting bar shackles to the detainees. The court saw that constantly keeping a detainee in shackles day and night diminished the detainee from individual to a creature and such treatment was so savage and unordinary that the utilization of bar chains was against the soul of the Constitution of India. On the topic of the legitimacy of the utilization of bar shackles, the court in Sunil Batra (I) saw that exposing a detainee to bar chains for a curiously significant lot, without due respect to the wellbeing of the detainee and the security of the detainee would abuse fundamental Human Dignity and is henceforth impermissible under the Constitution of India. The court while supporting segment 56 of the Prisons Act and announced that bar shackles can be utilized subject to the accompanying procedural shields:

- a. It must be totally important to utilize shackles;
- b. The explanations behind doing as such should be recorded;
- c. The fundamental state of peril must be well-grounded;
- d. Standards of normal equity must be watched;
- e. The shackles must be evacuated at the most punctual chance;
- f. There must a day by day audit of the total requirement for bar shackles;

- g. Continuation of bar shackles past multi day is liable to the course of a District Magistrate or session's judge⁸⁵.

The Supreme Court in *Sunil Batra (I)* diluted the rigour of solitary confinement and bar fetters to a considerable extent by specifying the procedural norms to be followed when resorting to sections 30 (2) and 56 of the Prisons Act, 1894.

5.5 Rights against Hand Cuffing

In *Prem Shanker vs. Delhi Administration*⁸⁶ the Supreme Court included one more shot in its ordinance to be utilized against the war for jail change and detainees rights. In the moment case the inquiry raised was whether cuffing is Constitutionally substantial or not? The Supreme Court examined inside and out the cuffing law. It is the situation put under the steady gaze of the court by method for Public Interest Litigation asking the court to articulate upon the Constitution legitimacy of the binding society in the light of Article 21 of the Constitution. In the moment case, the court prohibited the standard cuffing of a detainees as a Constitutional command and pronounced the qualification between classes of detainee as out of date. The court additionally opined that cuffing is by all appearances barbaric and, along these lines, absurd, is over unforgiving and at the primary flush, self-assertive. Missing reasonable methodology and target checking to incur "irons" is to turn to Zoological systems hostile to Article 21 of the Constitution⁸⁷. While deciding the Constitutional validity of hand cuffing, the Supreme Court specifically referred to Article 5 of the Universal Declaration of Human Rights, 1948⁸⁸ and Article 10 of the International Covenant on Civil and Political Rights⁸⁹ furthermore, held that cuffing

⁸⁵ *Sunil Batra (I) vs. Delhi administration* AIR 1978 SC 1675

⁸⁶ AIR 1980 SC 1535

⁸⁷ AIR 1980 SC 1541

⁸⁸ Article 5 of the Universal Declaration of Human Rights, 1948 provides that No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

⁸⁹ Article 10 of the International Covenant on Civil and Political Rights stipulates that All persons deprived of their liberty shall be treated with humanity and with respect for the

is impermissible torment and is abuse of Article 21. In the moment case equity Krishna Iyer appropriately underscored cuffs ought not be utilized in routine and they were to be utilized in outrageous conditions just, when the detainee is a security chance, edgy, boisterous or engaged with non-bailable offenses. In any case, in even such conditions, the accompanying expert must record the purposes behind doing as such. Something else, the court brought up, under Article 21 of the Constitution the methodology will be uncalled for and terrible in law.

Despite such clear administering of the Supreme Court against binding, the overbearing of the police work force went to the light in Delhi Judicial Service Association case⁹⁰, wherein the Supreme Court held that an unprecedented and the bizarre conduct of police was not legitimate and the court set down point by point rules which ought to be followed if there should arise an occurrence of capture and confinement of legal officer. The Supreme Court took a genuine note of entire episode and it adds up to obstruction with the organization of equity, bringing down of its legal specialist and it adds up to criminal scorn.

It is presented that any place any police authority acts in opposition to the reasonable headings against binding as set somewhere around the Supreme Court and consequently abuses the fundamental Human Right to human pride, he ought to be made by and by at risk to pay the pay and this reality is obviously settled in territory of Maharashtra versus Ravikanth S.Patil⁹¹. Apart from the above the Supreme Court had delivered many cases⁹² against hand cuffing and ruled that it is violative of Article 21 of the Constitution. In *Citizen for Democracy vs. State of Assam*⁹³, the Supreme Court said that it sets down decide in doubt that cuffs or different shackles

inherent dignity of the human person.

⁹⁰ *Delhi Judicial Service Association vs. State of Gujarath* (1991) 4 SCC 406

⁹¹ (1991) 2 SCC 373

⁹² *Sunil Gupta vs. State of M.P.* 1990 (3) S.CC 119; *Citizen for Democracy VS. State of Assam*, 1995 (3) SCC 743; *Khedat Mazdoor chetna sangath VS. State of M.P.* AIR 1995 SC 31

⁹³ 1995 (3) SCC 743

will not be constrained on detainee, sentenced or under trial, while stopped in a correctional facility anywhere in the nation or while transporting or in travel from prison to another or from prison to court and back. The police and correctional facility experts, all alone, will have no specialist to direct transport starting with one prison then onto the next or from prison to court and back". The court announced that in the event that it is totally vital for the correctional facility or police specialists to bind, authorization of Magistrate is to be acquired. The Magistrate may allow the authorization to cuff the detainee in uncommon cases. Infringement of the headings given by the Supreme Court by the specialists will be culpable under the hatred of court Act, 1971.

The Supreme Court guided the Union of India to edge standards or rules in regards to the conditions wherein cuffing of the blamed ought to be turned to, in congruity with the judgment of the court in Prem Shankar case; and to course them among all the Government of the states and Union Territories for exacting recognition. It is imperative to make reference to that in order to put a conclusion to binding it is recommended that the parliament may make a reasonable revision to the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973 where in, cuffing ought to be made a cognizable offense to offer impact to the decision of the Apex Court of the land and furthermore to safeguard the privilege to live with Human Dignity, which is a significant aspect of individual obligation of the people.

5.6 Rights against Inhuman Treatment of Prisoners

Human Rights are a vital part of Human Dignity. The Supreme Court of India in different cases has taken a genuine note of the barbaric treatment on detainees and has issued proper bearings to jail and police experts for defending the privileges of the detainees and people in police lock-up⁹⁴. The Supreme Court read the right against

⁹⁴ *Ramana Murthy V. State of Karnataka* AIR 1997 SC 1739; *Munna VS. State of U.P* AIR 1982 SC 806; *Rakesh VS. Suptd. Central prison, New Delhi*, AIR 1981 SC 760; *D.K.Basu VS. State of West Bengal* (1997 I SCC 416; *Sheela Barse VS. State of Maharashtra* AIR 1983 SC 378; *Khedat Mazdoor Chetna Sangtham V. State of M.P.* AIR 1995 SC 31.

torture into Articles 14 and 19 of the Constitution. The court observed that the treatment of a human being which offends human dignity, imposes avoidable torture and reduces the man to the level of a beast would certainly be arbitrary and can be questioned under Article 14. In the *Raghubir Singh v. State of Bihar*⁹⁵, the Supreme Court expressed its anguish over police torture by upholding the life sentence awarded to a police officer responsible for the death of a suspect due to torture in a police lock – up. In *Kishore Singh VS. State of Rajasthan*⁹⁶ the Supreme Court held that the utilization of third degree technique by police is violative of Article 21. The court likewise guided the Government to find a way to teach the police to instill a regard for the human individual. In the moment case the Supreme Court brought home the profound worry for Human Rights by seeing against police brutality in the accompanying words:

"Nothing is more fainthearted and unconscionable than an individual in police authority being thumped up and nothing delivers a more profound injury on our Constitutional culture that a state authority running wild paying little mind to Human Rights."

It is appropriate to make reference to that the custodial demise is maybe one of the most exceedingly terrible wrongdoings in humanized society administered by the standard of law. The court instantly decided that the cruel treatment distributed to the blamed in police care is the gross and barefaced infringement of Human Rights. Without any authoritative or official rules the court has attempted an extremist job and administered in plenty of cases and one such case is *D.K.Basu vs. State of West Bengal*⁹⁷.

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

⁹⁵ (1986) 4 SCC 481

⁹⁶ AIR 1981 SC 625

⁹⁷ AIR 1997 SC 610

torture and issued a number of directions to eradicate this evil, for better protection and promotion of Human Rights. In the instant case the Supreme Court defined torture and analyzed its implications. The observations of the court on torture are valuable and worth quoting at length. With a view to curbing this menace, the Supreme Court laid down detailed guidelines as preventive measures as follows.

- a. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.
- b. That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.
- c. A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock – up shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed as soon as practicable that he has been arrested and is being detained at the particular place unless the attesting witness of the memo of arrest is himself such a friend or relative of the arrestee.
- d. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through legal aid organizations in the district and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

- e. The person arrested must be aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
- f. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.
- g. The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. Inspection Memo must be signed both by the arrestee and the police officer affecting the arrest and its copy provided to the arrestee.
- h. The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.
- i. Copies of all the documents including the memo of arrest, referred to above should be sent to the area Magistrate for his/her record.
- j. The arrestee may be permitted to meet his lawyer during interrogation though not throughout the interrogation.
- k. A police control room should be provided at all district and state head quarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

In the instant case, the Apex Court made it clear that, custodial violence,

including torture and death in the police lock-up, strikes a blow at the rule of law, which demands that the powers of the executive should not only be deprived from the law but also that the same should be limited by the law. The court also made it clear that failure to comply with guidelines should, apart from rendering the official concerned liable for departmental action and also render him liable to contempt of court⁹⁸. The Supreme Court has made it unmistakable certain that any type of torment of merciless, barbaric or debasing treatment is hostile to Human Dignity and is violative of Article 21 of the Constitution.

