Chapter II
Prisoners Rights in India- Human Rights Perspective

2.1 Introduction:

The penal reforms in India during the past few decades have brought about a remarkable change in the attitude of people towards the offenders. The old concept about crime, criminal and convicts have radically changed. The emphasis has now shifted from deterrence to reformative of the criminal. The age old discriminatory and draconian punishments no longer find place in the modern penal system. Indian penologists are greatly impressed by the recent Anglo-American penal reforms and have adopted many of them in the indigenous system.\(^\text{11}\) A prison today serves three purposes which may be described as custody, care and correctional. Though the last of these which concerns the use of imprisonment as a form of legal punishment, now takes the primary place, it is in historical perspective a comparatively a new conception, not all the implications of which have yet been worked out. In its origin prison served only the custodial functions; it was a place in which an alleged offender could be kept in lawful custody until he could be tried, and if found guilty punished.\(^\text{12}\) In India, the Central Government constituted a number of committees on prison reforms and introduced the reformation and rehabilitation methods for the prisoners, providing rights to them. A person being a prisoner, cannot seized of all his rights by the authority, even though he is convicted as he is having fundamental rights guaranteed by the Art.21 of the Constitution and protected by the Supreme Court and High Courts under Art.32 and Art.226 of the Constitution. In this back ground the rights of the prisoners gained importance and has become the study of this research work.

2.1.1 Rights:

Rights are legal, social, or ethical principles of freedom or entitlement, rights are the fundamental normative rules is allowed of people, according to some legal


system, social convention, or ethical theory. The rights of man have been the concern of all civilizations from time immemorial. The concept of the rights of man and other fundamental rights was not unknown to the people of earlier periods.

In the jurisprudence and the law, a right is the legal or moral entitlement to do or refrain from doing something, or to obtain or refrain from obtaining an action, thing or recognition in civil society. Rights serve as rules of interaction between people and as such, they place constraints and obligations upon the actions of individuals or groups. Most modern conceptions of rights are Universalistic and egalitarian rights are granted to all people. There are two main modern conceptions of rights, on the one hand, the idea of natural rights holds that there is a certain list of rights enshrined in nature that cannot be legitimately modified by any human power. The idea of legal rights holds that rights are human constructs, created by society, enforced by governments and subject to change. It is not generally considered necessary that a right should be understood by the holder of that right, thus rights may be recognized on behalf of another, such as children's rights or the rights of people declared mentally incompetent to understand their rights. However, rights must be understood by someone in order to have legal existence, so the understanding of rights is a social prerequisite for the existence of rights. Therefore, educational opportunities within society have a close bearing upon the people's ability to erect adequate rights structures. Rights are Social, Political, economical, legal and ethical, natural rights by society and enforced by the governments, without right a human being cannot survive. Every human being is having certain basic rights, equally to man and women and with regard to the rights, it is the state obligation to implement the rights and if there is any violation, the courts are vigilant over its violations.

2.1.2 Human Rights:

Albert Einstein addressed at Chicago, the existence and validity of human rights are not written in the stars. The ideals concerning the conduct of men towards each other and the desirable structure of the community have been conceived and taught by enlightened individuals in the course of history. Those ideals and

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15 https://answers.yahoo.com
convictions which resulted from historical experience, from the craving for beauty and harmony, have been readily accepted in theory by man and at all times, have been trampled upon by the same people under the pressure of their animal instincts. A large part of history is therefore replete with the struggle for those human rights, an eternal struggle in which a final victory can never be won. But to tire in that struggle would mean the ruin of society. The right to work, to education, to maintenance in old age, to disability benefits and to free medical service made it possible for everyone really to exercise a whole number of social and political rights and liberties. As for the political freedoms, freedom of speech, of the press, of assembly, processions and demonstrations, the Soviet state not only made them into law, but also guaranteed them by nationalizing the mass media such as publishing houses, radio stations, newspapers, magazines, recreation centers, etc. They came to belong to society as a whole and were used in its interest.

Human rights, as the term is most commonly used, are the rights that every human being is entitled to enjoy and to have protected. The underlying idea of such rights are 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. It is the responsibility of governments 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. Everyone is entitled to a fair trial. The rights to freedom of thought, conscience, religion, and to freedom of expression are to be protected.

The human rights may be regarded as the fundamental and inalienable rights are essential for life as human being. Human rights are the rights possessed by every human being, irrespective of nationality, race, religion, and sex, simple because of a human being. Human rights are thus those rights which are inherent in our nature and without which cannot live as human being. Human rights are fundamental freedoms

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to fully develop and use the human qualities, intelligence, talents, and conscience and to satisfy physical, spiritual and other needs. Human rights called fundamental rights or basic rights or natural rights.18

Human rights may be categorized as the fundamental rights to every man or women living in any part of the world are entitled by virtue of having been born as a human being, the rights are required for the full and complete development of human personality. Human rights are derived from the dignity and worth inherent in human person. The courts in India have been recognizing and enforcing the human rights as natural rights of mankind or as Constitutional mandates or as rights of an Indian in an independent polity.19 The human rights are not created by any legislation; rights resemble very much the natural rights. Civilized country like the United Nations must recognize them. They cannot be subjected to the process of amendment. The legal duty to protect human rights includes the legal duty to respect them. Members of U.N. committed themselves to promote respect for and observance of human rights and fundamental freedoms. Human rights represent claims which individuals or groups make on the society. They include the right to freedom from torture, the rights to life, inhuman treatment, freedom from slavery and forced labour, the right to liberty and security, freedom of movement and choice of residence, right to fair trial, right to privacy, freedom of thought, conscience and religion, freedom of opinion and expression, the right to marry and from freely elected representatives, the right to nationality and equality before the law. These rights cannot be compromised universally. These rights are natural because they were derived from nature and could not be legally alienated by the ruler. Human Rights are inalienable rights or natural rights or basic rights. Part III of the Indian Constitution provides fundamental rights nothing but human rights which are to every citizen in India. Human rights are two types one natural and other one created and protected by legislations. The Human Rights are protected by Judiciary by enforcing Constitutional Provisions in India.

2.1.3 Prisoners Rights:

A prisoner when being imprisoned donot lose all the rights. They lose only a part of the right which are the necessary consequences of the confinement and the rest

of the rights are preserved\textsuperscript{20}. A Prisoner is a person who is deprived of liberty against their will. The prisoner can be by confinement, captivity, or by forcible restraint. The term applies particularly to the on trial or serving a prison sentence.\textsuperscript{21} The rights of civil and military prisoners are governed by both national and international law. International conventions include the International Covenant on Civil and Political Rights; the United Nations Minimum Rules for the Treatment of Prisoners, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment\textsuperscript{22} and the Convention on the Rights of Persons with Disabilities. The prisoners are protected by the rights guaranteed by the International Conventions and Constitution of India, enacted by the legislatures like The Prisons Act, 1894, The Prisoners Act, 1900. The rights are also protected and interpreted by the Judiciary like an inmate is not ceased as a human being or cannot be treated as a slave or bonded labour, even though the person is in prison, all protections and rights are guaranteed.

