Chapter VI

Conclusions and Suggestions

Even criminals, back in 1953, seemed to be soaking in the warm, hope filled glow that suffused the newly free India. From a peak of 654,019 in 1949, the number of crimes had declined year-on-year to 601,964. Murderers ad dacoits; house breakers and robbers all were showing declining enthusiasm for crime. Large scale communal violence, which had torn apart the nation at the moment of its birth, appeared to be a fading memory. Bar a Calcutta tram workers strike, which had paralysed the city for three weeks, there was no large scale violence at all. The sun wasn't shining in the stoneclad corridors of New Delhi's North Block, though, where police officials had just completed the country's first national crime survey the National Crime Records Bureau's now annual Crime in India. India, they concluded, faced a crisis of criminal justice. For one, India faced a crippling shortage of police officers. Then, poor training standards meant "there had been no improvement in the methods of investigation". "No facilities exist in any of the rural police stations and even in most of the urban police stations for scientific investigation," the report went on, "there had been a fall in the standard of work". The result, Crime in India, 1953 recorded, was plain: intelligence capacities had diminished: cases were failing; criminals walking free.

The concept of Human Rights has arisen from that of natural rights of all human beings. The belief that every person by virtue of his humanity is entitled to certain natural rights is written throughout the history of mankind. Though all human beings have human rights as they are inalienable but under certain conditions the protection which is given to human beings are curtailed. This is imposed by rule of law. The attitude of society towards prisoners may vary according to the object of punishment and social reaction to crime in a given community. If the prisons are meant for retribution or deterrence the condition inside them shall be punitive in nature, inflicting greater pain, suffering and imposing severe restrictions on inmates. But if it taken in a modern progressive views the things are different. When, crime is considered as a social disease and favors for treatment of methods through non penal methods, then question of protection of human rights of prisoners will take a significant turn. The prisoners protection laws were already enacted in India, but in
the era of globalization, when crimes are increasing and judiciary started penalising
the prisoners are increasing in prisons day by day. Whatever they have done or are
accused of doing, these prisoners remain human beings like the rest of us, concerned
for their families and children and seeking affection and solace for themselves.
Kindness and compassion are extremely important in every area of life, whether it
involves prisoners, prison guards or victims of crime. While harboring hatred and ill
will is futile, fostering cooperation, trust and consideration is far more constructive.
That is the reason why a great concern was shown to the prisoners and their human
rights protection.

The Roots of human rights were traced back in the Babylonian’s Period,
Babylonian king Hammurabi (1792-1750 B.C) provided for fair wages, protection of
property and for charges to be proved as trail for his people. It was called
Hammurabi’s code, they provided standers by which Babylonians could order their
lives and treat one another. In ancient Greece, Human rights were recognized as
natural rights of men. Stoicism had its origin in the views of Socrates (469-399
B.C.E.) and Plato (428-347 B.C.E.). Socrates had already imagined, according to
Plato's Republic, the possibility that a person could be rendered invisible by wearing
the mythical ring of Gyges. The Plato, Aristotle (384-322 B.C.E.) held that virtue
needed to be a central characteristic of human life, which should aim at the common
good. At the same time, he rejected Plato's theory of an essential universal goodness.
Adding a tangible character to Plato's teachings, he explained that the form of
goodness had to match its empirical content. Greece-Plato (427-348 B.C) was one of
the earliest writers to advocate a universal slandered of ethical conduct. Aristotle
wrote in politics that justice, virtue and rights change in accordance with different
kings of constitutions and circumstances. It can be traced back thousands of years
from the Hammurabi Code to the Magna Carta, the French Declaration of Human
Rights and the American Bill of Rights. The underlying idea of such rights -
fundamental principles that should be respected in the treatment of all men, women
and children - exists in some form in all cultures and societies. The contemporary
International statement of those rights is the Universal Declaration of Human Rights.
The responsibility of governments is to protect the human rights proclaimed by the
declaration. Under the provisions of Civil and Political Rights, all governments are to
protect the life, liberty and security of their citizens. They should guarantee that no-one is enslaved and that no-one is subjected to arbitrary arrest and detention or to torture. The rights such as freedom of thought, conscience, religion, and to freedom of expression are to be considered as Human Rights. Since the declaration does not have the necessary legal power, not being an International treaty does not determine de jure obligations for the states. Actually, its provisions have been included in the constitutions and internal laws of states and therefore it gained special importance.