5.7 Appropriate to have Interview with Friends, Relatives and Lawyers

The skyline of Human Rights is extending. Prisoner's rights have been perceived not exclusively to shield them from physical inconvenience or torment face to face, yet additionally to spare them from mental torment. The Right to Life and Personal Liberty revered in Article 21 can't be confined to minor creature presence. It implies something significantly more than simply physical survival. The privilege to have meet with the individuals from one's family and companions is plainly part of the Personal Liberty epitomized in Article 21. Article 22 (I) of the Constitution coordinates that no individual who is captured will be denied the privilege to counsel and to be safeguarded by a lawful professional of his decision. This lawful right is additionally accessible in the code of criminal system under segment 304. The court has held that from the season of capture, this correct gathers to the captured individual and he has the privilege of decision of a legal counselor. The denounced may decline to have a legal advisor however the court needs to give an Amicus Curie to safeguard him. At the point when a charged is undefended it is the obligation of the court to select an advice on Government costs for his resistance⁹⁹. In a series of cases the Supreme Court of India considered the scope of the right of the prisoners or detainees to have interviews with family members, friends and counsel. In

⁹⁸ Proceedings under the contempt of courts Act, 1971 can be started in any high court.

⁹⁹ *Tara Singh vs. State* AIR 1951SC 441

*Dharmbir vs. State of U.P*¹⁰⁰ the court directed the state Government to allow family members to visit the prisoners and for the prisoners, at least once a year, to visit their families, under guarded conditions.

In *Francis Coralie Mullin vs. Administrator, Union Territory of Delhi*¹⁰¹, the appeal under Article 32 of the Constitution brings up an issue in respect of the privilege of a detenu under preservation of Foreign Exchange and Prevention of Smuggling Activities Act, to have meet with an attorney and the individuals from his family. In the moment case, the court considered the detainees appropriate to have interviews from the point of view of the Right to Life and Personal Liberty under Article 21. The court likewise seen that the Right to Life incorporates the privilege to live with Human Dignity and with this the privilege of a detenu to counsel a lawful guide of his decision for any reason a bit much constrained to resistance in criminal continuing but rather additionally for verifying discharge from preventive confinement or recording a writ appeal or arraigning any case or of any respectful and criminal continuing. For this situation, the court likewise opined that the privilege to have meetings is unmistakably part of Personal Liberty and that "Individual Liberty" would incorporate the privilege to associate with individuals from family and companions subject to any substantial jail guidelines. Along these lines any jail guideline or system managing the detainees appropriate to have interviews with individuals from family and companions must be sensible and non-discretionary. Else it is obligated to be struck down as invalid, being violative of Articles 14 and 21. From the above examination, it immovably prompts the end that the privileges of the detainees to have interviews with loved ones is a necessary piece of Article 21 of the Constitution.

In *Hussainara Khatoon vs. Home Secretary, Bihar*¹⁰², the Supreme Court has held that it is the Constitutional right of each denounced individual who is unfit to draw in a legal advisor and secure lawful administrations because of reasons, for

¹⁰⁰ AIR 1979 SC 1595

¹⁰¹ (1981) 1 SCC 608

¹⁰² AIR 1979 SC 1377

example, destitution, neediness or incommunicado circumstance, to have free legitimate administrations given to him by the state and the state is under Constitutional obligation to give a legal advisor to such individual if the necessities of equity so require. In the event that free lawful administrations are not given the trail itself might be vitiated as repudiating the Article 21.

In *Sheela Barse vs. State of Maharashtra*¹⁰³ case, the petitioner, a Bombay based freelance journalist had sought permission to interview women prisoners in the Maharashtra jails and the letter of the petitioner was treated as writ petition under Article 32 of the Constitution. In the instant case the Supreme Court relying on *Prabhu Dutts case*¹⁰⁴, has held that the expressions "life" under Article 21 covers the living condition winning in prisons. The court saw that the native does not have any privilege either under Article 19 (1)(a) or Article 21 to go into the correctional facilities for gathering of data, yet all together that the assurance of the Fundamental Right under Article 21 might be accessible to the residents kept in prisons, it ends up important to allow the pressmen as companions of the general public and open lively residents access to data as additionally meets with detainees. Those natives who are kept in detainment facilities either as undertrials or as convicts are additionally qualified to support the certification subject to sensible confinements.

In the moment case, the court held that meetings of the detainees become important as generally the right data may not be gathered but rather such access must be controlled and directed. The pressman are not qualified for uncontrolled meeting. As and when truthful data is gathered because of meeting, the equivalent ought to for the most part be cross – checked with the specialists so a wrong image of the circumstance may not be distributed. The individuals who get authorization to have meetings will consent to comply with sensible limitations.

¹⁰³ (1987) 4 SCC 373

¹⁰⁴ *Prabhu Datt vs. Union of India* (1982) 1 SCC 1, In this case, the court was considered the claim of a journalist to interview two condemned prisoners awaiting execution.

In *Jogindar Kumar vs. State of U.P.*¹⁰⁵, the court opined that the skyline of Human Rights is extending and in the meantime, the wrongdoing rate is likewise expanding and the court has been accepting protests about infringement of Human Rights on account of unpredictable captures. The court saw that there is the privilege to have somebody educated. That privilege of the captured individual upon solicitation, to have somebody educated and to counsel secretly with a legal counselor was perceived by Sec 56(1) of the Police and Criminal Evidence Act, 1984 in England. For viable implementation of the Articles 21 and 22 (1) of the Constitution of India which require to be perceived and conscientiously secured, the court issue the accompanying necessities:

- a. A captured individual being held in guardianship is entitled, in the event that he so demands to have one companion, relative or other individual who is known to him or prone to check out his welfare told the extent that practicable that he has been captured and where is being kept.
- b. The cop will illuminate the captured individual regarding his correct when he is brought to the police headquarters.
- c. A passage will be required to be made in the journal concerning who was educated regarding the capture. These assurances from power must be held to spill out of Articles 21 and 22 (1) and implemented carefully.

5.8 Appropriate to Legal Aid

The primary object of the Free Legal Aid plan is to give implies by which the standard of balance under the steady gaze of law on which the building of our lawful framework is based. It additionally implies money related Aid gave to an individual in matter of lawful debates. Without Free Legal Aid to poor people and penniless, Fundamental Rights and Human Freedoms ensured by the particular Constitution and International Human Rights agreements have no worth.

¹⁰⁵ AIR 1994 SC 1349

However, the Constitution of India does not explicitly give the Right to Legal Aid, yet the legal executive has demonstrated its support towards poor detainees due to their destitution and are not in a situation to draw in the legal advisor of their own decision. The 42nd Amendment Act, 1976 has included Free Legal Aid as one of the Directive Principles of State Policy under Article 39A in the Constitution. This is the most significant and direct Article of the Constitution which talks about Free Legal Aid. However, this Article discovers place to some degree IV of the Constitution as one of the Directive Principle of State Policy and however this Article isn't enforceable by courts, the guideline set down there in are crucial in the administration of the nation.

Article 37 of the Constitution casts a duty on the state to apply these principles in making laws¹⁰⁶. While Article 38 imposes a duty on the state to promote the welfare of the people by securing and protecting as effectively as it many a social order in which justice, social, economic and political, shall inform all the institutions of the national life. The parliament has enacted Legal Services Authorities Act, 1987 under which legal Aid is guaranteed and various state governments had established legal Aid and Advice Board and framed schemes for Free Legal Aid and incidental matter to give effect to the Constitutional mandate of Article 39-A. Under the Indian Human Rights jurisprudence, Legal Aid is of wider amplitude and it is not only available in criminal cases but also in civil, revenue and administrative cases.

*Maneka Gandhi vs. Union of India*¹⁰⁷ case was an impetus which set out an establishment for deciphering Articles 39-A and 21, broadly to cover the entire display of Free Legal Aid. In the moment case the Supreme Court held that technique set up by law in Article 21 means reasonable, just and sensible method.

¹⁰⁶ Article 37 of the Constitution of India reads as “the provisions contained in part IV shall not be enforceable by any court but the principles there in laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws.

¹⁰⁷ AIR 1978 SC P597

In *Madhav Hayawadan Rao Hosket vs. State of Maharashtra*¹⁰⁸, a three judges seat (V.R.Krishna Iyer, D.A.Desai and O.Chinnappa Reddy, JJ) of the Supreme Court perusing Articles 21 and 39-An, alongside Article 142 and segment 304 of Cr.PC together proclaimed that the Government was under obligation to give legitimate administrations to the denounced people. Equity Krishna Iyer saw that Indian socio legitimate milieu makes free lawful administrations, at preliminary and more elevated amounts, a basic procedural bit of criminal equity. The Supreme Court chose the purpose of Legal Aid in request cases as pursues 'If a detainee condemned to detainment is for all intents and purposes unfit to practice his Constitutional and statutory right of bid, comprehensive of uncommon leave to offer, for need of lawful help, there is understood in the court under Article 142 read with Articles 21 and 39 An of the Constitution, capacity to appoint counsel for such detained individual for doing finish equity'. The court additionally included that legitimate Aid in such cases is states obligation and not Government's philanthropy. In the expressions of equity Krishna Iyer,

"Where the detainee is incapacitated from drawing in a legal advisor, on sensible grounds, for example, poverty of incommunicado circumstance, the court will, if the conditions of the case, the gravity of sentence and the closures of equity so require, relegate skilled insight for the detainees protection, gave the gathering does not article to that legal advisor. The state which indicted the detainee and get under way the procedure which denied him of his freedom will pay to allotted insight such whole of as the court may impartially fix".

