Chapter III

Human Rights of Prisoners-International Perspective

Human Rights are those irreducible minima which belong to every member of the human race when pitted against the State or other public authorities group and gangs and other oppressive communities. Being a member of human family he has the right to be treated as human once he takes birth or his alive in the womb with a potential title to personhood. When legal ideas were not clear-cut but blurred, ancient pundits thought of the doctrine of natural rights founded on natural law, not because it is enacted but because it inalienably belongs to each of us as conceived in civilized political societies. When the priestly order denies this right using religious sanction and authority, the independent mind of man expresses dissatisfaction and defies. When Kings and Queens and other diadems and despotisms sought to suppress the individual freedom an appeal to natural law was made on the assumption that beyond religious superiors and crowned heads, there was a system of natural law which embodied reason, justice and universal ethics.\(^{96}\) Though the concept of Human Rights is as old as the ancient doctrine of 'natural rights' founded on natural law, the expression 'Human Rights' is of recent origin, emerging from (post Second World War) international Charters and Conventions. Start with the concept of natural rights, eventfully led to the formulation of Human Rights.

The concept of a higher law binding on human authorities was evolved it came to be asserted that there were certain rights anterior to society, which too were superior to rights created by the human authorities, were of universal application to men of all ages and in all claims, and were supposed to have existed even before the birth of political society. These rights could not, therefore be violated by the State. The deficiencies of this doctrine of natural right, from the legal standpoint, however, were that it was a mere ideology and there was no agreed catalogue of such rights and no machinery for their enforcement, until they were codified into national Constitutions, as a judicially enforceable Bill of Rights, International Covenants,

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\(^{96}\) V.R. Krishna Iyer, The Dialectics and Dynamics of Human Rights in India
3.1 International Perspective of Human Rights of Prisoners

The Roots of human rights were traced back in the Babylonian’s Period, Babylonian king Hammurabi (1792-1750 B.C) provided for fair wages, protection of property and for charges to be proved as trial for his people. It was called Hammurabi’s code, they provided by which Babylonians could order their lives and treat one another. In ancient Greece, Human rights were recognized as natural rights of men. In a Greek play it was displayed(Antigone) that antigone’s brother, while rebelling against the king was killed and his burial was prohibited by the king crown. In Defiance of king’s order, Antigone buried her brother and when she was arrested for violating the order. She pleaded that she acted in accordance with immutable unwritten laws of heaven which even the king could not override. Stoicism had its origin in the views of Socrates (469-399 B.C.E.) and Plato (428-347 B.C.E.). Socrates had already imagined, according to Plato's Republic, the possibility that a person could be rendered invisible by wearing the mythical ring of Gyges. Than a long argument, Socrates maintained first that people have a general comprehension of what constitutes the good, and second, that coupled with that understanding, the need to seek internal and external harmony led most to pursue an altruistic path. Because goodness is not a particular characteristic but can be found in every topic of inquiry, he concluded that goodness is universal. It was in the process of deepening their understanding of the common element of goodness that Plato and Socrates showed their allegiance to a universal view of human goodness and, in a sense, human rights, and refuted the Sophists’ claim that goodness and justice are relative to the customs of each society a view that they believed was often offered to disguise the interests of the stronger. In the presentation of this argument more than two thousand years ago, Socrates and Plato highlighted key controversies of the human rights debate that continue even today to divide advocates of cultural relativism, on the one hand, and defenders of a universalist agenda, on the other. The Plato, Aristotle (384-322 B.C.E.) held that virtue needed to be a central characteristic of human life, which

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should aim at the common good. At the same time, he rejected Plato's theory of an essential universal goodness. Adding a tangible character to Plato's teachings, he explained that the form of goodness had to match its empirical content. In other words, virtue was not innate, but a capacity that needed to be developed. For instance, we become just by performing good actions, and courageous by performing acts of courage. Continuing to act in a certain way inculcates habits. The virtuous individual thus deserved respect for good habit formation and his or her search for a balanced life. In the same vein as the Buddha's middle path between self-indulgence and self-renunciation, Aristotle called for a Golden Mean between extreme forms of emotion. By urging people to consult their inner motivations while promoting the common good, Aristotle, with Plato and the Buddha, provided important insight into the psychological prerequisites for effective ethical action. However, Aristotle's notion of prudence called for a more "engaged" attitude toward the world than did those of his predecessors. Prudence, the keystone of all virtues, Aristotle maintained, was manifested in acting so that the idea of right could take its concrete form.