2.2 Historical Evolution of Prisons:

According to the Gita, he who has no ill will to any being, who is friendly and compassionate, who is free from egoism and self sense and who is even minded in pain and pleasure and patient is dear to God. It also says that divinity in humans is represented by the virtues of non-violence, truth, freedom from anger, renunciation and aversion to fault finding, compassion to living being, freedom from covetousness, gentleness, modesty and steadiness the qualities that a good human being ought to have.\textsuperscript{23} The historical account of ancient Bharat proves beyond doubt that human rights were manifest in the ancient Hindu and Islamic Civilizations as in the European Christian civilizations. Ashoka, prophet Mohammed and Akbar cannot be excluded from the genealogy of human rights.\textsuperscript{24}

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

\textsuperscript{20} A.K.Roy Vs Union of India and anothers, AIR 1982 SC 710
\textsuperscript{21} www.Merriam-webster.com, Retrieved 2012-04-19
\textsuperscript{22} Howard Davis (2003),"Prisoners' rights", Human rights and civil liberties, Taylor & Francis, p. 157, ISBN 978-1-84392-008-3
\textsuperscript{24} Yogesh K. Tyagi, "Third World Response to Human Rights," Indian Journal of International Law, Vo.21, No.1 (January - March 1981)
system and its evolution. Prisons in the shape of dungeons had existed from time immemorial in all the old countries of the world. The punitive imprisonment used extensively in Rome, Egypt, China, India, Assyria and Babylon and firmly established in Renaissance Europe. In India, prisons are even today are deemed to be created merely to maintain law and order. But it has to be viewed as an essential means of preserving and raising the quality of human life. Investment on prisons is still considered as non-developmental. Indian's attitude is greatly ambivalent. As most of the prisoners in India are themselves a victim of stark deprivation and of forced induction into criminogenic culture, they hardly have an advocacy of their own or on their behalf. Rationalization of prison reformation is not in India. As a consequence, prisons received the lowest priority within the criminal justice system in India. The Prison conditions under various dynasty’s is barbaric and inhuman methods were prevailed, the man became prisoner, all his rights are curtailed and he became slave. In those periods, different types of punishments were there. After independence, the prison conditions were changed from barbaric to reformation and rehabilitation methods.

2.2.1 Ancient Period:

The ancient Indian society exhibited all the characteristics of a scriptive social system. Many crimes and wrongs were sins and entailed secular punishments and also religious sanction. A well organized system of prisons is known to have existed in India from the earliest times. It is on record that Brahaspathi laid greater stress on imprisonment of convicts in closed prisons. In Vedic period, administration of justice did not form a part of the state duties. Offences like murder, theft and adultery are mentioned but there is nothing to 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

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27 Narayankar B.D, The New Indian Express, 2nd April 2001, p.9,
28 M.B. Mahaworkar, Prison Management, Problems and solutions, , Kalpaz Publications, Delhi. 2006, p.43
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.\textsuperscript{29} Sutras and Shastras, we rarely come across the words prison or jailor. The early prisons were only places of detention where an offender was detained until trial and judgment and the execution of the latter. The structure of society in Ancient India was founded on the principles enunciated by Manu and explained by Yiijnu Valkya, Kautilya and others.\textsuperscript{30} Among various types of corporal punishments are branding, hanging, mutilation and death, the imprisonment was the mild kind of penalty known prominently in ancient Indian penology. Imprisonment occupied an ordinary place among the penal treatment and the type of Corporal punishment was suggested in the Hindu scriptures. The evildoer was put into prison to segregate him from the society. The main aim of imprisonment was to keep away the wrongdoers; they might not defile the members of social order.\textsuperscript{31} These prisons were totally dark dens, cool and damp, unlighted, and unwarmed. There was not proper arrangement for the sanitation and no means of facility for human dwelling.\textsuperscript{32} To maintain law and order in society, to remove the criminals or wrongdoers by using force and punish the accused in public places, it will create fear among members of the society. At the time punishment is very cruel, inhuman treatment like as bounded labour and slavery.

Kautilya stated in his Arthashastra, that the prison should be constructed in a capital and provide separate accommodation for men and women. He was personally of the view that as far as possible the prisons should be constructed road side so that monotony of prison life can be reduced to a considerable extent, the problems of prisoner’s life and their welfare. He is of the opinion that every fifth day some prisoner’s should be made free who pay some money as fine or undergo some other mild corporal punishment or promise to work for social uplift. He has also suggested that general amnesty on the birth of a prince or coronation of a royal heir. Kautilya was of the view that social festivals were proper occasion for amnesty as that would draw the attention of others. The third occasion for making prisoners as free citizens

\textsuperscript{29} Basham, A.L: The Wonder That Was India, Macmillan Company, New York, 1959, pp.133,247
\textsuperscript{32} S. Prakash, "History of Indian Prison System", the Journal of Correctional Work, No. XXII, Lucknow, 1976, p. 89.
was the birth day of the ruling monarch who inspects prison, old prisoners, sick persons in the jail or orphans undergoing imprisonment. They were allowed to go out of the jail boundary and lead a life of free law abiding citizens. Kautilya has said that, the duties of the jailor who always keeps eyes on the movement of the prisoner’s and the proper functioning of the prison authorities. If a prisoner by chance moves out of his cell, he is fined twenty four rupees and the warden who is in league with the prisoner is fined the double amount. In case the warden disturbs the prison life, the higher authority imposes a fine of five hundred rupees. Sometimes the prisoner is put to death by the warden 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. Kautilya stated that in his Arthasastha, the duties of the jailer is to provide facilities to prisoners and imposed fines for misconduct in their duties. He further explains the condition of prisoner’s stringent fines are imposed when the prisoners tried to escape.

The prisoners of the Pre Buddhist times were terrible indeed. There were dangerous and the prisoners were kept under chains and heavy loads, and whipped on the slightest pretext. Whipping was a principle punishment in Europe and in India in the ancient times and in even the Middle Ages the prisoners were brutally chained and whipped every now and then. In the early years of Ashoka, there was an unreformed prison in which most of the traditional fiendish tortures were inflicted and from which no prisoner came out alive. But from his moral edicts which belong to his later period of rule was influenced by Buddhism. It appears that many reformatory measures were taken. Professor Ram Chandra Dikhitar in his book entitled 'Mauryan Polity', has suggested that Ashoka was familiar with the Arthashastra, for Ashoka speaks of as much as twenty five jail deliveries effected by him in the course of twenty six years since his appointment to the throne.

After the Mouryan dynasty, Jatakas given clear picture on crime and punishment, in this time, the release of political prisoners at the time of war and

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34 Basham, A.L: The Wonder That Was India, Fontana, Calcutta, 1975, pp.119
35 V.R.Ramachandra Dikhistar, The Mauryan polity, Madras University Historical Series, No.21, 1953, pp. 173-176
employed in their army. Emperor Ashoka constructed twenty five jails in his period and implemented reformative measures in prisons, because Ashok followed Buddhism. Later in jatakas period they used the prisoners as army in war times. From Harshacharita it appears that the condition of the prisoners was far from satisfactory. The life of Hiuen-Tsang records, prisoners generally received harsh treatment. They were not allowed to shave. They had hairy faces and matted beards. They were, however, occasions when prisoners were released. Kalidasa records when the constellation on which a King was born in evil aspect, astrologers advised release of all the prisoners. At the time of Royal Coronation all prisoners were released. The Bharat Samhita adds that release of prisoners could even be ordered when the king took the pusyasnana (as auspicious bath).\[^{36}\] The prison system was not regular, the conditions of the prisoners changed basing on the rulers attitude and the treatment of political prisoner was different when compared to the other prisoners. The rulers used inhuman methods on prisoners and the conditions of prisons were inhumane in olden days.