In *Hussainara Khatoon and others vs. Home Secretary, State of Bihar*¹⁰⁹, the fundamental perceptions of the Supreme Court are on quick trail. Bhagwathi and Koshal, JJ saw that the fast trail, which means sensibly quick preliminary, is a vital and basic piece of the Fundamental Right to Life and Liberty revered in Article 21.

¹⁰⁸ AIR 1978 SC 1548

¹⁰⁹ AIR 1979 SC 1360

Anyway the Apex Court proclaimed the rapid preliminary as a constituent of Legal Aid and guided the Government to give Free Legal Aid administration in meriting cases. This case fortifies the standards set down in M.H Hoskot's case.

Equity Bhagwathi saw that Article 39-A of the Constitution additionally stresses that free legitimate administration is an unalienable segment of sensible, reasonable and only strategy for without it an individual experiencing monetary or different incapacities would be denied of the open door for verifying equity. The privilege to free legitimate administrations is, in this manner plainly a fundamental element of sensible, reasonable and only system for an individual blamed for an offense and it must be held understood in Article 21 of the Constitution. In the moment case equity Bhagwathi underlined upon the necessity of presenting by the focal and state Governments, a dynamic and far reaching lawful administrations program with the end goal of achieving equity to the normal man. His lordship thought this reason as a command of equivalent equity verifiable in Articles 14, 21 and furthermore the impulse of Constitutional mandate installed in Article 39-A. The worry of his lordship was that such projects of lawful Aid are proposed to achieve the equity to the basic man.

In *Sunil Batra vs. Delhi administration (II)*¹¹⁰ equity Krishna Iyer saw that the free legitimate administrations to the jail projects will be advanced by expert association perceived by the court. His lordship further included that the District Bar.

Affiliation should keep a cell for detainee alleviation.

In *Khatri (I) vs. State of Bihar*¹¹¹ a division seat of the Supreme Court held that the state is under Constitutional order to give Free Legal Aid to a charged individual who is unfit to verify legitimate administrations by virtue of neediness and whatever is fundamental for this reason must be finished by the state.

¹¹⁰ AIR 1980 SC 1579

¹¹¹ AIR 1981 SC 928

In *Kedra Pahadiya and others vs. state of Bihar*¹¹², the Supreme Court by and by emphasized the standards set down in *Hussainara Khatoons* and *Sunil Batra (I)* cases, and saw that the court coordinated that the candidates must gave legitimate portrayal by a genuinely able attorney at the expense of the state, since lawful guide in a criminal case is a Fundamental Right verifiable in Article 21, and the Fundamental Right has simply remained a paper guarantee and has been horribly abused. In the moment case, the Supreme Court guided the state Government to record a rundown of undertrial detainees who have been in prison, for a time of over year and a half without their trial having started under the watchful eye of the Courts of Magistrates.

It is presented that while mentioning the above objective facts, the Supreme Court was increasingly worried about Article 39-An and least tried to Article 21. Appropriate to Free Legal Aid was raised to the status of a Fundamental Right in *Hoskot's* case as a piece of reasonable just and sensible strategy under Article 21 and this reason was fortified in instances of *Hussaniara, Khatoon (I)*. Right of Free Legal Aid was incorporated into under the defensive umbrella of Article 21, which is a Fundamental Right under the Constitution. Despite the fact that Article 39 An, a non – enforceable and non justiciable order standard turned into an enforceable Fundamental Right . Subsequently Free Legal Aid is a Fundamental Right which can be implemented against the state as characterized in Article 12 of the Constitution, if Free Legal Aid is denied for whatever reasons.

5.9 Ideal to Speedy Trial

The expedient preliminary of offenses is one of the essential destinations of the criminal equity conveyance framework. When the discernment of the allegation is taken by the court then the preliminary must be led quickly to rebuff the liable and to vindicate the guiltless. Everybody is ventured to be blameless until the liable is

¹¹² (1981) 3 SCC 671

demonstrated. In this way, the quality or blamelessness of the charged must be resolved as fast as would be prudent. It is along these lines, officeholder on the court to see that no blameworthy individual breaks, it is still more its obligation to see that equity isn't deferred and the charged people are not inconclusively hassled. It is relevant to make reference to that delay in trial without anyone else establish refusal of equity which is said to be equity postponed is equity denied. It is totally fundamental that the people blamed for offenses ought to be rapidly attempted so that in situations where the safeguard is can't, the charged people have not to stay in prison longer than is completely essential.

The privilege to fast preliminary has turned into an all around perceived human right. In United States of America, the fast trial is one of the Constitutionally ensured rights. In India, the privilege to expedient trial isn't explicitly counted as one of the Fundamental Rights in the Constitution since 1978, there have been ocean - saw changes in the legal translation of the Constitutional arrangements. In *Maneka Gandhi vs. Union of India*¹¹³, the Supreme Court has broadened the idea of life and Personal Liberty under Article 21 of the Constitution. For this situation, the court set up that the law and system mulled over by Article 21 must answer the trial of sensibility so as to be in congruity with Articles 14 and 19. It additionally builds up that the methodology set up by law inside the significance of Article 21 must be correct, just and reasonable however not self-assertive, whimsical or onerous. Taking the guideline of decency and sensibility developed in Maneka Gandhis cases, the Supreme Court in *Hussainara Khatoon (I) VS. Home secretary*¹¹⁴ case held that Clearly method endorsed by law for denying an individual of his freedom can't be sensible, reasonable, or simply except if that system guarantees a rapid preliminary for assurance of the blameworthy of such individual. No method which does not guarantee a sensibly brisk preliminary can be viewed as sensible, reasonable or just and it would fall foul of Article 21. There can be no uncertainty that quick trial and by rapid trial we

¹¹³ AIR 1978 SC 597

¹¹⁴ (1980) 1 SCC 81

mean sensibly speedy preliminary, is a necessary and basic piece of the Fundamental Right to Life and Liberty cherished in Article 21. Consequently, the privilege to expedient preliminary is certain in expansive scope and substance of Article 21 of the Constitution. Consequently any blamed who is denied this privilege for expedient preliminary is qualified for methodology the Supreme Court to uphold such right.

Be that as it may, the fundamental methodology for examination and preliminary of an offense with respect to rapid preliminary is contained in the code of criminal system. The privilege to expedient preliminary is contained under section 309 of Cr.PC¹¹⁵. On the off chance that the arrangements of Cr.PC are followed in their letter and soul, at that point there would be no doubt of any complaint. Be that as it may, these arrangements are not appropriately actualized in their soul. It is important that the Constitutional assurance of rapid preliminary radiating from Article 21 ought to be appropriately reflected in the arrangements of the code. For this reason in *A.R.Antulay vs. R.S.Nayak*¹¹⁶ the Supreme Court has set down after recommendations which will go far to ensure the Human Rights of the detainees. The worries hidden the privilege to quick preliminary from the perspective of the blamed are:

- a. The time of remand and pre – conviction detainment ought to be as short as could reasonably be expected. At the end of the day, the blamed will not be exposed to superfluous or unduly long confinement purpose of his conviction.
- b. The stress, nervousness, cost and unsettling influence to his livelihood and harmony coming about because of an unduly delayed examination, in inquiry or preliminary will be negligible; and

¹¹⁵ Section 309 (1) of Cr.PC contemplates “In every inquiry or trial the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the court finds that the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

¹¹⁶ AIR 1992 SC 1701

- c. Undue deferral may result in hindrance of the capacity of the blamed to safeguard himself whether by virtue of death, vanishing or non-accessibility of observers or something else.

In the moment case the Apex Court held that the privilege to fast preliminary spilling out of Article 21 of the Constitution is accessible to charged at all stages like examination, request, preliminary, offer, update and retrial. The court said that the charged can't be denied the privilege to rapid preliminary simply on the ground that he had neglected to request an expedient preliminary. From the above cases and standards of the Supreme Court, it tends to be reasoned that the privilege to fast preliminary is certain under Article 21 of the Constitution. In the expressions of equity Bhagwathi that it is the Constitutional commitment of the state to give a methodology which would guarantee expedient preliminary to the blamed. The state can't be allowed to prevent the Constitutional rights from claiming expedient preliminary to the blamed on the ground that the state has no sufficient money related assets to bring about the vital consumption required for improving the authoritative and legal contraption with the end goal of guaranteeing speed preliminary.

A nearby examination of the legal activity uncovers that the Supreme Court has formulated new systems and devices to guarantee the insurance of Human Rights to the general population. The courts are developing new techniques to give access to equity to enormous masses of individuals who were denied their fundamental Human Rights. The Supreme Court has augmented the ambit and extent of the Right to Life and Personal Liberty in Article 21 in wide and far reaching terms. The essential right in Article 21 is incredibly broadened in greatness and measurement to incorporate the privileges of detainees.