Greece-Plato (427-348 B.C) was one of the earliest writers to advocate a universal slandered of ethical conduct. Aristotle wrote in politics that justice, virtue and rights change in accordance with different kings of constitutions and circumstances. In Greece city states, the citizens enjoyed some basic rights even before formulation of natural law theory by the Stove Philosophers. After the breakdown of the Greece city states, the stove philosophers developed the natural law theory and explained that the human rights are rights which every human being possesses by virtue of being human. They emphasized that the principles of natural law were universal in their nature. Natural law applies to everybody and everywhere in the world. Plato's and Aristotle's views gradually gained influence, resonating, for example, in the writings of Epictetus (ca. 55-135) and the Roman statesman and legal scholar Marcus Tullius Cicero (106-43 b.c.). Epictetus advanced the idea of Stoicism, which stressed the importance of regulating passions and physical desires through reason. Challenging the common assumption of freedom, Epictetus maintained that neither kings, nor their friends, nor slaves were truly free. Only those who were not enslaved by their bodily desires, passions, and emotions and who could overcome the fear of death could be truly free. Diogenes and Socrates were Epictetus's heroes, for
they (like the Buddha and Confucius) called for a detached love of the common good, of the gods, and of their real country: the universe. The concept of human rights has existed under different names in world, The Magna Carta was the first human rights document in the human rights history, in 1215 king John issued to certain rights to the citizens of England. Under this charter honouring certain legal proceedings and allowing against unlawful imprisonment is provided, which enumerates a number of rights; latterly they came to be the human rights. The rights of all free citizens to own and inherent property and are free from excessive taxes. The Petition of right (1628) The movement continued through the repeated confirmation of the Magna Carta and the Petition of Right, 1628, and culminated in the Bill of Rights, which was enacted in a parliamentary statute the declaration which the people the Prince and Princess of Orange to subscribe at their accession in 1688. The Contribution of instrument is towards the development of Fundamental rights may be declared and enacted, singular the rights liberties asserted and claimed in the said declaration are the true, and indubitable rights and liberties of the people of kingdom.

The Bill of Rights adopted in the State Constitution of Virginia in 1776 was the first declaration of rights in a written Constitution as the basis and foundation of government. The impress of the doctrine of 'natural rights' is to be found in the Preamble of this Declaration which states that, All men are by nature equally free and independent and have certain inherent natural rights of which when they enter society, they cannot by any compact deprive or divest their posterity. As Ritchie points out that, this Bill of Rights served as the model for many similar declarations adopted after American independence had been secured. That it inspired the makers of the Bill of Rights appended to the national Constitution by the first Ten Amendments would be evident if one find that amongst the rights asserted by the Virginia Bill of Rights are equality of men; freedom of the press; freedom of religion; right not to be taxed without consent or not to be deprived of liberty except by the law of the land; right against general warrants, cruel punishments, self incrimination etc.

In the late 1700’s two revolutions occurred which drew heavily on this concept. In 1700 most of the British colonies in North America proclaimed their

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99 Epictetus, The Discourses, in The Discourses and De legibus, book, 4, chap.7, 29-34.
100 http://www.humanrights.com/what-are-human-rights/brief-history/cyrus-cylinder.html
independence from the British Empire. The Human Rights word is used in United States Declaration of Independence, 1776. The theory of natural rights entered into the realm of Constitutional realism with two revolutionary documents, namely the American Declaration of Independence and the French Declaration of Rights of Man, which asserted that there were certain inalienable rights, and it was the duty of the State and its organs to maintain these rights. The aggression of the omnipotent British Parliament against the American Colonists could be met only by holding up the shield of the inviolable natural rights of man, which constituted a limitation on any form of government, monarchical or parliamentary. The Declaration of American Independence hold these truths to be self evident; that all men are created equal; that they are endowed by their creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness. Though it was not a part of written Constitution, it asserted certain able rights, as against any Government in power, adding that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed.

The French declaration of the rights of man (1791) Inspired by the American Declaration of Independence, the French National assembly formulated the Declaration of the Rights of Man. The representatives of the people of France, formed into a National Assembly considering that ignorance, neglect or contempt of Human Rights, are the sole causes of public misfortunes and corruption of Government, have resolved to set forth in a solemn declaration, these natural imprescriptible, and inalienable rights are that this declaration being constantly present to the minds of the members of the body social, they may be ever kept attentive to their rights and their duties; that the Acts, of the legislative and executive powers of Government, being every moment compared with the end of political institutions, may be more respected; and also, that the future claims of the citizens, being directed by simple and incontestable principles, may always tend to maintenance of the Constitution, and the general happiness. For these reasons the national assembly both recognizes and declares in the presence of the Supreme Being, and with the hope of his blessing and favour the following sacred rights of men and citizens. The end of all political associations is the preservation of natural and imprescriptible rights of man; and these

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101 J.L.Brierly, the law of nations, Humphery waldock, sixth edition(1963) p291-292
102 Dunning, History of Political Theories(1920), Indian Edition, 1967,
rights are Liberty, Property, Security and Resistance of Oppression.\textsuperscript{103} The Bill of Rights in the American Constitution (1789), a most striking feature of the Federal Constitution of the USA, however was that no Bill of Rights was appended to the original Constitution as framed by the Convention of 1787 and brought into force in 1789, even though the Constitution contained certain specific limitations on legislative power, such as the prohibition of bill of ex post facto law.\textsuperscript{104} There was, in fact, a proposal in the Convention that a Bill of Rights should be inserted in the Constitution; but it was defeated. Consequently, the Constitution of 1789 contained no guarantee of those 'inalienable rights' which were envisaged by the Declaration of Independence, such as the freedom of speech, assembly and religion.