The Magna Carta, 1215, is the most significant constitutional document of all human history. The main theme of it was protection against the arbitrary acts by the king. The Charter guaranteed basic civic and legal rights to citizens, and protected the barons from unjust taxes. The English Church too gained freedom from royal interferences. The king was compelled to grant the Charter, because the barons refused to pay heavy taxes unless the king signed the Charter. The English Bill of Rights declared that the king has no overriding authority. The Bill of Rights codified the customary laws, and clarified the rights and liberties of the citizens. The first colonies to revolt against England were the thirteen States of America. These states declared their independence from their mother country on 4th July 1776, American Declaration of Independence, 1776. The declaration charges the king colonies. The declaration of independence has great significance in the history of mankind as it justified the right to revolt against a government that no longer guaranteed the man’s natural and inalienable rights. After that the U.S. Bill of Rights, 1791. The Constitution was enacted on 17th September 1787. The most prominent defect of the original constitution was the omission of a Bill of Rights concerning private rights and personal liberties. The French Declaration of the Rights of Citizens in 1789, the fall of Bastille and the abolition of feudalism, serfdom and class privileges by the National Assembly ushered France into a new era. On 4th August 1789, the National Assembly proclaimed the Rights of Man and of the Citizens. The Rights were formulated in 17 Articles. The Declaration of the Rights of Man and of the Citizen has far reaching importance not only in the history of France but also in the history of Europe and mankind. The declaration served as the death warrant for the old regime and introduced a new social and political order, founded on the noble and impressive principles. United Nations Declaration of Human Rights (UNDHR, 1948), which
defines specific rights and their limitations, the International Covenants on Economic, 
Social and Cultural Rights (1966) and the International Covenant on Civil and 
Political Rights (1966), which place on states the obligation to promote and protect 
human rights. The Covenants are legally binding on those states that have ratified 
them. The UNDHR, which is the key document, is conceived as "a common standard 
of achievement for all peoples and all nations":

The prison is used as an institution to treat the criminal as a deviant and so there would be lesser restrictions and control over him inside the institution. The modern progressive view, however, regards crime as a social disease and favors treatment of offenders through non-penal methods such as probation, parole, open jail etc. It is on record that Brahaspati laid greater stress on imprisonment of convicts in closed prisons. In Vedic period, administration of justice did not form a part of the state duties. Offences like murder, theft and adultery are mentioned but there is nothing to indicate that the king or an authorized officer as a judge, either in civil or criminal cases, passed any judicial judgment. Some critics have suggested that Sabhapati of the later Vedic period may have been a judge. The Dharma Sutras and the Dharma Shastras (the earliest is that of Manu and other important Dharma Shastras are those of Yagnavalkya, Vishnu and Narada), reveal a more or less full-fledged and well-developed judiciary. Law or dharma was not a measure passed by legislature in Ancient India, it was based upon Shrutis (hearings) and Smritis (remembrance). It was enforced by social approval or the dread of hell and not by the force of the state. King was at its head and it was his pious duty to punish the wrong doers, if he fails from discharging it, he would go to hell. Kautilya stated in his Arthashastra, that the prison should be constructed in a capital and provide separate accommodation for men and women. He was personally of the view that as far as possible the prisons should be constructed road side so that monotony of prison life is reduced to a considerable extent, the problems of prisoners life and their welfare. He is of the opinion that every fifth day some prisoners should be made free who pay some money as fine or undergo some other mild corporal punishment or promise to work for social uplift. Kautilya has said that, the duties of the jailor who always keeps eyes on the movement of the prisoners and the proper functioning of the prison authorities. If a prisoner by chance moves out of his cell, he is fined twenty four
rupees and the warder who is in league with the prisoner is fined the double amount. In case the warder disturbs the prison life, the higher authority imposes a fine of five hundred rupees. Sometimes the prisoner is put to death by the warder so the penalty in this case is the highest, i.e., one thousand rupees. Kautilya has gone deep to jail life and opines that the prisoner escaping after breaking the prison walls, must be put to death. This shows that the jail authority called Bandhanagaradhyaksa was always vigilant and alert and no evil action could escape his eyes. Ashoka was familiar with the Arthashastra, for Ashoka speaks of as much as twenty five jail deliveries effected by him in the course of twenty six years since his appointment to the throne. The Brhat Samhita adds that release of prisoners could even be ordered when the king took the pusyasnana (as auspicious bath).