5.10 COMPENSATORY JURISPRUDENCE AND HUMAN RIGHTS

A significant contribution of judicial activism in the post *Maneka Gandhi*¹¹⁷

¹¹⁷ AIR 1978 SC 597

period has been the advancement of compensatory ward of the Supreme Court and the High Courts under Articles 32 and 226 of the Constitution. The extent of writ ward has likewise been extended to maintain the Human Dignity and other Fundamental Human Rights. Ensuing upon the extension of writ ward, the Compensation as a method of redress of infringement of Human Rights picked up significance. The Supreme Court made a takeoff from the customary common law, where the privilege to guarantee remuneration is just through a common suit founded by the bothered party under the watchful eye of the court of first occurrence.

As of now, the writ ward of higher legal executive and the first purview of the common court with respect to the honor of pay endless supply of Human Rights depend on unmistakable Constitutional and legitimate standards. Judicially, it is settled that regulation of sovereign invulnerability isn't relevant against the Constitutional cure under Articles 32 and 226 of the Constitution. The improvement of the cure of fiscal pay as to Constitutional and common law solutions for infringement of Human Rights is examined through the legal proclamations extending their particular nature, degree and confinements.

5.11 Money related Compensation and Human Rights

It is globally perceived rule that privilege to pay isn't strange to the idea of requirement of ensured right. The improvement of the cure of financial pay for the authorization of Human Rights might be talked about with reference to writ purview of the higher legal executive and the conventional unique ward of the common court. Remuneration through writs is an ongoing improvement and an augmentation of the rights of the Supreme Court and High Courts in the field of Constitutional cures. Despite the fact that, there was much analysis on the installment of remuneration under Article 32 of the Constitution, in view of this Article all things considered itself does not explicitly enables the courts to grant such help. It is essential to make reference to here that the seed of remuneration for the infringement of the rights

verifiable in Article 21 is first sowed in *Veena Sethi vs. State of Bihar*¹¹⁸ and *Khatri vs. State of Bihar (II)*¹¹⁹. In both the cases, one of the inquiries raised was if the state denies an individual of his life or Personal Liberty on infringement of the privilege ensured by Article 21, is the court vulnerable to concede help to the people who has endured such hardship? To this inquiry, Bhagawathi, J in *Veena Sethi* case saw that "the inquiry would in any case stay to be viewed as whether these detainees are qualified for pay from state Government for their illicit confinement in repudiation of Article 21 of the Constitution.

Where in *Khatri's* case, the Supreme Court started the locale of installment of money related pay under Public Interest Litigation to the exploited people on infringement of their life and individual freedom. Along these lines an issue of incredible Constitutional significance with respect to what help could be given for infringement of Constitutional rights was under the watchful eye of the court. Bhagwathi .J., representing the court watched: "the court can positively infuse the state for denying an individual of his life or Personal Liberty aside from as per the methodology built up by law be that as it may, if life or Personal Liberty is abused generally than as per such system, is the court powerless to concede help to the individual who has endured such hardship? For what reason should the court not be set up to fashion new and devise new solutions for the motivation behind vindicating the most valuable Fundamental Right to life and Personal Liberty? Generally Article 21 would be decreased to a nullity, an insignificant rope of sand. The court portrayed this issue as of gravest Constitutional significance including investigation of new element of the Right to Life and individual freedom ¹²⁰.

The jurisdiction to award compensation for deprivation of Fundamental Rights of a person through writs was recognised by the Supreme Court in *Rudal Shah VS. State of Bihar*¹²¹ case, wherein the candidate was kept illicitly in the jail for more than fourteen years after his exoneration in full dressed preliminary. He tested the said

¹¹⁸ AIR 1983 SC 339

¹¹⁹ 1981 SC 928

¹²⁰ Ibid at P 930 Para 3

¹²¹ AIR 1983 SC 1086

demonstration in the court by documenting habeas corpus request and battled that he was qualified for be made up for his illicit confinement and that the court should pass a proper request for the installment of pay. The Supreme Court for this situation disclosed the ward to grant remuneration under Article 32 of the Constitution by watching:

The facts confirm that Article 32 can't be utilized as a substitute for requirement of rights and commitments which can be authorized strongly through the standard procedure of courts, common and criminal. A cash case has in this manner, to be fomented in and mediated upon the suit initiated in a court of least grade skillful to attempt it. In the activity of its purview under Article 32, the Supreme Court can pass a request for the installment of cash in the idea of pay considerable upon the hardship of a Fundamental Right to Life and Liberty of the applicant. The choice of the Supreme Court in Rudul Shah case clarified that, through the activity of writ purview, the Supreme Court or the High Courts have forces to grant pay for the infringement of Fundamental Rights and this choice has been followed in various choices by the Supreme Court and the High court's in the comparable circumstances of infringement of the Right to Life and freedom of an individual. The Supreme Court in *Sebastian M. Hongray VS. union of India*¹²² case, through a writ request of habeas corpus granted praiseworthy expenses on disappointment of the confining specialist to create two missing people, on presumption that they were not alive and had met unnatural passings because of security powers. In the moment case *D.A.Desai and O.Chinnappa Reddy JJ.* Seen that the respondents would be liable of common scorn due to their wilful insubordination to the writ. The Supreme Court keeping in view the torment, the misery and mental mistreatment through which the spouses of the people coordinated to be delivered needs to go, rather than forcing a fine, coordinated that as a proportion of excellent expense of Rs. 1,00,000/- to every one of the spouses of the people.

¹²² AIR 1984 SC 1026

In this way, on account of *Bhim Singh vs. state of Jammu & Kashmir*¹²³, the Apex Court pursued Rudul Shah and Sebastian cases, by seeing that "when an individual goes to the Supreme Court with the grievance that he has been captured and detained with fiendish or vindictive expectation and that his Constitutional lawful rights were attacked, the fiendishness or vindictiveness and intrusion may not be washed away or wished away by his being sans set. In proper cases, the court has the purview to remunerate the unfortunate casualty by granting reasonable fiscal pay. For this situation, the illicit detainment of the applicant was held to establish infringement of rights under Articles 21 and 22 (2) of the Constitution by the Supreme Court. O.Chinnappa Reddy and V.Khalid, JJ. Expressed that cops who are the caretakers of peace ought to have the more noteworthy regard for the Personal Liberty of natives and ought not ridicule the laws by stooping to the odd demonstrations of wilderness. Caretakers of peace ought not become depredators of common freedoms. The obligation of the cops is just to secure and not to kidnap. Practicing its capacity to grant pay under Article 32, the court guided the state to pay financial remuneration of Rs. 50,000/- to the applicant for infringement of his Constitutional ideal by method for model expenses.

In *Saheli, A women's Resource Centre vs. Commissioner of Police, Delhi*¹²⁴ case, the cops struck the spot of Mrs. Kamalesh Kumari. The Victim was staying in a house with her three children. The landowner of that house took the help of police to influentially remove them from the house. During the police assault, the police trampled upon nine years posterity of Kamalesh Kumari coming about the death of the child. It is all around settled that the state is responsible for the tortious exhibits of its laborers.

At the time case court saw that "in the matter of commitment state is in danger for tortious acts presented by its specialists over the range of their business. On these convictions, the Supreme Court mentioned for portion of Rs. 75,000/- as pay to the

¹²³ AIR 1986 SC 494

¹²⁴ AIR 1990 SC 513

mother of the lapsed child. For this circumstance, the court mentioned to recover the proportion of compensation from the concerned cop. In *Nilabati Behara vs. state of Orissa and others*¹²⁵ case, the Supreme Court struck down the tenet of sovereign resistance in the field of open law. This is the situation of the custodial passing of an individual. In the moment case one youth by name Suman Behara was taken into police guardianship regarding the examination of a burglary on first December, 1987, and on the following day, his dead body was found on the railroad track. There were numerous wounds on the group of Suman Behara. The applicant Nilabati Behara, tended to a letter to the Supreme Court under Article 32 of the Constitution of India. The police took the request that the perished was taken to care however he figured out how to escape from the guardianship and that they couldn't follow him. The police denied the custodial demise. In this unique situation, the Supreme Court requested enquiry by the District Judge of Sundergarh, Orissa. The report of the District Judge uncovers that there is a torment of the perished with eleven outside wounds and because of these wounds perpetrated by the police, the report affirmed that the demise is in the idea of custodial passing. The Supreme Court granted Rs. 1,50,000/- as remuneration to the mother of the perished. In the moment case, the court additionally held and explained that "open law procedures" are not the same as private law procedures" and the honor of remuneration in procedures for the authorization of Fundamental Rights under Article 32 and 226 of the Constitution is a cure accessible in open law. It was properly watched: the court isn't vulnerable and wide powers given to the Supreme Court by Article 32, which itself is a Fundamental Rights, forces a Constitutional commitment on the court to create such new devices, which might be important for during complete equity and authorizing the Fundamental Rights ensured in the Constitution which empower the ward of fiscal pay in fitting cases.

To help the above perception, the court appropriately alluded to Article 9 of the International Covenant on Civil and Political Rights, 1966 and held that the state

¹²⁵ AIR 1993 SC 1960

is obligated to pay remuneration for police abominations. The court additionally held that the said arrangement shows that an enforceable ideal to remuneration isn't strange to the idea of an ensured right. It is additionally appropriate to specify that the arrangement of remuneration to the wrongdoing unfortunate casualties is crying need of the respect. The International Covenant on Civil and Political Rights, 1966 demonstrates that an enforceable appropriate to remuneration is thoughtfully fundamental to Human Rights.

It would get the job done to express that the arrangements of the pledge which clarify and go to effectuate the Fundamental Rights ensured by the Constitution under part III can unquestionably be depended upon by courts as aspects of those Fundamental Rights and henceforth enforceable accordingly. It is suspicious whether it was spot on the piece of the court to achieve such an end without guaranteeing expert of such contracts and leaving it for the choices of a later discussion. It is additionally to be noticed that the agreement on common and political rights, 1966 was sanctioned by India with a booking that Article 9 (5) of the said contract isn't pertinent in India. Henceforth it is presented that perusing of the pledge into the Indian law isn't right.