The Federal Constitution was adopted, the absence of a Bill Rights was felt by some of the leaders, of whom Jefferson was the spokesman and some States demanded the incorporation of a Bill of Rights as a condition for their ratification of the Constitution. Jefferson pointed out the fallacy of assumption that representatives of the people could not be arbitrary and that representative Legislature required no Constitutional limitations on its powers and he stated that a Bill of Rights is what the people are entitled to against every Government on earth, general or particular. He also met the usual arguments against the adoption of a Bill of Rights thus; the Declaration of Rights is, like all other human blessings alloyed with some inconvenience and not accomplishing fully its object. But the good in this instance vastly overweighs the evil. Experience proves the inefficacy of a Bill of Rights. But though it is not absolutely inefficacious under all circumstances, it is of great potency always and rarely inefficacious. There is a remarkable difference between the characters of the inconveniences which attend a Declaration of Rights and those which attend the want of it. The inconvenience of the Declaration is that it may cramp Government in its useful exertions. But the evil of this is short lived, moderate and reparable. The inconveniences of the want of a Declaration are permanent, afflicting and irreparable. They are in constant progression from bad to worse. The executive, in our Governments, is not the sole; it is scarcely the principal, my jealousy. The tyranny of the legislature is the most formidable dread.\textsuperscript{105} The term natural rights eventually

\textsuperscript{103} French Declaration of the Rights of Man (1791), formulated in 1789.
\textsuperscript{104} Article 1, section 9(1).
\textsuperscript{105} Dumbauld, Political Writings of Thomas Jefferson, Vol.III, p. 127-129,
turned human rights or basic rights of every human being. In the middle of 19th and 20th century number of issues was raised to relating to human rights issues and their violations. Before the Second World War, certain fundamental rights known as rights of mankind in their states. But there is no attempt to regulate human rights at an international level until the establishment of the United Nations. Generally there is no law with regard human rights upto world war II. In human history, slavery occupies a special role. It was in existence from ancient to modern times. Even in the era of globalization and information technology, of contemporary era, slavery is in existence and is in practice in different forms. The main forms of slavery are chattel slavery, bonded labour, beggar, human trafficking, and forced labour. Chattel, Slavery means, human beings are treated as animals and sold in a market like goods. Once a person buys another person, as owner, such person will have all the rights, and the purchased person had to undertake all the jobs entrusted by the purchaser.

American courts were negligent to recognize the existence of prisoner's rights at earlier times. This negligence has contributed to the dehumanizing conditions which has existed in prisons there. in 1597, jails were established. The jails of old times were miserable places, which afforded opportunities for graduation to a life of crime. Recidivism was rampant. Men, women and children are first offenders, causal offenders are habitual were all hurled together like “Rats in a hamper and pigs in a sty”. Prisons, in the modern sense of the term were unknown in the medieval times: a person could be incarcerated even while trail was pending. It was in the 18th century that cellular prisons were built. The horrible conditions of prisons of the 18th century underwent a gradual change in the beginning of the 19th century when there was a move for improvement of the conditions prevailing in the prisons. Only in the middle of 19th century that something substantial was done in the matter of prison reform. The Hague regulations regarding the treatment of prisoners of 1899 and 1907 revealed more deficiencies in the First World War to overcome of agreements belligerents and Berne in 1917 and 1918. But in 1921, The Red cross society conference held at Geneva expressed that convention with regard to prisoners of war is necessary. The international committee was appointed for draft convention which was submitted to the Diplomatic Conference convened at Geneva in 1929. The Convention does not replace but only completes the provisions of the Hague regulations. The 1929
Convention relative to the Treatment of Prisoners of War was replaced by the third Geneva Convention.\textsuperscript{106} Before the First World War, there are no human rights to the prisoners even though the Hague regulation is there. But after the First World War, the Geneva Convention for treatment of prisoners of war discussed and provides certain guidelines to the states for the protection of human rights of the prisoners in war. The League of Nations was established for the development of peace in world. The human rights are not created by any legislation; they resemble very much the natural rights. Civilized country like the United Nations much recognized them. They cannot be subjected to the process of amendment even. The legal duty to protect human rights includes the legal duty to respect them. Members of the U.N have committed themselves to promote respect for and observance of human rights and fundamental freedoms. Even before first world war, some writers expressed the view that there were certain fundamental rights known as rights of mankind which international law guaranteed to individuals, both at home and abroad and whether nationals of a state or stateless. It was pointed out that such rights comprised of the right of life, liberty, freedom of religion and conscience.\textsuperscript{107} From ancient period, the rights of the war prisoners came from natural rights, this are created by nature, followed by customs and accepted by morals of the society and another one is rights were given and protected by the statutes.

The rights of mankind or right of individuals is freedom from slavery. This right has been recognized under customary international law since 1815, subsequently this right was re-affirmed by international conventions such as 1926 slavery convention and the 1956 supplementary convention on the Abolition of Slavery, the Slave trade and institution and practices similar to slavery. Thus, generally speaking, international law did not concern itself with human rights, up to World War II as such not way any attempt made to regulate them. The treatment of prisoners with human dignity cannot see in historical level, instead of this, the treatment of prisoners of war was barbaric, inhuman treatment and torture. The defeated prisoners were treated as slaves.