During Mughal period sources of law and its character essentially remained Quranic. Crimes were divided into three groups, namely offences against God, offences against the State, offences against private persons. The punishments for these offences were hadd, tazir, quisas, and tashir. There were three main prisons in Mughal India. One was at Gwaliar, second at Ranthambore and the third was at Rohtas. Criminals condemned to death punishment were usually sent to the fort of Ranthambore. They met their death two months after their survival there. The Gwaliar Fort was reserved for the nobles that offend. To Rohats were sent those nobles who were condemned to perpetual imprisonment, from where very few return home. Punishment during the Hindu and Mughal period in India was to deter offenders from repeating crime. The recognized modes of punishment were death sentence, hanging, and mutilation, whipping, flogging, branding or starving to death. Particularly, during the Mughal rule in India the condition of prisons was awe fully draconic. The prisoners were ill-treated, tortured and subjected to most inhuman treatment. They were kept under strict surveillance and control. Thus the prisons were places of terror and torture and prison authorities were expected to be tough and rigorous in implementing sentences. The system of imprisonment originated in the first quarter of nineteenth century. The first time in India, Lord Macaulay drew attention of the government of India basing on his suggestions appointed a committee in 1836 to enquire the prison conditions and prison administration. The committee submitted their report after enquired the existing conditions in prisons, but the committee
recommendations rejected due to all reforming influences such as moral and religious teaching, Education or any system of rewards for good conduct. In 1862 Jail enquiry committee appointed to sanitary conditions in Indian prisons, the committee suggested that the need for proper food and clothing for the prisoners and medical treatment for ailing prisoners. Later, the third Jail committee appointed in 1877, this committee has given suggestions. Basing on this committee suggestions The Prison Act, 1894 came into existence in India. The Indian Jails reforms committee appointed by the British in 1919-20 for the prisoners conditions, basing on this committee recommendation the prisoners should be fixed to every prison. The provincial governments of India appointed number of committees on prison reforms after the All India Jail Committee (1919-1920). The committees which are appointed are Punjab Reforms Committee (1919 and 1948), Uttar Pradesh Jail committees (1929, 1938 and 1946), Bombay (1939 and 1946), Mysore (1941), Bihar (1948), Madras (1950), Orissa (1952) and Travancore Cochin (now Kerala) (1953).

The Govt. of India invited Dr. W.C.Reckless, United Nations Technical Experts on Crime prevention and treatment of offenders, to make recommendations on prison reforms in 1951. Later on, a committee was appointed to prepare an All Indian Jail Manual in 1957 on the basis of the suggestions made by Dr.W.C.Reckless. An All India Conference of Inspector General of Prisons of the Provinces was also convened. The correctional services should form an integral part of the Home Department of each state and a Central Bureau of Correctional Services should be established at the Center. The reformative methods of probation and parole should be used to lessen the burden on prisons. State After-care units should be set up in each state. Solitary confinement as mode of punishment should be abolished. Classification of prisoners for the purpose of their treatment was necessary. The State jails manuals should be revised periodically. In 1980, the Central Government of India appointed committee under the chairmanship of Justice A.N.Mulla on All India Jail Reforms, his recommendations has great impact on prison reforms in India as that committee examined all areas of the prison and prisoners, suggested to amend legislations relating to prisoners, to enact separate statutes for the protection of prisoners, facilities for the women prisoners, free legal aid to the under trail prisoners, to construct separate jails for women and also for the improvements of prison conditions like
sanitation, diet and medical care in prisons. Thereafter, Government of India has constituted another committee on 26th May, 1986, namely, National Expert Committee on Women Prisoners under the chairmanship of Justice V.R. Krishna Iyer who has submitted its report on 18th May, 1987. This report has also been circulated to all States for taking necessary follow-up action. Provision of a national policy are relating to the women prisoners in India and for formation of new rules and regulations relating to their punishment and conduct for Maintenance of proper coordination among the police, law and prison for providing justice to women prisoners. Provisions are legal-aid for women. A recommendation was made for Construction of separate prisons for women prisoners. Proper care of the baby born in jail to a woman prisoner and provision of nutritious diet for the mother and the child is one of the main agenda.