### 2.2.2 Medieval Period

The legal system of Medieval India resembled that of ancient India. The contemporary Muslim sovereigns seldom attempted to tamper with the day to day administration of justice. During Mughal period sources of law and its character were essentially Quaranic. The crudeness and insufficiency of the judicial systems were aggravated by the fact that only law recognized by the emperor and his judge was the Quaranic law, which had originated and grown to maturity outside India. Brahmanic Courts and Gentoc Code a loose mass of Sanskrit legal rules and sacred injunctions-survived Emperor Akbar. During Mughal period sources of law and its character essentially remained Quranic. Crimes were divided into three groups, namely offences against God, offences against the State, offences against private persons. The punishments for these offences were hadd, tazir, quisas, and tashir.\[^{37}\]

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

\[^{36}\] Sukla Das, Crime and Punishment in Ancient India, Abhinav, New Delhi, 1977, p.74
\[^{37}\] Sarkar Jadunath; Mughal Administration in India, Calcutta, 1935, pp. 114-117
their survival there. The Gwalior 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. Princes of Royal Blood were often sent to this place. The release of prisoners was that, the orders for their release were issued on special occasions. These occasions were birth of crowned prince, recovery of the Emperor or any of his sons from long illness, or some occasional Royal visit to a prison fortress. On the birth of prince Salim, Emperor Akbar ordered that all the prisoners in the imperial dominions who were confined in the fortresses for great accounts were to be released. On the occasion of the celebrations of recovery from illness of the favorite princess, Begum Sahib, Shahajahan ordered the release of prisoners in 1638. In Mughal period, the prisons were overcrowded and inhuman treatment to the prisoners. The prisoners were sent to different prisons, the prisoners died within two months of their prison life. The offences were of different types and the punishments were mutilation, branding, whipping and etc and the kings released prisoners on the happiest occasions in their life.

The prisoners were taken to the prison; they were usually loaded with iron fetters on their feet and shackles on their necks. Ancient and Medieval period imprisonment was considered to be a form of punishment and the same features of the prison system prevailed in pre British period. It was no description of the internal administration of prisons. No separate prison service existed and courts were not feeding centers for prisons, no rules for maintenance of prisons. The conditions of the prisons were degrading; solitary confinement was given to the prisoners and not allowed to meet their families. It was no uniformity in treating the prisoners and the conditions in the prisons was deplorable.

In 1783, the agreement written between Britishers and Tipu Sulthan is relating to war prisoners. The Tipu Sultan bravely fought against Britishers. Tipu captured brigadier Mathews, in 1783. Then in November 1783, Colonel Fullarton captured Coimbatore. Tired of the war, the two sides concluded the Treaty of Mangalore in 1784. According to the treaty, both the parties decided to restore each other's conquered territories and free all the prisoners.

38 Satya Prakash Sagar, Crime and Punishment in Mughal India, sterling, Delhi, 1967, p. 47
2.2.3 British Period

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

In 1835, Under East India Company Rule, 143 civil jails, 75 criminal jails and 68 mixed jails, with a total accommodation for 75, 100 had been built in Bengal, North-Western Provinces, Madras and Bombay. Reforms in prison administration came to occupy public attention; the British Parliament passed an enactment in 1824 in regard to the essentials of prison administration. In 1836, the East India Company constituted committee for modern administrative structure of prisons. Lord Macalay is the member of that committee. The committee criticized that the corruption of prison staff and laxity of discipline. The main recommendation of the committee was Central Jails should be built to accommodate not more than 1000 prisoners each. Inspector General of Prisons should be appointed in all provinces. Sufficient buildings should be provided in all jails to accommodate prisoners comfortably. The First committee which has been setup on prisons conditions in India constituted by the East India Company. Basing on that committee recommendation, the first central prison was constructed in Agra in 1846. The recommendations of the first Committee could not be implemented, the East India Company rule ended in

40 Vidya Bhushan, Prison Administration in Uttarpradesh, 1953, P.12
42 Devakar, Prison and prison Reforms in British India, Social Defence, Vol.xx, January 1985,
43 Orissa Jail Reform Committees Report (chairmen- Justice Harihar Mahapatra), 1981, p.1
1858 and the rule of British Crown started in India. During this period, The Indian penal code, 1860 and code of criminal procedure came into force. The Indian Prison System changed from barbaric to modern but not fully equipped to meet the prisoner’s needs. The British rulers were sent as prisoners to the Andaman Islands. In 1858 to 1860 up to 2000 to 4000 prisoners were sent to Andaman Cellular Jail and many of them died. A second committee was constituted in 1864 to consider the deaths in prison and prison management. The committee came to the conclusion and submitted a report that due to overcrowding, bad conservancy, bad drainage, insufficient food, and insufficient medical facility. In 1877, the third jail committee was constituted entirely officials; it reviewed conditions of prisons and general administration.

In 1888, the Fourth Committee was appointed on an all India basis. This Committee was expressly directed towards the routine working of the prisons. The report covered nearly the whole field of internal management of jails and laid down elaborate rules for prison management. The Committee recommended the separation of under trial prisoners and the classification of prisoners into casuals and habitual. Most of the recommendations of the Committee were incorporated in the jail manuals of various provinces. In 1892, the fifth all India jail committee was appointed and it reviewed total prison administration in India and recommended that the punishments of prison offences and separate under trails from the other prisoners and classification of prisoners like offenders and habitual. Britishers accepted the committee report and passed The Prisons Act, 1894. The act provided classification of prisoners and important aspect to be considered is the sentence of whipping was abolished. The medical facilities made available to the prisoners in 1866 were further improved and better amenities were provided to women inmates to protect them against contagious disease. Despite those changes, the prison policy as reflected through the Act. 44 In 1897, the Reformatory School Act was passed, that was the landmark in the history of prison reforms in India. The court directed to the prison authorities, to separate the youth offenders from the other prisoners. The Prisoners Act was passed in the year 1900, incorporated prisoner’s rights and duties in prisons.

44 Vidya Bhushan: Prison Administration in India, p.21
After the First World War, the revolutionary changes came in to Indian prison system. The sixth Jail Committee was appointed in 1919 under the chairmanship of Sir Alexander G Cadrew. The process of review of prison problems in India continued the enactment of Prisons Act, 1894. The first ever comprehensive study was launched on this subject with the appointment of All India Jail Committee (1919-1920). Landmark in the history of prison reforms in India and is appropriately called the corner stone of modern prison reforms. The prison administration, reformation and rehabilitation of offenders were identified as one of the objectives of prison administration. The care of prisoners should be entrusted to adequately trained staff drawing sufficient salary to render faithful service. The separations of executive/custodial, ministerial and technical staff are in prison service. The diversification of the prison institutions i.e. separate jail for various categories of prisoners and a minimum area of 675 Sq. Feet (75 Sq. Yards) per prisoner was prescribed within the enclosed walls of the prison. It is ironical that the recommendations made by this Committee could not be implemented due to disadvantageous political environment.45

The All India Jail Committee (1919-1920) played a significant role in the prison reforms under British rule and that the committee was introduced reformation and rehabilitation methods for the prisoners to deter them after release from prisons and also suggested that to classify the prisoners under various categories and provide minimum facilities to them. The categories are classified into habitual offenders, offenders, under trial, convicted and women prisoners. The provincial governments of India appointed number of committees on prison reforms after the All India Jail Committee (1919-1920). 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).46

2.2.4 Post Independence Era:

The first decade after independence was marked by strenuous efforts for improvements in living conditions in prisons. A number of Jail Reforms Committees were appointed by the State Governments, to achieve a certain measure of

45 Draft National Policy on Prison Reform and Correctional Administration, Historical Review of Prison Reforms in India

In Nijam’s state of Hyderabad, having imprisoned an estimated 17,550 people who entered the territory, the Government of India left all the prisoners rounded up in the upheaval, and to relieve the problem of overcrowded jails. In Hyderabad, British rulers inherited a criminal justice system that had been paralysed by the conflict, and could not process any significant number of cases. As in British India, politics came to determine was subjected to formal punishment, and escaped. Nehru government was different from those of the British: they were not spending money could otherwise be used for development projects, on expensive legal proceedings; and they were sensitive to the importance of political parties in a democratic. Many members of the public, contain in their insistence that, the government punished participants in communal violence, these only worsened relations between those communities were perceived to be at loggerheads with one another though thousands were originally detained; only a few exemplary persons remained in jail by 1953. The constraints of governance in a democratic state had an impact in three rather contradictory ways on the decisions which the government made about these prisoners. They had been detained for several months without trial, the International Committee for the Red Cross was pressing Nehru to see that those detained were either prosecuted or released. Nehru had long since realized that the eyes of the world were on Hyderabad, and wished to prove that the new Indian government could be balanced in its approach to both Hindus and Muslims. it was the widely held opinion amongst the new rulers of the state that the communist and ‘communalist’ parties in the state remained popular because the state Congress Party was weak. Chaudhuri, therefore, hoped that the release of prisoners would ‘rehabilitate the prestige of the Hyderabad State Congress’ Party in the eyes of the public in Hyderabad, and improve relations between the state and national sections of the party. There could be no general amnesty because the Military Governor still wished to prosecute prominent Razakars.