\textsuperscript{106} Convention relative to the Treatment of Prisoners of War. Geneva, 27 July 1929.
The United Nations predecessor, the League of Nations, has made efforts to advance prisoners rights and, the International Penal and Penitentiary Commission had set forth standards for decent treatment which, in turn, were endorsed by the Assembly of the League in 1934. However, these efforts were thwarted by the crime control spirit of the age and, eventually, like most pre-World War II efforts to advance human rights, received the stigma of failure due to the atrocities committed during the Second World War. World War I, the League of Nations constituted and also framed the International penal and penitentiary commission for the standard for the war prisoners, but the efforts cannot reach their aim and cannot control the violation on them. The United Nations is more closely identified with than the cause of human rights. Concern for human rights is woven into the U.N. Charter like a golden thread. Human rights are occupying a significant chapter in any story of the United Nation. The signing of the United Nation Charter incorporates several provisions concerning human rights has done much to stimulate the large amount of international human rights which are respected in these days. Thus the provisions of United Nation Charter concerning, human rights provide a foundation and an impetus for further improvement in the protection of human rights. The United Nations an attempt was made to fill them out by drawing up in 1948 the Universal Declaration of Human Rights and Fundamental Freedoms, and with a view to implement the Universal Declaration, European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the American Convention on Human Rights, and African Charter on Human and people's rights, 1981 and finally International Covenants on Human Rights were adopted. The United Nations was constituted after the Second World War and this charter contains various provisions relating to the human rights, development of friendly nature between the member states and peace free from wars. The United Nations was framed several conventions for the promotion and protection of human rights at international level.

United Nations on Human Rights established by the Economic and Social Council in February, 1946 is the nearest approach to permanent machinery for the supervision of the problem of protection of human rights. It is one of the six Functional Commissions established by the Economic and Social Council. The sub-

Commission on Prevention of Discrimination and Protection of Minorities, 1947 is undertake studies, particularly in the light of Universal Declaration of Human Rights. The Commission on the Status of Women (1946) to prepare recommendations and reports to the ECOSOC on Promotion of women’s right in political, economical, civil, social and educational fields. The United Nation Commissioner for Human Rights was constituted in 1993 under the High Commissioner of Jose Ayala Lasso. The commission responsibilities are strengthening and streamlining existing human rights mechanism; to promote and protect the effective enjoyment by all of civil, cultural, economic, political and social rights. The United Nations for Human Rights has been established at Geneva for coordinating human rights activities. After the World War II, the United Nation was constituted for the unity among states and to provide peace among member states. The United Nation was established various Commissions for functions for the protection, promotion and observation of human rights in world, to study find out violations of human rights and protect their rights by implementation of local laws in their states.

The establishment of the United Nations together with the primacy afforded in the U.N. Charter to the promotion of human rights heralded a new era, with the Universal Declaration of Human Rights (UDHR) 110 epitomizing the organization’s fundamental values. In its Preamble, the Charter stresses the founders’ determination to shield succeeding generations from the scourge of war and to reaffirm faith in fundamental human rights and in the dignity and worth of the human person. The drafters further sought to promote social progress and better standards of life in larger freedom. Article 1 of the U.N. Charter outlines the United Nations’ purposes international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion. After the adoption of the universal declaration of human rights, it was playing important role in protection of human rights of prisoners at international and national level. Human rights covered different aspects of the life, prevention of discrimination, freedom from slavery, statues of women, refugees and protection of prisoner’s rights.

110 Adopted by U.N. G.A. resolution 217 A (III) of 10 December 1948
Amnesty International in 1955 adopted certain standard rules for the treatment of prisoners. These rules form certain basic principles of law in most of the democratic countries. It provides for the segregation of prisoners on the basis of age, sex, and nature of punishment and the gravity of the offence committed. The rules also condemned the punishments like solitary confinement, reduction in diet and other heavy deprivative measures used by the prison authorities as a punishment for prison offences. Thus various conventions on Human Rights guarantees to every person freedom from torture.\textsuperscript{111} If the courts are receptive to the grievances of prisoners it will resolve individual and collective prison problems.\textsuperscript{112} The International Non Governmental Organizations were like Amnesty and Red Cross society which is playing important role in the protection of war prisoners and against violations of human rights of prisoners.

The International Covenant on Civil and Political Rights (ICCPR) remains the core international treaty on the protection of the rights of prisoners. In modern times one can see how brutal regimes considered that torture would remind dissidents and the general population who was in charge and was determined to remain in charge. In the 1980s, an anti-torture campaign, led by groups such as Amnesty International, was successful in advocating a set of binding international prohibitions on torture. Torture was already criminalized as a war crime when committed against certain prisoners, and was considered an international crime in the context of genocide and crimes against humanity. But the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment criminalized torture even outside these contexts, and prescribed individual criminal responsibility for a single act of torture.\textsuperscript{113} The International Conventions against torture, inhuman treatment and cruel was framed, the states ratified and also implemented the convention in their local laws, particularly on prisoners the human right organizations condemned the atrocities. In 1946, The United Nations was declared that Genocide is a crime under International law, contrary to the spirit and aim of the United Nations.\textsuperscript{114} The Convention of 1929 in its turn was superseded by the Geneva Convention relating to the Prisoners of War, 1949. The Geneva Convention of 1949 contains exhaustive