5.12 NATURE OF THE CONSTITUTIONAL REMEDY

A scrutiny of the above legal scene in the prior talk clarifies that, at present, the ability to allow remuneration through the writs is a set up cure. Pay has been granted by the Supreme Court by alluding to its distinctive idea like Praiseworthy costs, palliative measures, solarium or commendable harms.

Based on the above talk it very well may be deduced that the improvement of Constitutional cure bears a successful cure as money related remuneration on infraction of Human Rights. Anyway this cure is an unmistakable cure and not a substitute of the cure under common law. The Constitutional cure is just an extra cure and an oppressed individual benefit other cure accessible to him under law. In

Nilabetis case, a refinement is made between the cure of pay accessible under the open law i.e., Constitution and the private law, for example common law of Tort. For this situation Anand J, in his agreeing judgment further clarified the qualification by seeing that "the installment of pay in such cases not to be comprehended, as it is commonly comprehended in a common activity for harm under the private law, however in the more extensive feeling of giving help by a request of making "money related corrects", under open law for the wrong done because of rupture of open obligation of not ensuring the Fundamental Rights of the resident. The remuneration is in the idea of praiseworthy harms granted against the miscreant for the break of its open law obligation and it is autonomous of the rights accessible to the oppressed party to guarantee pay under the private law in real life dependent on tort through a suit initiated in a court of able locale or to indict the wrongdoer under the punitive law.

In this manner, the money related remuneration through the writs for infringement of Human Rights and principal opportunities is a recognized solution for maintain the Constitutional assurance not at all like common law cure, however Constitutional cure isn't in the idea of harms, for the misfortune endured, yet manages financial alleviation to an abused individual. The very idea of the Constitutional cure recommends that it is liable to certain natural impediments viz., exact measure of remuneration to make great the misfortune and Personal Liberty of the concerned authorities are the issues which must be appropriately arbitrated in a common suit. The Constitutional and common law cures being advantageous to one another likewise require a talk on the topic of appropriateness of precept of sovereign invulnerability in their separate gatherings.

5.13 SOVEREIGN IMMUNITY AND VIOLATION OF HUMAN RIGHTS

The Indian History uncovers that the idea of sovereign resistance did not exist in any purpose of time. In antiquated occasions additionally the lord was exposed to the standard of law and the desire of the general population. In India, the

absolutism of lord was never acknowledged. It was the essential obligation of the lord to secure the general population, regulate equity and there by keep up request and ensuring individuals in pleasure in their property. While releasing this required obligation, the lord was not safe from risk to remunerate his subjects. It is critical that the commitment with respect to the lord was completely missing under the English framework. During the British guideline in India not one or the other section 65 of the Government of India Act, 1858¹²⁶ nor Sec 176 of the Government of India Act, 1935 stretched out resistance to the organization or the secretary of state which the Crown in England delighted in regard of Torts submitted by its hirelings.

In India, the principle of Sovereign Immunity is simply a legal creation having its source in Judicial declarations which can be followed back to 1861 when the topic of state risk in tort preceded the Supreme Court of Calcutta in *peninsular and oriental steam Navigation Company vs. The Secretary of State for India*¹²⁷, for this situation, Lord Peacock made a refinement among sovereign and non-sovereign capacity of the state to decide the convoluted risk. The main point for thought was whether if there should arise an occurrence of a tort submitted in the direct of business, the secretary of state was subject to pay remuneration. It is apparent that the court planned to incorporate just demonstrations of state inside the ambit of sovereign power.

The law identifying with the obligation of the state for the wrongs submitted by its hirelings is set down in Article 300 of the Constitution . The hypothesis of sovereign Immunity as to the risk of state was connected in India by uprightness of Article 300 propounded. As a rule, the Supreme Court dismissed the remuneration on

¹²⁶ Sec. 65 of the Government of Indian Act, 1858 reads as follows: the secretary of state in council shall and may sue and be sued as well in India as in England by the name of the secretary of State in council as a body corporate and all persons and bodies politic shall, and may have and take the same suits, remedies and proceedings, legal and equitable, against the secretary of state in council of India as a they could have done against the East India company.

¹²⁷ 1868-1869 5 Bom HC Reports

the ground that release of police capacities are sovereign capacities and the state isn't at risk for the unfair demonstrations of its workers while releasing the sovereign capacities.

Consequent to the accomplishment of Independence, the Supreme Court of India got an open door for talking about the obligation of the State in the event of convoluted acts submitted by its hirelings in *state of Rajasthan vs. Vidhyawathi* case¹²⁸, in which the court held that the state was at risk for the torts submitted by its hirelings. On the topic of sovereign resistance of state in paying pay of the tort of carelessness of its workers, the court saw that after selection of republican Government under the Constitution there is no avocation for giving invulnerabilities to the state and held the state is vicariously subject for the demonstrations of its hirelings and would not surrender the protection of sovereign insusceptibility. In spite of the fact that the court condemned sovereign invulnerability, it never explained whether the safeguard of resistance is accessible now in India or not. This prepared for the appalling choice on account of *Kasturilal vs. State of U.P* ¹²⁹.

In *Kasturilal's* case the Apex Court affirmed the qualification made in the *steam route* case among sovereign and non-sovereign elements of the state. Gajendragadkar, C.J stated: 'If a tortious demonstration submitted by a community worker offers ascend to a case for harms, the inquiry to pose is: was the tortious demonstration submitted by a local official in release of statutory capacity which is referable to, and at last dependent on the assignment of the sovereign forces of the state to such local official. On the off chance that the appropriate response is in the certifiable the activity for harms won't lie.' Then again, if the tortious demonstration has been submitted by a local official in the release of obligations doled out to him not by excellence of the appointment of any sovereign powers, and activity for harms would lie. The court held that the tortious demonstration of the cops was submitted by them in release of sovereign forces and the state was in this way not subject for the harm caused to the appealing party. The Apex

¹²⁸ AIR 1962 SC 933

¹²⁹ AIR 1965 SC 1039

Court anyway made a solid supplication for authorization of an enactment to manage and control the case of the state for insusceptibility on the lines of the Crown procedures Act of England.

“In Nilabeti’s case, the Supreme Court mentioned objective facts in regards to the relevance of tenet of sovereign resistance in a Constitutional cure under law of torts as Grant of pay in procedures under Article 32 by this court or by the High Courts under Article 226 of the Constitution is a cure accessible in open law dependent on severe risk for repudiation of Fundamental Rights to which the rule of Sovereign invulnerability does not make a difference, despite the fact that, it might be accessible as a protection in private law in an activity dependent on tort. In the moment case, the Supreme Court settled on reference to its prior choice in Sahelis case as "the state was held at risk to pay remuneration payable to the mother of the expired who bites the dust because of beating and strike by the police. Anyway the standard showed there in was that the state is in charge of the tortious demonstrations of its representatives". In Sahelis case no reference has been settled on to the choice of Kasturi Lal’s case, wherein, the sovereign invulnerability was maintained on account of vicarious risk of the state for tort of its workers. The choice is in this manner more as per the standards showed in Rudul Shah Case.

The Supreme Court through this reference seems to have brought up that tenet of sovereign insusceptibility is as yet relevant in law of tort yet not accessible, where the cure is looked for through the writ as a Constitutional cure. This refinement does not seem legitimate. The inquiry for appropriateness or non-materialness of precept of sovereign invulnerability ought to be with reference to the idea of the privilege damaged, yet not from the gathering of cure. However in *State of A.P Vs. Challa Rama Krishna Reddy*¹³⁰ case, the Supreme Court held that in the process of Judicial advancement Kastuilal’s case has placed into insignificance and no longer of any binding value. In this case a detainee who had an educated the correctional facility experts that he

¹³⁰ AIR 2000 SC 208

captured risk to his life however no move was made on this data and no measures were taken for his security and he was murdered the detainee which was brought forth in jail. The court held that if there should be an occurrence of infringement of Fundamental Right the barrier of Sovereign insusceptibility which is an old and obsolete resistance can't be acknowledged and the administration and the police are at risk to remunerate the person in question. The Apex Court held that the individual obligation ought to be given Supremacy over sovereign Immunity.

There are catena of cases conveyed by the Supreme Court and the High Courts with respect to the installment of pay concerning custodial savagery. Hence, the courts received the procedure of giving a limited understanding to the idea of Sovereign capacities while allowing the pay in light of a legitimate concern for equity. In later past, the Supreme Court began granting pay at whatever point the Human Rights are abused and subsequently built up another compensatory law.

It is generally perceived that privilege to life, freedom and nobility are characteristic in the human instinct. These essential Human Rights are enforceable rights in each edified and welfare state. Fiscal pay as a method of redressal and requirement of Human Rights, in case of their infringement, is a built up cure of incredible centrality. In India, the Constitution guarantees the Right to Life and Personal Liberty to each individual as a Fundamental Right. The extremist methodology of the Supreme Court not just added to the rundown of Human Rights ensured under the Constitution, yet in addition extended the locale of the court to concede money related help on their infraction.

A huge commitment of Judicial activism in the post – Maneka Gandhi period has been the advancement of compensatory ward of the Supreme Court and the High Courts under Article 32 (2) and 226(1) of the Constitution and these courts have plentiful forces to give fiscal pay in proper cases. The law identifying with honor of pay in writ petitions is another advancement in Constitutional law of India, which ought to be founded on the all around acknowledged standards of regulatory law.