47 Indian Economic Social History Review 2007; 44;
such as Kasim Razvi. In Major-General Chaudhuri’s words, ‘in political physics, Razakar action and Hindu reaction have been almost equal and opposite’. Thus, when it was decided to free all Hindus and to institute a programme for the review of Muslim cases with an aim to gradually letting many out of jail, the government preferred that the policy be given no publicity. Releases were staggered and former prisoners made to report periodically to the police. The Indian authorities ordered the release of all Congressmen who had landed in Hyderabad’s jails during their campaign of satyagraha and sabotage before the police action. Before the release, there was some debate as to whether those who had committed crimes of violence should be freed. In the event, Congressmen accused of violent crimes were let out, while communists were kept in jail, whether their crimes involved violence. the Government of India released 1,222 out of 1,736 detenus, and 7,893 out of 9,218 political prisoners. The Govt. of India invited Dr. W.C.Reckless, United Nations Technical Experts on Crime prevention and treatment of offenders, to make recommendations on prison reforms in 1951. Later on, a committee was appointed to prepare an All Indian Jail Manual in 1957 on the basis of the suggestions made by Dr.W.C.Reckless. An All India Conference of Inspector General of Prisons of the Provinces was also convened. Consequent of these efforts, the following major policy guidelines regarding reformation and rehabilitation of prisoners were unanimously accepted. The correctional services should form an integral part of the Home Department of each state and a Central Bureau of Correctional Services should be established at the Center. The reformative methods of probation and parole should be used to lessen the burden on prisons. State run after-care units should be set up in each state. Solitary confinement as mode of punishment should be abolished. Classification of prisoners for the purpose of their treatment was necessary. The State jails manuals should be revised periodically.48

On the recommendations of the Pakwasa committee a Model Prison was constructed at Lucknow in 1949. In 1951, Dr.W.C.Reckless was appointed by the Govt. of India for the recommendations of the prison reforms in India. He made several recommendations to relate juveniles, undertrail prisoners, convicted prisoners and their facilities, suggested to enact statutes relating to probation and after care

schemes for the welfare of the prisoners. In 1961, The Govt. of India developed Central Bureau of Correctional Services and that was the first Central Agency to undertake research, training, education and documentation on the matters relating to Social Defence. The Government of India constituted Working Group on Prisons in 1972, which submitted its report in 1973. The committee made a number of recommendations and the State Governments were asked by Central Government to implement such recommendations. It recommended for the establishment of a Research Unit at the headquarters of the Inspector General of Prisons in each State. The setting up of a training institute in each State as well as of Regional Training Institute, diversification of the Institutions, accommodation and other connected matters, etc., formed the contents of its report.49

In 1979, a Conference of Chief Secretaries made a number of recommendations to reduce the overcrowding in Jails. This included the establishment of an effective system of regular review of cases of under-trials, appointment of part-time or whole-time law officers in jails to enable the under-trials to contest their cases in courts, setting up of new Courts and amendment of the law relating to the transfer of prisoners. The other recommendations made by this conference were; creation of separate facilities for the care, treatment and rehabilitation of women offenders, segregation of juveniles, improving the system of inspection and supervision in jails so as to avoid indiscipline and malpractices, strengthening of training facilities for jail staff, work programme for all able bodied persons, setting up of State and national boards of visitors and revision of State Jail Manuals on the lines of the Model Prison Manual.50 This conference accepted various rights to the prisoners, their protection measures and development of prison conditions. The Govt. of India requested to the State Governments and Union Territory Administrations for the protection of prisons and prisoners and which is considered as an important document for prisoners regulating and prison reforms, to revise their prison manuals on the lines of the Model Prison Manual by the end of the year, to appoint Review Committees for the under trial prisoners at the district and state levels, to provide legal aid to indigent prisoners and to appoint whole time or part-time law officers in prisons, to enforce existing

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

The Committee had, therefore, formulated the draft of a National Policy on Prisons and recommended for its adoption by the Government of India in consultation with the State Government and Union Territory Administrations. The goals and objectives of prisons in India, according to the proposed National Policy on Prisons, were to protect society and to reform and re assimilate offenders in the social milieu by giving them appropriate correctional treatment. The Committee strongly recommended that the protection and caring of prisoners is the duty of the states and also to create a regular plan aiming at creating a rehabilitation culture towards
Among the important suggestions made by the Committee are Directive Principle of National Policy on Prisons had to be formulated and embodied in Part 4 of the Indian Constitution. The subject of Prisons and allied institutions were to be included in the Concurrent List of Seventh Schedule of the Constitution. A Provision of an uniform framework for correctional administration by a consolidated, new and uniform comprehensive legislation to be enacted by the Parliament for the entire country was also recommended Revision of Jail Manuals was to be given top priority and suitable amendments in IPC. The follow up action on the report had been initiated by the Ministry of Home Affairs in consultation with concerned ministries and department of the Central and State Governments. The committee suggested that the national prison policy was necessary for uniform rules and regulations to the prisoners though out India, to review existing laws and Manuals relating to the prisoners and amendment to the Indian Penal code.

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

The Prisons shall endeavor to reform and reassimilate offenders in the social milieu by giving them appropriate correctional treatment. Incorporation of the principles of management of prisons and treatment of offenders in the Directive Principles of the State Policy embodied in Part IV of the Constitution of India; Inclusion of the subject of prisons and allied institutions in the Concurrent List of the

52 M.B. Mahaworkar, Prison Management, Problems and solutions, Kalpaz Publications, Delhi, 2006. p.43
Seventh Schedule to the Constitution of India. Enactment of uniform and comprehensive legislation is embodying modern principles and procedures regarding reformation and rehabilitation of offenders. There shall be in each State and Union Territory a Department of Prisons and Correctional Services dealing with adult and young offenders their institutional care, treatment, aftercare, probation and other non-institutional services. The State shall endeavour to evolve proper mechanism to ensure that no undertrial prisoner is unnecessarily detained and achieved by speeding up trials, simplification of bail procedures and periodic review of cases of undertrial prisoners. Undertrial prisoners shall, as far as possible, be confined in separate institutions. Imprisonment is not always the best way to the punishments the government shall endeavour to provide in law new alternatives to imprisonment such as community service, forfeiture of property, payment of compensation to victims, public censure, specially ensure that the Probation of Offenders Act, 1958, is effectively implemented throughout the country. Living conditions in every prison and allied institution meant for the custody, care, treatment and rehabilitation of offenders shall be compatible with human dignity in such as accommodation, hygiene, sanitation, food, clothing, and medical facilities. All factors responsible for vitiating the atmosphere of these institutions shall be identified and dealt with effectively. In consonance with the goals and objectives of prisons, the State shall provide appropriate facilities and professional personnel for the classification of prisoners on a scientific basis. Diversified institutions shall be provided for the segregation of different categories of inmates for proper treatment.