The Government of India also enacted the Human Rights Protection Act passed in 1993, for eradication of human rights violations by the executives and legislatures discretions. Under this a National Human Rights Commission at National Level and State Human Rights Commissions at state level was constituted. The Juvenile Justice Act was enacted by the central government The Central Government enacted the Juvenile Justice(Care and Protection) Act, 2000, for the juvenile delinquents. The committee was set up by the Ministry of Home Affairs in the Bureau of Police Research and Development for the new prison policy for all the states and union territories. The jail manual drafted by the committee was accepted by the Central government and circulated to State governments in late December 2003. It is entirely possible that another kind of police bias against women might account for this high level of acquittals; male-chauvinist police officers would, after all, conduct poor investigations. It isn't only alleged rapists, though, who are being acquitted in record numbers. Kidnapping convictions have fallen from 48 per cent in 1953 to 27 per cent in 2011; successful robbery prosecutions from 47 per cent to 29. In 2003, less than a third of completed murder trials ended in a conviction; in 2011, the last year figure remained under 40 percent. When it comes to communal offences High quality empirical studies to establish just how much communal bias influences the criminal justice system are desperately needed and their absence is evidence of the chronic deficits in the policing system as a whole.
The promotion and protection of Human Rights depends upon a strong and independent judiciary. The apex judiciary in India has achieved success in discharging the heavy responsibility of safeguarding Human Rights in the light of our Constitutional mandate. The major contributions of the judiciary to the Human Rights jurisprudence have been twofold: the substantive expansion of the concept of Human Rights under Article 21 of the Constitution, and the procedural innovation of Public Interest Litigation. The Supreme Court of India is taking more steps to prevent the violations on human rights of prisoners and for the protection of prisoners and is done through Public Interest Litigation. Further almost all the basic rights are identified to come under Art 21 of the Constitution by the judiciary.

The constitution of India guarantees equality, provides right to freedom of speech and expression, peaceful assembly, freedom from arbitrary arrest, protection of life and liberty right against exploitation, freedom of conscience and free profession, practice and propagation of religion and educational and cultural rights. It also provides teeth to those rights by making them enforceable by direct access to the Supreme Court of India. In the comprehension of the Supreme Court the right to life and liberty includes, right to human dignity, right to privacy, right to speedy trail, right to free legal aid, right to be prisoner to be treated with dignity and humanity, right to bail, right to compensate for custodial death, right of workers to fair wage and human conditions of work, right to security, right to education and right to health environment. The Supreme Court of India interpreted Art 21 of the Constitution and shows much interest on prison reforms. The Supreme Court all the time balanced the reformative theory and retributive theory of punishment, i.e., the Apex Court maintaining the severity of punishment wherever necessary and considering the gravity of crime and circumstances when in it is committed. The penological approach of the Indian Judiciary itself inhumane. Prison jurisprudence since the late ‘60s recognizes that prisoners do not lose all their rights because of imprisonment. But loss of rights within custodial institutions continued. Beginning with the first few instances in the late 1970’s, the category of Public Interest Litigation (PIL) has come to be associated with its own people-friendly procedures. The foremost change came in the form of the dilution of the requirement of ‘locus standi’ for initiating proceedings. Since the intent was to improve access to justice for those who were
otherwise too poor to move the courts or were unaware of their legal entitlements, the Court allowed actions to be brought on their behalf by social activists and lawyers. The primary constitutional and moral concern with undertrial detention is that it violates the normative principle that there should be no punishment before a finding of guilt by due process. So, undertrial detention of those suspected, investigated or accused of an offence effectively detains the "innocent." However, all criminal justice systems across the world authorise limited pretrial incarceration to facilitate investigation and ensure the presence of accused persons during trial. So, the critical challenge in this area is to identify the normatively optimal and necessary level of pretrial incarceration and then design a criminal justice system.