\textsuperscript{111} Developing Humangfiights Jurisprudence (1988), p.172  
\textsuperscript{112} Necoletti Parisi the Prisoners Pressures and responses in Necoletti Parisi ,(1982), p.9-17.  
\textsuperscript{113} Andrew Clapham, Human Rights, A Very Short Introduction, Oxford University Press  
\textsuperscript{114} Raphael Lemkin, Genocide as a Crime under International Law, AJIL, Vol 41 1947, p. 145-150
provisions relating the treatment of prisoners of war. The earlier United Nations Standard Minimum Rules for the Treatment of Prisoners, 1955 consists of five parts and ninety-five rules. Part one provides rules for general applications. It declares that there shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. At the same time there is a strong need for respecting the religious belief and moral precepts of the group to which a prisoner belongs. The standard rules give due consideration to the separation of the different categories of prisoners. It indicates that men and women be detained in separate institutions. The under-trial prisoners are to be kept separate from convicted prisoners. Further, it advocates complete separation between the prisoners detained under civil law and criminal offences. The UN standard Minimum Rule also made it mandatory to provide separate residence for young and child prisoners from the adult prisoners. Subsequent UN directives have been the Basic Principles for the Treatment of Prisoners (United Nations 1990) and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (United Nations 1988). 115 There are many international conventions relating to the prisoners for protecting human dignity, basic minimum conditions in prisons, adopting reformative and rehabilitation methods for the protection and preservation of their rights from the atrocities of the prison authorities.

3.2 International Conventions relating to Prisoners Rights

After the United Nation formation, the U.N constituted several international conventions relating to human rights of prisoners along with Universal Declaration of Human Rights. There are various international legally binding conventions on human rights in different fields. These conventions can be divided into two broad categories- Conventions relating to inhuman, Cruel and Degrading Acts is main aspect.116 The Declaration of Human Rights was prepared by the Commission on Human Rights in 1947 and 1948 and was adopted by the General Assemble on December 10, 1948. When the Universal Declaration of Human Rights was adopted, it was a most eloquent expression of hope by a world emerging from the most devastating war in


the history of human race. The boldness of this document, destined for a world of peace where the rights to live in peace has become a reality for all.\footnote{U.N.Chronicle, Vol.XXX, No.1, March 1998, p.46} The large scale violations of human rights during two world wars, especially the Second World War, including the Nazi atrocities were fresh in the minds of the framers of the U.N. Charter. The United Nation General Assembly proclaims Universal Declaration of Human Rights as a common standard of achievement for all people, and of all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect of these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of members states themselves and among the peoples of territories under their jurisdiction. The Universal Declaration of Human Rights, 1948 was framed after two World Wars, the aim of the Declaration is to provide peace World Wide and free from war fear, to protect the rights of individual.

The Universal Declaration of Human Rights represents a great step forward taken by the international community in 1948. Its persuasive moral character and political authority derive from the fact that it is agreed to be a statement of generally accepted international principles. This outline of human rights objectives is drafted in broad and general terms, and its principles have inspired more than 140 human rights instruments which, taken together, constitute international human rights standards. Moreover, the Universal Declaration has spelled out the fundamental rights proclaimed in the Charter of the United Nations, recognizing that the inherent dignity of all members of the human family is the foundation of freedom, justice and peace in the world. While the Universal Declaration is not, in itself, a binding instrument, certain provisions of the Declaration are considered to have the character of customary international law.\footnote{Human rights and prisons, united nations New York and Geneva, 2005} This Declaration deals with the right to life, liberty and security of person; the prohibition of torture and of cruel, inhuman and degrading treatment or punishment; the prohibition of arbitrary arrest; the right to a fair trial; the right to be presumed innocent until proved guilty; and the prohibition of retroactive penal measures. While these articles are most directly relevant to the administration of justice, the entire text of the Universal Declaration offers guidance for the work of
prison officials. The Declaration of Human Rights guaranteed the right to life and personal liberty, free from torture, inhuman treatment or cruel and this provides all rights of human rights to the human being. The recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, the disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in the human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people, it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law and it is essential to promote the development of friendly relations between nations, the countries of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom, member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms, a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge. The General Assembly, Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

The Universal Declaration operated merely as a statement of ideals, which was not of the nature of a legally binding Covenant and had no machinery for its enforcement. That deficiency was sought to be removed by the United Nation Assembly by adopting in December, 1966, two Covenants for the observance of

119 Human rights and prisons, united nations New York and Geneva, 2005
120 Dr. S.K.Kapoor, Human Rights Under International Law and Indian Law, Central Law Agency. 3rd Edition, 2005,
human rights. The Covenant on Civil and Political Rights. It currently has 149 States parties. the Covenant details the right to life; the prohibition of torture; the prohibition of slavery, servitude and forced labour; the prohibition of arbitrary arrest or detention; the rights of all persons deprived of their liberty; the prohibition of imprisonment for failure to fulfill a contractual obligation; the right to a fair trial; and the prohibition of retroactive penal measures. The Covenant is a legally binding instrument which must be respected by Governments and their institutions, including prison authorities. The implementation of the Covenant is monitored by the Human Rights Committee, which was established under the terms of the Covenant itself. These Covenants are therefore, legally binding force on the ratified states. The effect of such ratification is that the ratifying state is obligated to adopt legislative measures to implement the Covenant to ensure the rights proclaimed in the covenant so that, through the covenant itself is not part of the domestic law of the ratifying state, the rights embodied in the relevant legislation are enforceable through the domestic Courts. The two covenants are protecting the right of the prisoners in individual form and also the rights of the war prisoners in international level.