The State shall endeavour to develop the field of criminology and penology and promote research on the typology of crime in the context of emerging patterns of crime in the country. Proper classification of offenders and in devising appropriate treatment for them. A system of graded custody ranging from special security institutions to open institutions shall be provided to offer proper opportunities for the reformation of offenders according to the progress. Programmes for the treatment of offenders shall be individualized and shall aim at providing them with opportunities for diversified education, development of work habits and skills, change in attitude, modification of behaviour and implantation of social and moral values. The State

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shall endeavour to develop vocational training and work programmes in prisons for all inmates eligible to work. The aim of such training and work programmes shall be to equip inmates with better skills and work habits for their rehabilitation. Payment of fair wages and other incentives shall be associated with work programmes to encourage inmate participation in such programmes. The incentives of leave, remission and premature release to convicts shall also be utilized for improvement of their behaviour, strengthening, of family ties and their early return to society. Custody being the basic function of prisons, appropriate security arrangements shall be made in accordance with the need for graded custody in different types of institutions. The management of prisons shall be characterized by firm and positive discipline, with due regard, however, to the maintenance of human rights of prisoners. The State recognizes that a prisoner loses his right to liberty but maintains his residuary rights. It shall be the endeavour of the State to protect these residuary rights of the prisoners. The State shall provide free legal aid to all needy prisoners. Prisons are not the places for confinement of children. Children (under 18 years of age) shall in no case be sent to prisons. All children confined in prisons shall be transferred forthwith to appropriate institutions, meant exclusively for children with facilities for their care, education, training and rehabilitation. Benefit of non-institutional facilities shall, whenever possible, be extended to such children.

Young offenders (between 18 to 21 years) shall not be confined in prisons meant for adult offenders. There shall be separate institutions for them where, in view of their young and impressionable age, they shall be given treatment and training suited to their special needs of rehabilitation. Women offenders shall, as far as possible, be confined in separate institutions specially meant for them. Wherever such arrangements are not possible they shall be kept in separate annexes of prisons with proper arrangements. The staff for these institutions and annexes shall comprise of women employees only. Women prisoners shall be protected against all exploitation. Work and treatment programmes shall be devised for them in consonance with their special needs. Mentally ill prisoners shall not be confined in prisons. Proper arrangements shall be made for the care and treatment of mentally ill prisoners. Persons courting arrest during non-violent socio, political, economic agitations are

54 N.Ravi, Human rights scenario in India -an overview, Lap Lambert Academic publishing,2013
declared as public cause who shall not be confined in prisons along with other prisoners. Separate prison camps with proper and adequate facilities shall be provided for such nonviolent agitators. The persons sentenced to life imprisonment have to undergo at least 14 years of actual imprisonment. Prolonged incarceration has a degenerating effect on such persons and is not necessary either from the point of view of individual’s reformation or from that of the protection of society. The term of sentence for life in such cases shall be made flexible in terms of actual confinement so that such a person may not have necessarily to spend 14 years in prison and may be released when his incarceration is no longer necessary. Prison services shall be developed as a professional career service. The State shall endeavour to develop a well-organized prison cadre based on appropriate job requirements, sound training and proper promotional avenues. The efficient functioning of prisons depends undoubtedly upon the personal qualities, educational qualifications, professional competence and character of prison personnel. Emoluments and other service conditions of prison personnel should be commensurate with their job requirements and responsibilities. An All India Service namely the Indian Prisons and Correctional Service shall be constituted to induct better qualified and talented persons at higher echelons. Proper training for prison personnel shall be developed at the national, regional and state levels.

The State shall endeavour to secure and encourage voluntary participation of the community in prison programmes and in non-institutional treatment of offenders on an extensive and systematic basis. Such participation is necessary in view of the objective of ultimate rehabilitation of the offenders in the community. The government shall open avenues for such participation and shall extend financial and other assistance to voluntary organizations and individuals willing to extend help to prisoners and ex-prisoners. Prisons are hitherto a closed world. It is necessary to open them to some kind of positive and constructive public discernment. Selected eminent public-men shall be authorised to visit prisons and give independent report on them to appropriate authorities. In order to provide a forum in the community for continuous thinking on problems of prisons, for promoting professional knowledge and for generating public interest in the reformation of offender, it is necessary that a

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professional non-official registered body is established at the national level. It may have its branches in the States and Union Territories. The Government of India, the State Governments and the Union Territory Administrations shall encourage setting up of such a body and its branches, and shall provide necessary financial and other assistance for their proper functioning. Probation, aftercare, rehabilitation and follow-up of offenders shall form an integral part of the functions of the Department of Prisons and Correctional Services. The development of prisons shall be planned in a systematic manner keeping in view the objectives and goals to be achieved. The progress of the implementation of such plans shall be continuously monitored and periodically evaluated. The governments at the Centre and in the States / Union Territories shall endeavour to provide adequate resources for the development of prisons and other allied services. Government recognizes that the process of reformation and rehabilitation of offenders is an integral part of the total process of social reconstruction, and, therefore, the development of prisons shall find a place in the national development plans.\textsuperscript{56}

In view of the importance of uniform development of prisons in the country the Government of India has to play an effective role in this field. For this purpose the Central Government shall set up a high status National Commission on Prisons on a permanent basis. This shall be a specialized body to advise the Government of India, the State Governments and the Union Territory Administrations on all matters relating to prisons and allied services. Adequate funds shall be placed at the disposal of this Commission for enabling it to play an effective role in the development of prisons and other welfare programmes. The Commission shall prepare an annual national report on the administration of prisons and allied services, which shall be placed before the Parliament for discussion. As prisons form part of the criminal justice system and the functioning of other branches of the system, the police, the prosecution and the judiciary have a bearing on the working of prisons, it is necessary to effect proper coordination among these branches. The government shall ensure such coordination at various levels. The State shall promote research in the correctional field to make prison programmes more effective.\textsuperscript{57}

\textsuperscript{57} Justice A.N.Mulla Committee on All India Jail Reforms Report, (1980-1983)
The draft of the proposed National Policy on Prisons, quoted above, would require some changes in view of the developments that have taken place in the intervening period. For instance, the present committee is of the opinion that the enactment of a uniform and comprehensive legislation on prisons would be possible within the existing provisions of the Constitution of India, as India is a party to the International Covenant on Civil and Political Rights, 1966. Thereafter, Government of India has constituted another committee on 26th May, 1986, namely, National Expert Committee on Women Prisoners under the chairmanship of Justice V.R. Krishna Iyer who has submitted its report on 18th May, 1987. This report has also been circulated to all States for taking necessary follow-up action. Provision of a national policy are relating to the women prisoners in India and for formation of new rules and regulations relating to their punishment and conduct for Maintenance of proper coordination among the police, law and prison for providing justice to women prisoners. Provisions are legal-aid for women. A recommendation was made for Construction of separate prisons for women prisoners. Proper care of the baby born in jail to a woman prisoner and provision of nutritious diet is for the mother and the child.58

The Government of India has shown serious concern over the growing threats to the security and discipline in prisons posing a challenge as how to make prisons a safe place. Consequently, the Ministry of Home Affairs, Government of India has constituted a All India Group on Prison Administration-Security and discipline on 28th July, 1986 under the chairmanship of Shri R.K. Kapoor who submitted their report on 29th July, 1987. In pursuance to the recommendations made by the All India Committee on Jails Reforms, the Government of India identified Bureau of Police Research & Development (BPR&D) as a nodal agency at the national level in the field of Correctional Administration on November 16,1995 with specific charter of duties. Analysis of Prison statistics and problems are of general nature affecting Prison Administration. Assimilation and dissemination of relevant information is to the States in the field of Correctional Administration. Coordination of Research Studies conducted by Regional Institutes of Correctional Administration (RICAs) and other Academic/Research Institutes in Correctional Administration and to frame