Because of this advancement, which was set in Rudul Shah rule, that the pay has been granted in writ petitions in number of cases. A large portion of these cases identified with custodial demise, torment, assault, illicit confinement and other comparative zones. It is likewise to be noticed that other than the above cases, remuneration has been granted in a couple of situations where illicitness or ultra-vires nature of authoritative activity was not patent or obvious on the face.

The precept of sovereign insusceptibility ought to have no application for a situation where the cure of remuneration for infringement of Right to Life or freedom is looked for even through a common suit for harms. In the present day this precept does not discover place in a welfare state. The opportunity has already come and gone that this invulnerability ought to be administratively abrogated in India for giving full authorization and assurance of Human Rights of a person. Despite the fact that, a plenty of cases has been chosen by the court in granting the remuneration, the court has always neglected to advance any unequivocal basis with regards to the calculation of the quantum of pay. It is relevant to make reference to that since the advancement of law dependent on open law for the infringement of Fundamental Rights, where the legal circumspection assume a noteworthy job, the court neglects to create any statute with regards to the obligation of the state.

5.14 ROLE OF NHRC IN PRISON REFORMS IN INDIA

There are various methods for ensuring human rights. A pluralist and responsible parliament, an official who is at last subject to the expert of chose delegates and a free, unprejudiced legal executive are vital, but not sufficient, institutional prerequisites¹³¹. Besides these basic 'institutions' there may be other mechanisms whose establishment and strengthening will enhance the excising

¹³¹ Brian Burdekin and Anne Gallagher, 'The United Nations and National Human Rights Institutions', Human Rights-2/1998, A Quarterly Review of the Office of the UN High Commissioner for Human Rights, p.21.

mechanisms. Lately National Human Rights Commissions (NHRCs) have become prominent actors in the national, regional and international human rights arena. The UN bodies and other funders in international donor community have directly encouraged and supported both technically¹³² and financially the growth of these institutions. The international community lends its support since it considers the way toward setting up NHRCs to be a sign that a legislature is happy to submit to global human rights standards.

Regard for the respect of an individual and making progress toward harmony and concordance in the public eye, has been a standing component in Indian culture. The Indian culture has been the result of absorption of differing societies and religions that came into contact in the colossal Indian sub-mainland after some time. The global network has perceived the developing significance of reinforcing national human rights establishments. In this unique circumstance, in the year 1991 an UN-supported gathering of agents of national establishments held in Paris, a definite arrangement of standards on the status of national foundations was built up, these are regularly known as the Paris Principles. These standards, accordingly embraced by the UN Commission on Human Rights¹³³ and the UN General Assembly¹³⁴ have become the foundation and reference point for the establishment and operation of national human rights institutions.

5.15 Role Played by the National Human Rights Commission in India

The presence of Supreme Court in a setting like India may not be a panacea for taking care of rights based prosecution, without solid help of lawful assembly at societal dimension. Foundations like the NHRC are the main methods, which hypothetically in any event, hold guarantee of moderate access to equity for poor

¹³² For example a project, entitled 'Action Research Study on the Institutional Development of Human Rights in Bangladesh' (IDHRB) was undertaken by the UNDP to assess the need of establishing the NHRC.

¹³³ Commission on Human Rights Resolution 1992/54 of 3 March 1992.

¹³⁴ General Assembly Resolution 48/134 of 20 December 1993.

people and the defenseless which establish at any rate 33% of India's populace. Thus in such social settings foundations like the NHRC fill a significant void in a needy individual's quest for equity ¹³⁵.

Regardless of confinements, featuring the basic deficiency of Indian culture by concentrating on monetary, social and social rights the NHRC has made incredible walks in making the Indian state mindful of taking care of financial, social and social rights. The genuine hugeness of the commission is promotion, to fabricate consistent weight and go about as notice of the state commitments towards the rights. Because of the commission's request these financial, social and social rights have gained steady open talk in assessing the adequacy of the Indian state. Shockingly, the NHRC itself is by all accounts really mindful of what it calls its 'challenges'. After the foundation it is the time of combination for the commission where the commission has seen in its yearly report 1998-1999 that how it needs to manage difficulties of validity, scale and desire, assortment, great administration and settled in frames of mind. In any case, no diagram for viable activity is laid out in its records.

As watched before in this investigation that the courts are not adequate in themselves in going to rights in light of powerless help structure for legitimate activation. The view that courts and existing national establishments are adequate to take care of the human rights motivation depends on the presumption that that help for lawful assembly is uniform all through. In any case, this isn't valid in some social settings as India specifically and South Asia by and large. What's more, the social arrangement is with the end goal that poor people and the defenseless gatherings structure huge segments in these social orders.

These social fragments are scarcely in the situation to use the courts as an organization to full their key rights, considerably less their monetary, social and social

¹³⁵ Jeewan Reddy B.P and Rajeev Dhavan, 'The Jurisprudence of Human Rights', pp.175-226 in Beatty David M. (ed.) 'Human Rights and Judicial Review: A Comparative Perspective', International Studies in Human Rights, Martinus Nijhoff Publishers, 1994.

rights. In such social settings foundations like the NHRC are especially expected to maintain elite spotlight on requirement for satisfaction of these rights and disguise of universal human rights standards. Coming to the Indian NHRC contextual analysis it turns out to be evident that the commission has been hampered in understanding its maximum capacity by outer just as interior variables. Outside elements are those, which are constrained by or affected by the state and its offices.

A portion of the outside variables are numerated beneath:

- the NHRC stressed the need to set up SHRCs and to build up clear utilitarian connection between the two yet the focal government has completely rejected the commission's proposition.
- In the territory of youngster work, training and different parts of tyke welfare the commission has made approach suggestions yet the focal government has not reacted to them.
- dealing with human rights infringement submitted by furnished power staff however the advantaged status of military proceeds and the administration has expelled every single such proposition as superfluous, even instance of death and assault while in the care of military.

While inside components are the ones, which the NHRC has, some control but since of different variables has not had the option to money on. For instance: while the administration was to blame for not agreeing to the suggestions of the NHRC, the commission was likewise in charge of not supporting its solid words with activity. The NHRC has finished on just a couple of the suggestions issued in its yearly reports.

From its beginning the Commission pulled in much doubt as a result of its status as an administration establishment. Be that as it may, with the progression of time it has had the option to build up its honesty and responsibility. The Commission

had the option to exhibit its capacity to work autonomously and unbiasedly, which is borne out by its proposals. Regardless of whether the Commission is an exceptionally little advance in the overwhelming assignment of the execution of human rights at the national dimension, it remains an extremely critical advance. Thinking about India's broad regional area, the boundlessness of its populace and the intricacy of social structure, instances of infringement of rights, regardless of whether owing to the offices of the State or to the private people or gatherings, may happen in spite of its earnest attempts ¹³⁶.

¹³⁶ http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1681512.

CHAPTER 6

CONCLUSIONS AND SUGGESTIONS

Liberty of the person is one of the oldest concepts to be protected by national courts. As long as 1215, the English Magna Carta provided that,

No freeman shall be taken or imprisoned... but... by the law of the land.

The smallest Article of eighteen words has the greatest significance for those who cherish the ideals of liberty. What can be more important than liberty? In India, the concept of 'liberty' has received a far more expansive interpretation. The Supreme Court of India has rejected the view that liberty denotes merely freedom from bodily restraint, and has held that it encompasses those rights and privileges that have long been recognized as being essential to the orderly pursuit of happiness by free men.

The meaning of the term 'personal liberty' was considered by the Supreme Court in the Kharak Singh's case, which arose out of the challenge to Constitutional validity of the U. P. Police Regulations that provided for surveillance by way of domiciliary visits and secret picketing. Oddly enough both the majority and minority on the bench relied on the meaning given to the term 'personal liberty' by an American judgment (per Field, J.) in *Munn v Illinois*, which held the term 'life' meant something more than mere animal existence. The prohibition against its deprivation extended to all those limits and faculties by which the life was enjoyed.

This provision equally prohibited the mutilation of the body or the amputation of an arm or leg or the putting of an eye or the destruction of any other organ of the body through which the soul communicated with the outer world. The majority held that the U. P. Police Regulations authorizing domiciliary visits [at night by police officers as a form of surveillance, constituted a deprivation of liberty and thus] unconstitutional. The Court observed that the right to personal liberty in the Indian Constitution is the right of an individual to be free from restrictions or

encroachments on his person, whether they are directly imposed or indirectly brought about by calculated measures.

The Supreme Court has held that even lawful imprisonment does not spell farewell to all fundamental rights. A prisoner retains all the rights enjoyed by a free citizen except only those 'necessarily' lost as an incident of imprisonment.

In England due to the hands off approach of the courts, the prisoners felt extraordinary troubles in testing the different onerous estimates utilized by the specialists. In any case, because of different legal intercessions later, the legislature has perceived and stretched out different offices to the detainees which go as per the idea of human rights and poise. In India additionally the legal executive has approached to secure the privileges of the detainees. It very well may be seen that at first here additionally the courts were hesitant to embrace the liberal mentality towards detainee's cases of different requests corresponding to the major rights ideas. However, later the disposition changed and the courts began perceiving the human rights ideas for detainees in letter and soul. Through different choices the legal executive have perceived the privilege to direct, appropriate to expedient preliminary, ideal to physical security, ideal to articulation, ideal to meet relatives, and ideal against remorseless and unordinary or onerous prison rehearses.