The International Covenant on Economic, Social and Cultural Rights deals with the right of everyone to an adequate standard of living is particularly important to the rights of prisoners, the right to adequate food, clothing and housing and to the continuous improvement of living conditions, the fundamental right of everyone to be free from hunger and also the rights to work; to reasonable conditions of employment; to organize trade unions; to social security and social insurance; to protection of families and children; to health; to education; and to take part in cultural life. The implementation of the Covenant is monitored by the Committee on Economic, Social and Cultural Rights. In May 1999, the Committee on Economic, Social and Cultural Rights adopted that the right to adequate food and the right to drinking water are relevant to relation to conditions of imprisonment and detention. The Convention on the Prevention and Punishment of the Crime of Genocide entered into force in January 1951. It was, like the United Nations itself, a product of the universal horror and outrage felt by the international community at the gross violations of human rights which characterized the Second World War. The Convention confirms that

121 The International Covenant on Civil and Political Rights, 1966,
genocide is a crime under international law, and aims to advance international cooperation towards the abolition of this atrocity. In particular, it addresses acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group through killing, causing serious bodily or mental harm, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, imposing measures intended to prevent births within the group, or forcibly transferring children of the group to another group. The United Nations framed the convention against Genocide, in World War II, the Nazi’s used this and also in Bangladesh (Part of East Pakistan) war.

Standard Minimum Rules for the Treatment of Prisoners was the instrument to provide a comprehensive set of safeguards for the protection of the rights of persons who are detained or imprisoned. The Standard Minimum Rules for the Treatment of Prisoners was adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955; this contains minimum rules for the protection of prisoner’s rights against cruel, inhuman treatment or degradation and torture by the authorities and later approved by the Economic and Social Council. The Geneva Convention (1949), Standard Minimum rules for Treatment of Prisoners 1955, Convention against cruel, inhuman treatment and torture and also various civil and political and Economic, Social, Cultural Rights for prisoners. In India, the role of prison administration played very important role to reform the criminals, for this adopted various programs for them and introduced early release methods to the prisoners, providing phone facilities from the jail to their families and advocates. The UN Standard Minimum Rules for the Treatment of Prisoners came into force in 1955. The standards set out by the UN are not legally binding but offer guidelines in international and municipal law with respect to any person held in any form of custody. They are generally regarded as being good principle and practice for the management of custodial facilities. The document sets out standards for those in custody which covers registration, personal hygiene, clothing and bedding, food, exercise and sport, medical services, discipline and

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125 M.B.Mahaworker, Prison Management, Problems and solutions, 2006, Kalpaz Publications
punishment, instruments of restraint, information to and complaints by prisoners, contact with the outside world, books, religion, retentions of prisoners’ property, notification of death, illness, transfer, removal of prisoners, institutional personnel and inspection of facilities. It also sets out guidelines for prisoners under sentence which further includes treatment, classification and individualization, privileges, work, educations and recreations, and social relations and after-care. There are also special provisions for insane and mentally abnormal prisoners, prisoners under arrest or awaiting trial, civil prisoners and persons arrested or detained without charge. The United Nations Standard Minimum Rules for the Treatment of Prisoners6 (1957) affirms in Rule 57 that ‘the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation’127.

The rules are to be applied without discrimination on the grounds of race, colour, sex, language, religion, political opinions, national or social origin, property, birth or other status. It is necessary, however, to respect religious beliefs of prisoners. A bound registration book shall be maintained with the identity, reasons for commitment and day and hour of admission and release of prisoners. Men and women in detention are to be held in separate facilities, likewise, untried and convicted prisoners, those imprisoned for civil offences and criminal offenders, and youths and adults shall be housed separately. Cells for individuals should not be used to accommodate two or more persons overnight, dormitory facilities are to be supervised at night. Cells and prison dormitories should provide adequate pace, ventilation, lighting and sanitary facilities and are to be kept clean at all times. Prisoners shall be provided with adequate water and toilet articles, and required to keep themselves clean. Prisoners not allowed to wear their own clothing are to be provided with an adequate and suitable outfit, with provisions for laundry and changes of clothes. Prisoners outside an institution for an authorized purpose are to be allowed to wear their own clothing. Every prisoner shall be provided with a separate bed and clean, separate and sufficient bedding. Wholesome, well-prepared food is to be provided prisoners at usual hours. Every prisoner shall have at least one hour of exercise in the open air, weather permitting. Young prisoners and others of suitable age and physique