58 Justice A.N.Mulla Committee on All India Jail Reforms Report, (1980-1983)
guidelines for conducting research surveys in consultation with State Governments. To review Training Programmes keeping in view the changing social conditions, introduction of new scientific techniques and other related aspects in the field of correction administration. To prepare uniform Training Modules, including courses, syllabi, curriculum are providing training at various levels to the Prison Staff in the field of Correctional Administration. Publication of reports, newsletters, bulletins and preparation of Audio Visual aids etc. in the field of Correctional Administration. To set up an Advisory Committee is to guide the work relating to Correctional Administration.\textsuperscript{59}

The Juvenile Justice Act was enacted by the central government in 2000. The Central Government amended and enacted the Juvenile Justice(Care and Protection) Act, 2000, for the juvenile delinquents. It laid down a uniform legal framework so as to ensure that no child under any circumstances is lodged in jail or police lock-up. Juvenile welfare boards and juvenile courts have been established to provide for a specialized approach towards neglected and delinquent juveniles respectively. During the pendency of any enquiry regarding the juvenile, be sent to an observation home or a place of safety. After the completion of enquiry neglected and delinquent juveniles are sent to an observation home or a place of safety. After the completion of enquiry neglected and delinquent juveniles are lodged in juvenile home and special homes respectively.\textsuperscript{60} The Act represents a blue print for fair, equitable and just treatment of juveniles with due emphasis on the rights of child. ‘The Government of India also enacted The Human Rights Protection Act’ which was 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 NHRC in 1997 and in 1999 had stressed the need for setting up State Human Rights Commissions (SHRC) in States as expeditiously as possible. But, only eight States in the country had set up SHRCs, the New Prison Act of 1996 was finalized and further action on its implementation was to be taken soon. It also pressed the State Governments to set up State Human Rights Commissions and Human Rights Courts at the district level. The NHRC in December 1997 ruled that an under trial cannot be put to hard work. It asked the Uttar

\textsuperscript{60} The Juvenile Justice(Care and Protection) Act, 2000
Pradesh Government to pay an interim compensation of Rs. one lakh within a month to the parents of Ashoka Kumar, an under trial in Roorkee sub-jail who succumbed to injuries on August 28, 1996, while carrying a load at the behest of the Roorkee sub-jail authorities. The NHRC headed by M.N. Venkatachaliah condemned in a report on increasing criminality among the police. Referring to the NHRC's experience, there can be no substantial improvement in the human rights situation in this country unless those whose duty was to protect such rights, cease to predators themselves. He said 60 per cent of all the arrests made by the police were 'unnecessary and unjustifiable. At least 43 per cent of the prison's total expenditure was incurred on accommodating the innocent persons arrested, without evidence. The NHRC criticized that, Indian criminal justice system suffers from executive deficiencies, if for example, if a person is arrested for a minor crime, in India he could be held in custody for years without trail. The real truth is prisoners serve more time in prisons for their court hearing\textsuperscript{61}.

2.3 Development of Human Rights Jurisprudence in India

A man on becoming a prisoner, whether convict or under trial, does not cease to be human being. Though the prisoners can’t be treated as animals yet the barbarous treatment sometimes given to them in prisons is not qualitatively human compared to the one given to the caged inmates. The grim scenario of prison justice assumes in human misanthropic fragrance when the intellect of prisoners is blemished, personhood of prison is fortified and they are forced to lose their integrity and individuality and thereby compelling them to become the right less slaves of the state. It become gruesome indeed and calls for interference of judicial power as constitutional sentinel, when the jurisprudence of prison justice becomes an escalating torture and the violent violation of the human rights is perpetrated by agencies of the state. The mandates of preamble, fundamental rights and Directive Principles of the Indian Constitution seem to be outlawed from the security bound prohibited areas of high walled jails.\textsuperscript{62} A man whether undertrial or convicted prisoner is having all fundamental rights like human being residing in society except some restrictions imposed by his incarceration. The Constitution of India in its preamble clearly states that, justice social, economical and political should be given to the

\textsuperscript{61} V.K. Sircar, Protection of Human Rights in India, 2004-05, Asia Law House, Hyd
people. The prisoners also cannot be deprived of those rights basing on the fact that he is undertrial or prisoner. India is a secular country. The concept of the administration of justice in India had been influenced for centuries by different age-old religious beliefs. For instance, under the Hindu Jurisprudence, the administration of criminal justice was carried out in accordance with the socio-religious doctrines coming from Vedic revelations like the Srutis, Smritis, Puranas, Nibandh and Granthas. The judicial functions were conducted by the village assemblies (assemblies of seniors and leaders of villages), or the Kings themselves. The Hindu doctrine of criminal justice administration, both in the Vedic and post-Vedic communities and kingdoms paid little or no attention on the right of the accused because the accused was not recognized as an individual who could claim to have any right. In other words, once an individual was accused of committing a crime, he lost all the rights he could claim before the accusation. Another instance comes from the Muslim concept of the administration of justice, based upon the scriptures and principles of the Quoran. The Muslim philosophy of the administration of justice looked upon the accused as a sinner; consequently, the sinner had to be subjected to social deprivation (Mehraj-Ud-Din, 1985). In pre-Vedic period, there was no judge for administration of judiciary but the village heads solve the problems by group assembling. There was no accusation and what village head says is final. The kings imprisoned only the war victims and who committed heinous crimes. The prisoners loose all his rights and live like a slave or bonded labour is accused of a crime.

The modern version of human rights jurisprudence may be said to have taken birth in India at the time of the British rule. When the British ruled India, resistance to foreign rule manifested itself in the form of demand for fundamental freedoms and the civil and political rights of the people; Indians were humiliated and discriminated against by the Britishers. The freedom movement and the harsh repressive measures of the British rulers encouraged the fight for civil liberties and fundamental freedoms. Prison is a place where the criminal justice system put its entire hopes. The correctional mechanism, if fails will make the whole criminal procedure in vain. The doctrine behind punishment for a crime has been changed a lot by the evolution

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63 Sudipto Roy, violations of the rights of the accused and the convicted in India I, Department of Criminology, Indiana State University, Terre Haute, IN 47809

64 N.Ravi, Human rights scenario in India -an overview, Lap Lambert Academic publishing,2013
of new human rights jurisprudence. The concept of reformation has become the watchword for prison administration. Human rights jurisprudence advocates that no crime should be punished in a cruel, degrading or in an inhuman manner. The punishment amounting to cruel, degrading or inhuman should be treated as an offence by itself. The transition caused to the criminal justice system and its correctional mechanism has been adopted worldwide. The inquiry is made to know the extent of inclusion of these human rights of prisoners into Indian legislations. Judicially non-enforceable rights in Part IV of the Constitution are chiefly those of economic and social character. However, Article 37 makes it clear that their judicial non-enforceability does not weaken the duty of the State to apply them in making laws, since they are nevertheless fundamental in the governance of the county. Additionally, the innovative jurisprudence of the Supreme Court has now read into Article 21 (the right to life and personal liberty) many of these principles and made them enforceable. According to Human rights jurisprudence no prisoners should be punished in a cruel, degrading or in an inhuman manner, this type of punishment should be treated as an offence by itself. The correctional systems and criminal justice system have been adopted worldwide.

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

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65 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
66 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, Art. 4
under Art 21 of the Constitution. The three organs of Government, the judiciary has become a vanguard of human rights in India. It performs this function mainly by innovative interpretation and application of the human rights provisions of the Constitution. The Supreme Court of India has in the case Ajay Hasia v. Khalid mujibe69 declared that it has a special responsibility, to enlarge the range and meaning of the fundamental rights and to advance the human rights jurisprudence. The judgment given in the Chairman, Railway Board and others v. Mrs. Chandrima das70, the Supreme Court observed that the Declaration has the international recognition as the Moral Code of Conduct having been adopted by the General Assembly of the United Nations. The applicability of the Universal Declaration of Human Rights and principles thereof may have to be read, if need be, into the domestic jurisprudence. In a number of cases the Declaration has been referred to in the decisions of the Supreme Court and State High Courts. The Indian Judiciary identified certain rights of Part IV of the constitution and implemented those rights under Part III of the Constitution of India and has given several directions to the Central as well as State Governments. This can be attributed as a success to Indian Apex Court.