The protection of Article 21 is available even to convicts in jail. The convicts are not by mere reason of their conviction deprived of all the fundamental rights that they otherwise possess. Following the conviction of a convict is put into a jail he may be deprived of fundamental freedoms like the right to move freely throughout the territory of India. But a convict is entitled to the precious right guaranteed under Article 21 and he shall not be deprived of his life and personal liberty except by a procedure established by law.

In *Maneka Gandhi v. Union of India*, the Supreme Court gave a new dimension to Article 21. The Court has interpreted Article 21 so as to have widest

possible amplitude. On being convicted of a crime and deprived of their liberty in accordance with the procedure established by law. Article 21, has laid down a new constitutional and prison jurisprudence.

After Maneka Gandhi case detainees rights took a turn in India. All things considered the Supreme Court gave a wide elucidation to the word 'law' in Article 21 where it has set up that law means reasonable and sensible law. professions in Sunil Batra and Charles Sobraj, advanced another jail law striking a harmony between the nobility of the people managed inside the dividers and the forces of the correctional facility experts that standard them.

The rights and protections recognized to be given in the topics to follow:

Right To Free Legal Aid & Right To Appeal

In M.H. Hoskot v. State of Maharashtra, the Supreme Court said while holding free legal aid as an integral part of fair procedure the Court explained that the two important ingredients of the right of appeal are; firstly, service of a copy of a judgement to the prisoner in time to enable him to file an appeal and secondly, provision of free legal service to the prisoner who is indigent or otherwise disabled from securing legal assistance. This right to free legal aid is the duty of the government and is an implicit aspect of Article 21 in ensuring fairness and reasonableness; this cannot be termed as government charity.

Right To Speedy Trial

In Hussainara Khatoon v. Home Secretary, State of Bihar, it was brought to the notice of the Supreme Court that an alarming number of men, women, and children were kept in prisons for years awaiting trial in courts of law. The Court took a serious note of the situation and observed that it was carrying a shame on the judicial system that permitted incarceration of men and women for such long periods of time without trials.

Right To Fair Trial

Free and fair trial has been said to be the sine qua non of Article 21. The Supreme Court in *Zahira Habibullah Sheikh v. State of Gujarat* said that right to free and fair trial not only to the accused but also to the victims, their family members and relatives, and society at large.

Right To Bail

The Supreme Court has diagnosed the root cause for long pre-trial incarceration to be the present-day unsatisfactory and irrational rules for bail, which insists merely on financial security from the accused and their sureties. Many of the undertrials being poor and indigent are unable to provide any financial security. Consequently, they have to languish in prisons awaiting their trials.

But incarceration of persons charged with non-bailable offenses during the pendency of trial cannot be questioned as violative of Article 21 since the same is authorized by law. In the case of *Babu Singh v. State of Uttar Pradesh*, the Court held that right to bail was included in the personal liberty under Article 21 and its refusal would be the deprivation of that liberty which could be authorized in accordance with the procedure established by law.

No Right To Anticipatory Bail

Anticipatory bail is a statutory right and it does not arise out of Article 21. Anticipatory bail cannot be granted as a matter of right as it cannot be granted as a matter of right as it cannot be considered as an essential ingredient of Article 21.

Right Against Handcuffing

Handcuffing has been held to be prima facie inhuman and therefore unreasonable, over-harsh and at first flush, arbitrary. It has been held to be unwarranted and violative of Article 21.

Right Against Solitary Confinement

It has been held that a convict is not wholly denuded of his fundamental rights and his conviction does not reduce to him into a non – person whose rights are subjected to the whims of the prison administration. Therefore, the imposition of any major punishment within the prison system is conditional upon the observance of procedural safeguard.

It was contended that Section 30 of Prisoners Act does not authorize jail authorities to send him to solitary confinement, which by itself was a substantive punishment under Sections 73 and 74 of the Indian Penal Code, 1860 and could be imposed by a court of law and it could not be left to the whim and caprice of the prison authorities. The Supreme Court accepted the argument of the petitioner and held that imposition of solitary confinement on the petitioner was violative of Article 21.

Right Against Custodial Violence

The incidents of brutal police behavior towards persons detained on suspicion of having committed crimes are a routine matter. There has been a lot of public outcry from time to time against custodial deaths.

The Supreme Court has taken a very positive stand against the atrocities, intimidation, harassment and use of third-degree methods to extort confessions. The Court has classified these as being against human dignity. The rights under Article 21 secure life with human dignity and the same are available against torture.

Death By Hanging Not Violative Of Article 21

In Deena v. Union of India, the constitutional validity of the death sentence by hanging was challenged as being “barbarous, inhuman, and degrading” and therefore violative of Article 21. Referring to the Report of the UK Royal Commission, 1949; the opinion of the Director General of Health Services of India,

the 35th Report of the Law Commission; and the opinion of the Prison Advisers and Forensic Medicine Experts, the Court held that death by hanging was the best and least painful method of carrying out the death penalty, and thus not violative of Article 21.

Right Against Public Hanging

The Rajasthan High Court, by an order, directed the execution of the death sentence of an accused by hanging at the Stadium Ground of Jaipur. It was also directed that the execution should be done after giving widespread publicity through the media.

Right Against Delayed Execution

In *T.V. Vatheeswaram v. State of Tamil Nadu*, the Supreme Court held that delay in execution of death sentence exceeding 2 years would be sufficient ground to invoke protection under Article 21 and the death sentence would be commuted to life imprisonment. The cause of the delay is immaterial, the accused himself may be the cause of the delay.

Right To Write A Book

In *State of Maharashtra v. Prabhakar Pandurang*, the petitioner while under detention in jail wrote a book on science and sought the permission from the Government to send the manuscript of the book to his wife for publication, to which the Government refused. The Court held that this was an infringement of personal liberty and that Article 21 included the right to write the book and get it published.

Right Against Bar Fetters

In *Sunil Batra v. Delhi Administration*, the Supreme Court gave Right against Bar Fetters and held that treatment that offended human dignity and reduced man to a

level of the beast would certainly be arbitrary and could be questioned under Article 21, but the right is not absolute.

Procedure Established By Law

The expression procedure established by law has been the subject matter of interpretation in a catena of cases. A survey of these cases reveals that courts in the process of judicial interpretation have enlarged the scope of the expression. The Supreme Court took the view that procedure established by law in Article 21 means procedure prescribed by law as enacted by the state and rejected to equate it with the American due process of law.

But, in *Maneka Gandhi v Union of India* the Supreme Court observed that the procedure prescribed by law for depriving a person of his life and personal liberty must be right, just and fair and not arbitrary, fanciful and oppressive, otherwise it would be no procedure at all and the requirement of Article 21 would not be satisfied. Thus, the procedure established by law has acquired the same significance in India as the due process of law clause in America.

Justice V. R. Krishna Iyer, speaking in *Sunil Batra v Delhi Administration* has said that though our Constitution has no due process clause but after *Maneka Gandhi's* case the consequence is the same, and as much as such Article 21 may be treated as counterpart of the due process clause in American Constitution.

Recently the Supreme Court has dealt with an increasing number of people sentenced to death for bride-burning. In December 1985 the Rajasthan High Court sentenced a man, Jagdish Kumar, and a woman, Lichma Devi, to death for two separate cases of killing two young women by setting them on fire. In an unprecedented move, the court ordered both prisoners to be publicly executed.

Article 21 And The Emergency

In *A.D.M. Jabalpur v. S. Shukla*, Popularly known as habeas corpus case, the supreme court held that article 21 was the sole repository of the right to life and personal liberty and therefore, if the right to move any court for the enforcement of that right was suspended by the presidential order under Article 359, the detune would have no locus standi to a writ petition for challenging the legality of his detention.

Such a wider connotation given to article 359, resulted in the denial of the cherished right to personal liberty guaranteed to the citizens. Experience established that during the emergence of 1975, the fundamental freedom of the people had lost all meanings.

In order that it must not occur again, the constitution act, 1978, amended article 359 to the effect that during the operation of the proclamation of emergency, the remedy for the enforcement of the fundamental right guaranteed by article 21 would not be suspended under a presidential order.

In view of the 44th amendment, 1978, the observation made in the above-cited judgments are left merely of academic importance.