Under the Indian Constitution, the subject of prisons is transferred from central list to state list and is mentioned in the Seventh Schedule. Thus importance is given to the prisoners for their better maintenance and improvements in prisons. The fundamental rights guaranteed under the Constitution are not absolute and many restrictions have been imposed on their enjoyment. Right to freedom of person is one of the most important rights among the fundamental rights. Articles 19 to 22 as contained in part III of the Constitution of India also the constitution has guaranteed certain rights to the accused. Art 19 of the Constitution has guaranteed certain freedoms to the citizens only and also the restrictions that may be imposed on them by the State. Art 20 deals with the protection in respect of conviction for offences under certain circumstances. Art 21 specifically deals with the protection of life and personal liberty. Art 22 provides certain safeguards to the persons arrested or detained. The fundamental right to life, article 21 deals with, is the most precious human right and forms the arc of all other rights. The protection of Article 21 is available even to convict in Jails. A convict has no right, more than anyone else to dictate where guard to be posted to prevent the escape of prisoners. The installation of live wire mechanism does not offend their right. It is a preventive measure intended to act as a deterrent and cause death only a prisoner causes death by scaling the wall while attempting to escape from lawful custody. The installation of live wire does not by itself cause the death of the prisoner. In Charles Shobraj case, the Supreme Court held that the prison authorities are justified in classifying between dangerous prisoners and ordinary' prisoners. While dismissing the petition the court held that in
the present case the petitioner is not under solitary confinement. A distinction between under trial and convict is reasonable and the petitioner is now a convict. The right to Life protected under Article 21 is not confined merely to the right of physical existence but it also includes within its broad matrix the right to the use of every faculty or limb through life is enjoyed as also the right to live with basic human dignity. The supreme court held that the detenue right to have interview with his lawyer and family members is part of his personal liberty guaranteed by Art 21 of the constitution and cannot be interfered with expect in accordance with reasonable, fair and just procedure established by law.

Whether the right of appeal is an integral part of the fair procedure as envisaged in Article 21 of the Constitution. In Hussainara Khatoon Vs Home. Secretary, State of Bihar the court has observed that, even under our constitution, though speedy trail is not specifically enumerated fundamental right, it is implicit in the board sweep and content of Article of 21 as interpreted by this court in Maneka Gandhi’s case. It is considered as on integral and essential part of the fundamental right to life and personal liberty. Every prisoner is having a right to defend their cases in trail. The speedy trail is an integral part of prisoner right to life and personal liberty guaranteed by the Constitution for them. The decision of Rudal Shah Vs State of Bihar was important in two respects. Firstly, it held that violation of a constitutional right can give rise to a civil liability enforceable in a civil court and secondly, it formulates the bases for a theory of liability under a violation of the right to personal liberty which can give rise to a civil liability. The decision focused on extreme concern to protect and preserve the fundamental right of a citizen. It also calls for compensatory jurisprudence for illegal detention in prison In India. The providing legal assistance is state obligation to the women prisoner and that two prisoners who were foreign nationals complained that a lawyer duped and defrauded them and misappropriated almost half of their belongings and jewelery on the plea that he was retaining them for payment of his fees. The Supreme Court in Sunil Batra vs Delhi Administration held that Lawyers nominated by the District Magistrate, Sessions Judge, High Court or the Supreme Court will be given all facilities for interviews, visits and confidential communication with prisoners subject to discipline and security considerations. To provide Legal assistance to a poor or indigent accused, arrested is a
constitution right and not only by Article 39A but also by Articles 14 and 21 of the Constitution. It is a necessary sine qua non of justice and where it is not provided, injustice is likely to result and undeniably every act of injustice corrodes the foundations of democracy and rule of law. Section 303 of the Criminal Procedure Code, 1973 empowers the prisoners to be defended by the pleader of their choice and Section 304 of this code provides that in certain cases legal aid is to be provided at state expense. 309 (1) of the criminal procedure code provides that in every inquiry or trial, the proceedings shall be held as expeditiously as possible. Similarly, mere sentence does not restrict the right to freedom of religion. In Prem Shanker vs. Delhi Administration the Supreme Court added another projectile in its armoury to be used against the war for prison reform and prisoners rights. The Supreme Court identified certain rights of prisoners in various cases decided and interpreted Art 21 of the Constitution and those rights are Rights against Hand Cuffing, Rights against Inhuman Treatment of Prisoners, Rights against Solitary Confinement and Bar Fetters, Right to have Interview with Friends, Relatives and Lawyers, Right to Free Legal Aid, Right to Speedy Trial and Children of Women Prisoners, etc.,.