Prison jurisprudence since the late ‘60s recognizes that prisoners do not lose all their rights because of imprisonment. Yet, there is a loss of rights within custodial institutions which continue to occur. For instance, it was found that the HIV status of all the women in the Agra Protective Home was public knowledge, and there was no confidentiality attaching to this information. There was segregation within the institutions of those found to be HIV positive, and, for a while, the Supreme Court too endorsed this. The rules governing women in these institutions uncannily resemble prison rules, such as those concerning visitors, letters, and even punishment for conduct within the institutions. The Supreme Court of India, by interpreting Article 21 of the Constitution, has developed human rights jurisprudence for the preservation and protection of prisoners rights to maintain human dignity. Although it is clearly mentioned that deprivation of Article 21 is justifiable according to procedure established by law, this procedure cannot be arbitrary, unfair or unreasonable. In a Maneka Gandhi case the Apex Court opened up a new dimension and lay down that the procedure cannot be arbitrary, unfair or unreasonable. Article 21 imposed a

69 A.I.R. 1981 S.C. 487 at 493
70 A.I.R. 2000 (I) S.C. 265
restriction upon the state where it prescribed a procedure for depriving a person of his life or personal liberty. This was further upheld in Francis Coralie Mullin case, Article 21 requires that no one shall be deprived of his life or personal liberty except by procedure established by law and this procedure must be reasonable, fair and just and not arbitrary, whimsical or fanciful.\textsuperscript{71} The Supreme Court developed human rights jurisprudence by interpreting Article 21 of the Constitution as for the welfare of prisoners and their human dignity. The Court’s approach on human rights jurisprudence is only after the Maneka Gandhi’s case, but before this case the violations of rights are dealt by executive only, but after this case the legislature violations has also been identified by the Apex Court.

A landmark judgment which was pronounced by the judiciary is the right to compensation in cases of illegal deprivation of personal liberty. The Rudal Shah case (Rudal Shah V. State of Bihar, 1983) is an instance of breakthrough in Human Rights Jurisprudence. The petitioner Rudal Shah was detained illegally in prison for more than fourteen years. He filed Habeas Corpus before the court for his immediate release and, interalia, prayed for his rehabilitation cost, medical charges and compensation for illegal detention. After his release, the question before the court was "whether in exercise of jurisdiction under Article 32, such an order in the nature of compensation consequential upon the deprivation of fundamental right. There is no expressed provision in the Constitution of India for grant of compensation for violation of a fundamental right to life and personal liberty. But the judiciary has evolved a right to compensation in cases of illegal deprivation of personal liberty. The Court granted monetary compensation of Rs.35,000 against the Bihar Government for keeping the person in illegal detention for 14 years even after his acquittal. The Court departed from the traditional approach, ignored the technicalities while granting compensation. In this case the Apex Court extended a new branch of Jurisprudence has emerged called compensatory Jurisprudence where in for the violations of the prisoners’ rights to the executive action, compensation was awarded to the victim by the court. This concept changed the total scenario of Criminal Law. This humanitarian attitude of the judges has helped the poor, illiterate and needy victims who were victimized by the acts of the authorities.

\textsuperscript{71} Suresh Bada Math, Pratima Murthy, Rajani Parthasarthy, C Naveen Kumar, S Madhusudhan, Minds Imprisoned: Mental Health Care in Prisons. Publication, National Institute of Mental Health Neuro Sciences, Bangalore (2011).
2.4 Comparative study of protection of Human Rights of Prisoners

It is universally settled that punishment is to reform the convicts mentally, physically, socially, economically and psychologically by adopting therapeutic and human approach at prison. The present chapter deals with human rights or prisoners in United States of America and United Kingdom.\textsuperscript{72} The human rights of prisoners are protected by the several amendment legislations in U.S.A and the Common of England also taken much interest on prisoner’s rights, for this implemented various prison reforms in England.

2.4.1 United States of America

During the medieval period, American colonies had witnessed barbaric and deterrent punishments for criminals. Torture was the order of the day. Even for minor offences, criminals were imposed the punishment of death, public humiliation, branding, whipping etc. Imprisonment was used only in rare cases. Political and war offenders were kept in prison as under trial Prison life was unbearable and painful. Because of the public pressing Penn's Charter of 1862 was passed providing certain reforms in prison administration, such as, releasing of prisoners on bail, payment compensation for wrongful imprisonment, permission to prisoners to have food and lodging of their choice, abolition of punishments in public places. They are different types of Prison System of United States of America are The Philadelphia System, The Pennsylvania Prison System, The Auburn Prison System, Elmira Reformatory System and The Illinois Prison System was prevailed in U.S.A.\textsuperscript{73} In The Philadelphia System the prisons was remodeled from its earlier stage, envisaging classification of prisoners into incorrigible or hardened criminals and corrigible or ordinary airminals. The first category of prisoners was subjected to solitary confinement in cells without any labour. The second categories of criminals were considered to be reformable. Due to overcrowding, the Philadelphian prison deteriorated, thereby resulting in the establishment of two new model prisons, one at Pennsylvania and the other at Auburn. These prisons were started simultaneously. In Pennsylvania Prison System, this system was first introduced in the Valnet State prison in Philadelphia in 1790.

\textsuperscript{72} Dr.N. Maheswara Swamy, Criminology and Criminal Justice System, Asia Law House, Hyd. 2013
\textsuperscript{73} Vold G.B, Theoretical Criminology, (1958),
Under this system, prisoners were kept in complete isolation in separate cells during day and night, and food was supplied in cells only, with a view to bring quick reforms among them. But this was leading to the death of number of inmates. Those who survived their term of solitary confinement were either returned mad or became irresponsible. To meet the situation, the system of "labour and work" was introduced but to be performed only in their cells. While transporting prisoners from one place to another, their faces were covered by hoods, so as to prohibit them from seeing each other. The inmates were permitted to do prayers so that they behave themselves with propriety. Later on this system also failed giving place to the Auburn system.

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

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74 Vold G.B, Theoretical Criminology, (1958),
75 ibid
trial clause than Professor Akhil Amar of Yale Law School. In his work, Amar uses detailed, historical legal analysis to make a provocative argument concerning the rights of defendants who failed to receive a speedy trial. Amar contends that in such cases the remedy of “dismissal with prejudice” the standard set-forth by the Supreme Court as early as 1972 can perversely serve as a “windfall” for defendants and place society in danger, especially when there is overwhelming evidence that the pre-trial detainee is guilty.

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

76 Akhil Amar, the constitution and criminal procedure: first principles (1997).
77 Barker v. Wingo, 407 U.S. 514 (1972)
80 Moore Vs Dempsey, (1923) 261 U.S 86;
81 Barkar Vs Wingo, (1972) 407, U.S. 514
Article 5 of the Universal Declaration specifically states that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Although neither of these initial human rights documents was legally binding, they were generally accepted as part of customary international law. In terms of prisoners' rights specifically, the Universal Declaration served to bring international attention to issues of torture and punishment, upon which further developments on protecting individuals could be established. The United States ratified the ICCPR in 1992, and the Convention Against Torture in 1990, with reservations on specific articles. These reservations present perhaps the greatest obstacle to prisoners' rights in the United States. The reservation on ICCPR Article 7 binds the United States only to the extent that the "cruel, inhuman or degrading treatment" means such treatment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution. Similarly, the U.S. reservation on the Convention Against Torture's Article 16 makes sure to clarify that the treatment prohibited is only treatment which is cruel, inhuman, or degrading punishment as interpreted via the Fifth, Eighth, and Fourteenth Amendments to the U.S. Constitution. The international conventions relating to civil and political rights gives the minimum stranded rules for treatment of prisoners, Jeneva Conventions relating to prisoners were meant for promoting prisoners rights and are being implemented by member states for the protection of human rights of prisoners.