are to receive physical and recreational training. A medical officer with some knowledge of psychiatry is to be available to every institution. Prisoners requiring specialized treatment are to be transferred to a civil hospital or appropriate facility. A qualified dental officer shall be available to every prisoner. Prenatal and post-natal care and treatment are to be provided by women's institutions; where nursing infants are allowed to remain with their mothers, a nursery staffed by qualified persons is needed. Every prisoner shall be examined by the medical officer shortly after admission; prisoners suspected of contagious diseases are to be segregated. The medical officer shall see all sick prisoners daily, along with those who complain of illness. The medical officer is to report to the director on prisoners whose health is jeopardized by continued imprisonment and on the quality of the food, hygiene, bedding, clothing and physical regimen of the prisoners. Discipline shall be no more restrictive than what is necessary to ensure custody and order. No prisoner shall be employed in a disciplinary capacity. The types of conduct to be considered offences and punishments for them shall be set by law or regulation, and prisoners are to be allowed to defend themselves against charges. Cruel, inhuman and/or degrading punishments, including corporal punishment and restriction to a dark cell, shall be prohibited. The medical officer is to be consulted before implementing any punishment that may be prejudicial to the physical or mental health of a prisoner. Handcuffs, strait-jackets and other instruments of restraint are never to be applied as a punishment, and irons and chains are not to be used as means of restraint. Information to and complaints by prisoners upon admission, prisoners shall be informed of the regulations they are to live by and of authorized channels for seeking information and making complaints.

The Standard Minimum Rules for the Treatment of Prisoners apply to all prisoners without discrimination; therefore, the specific needs and realities of all prisoners, including of women prisoners, should be taken into account in their application. The Rules, adopted more than 50 years ago, did not, however, draw sufficient attention to women’s particular needs. With the increase in the number of women prisoners worldwide, the need to bring more clarity to considerations that should apply to the treatment of women prisoners has acquired importance and

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128 The UN Standard Minimum Rules for the Treatment of Prisoners, 1955
129 The UN Standard Minimum Rules for the Treatment of Prisoners, 1955
urgency.\textsuperscript{130} The Recognizing the need to provide global standards with regard to the distinct considerations that should apply to women prisoners and offenders and taking into account a number of relevant resolutions adopted by different United Nations bodies, in which Member States were called on to respond appropriately to the needs of women offenders and prisoners, the present rules have been developed to complement and supplement, as appropriate, the Standard Minimum Rules for the Treatment of Prisoners and the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) in connection with the treatment of women prisoners and alternatives to imprisonment for women offenders. The International Convention relating to women prisoners was given more important for development of facilities to the women prisoners and also treatment, diet, medical care and sufficient environment.

The U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Committee the U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted in 1984.\textsuperscript{131} According to its Preamble, the Convention is grounded in existing international law, pointing at the UDHR, the ICCPR and the 1975 Declaration. Pursuant to Article 17, the Committee against Torture was established, which consists of a team of experts and which operates as a monitoring body. Under Article 19, States parties are obliged to submit reports on measures they have taken to implement the obligations under the Convention. The adoption in the 1960s of the two major Covenants, the ICCPR and the ICESCR, an international ‘Bill of Rights’ came into existence. Of particular importance to the rights of incarcerated persons is Article 10(1) of the ICCPR, which expressly provides that ‘all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person’. The importance of this provision should not be underestimated. First, the ICCPR is binding on all States parties. Second, as noted by Van Zyl Smit, because the notion of ‘human dignity’ lies at the very heart of all human rights, Article 10(1) appears to constitute an argument for a holistic approach towards all aspects of confinement from a human rights perspective.\textsuperscript{132} The United Nation framed number
of conventions to relate human rights in some of them to prisoners including war prisoners. The Conventions are against cruel, inhuman treatment and torture. The violations are different types, physical and mental torture is also violations of human rights of the prisoners, the conventions are protecting, the rights of the prisoners by implementing provisions of Conventions in their local laws. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment\textsuperscript{133} entered into force in June 1987. The Convention goes considerably further than the International Covenant on Civil and Political Rights in protecting against the international crime of torture. the Convention defines torture as; any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment was adopted by the General Assembly in December 1988. The Basic Principles for the Treatment of Prisoners, adopted by the General Assembly in December 1990, complete the set of safeguards, with 11 point-form standards. The content of these instruments forms the basis for organizing any prison regime and the texts are frequently quoted throughout this Manual. In sum, they state that all prisoners and detainees must be treated with respect for their human dignity, with regard to the conditions of their detention. They deal with the following issues: treatment and discipline; contact with the outside world; health; classification and separation; complaints; records; work and recreation; and religion and culture.\textsuperscript{134} After the Geneva Convention, convention is basic convention to the protection of prisoners at international level a model penal institutions, essential elements of prisons and rights of the prisoners.