The supreme aim of punishment is the protection of society through the rehabilitation of offender. The principal goals of the criminal justice system are assimilation of the offender in society and the prevention of crime. Accordingly, the aim of the prison administration was to employee all resources, human and material, to provide scientific treatment to every offender according to his peculiar needs and circumstances. The prison administration in Independent India shows that the Government of India took some interest in the matters of changes in the prison system. The Government of India passed the Exchange of Prisoners Act, 1948. In 1950, the Transfer of Prisoners Act was passed by the central government. This act made provision for the removal of prisoners from one state to another. The modern prison in India originated with the minutes by TB Macaulay in 1835. A committee namely Prison Discipline Committee, was appointed, which submitted its report on 1838. The committee recommended that increased rigorousness treatment while rejecting all humanitarian needs and reforms for the prisoners. Following the recommendations of the Macaulay Committee between 1836-1838, the Central Prisons were constructed. The contemporary Prison administration in India is thus a
legacy of British rule. It is based on the notion that the best criminal code can be of little use to a community unless there is good machinery for the infliction of punishments. In 1864, the Second Commission of Inquiry into Jail Management and Discipline made similar recommendations as the 1836 Committee. In addition, this Commission made some specific suggestions regarding accommodation for prisoners, improvement in diet, and clothing, bedding and medical care. In 1877, a Conference of Experts met to inquire into prison administration. The conference proposed the enactment of a prison law and a draft bill was prepared. In 1888, the Fourth Jail Commission was appointed. On the basis of its recommendation, a consolidated prison bill was formulated. Provisions regarding the jail offences and punishment were specially examined by a conference of experts on Jail Management. In 1894, the draft bill became law with the assent of the Governor General of India. The Prison Reforms in India was changed through British ruling, before the colonial rule, there was no uniformity in penal system, accused or prisoners houses treated as jails and some of them used mostly war prisoners.

In 1980, the Central Government was setup a Committee on Jail Reform, under the chairmanship of Justice A. N. Mulla. The basic objective of the Committee was to review the laws, rules and regulations keeping in view the overall objective of protecting society and rehabilitating offenders. The Mulla Committee submitted its report in 1983 and his recommendations related to prison administration and that the prison staff should be properly trained and organized into different cadres. It would be advisable to constitute an All India Service called the Indian Prisons & Correctional Service for recruitment of Prison officials. After care, rehabilitation and probation should constitute an integral part of the prison system. This committee is corner stone of the Indian prison reforms. Also various High Courts and Supreme Court upheld the recommendations in their decision relating to the prisoners rights. The state governments showed much interest to prevent atrocities and to protect the rights of prisoners and for that rules and regulations were framed in their states for the prisoners reformation. In 1986, the Government of India constituted another committee under chairmanship of Justice Krishna Iyer to undertake a study on women prisoners in India. The committee submitted a report in 1987 and recommended various immunities for women in the police force in view of their special role in
tackling women and child offenders. To prepare National policy for the women prisoners, includes special rules and regulation for them, co ordination between police, court and prison authorities, and legal aid to the needy, facilities to the child’s of imprisoned mothers. It is a deep – seated fear among many sections of Indian men that too many Indian women have taken control of their lives at a much faster pace than expected, show little patience for the structures of the past, and therefore need to be taught a quick lesson and kept in place. What better strategy than to create a fear which will unite a seriously fractured society and bring it back to its familiar, hierarchial whole? The answer is to have best correctional institutions which places the conducts or undertrails in exact places of correction and change them as normal Indians.