The Court slightly changed its standards for finding an infringement of prisoners' rights in Helling v. McKinney, where it found that the Eighth Amendment protects against future harm. By looking at objectivity slightly differently, inhalation of second hand smoke from being involuntarily placed with an inmate with excessive smoking habits was determined to be an infringement of a prisoner's rights. While showing actual likelihood that the injury will occur, a prisoner must also show that

86 ICCPR Hearing, (describing other U.S. reservations, such as those involving free speech, capital punishment, criminal penalties and juveniles).
87 Miller, Article 30(1) requiring parties to submit disputes to arbitration and, if no change, to the International Court of Justice. (1990)
society would find the risk so grave as to violate contemporary standards of decency. The Supreme Court of United States of America is playing an important role for the protection of human rights of prisoners by constitutional amendments and started protecting the rights of the prisoners through its cases for implementation and interpretation of these rights of prisoners.

2.4.2 United Kingdom

The common law of England, which has no written constitution, because, historically, the concept of each of the human rights has its origin in the ordinary law of England, and those rights enforced as such by the courts of law, as a part of what is known as the common law. Of decisions underwritten constitutions, primacy should be given to the American Constitution which is the acknowledge matter of modern written constitution. In England, the unwritten constitution is prevailing, the implementation of rights of the individual is based on common law of England and also the rights of the prisoners are protected by the legislations. During the early period of civilization in England and elsewhere, the philosophy of 'liassez faire' was prevailing in all socio-economic walks of the society. 'Hire and Fire' was a most common practice in dealing with labour management relations and economic aspects of life. During the 12th Century, in England, compensation was payable to the victims of crime by the wrong doers. When crown took up administration of the country, the rule of payment of compensation to the Crown, was introduced as a source of income to the Government. Later, imposition of fines was practiced to increase the income of the Government in 18th Century, imposition of death sentence for certain offences was introduced, before which torture, mutilation of limbs were modes of Punishment. There was no scope for reformatory approach. Jails were and all types of criminals including men and women were kept in same jail. Jails were in the control and management of private persons. Inmates were required to pay charges for all supplies and services provided by the management of prisons. Later on transportation of criminals was introduced in England. Transportation of criminals was meant sending them to unsettled continent of then to Australia. According to Lord Ellenborough, transportation was like the summer excursion to enjoy a happy and better climate.

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89 Cf. Bell Vs D.P.P., (1986) L.R.C(Const.) 392(401) P.C (From Jamaica)
In the 12th century, in England, compensation was payable to the victims of crime of the wrong doers. Later, the Crown Changed the system of the payment of compensation to him and imposition of fines was practiced to increase the income of the Government. Jhon Howard, a High Sheiff, in British Government was considered to be the pioneer of prison reforms in England during 1773. He wished that good sanitary conditions should be provided to inmates. The act of 1778 passed by the British Parliament was another milestone in the evolution of prison reforms in England. The act contained elaborate provisions relating to prison reforms and remodeling of the prisons. In half part of the 19th century, the system of release of prisoners which is popularly known as ticket on leave was introduced on the conditions that the prisoners should not resort in criminal activities. The Prisons Act was passed in 1898. The prisons reforms started in England in half of the 18th century and the conditions of prisons changed from old traditions to modern reformatory pattern. The pre mature release of prisoners started in 1778 by the Act of England Parliament.

Sir Lionel Fox, the Secretary of the Prison Commission during 1925-1934 and chairmen of the Commission during 1942-1960 emphasized that public should always be kept well informed about the working of the prisons through intensive reporting. Press man and Social Workers should be permitted to make frequent visits for that purpose. Prison Administration should aim at reconciling the conflicting objectives of deterrence and reformation. According to him, the deterrence inside the prison had to be found in the fact, by imprisonment and not in severity of the prison regime.90 In U.K., The English Criminal Justice Act of 1982 provides for a scheme of liberalized parole system because of the increasing number of inmates to cope-up with the situation. It was proposed to release prisoners on license after serving 1/3rd of the sentence without the discretion of the Parole Board. Deduction of minimum period for release on parole greatly reduced the pressure of administration. In the existing British prison system, the prisoners are classified into different categories by applying group therapy method. They are provided vocational training for physical, moral and mental upliftment the system of reforming prisoners within the community is permitted. Rehabilitation and socialization of prisoners after release is entrusted to after care

institutions or voluntary social service organizations. Basic rights of prisoners are duly recognized by treating the prisons as minimum security institutions. The recently introduced The Human Rights Act, 1998 is the most important legislation to give further effect to the rights and freedoms which were guaranteed under the European Convention on Human Rights and thus makes the convention rights enforceable in the courts of United Kingdom. The enactment of the Human Rights Act marks a turning point in the legal and constitutional history in U.K. it provides explicit constitutional underpinning for the fundamental rights of the citizen. In the existing British prison system, the prisoners are classified into different categories by applying group therapy method. They are provided vocational training Constitutional for physical, moral and mental upliftment. The system of reforming prisoners within the community is permitted. Rehabilitation and socialization of prisoners after release is entrusted to after care institutions or voluntary social service organizations. Basic rights of prisoners are duly recognized by treating the prisons as minimum security institutions. Under the British Prison System, the prisoners were classified and for the protection of human rights of prisoners the British Parliament enacted several statues and the judiciary also protected the prisoner’s rights from violations by the authorities by rendering land mark judgements. For, the welfare of the prisoners after their release innovative programmes were chalked out and they were initiated by the non Governmental Organizations and Social Institutions in England.

2.4.3 Canada:

Prisoners are among the most vulnerable categories of citizens in every country, due to the large amount of control of the state has over them. Enforcing Human Rights Law is a challenge in all areas that it covers. However, ensuring human rights for those behind bars sometimes seems nearly impossible because of the isolation, the lack of interest of the outside world and mostly because of the sometimes conflicting goals that Correctional Law and Human Rights Law seem to have. Canada is not part of any regional conventions against torture or that could be applied to torture. There are several Inter-American Conventions (Inter-American Convention to Prevent and Punish Torture, Inter-American Convention on Human

91 Dr. N. Maheswara swamy, Criminology and Criminal Justice system, Asia Law House, Hyd
93 Dr.N. Maheswara Swamy, Criminology and Criminal Justice System, Asia Law House, Hyd. 2013
Rights etc), but Canada has chosen to regulate this matter through national avenues, with the consideration of the International bodies which it recognized as binding. Canada has a federal legal system. The Constitution Act, 1867 divides the legislative and executive powers between federal and provincial spheres. While criminal law falls under federal jurisdiction and it is applied uniformly all over Canada, imprisonment falls under either federal or provincial jurisdiction, depending upon certain criteria. Penetary is under federal authority, they are governed by the Corrections and Conditional Release Act and are administered by the Correctional Service Canada (CSC). People receiving two years or more of imprisonment will serve time in a federal institution. However, every province and territory has its own correctional system, created to fit the needs of their offenders and depending completely on the local budget. Prisons, reformatories, local jails and detention centers fall under provincial jurisdiction. The standards for health are perhaps higher in Canada, Canada Correctional Services have often been criticized for the severe failure to provide adequate health services. At the national level in Canada, there is legislation protecting the rights at issue. There is also a body of case law, which more or less covers aspects related to the protection of inmates’ right to be free from torture and cruel and unusual punishment or treatment.

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

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