SOME OTHER WORKABLE SUGGESTION :-

1. Recording Public Interest Litigations (PILs)

Most jail changes have not yet been executed. In this way the need to document PILs in High Courts and the Supreme Court. The accompanying PIL can be filled:

- a. Usage of the Mulla Committee Report, the Kapoor Committee Report and the Malimath Committee Report;
- b. Usage of plans and the Model Prison Manual by State Governments;

- c. Consistency of prison manual and correctional facility laws;
- d. Execution of Probation of Offenders Act, 1958;
- e. Execution of Borstal Schools Act, 1928;
- f. Execution of the Food and Nutrition Board, Ministry of Family and Health Ministry Recommendations on giving wholesome nourishment in all detainment facilities, including extraordinary weight control plans for wiped out, and so forth;
- g. Cancellation of capital punishment and Abolition of isolation, torment, misuse;
- i. De-criminalization of asking;
- j. Arrival of under-preliminaries who have officially finished a large portion of the most extreme sentence time frame, whenever indicted;
- k. Arrival of under-preliminaries who have been in jail for a period comparable to the most extreme time of conviction;
- l. Arrival of people in jail for frivolous offenses;
- m. Release of Minorities;
- n. Arrival of people with psychological maladjustment. Individuals, with psychological maladjustment, ought not be kept in jails. They ought to be sent to homes or discharged on helpful grounds. They ought to be given psycho-social and advising administrations;
- o. Arrival of ladies and youngsters;
- p. Improvement of ladies' detainment facilities:
- i. Health;

- ii. Lewd behavior;
- iii. Female staffing;
- iv. Separate open detainment facilities;
- v. Security;
- vi. Arrangement for crèche for youngsters;
- vii. Pregnant ladies' medicinal services;

2. Giving legitimate guide in prisons

The people in prison are generally from the poor strata of society and are normally unskilled. They can't stand to enlist a legal counselor nor would they be able to approach legal advisors. In this specific situation, it is significant that legitimate guide is given to them in prisons. For giving powerful legitimate guide benefits the accompanying estimates should be embraced:

- a. Correctional facility visits by legal counselors;
- b. Legitimate guide must be given from the purpose of capture of the individual;
- c. Sorting out Lok Adalats in penitentiaries;
- d. Using supplication dealing, while at the same time ensuring that the police and open examiners don't mishandle this arrangement to put honest individuals in prison;
- e. Permitting a more prominent extension for detainee legal advisor communication. The NGOs, that approach correctional facilities, can go about as a delegate/facilitator in this detainee legal advisor connection. They can discover and allude cases to concerned legal advisor gatherings and furthermore follow-up on them;

- f. Detainees ought to be made mindful of the presence and accessibility of legitimate guide administrations. NGOs can help in bringing issues to light among detainees;
- g. There ought to be full-time legal counselors on practically self-sufficient lawful guide boards. Legitimate guide payments ought to be upgraded for better administrations;
- h. Law understudies ought to be urged to do intentional work with detainees;
- i. Decreasing extortion by helping detainees report exploitative legal counselors to the bar and having their permit removed.

3. Sorting out Training and Sensitization Programs

Preparing and sharpening projects ought to be sorted out in a joint effort with legal advisor gatherings and NGOs.

For Legal Aid Lawyers

- a. Giving preparing to lawful guide legal advisors, including giving customary and exceptional data on cases;
- b. In light of encounters at Yervada Jail, life convicts can be prepared as paralegals to give legitimate guide to different detainees;
- c. NGOs can likewise be prepared as paralegals.

For Jail Authorities

- d. Giving preparing to imprison experts on the detainee rights, and best practices in jail changes, for detainees and under-preliminaries.

For Police Officials/Prison Officials/Magistrates

- e. In numerous occasions, police authorities, jail authorities and even officers don't know about the laws and decisions. Sharpening and preparing projects can help bring issues to light.

For Judges

- f. Giving preparing to made a decision about lawful guide plans and detainee rights. Judges should demand having better jail checking frameworks and should visit imprisons normally.

4. Setting up a Network of different gatherings including NGOs, Lawyers, Prison Officials, Legal guide Panels, Social Workers, and so on.

There is a requirement for expanding coordination and correspondence between NGOs, social specialists, legal advisors, lawful guide boards, sociologists and jail authorities. This will guarantee better execution of laws and plans, improved jail conditions and more noteworthy responsibility:

- a. NGOs and legal counselors go to jails for various reasons. Notwithstanding, they can likewise work cooperatively.
- b. NGOs, visiting the detainment facilities, ought to distribute truth discovering reports occasionally. This will help in imparting encounters to various gatherings;
- c. Legal counselor gatherings ought to incorporate and distribute High Court and Supreme Court decisions and requests.

5. Receiving Measures for Reforming the Prison Management System

- a. Reception of Model Prison Manual 2003 created by BPR&D;
- b. Reception of Prison Management Bill created by Ministry of Home Affairs (MHA). Penitentiaries, being a state subject, states have a risk to build up their

very own jail the executives laws and strategies. The laws and approaches ought to be in consonance with those created by the MHA and BPR&D;

- c. Authorities, from the police division, ought not be selected as jail experts since prison guardianship would then stop to be legal care. There ought to be appropriate preparing of staff in penitentiaries;
- d. Establishment of between departmental board of trustees/warning council in jails to guarantee appropriate execution of laws and plans.

6. Changing Focus towards Reform and Rehabilitation of Prisoners

- a. The motivation behind imprisonment ought to be that of change and recovery;
- b. Just little piece of the jail staff is restorative staff while the rest is custodial. This should change in light of the fact that the emphasis is on restoration and not on corrective measures;
- c. Individuals, administering detainment facilities, ought to be from social specialist foundations with some information of criminology;
- d. Jails ought to be put under the locale of the Ministry of Social Justice and Empowerment. Penitentiaries ought not be under the domain of the Ministry of Home Affairs any more;
- e. Solidified lawbreakers ought to be kept separated from first-time guilty parties;
- f. For first-time wrongdoers, separate focuses ought to be set up by social laborers, specialists, specialists, and so on;
- g. Detainees ought to be kept educated regarding the status of their case. They ought to be permitted to stay in contact with their family;
- h. Appropriate advising administrations ought to be given to detainees. Work

treatment projects ought to be presented;

- i. Professional preparing administrations – through connecting up with NGOs, IITs, Polytechnic Colleges – ought to be made obligatory;
- j. Recreational projects ought to be given;
- k. Psychometric test offices ought to be made accessible in detainment facilities;
- l. Mentorship projects ought to be presented through Welfare Officers, jail authorities, or NGOs;
- m. Allow in-help plans ought to be presented for released detainees.

7. Providing Educational Facilities for Prisoners

- a. Detainees ought to be urged to take on open-colleges/remove training focuses;
- b. Examination focuses ought to be set up in prisons;
- c. Books and perusing material ought to be made accessible to detainees. Libraries ought to likewise be set up and new books ought to be acquired each year;
- d. Detainees ought to be furnished with charge exception offices for joining up with courses at colleges, universities and schools. The Prison Welfare Fund must be squeezed into utilization for the reason.

8. Introducing Non-biased Provisions for Minority Groups in Prisons

Populace of minority gatherings is most astounding in prisons. These incorporate religious minorities, dalits, tribals, unlawful settlers, displaced people, people with inabilities, and so forth. These individuals are for the most part uneducated and poor, they likewise face correspondence boundaries, and consequently mope in prisons for a considerable length of time. This requires

exceptional consideration and sufficient lawful guide arrangements for these gatherings. These include:

- a. Giving legitimate lawful guide administrations including administrations of interpreters.
- b. Giving communication through signing mediators to people with hearing inabilities, guiding administrations for people with psychological sickness.
- c. Giving access to religious gatherings to tending to the necessities of religious minorities.
- d. Setting up sufficient measures to guarantee that minority gatherings are not exposed to torment and mishandle.

9. Presenting viable arrangements for ladies and youngsters

- a. Guaranteeing viable usage of R. D. Upadhyaya judgment.
- b. Lactating moms in jail ought to be given unique consideration. The infant and the mother ought to be given satisfactory and nourishing sustenance. Youngsters beneath the age of 6 living with their moms in jail, must be furnished with administrations of crèche, play area offices, sufficient open doors for communication with the outside world.
- c. There ought to be an appropriate framework for essential instruction for kids in jails.

10. Giving Proper Medical Facilities in Jails

- a. Medicinal officers ought to be named in each jail;
- b. Penitentiaries require specific specialists. For ladies, extraordinary arrangements ought to be made for gynecologists;

- c. People – with HIV/AIDS , transferable illnesses, tuberculosis, unhealthiness – ought to be given appropriate medicinal consideration and consideration;
- d. Psycho-social and advising administrations ought to be given to first-time wrongdoers, casualties of torment and misuse and rationally sick detainees.

11. Presenting Transparency and Accountability in Prison Management

- a. Guarantee appropriate execution of RTI Act;
- b. Guarantee proactive divulgence of data;

Computerization of Prisons

- c. Setting up jail sites which would incorporate yearly reports of information on detainees;
- d. Keeping up legitimate registers with date of affirmation, subtleties of detainees;
- e. Week after week reports of prisons ought to be put on jail sites;

Social Audit

- f. Social Audit and assessment of jail framework ought to be finished by NGOs working in penitentiaries;

Media

- g. Media should assume a useful job in featuring the circumstance of detainees and considering the Government and Prison System responsible;
- h. Media ought to likewise feature the rate of torment, misuse, and so forth in detainment facilities;

Jail Visits

- i. The Prison visiting framework should be upgraded with ordinary executive gatherings. Reports, of the Inspector General, ought to be given all the time;
- j. NGOs ought to be permitted to be a piece of the revealing framework;
- k. Universal NGOs, similar to Amnesty International, ought to be urged to visit penitentiaries all the time. The reports of these NGOs ought to be made open;
- l. Judges should visit prisons. They ought to likewise energize holding of Lok Adalats in prisons to guarantee straightforwardness;

Videoconferencing

- m. Is video conferencing advantageous to detainees or does it impede fair treatment? This ought to be analyzed cautiously.

12. Appearance Rights

Families

- a. Visits, by relatives, ought to be permitted on need premise. No expense ought to be charged from families visiting penitentiaries. A few people can come distinctly on ends of the week, so detainment facilities ought to permit guests in on Sundays and open occasions;

Compassionate Groups

- b. Penitentiaries ought to enable access to every single helpful gathering, including NGOs, human rights gatherings, legal advisors, and so forth. In the event that the gatherings are denied get to, the reasons ought to be determined;

Religious Groups

- c. Religious gatherings ought not be denied access as they take into account the necessities of minorities in detainment facilities.