\textsuperscript{133} The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
\textsuperscript{134} Human rights and prisons, united nations New York and Geneva, 2005
Geneva Convention relative to the Treatment of Prisoners of War Adopted on 12 August 1949 by the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, held in Geneva from 21 April to 12 August, 1949 entry into force 21 October 1950. The present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance. Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.\footnote{Adopted by the First United Nations Congress on the Prevention of Crime and the Treatm of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council its resolution 663 C (XXIV) of 31 July, 1957 and 2076}

The acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; Taking of hostages; Outrages upon personal dignity, in particular, humiliating and degrading treatments, the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples. Prisoners of war, are persons belonging to Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces. Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements.
That of being commanded by a person responsible for his subordinates; that of having a fixed distinctive sign recognizable at a distance, that of carrying arms openly; That of conducting their operations in accordance with the laws and customs of war. Members of regular armed forces profess allegiance to a government or an authority not recognized by the Detaining Power. Persons accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, and supply contractors, members of labour units or of services responsible for the welfare of the armed forces.

Prisoners of war are entitled in all circumstances to respect for their persons and their honour. Women shall be treated with all the regard due to their sex and shall in all cases benefit by treatment as favourable as that granted to men. Prisoners of war shall retain the full civil capacity which they enjoyed at the time of their capture. The Detaining Power may not restrict the exercise, either within or without its own territory, of the rights such capacity confers except in so far as the captivity requires. Each Party to a conflict is required to furnish the persons under its jurisdiction who are liable to become prisoners of war, with an identity card showing the owner's surname, first names, rank, army, regimental, personal or serial number or equivalent information, and date of birth. The identity card may, furthermore, bear the signature or the fingerprints, or both, of the owner, and may bear, as well, any other information the Party to the conflict may wish to add concerning persons belonging to its armed forces. As far as possible the card shall measure 6.5 x 10 cm. and shall be issued in duplicate. The identity card shall be shown by the prisoner of war upon demand, but may in no case be taken away from him. No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind. Prisoners of war who, owing to their physical or mental condition, are unable to state their identity, shall be handed over to the medical service. The identity of such prisoners shall be established by all possible means, subject to the provisions of the preceding paragraph. No prisoner of war may at any time be sent to or detained

in areas where he may be exposed to the fire of the combat zone, nor may his presence be used to render certain points or areas immune from military operations. Prisoners of war shall have shelters against air bombardment and other hazards of war, to the same extent as the local civilian population. With the exception of those engaged in the protection of their quarters against the aforesaid hazards, they may enter such shelters as soon as possible after the giving of the alarm. Any other protective measure taken in favour of the population shall also apply to them\textsuperscript{137}.

Medical inspections of prisoners of war shall be held at least once a month. They shall include the checking and the recording of the weight of each prisoner of war. Their purpose shall be, in particular, to supervise the general state of health, nutrition and cleanliness of prisoners and to detect contagious diseases, especially tuberculosis, malaria and venereal disease. For this purpose the most efficient methods available shall be employed, e.g. periodic mass miniature radiography for the early detection of tuberculosis. Prisoners of war shall enjoy complete latitude in the exercise of their religious duties, including attendance at the service of their faith, on condition that they comply with the disciplinary routine prescribed by the military authorities. Adequate premises shall be provided where religious services may be held. The transfer of prisoners of war shall always be effected humanely and in conditions not less favourable than those under which the forces of the Detaining Power are transferred. Account shall always be taken of the climatic conditions to which the prisoners of war are accustomed and the conditions of transfer shall in no case be prejudicial to their health.\textsuperscript{138} The Detaining Power shall supply prisoners of war during transfer with sufficient food and drinking water to keep them in good health, likewise with the necessary clothing, shelter and medical attention. The Detaining Power shall take adequate precautions especially in case of transport by sea or by air, to ensure their safety during transfer, and shall draw up a complete list of all transferred prisoners before their departure. The Detaining Power may utilize the labour of prisoners of war who are physically fit, taking into account their age, sex, rank and physical aptitude, and with a view particularly to maintaining them in a good state of physical and mental health. Non-commissioned officers who are prisoners of

\textsuperscript{137} M.B. Mahaworker, Prison Management, Problems and Solutions, Kalpaz Publications, 2006

\textsuperscript{138} Dr.Gurubax Singh, Law Relating to Protection of Human Rights and Human Values, Vinod Publications (P).Ltd, 2008,
war shall only be required to do supervisory work. Those not so required may ask for other suitable work which shall, so far as possible, be found for them. In all places where there are prisoners of war, except in those where there are officers, the prisoners shall freely elect by secret ballot, every six months, and also in case of vacancies, prisoners' representatives entrusted with representing them before the military authorities, the Protecting Powers, the International Committee of the Red Cross and any other organization which may assist them. These prisoners' representatives shall be eligible for re-election. In camps for officers and persons of equivalent status or in mixed camps, the senior officer among the prisoners of war shall be recognized as the camp prisoners' representative. In camps for officers, he shall be assisted by one or more advisers chosen by the officers; in mixed camps, his assistants shall be chosen from among the prisoners of war who are not officers and shall be elected by them. Prisoners of war shall be released and repatriated without delay after the cessation of active hostilities. In the absence of stipulations to the above effect in any agreement concluded between the Parties to the conflict with a view to the cessation of hostilities, or failing any such agreement, each of the Detaining Powers shall itself establish and execute without delay a plan of repatriation in conformity with the principle laid down in the foregoing paragraph.139

Basic Principles for the Treatment of Prisoners, 1990, 68t Plenary Meeting of the General Assembly of United Nations, held on 14t December, 1990, had passed a Resolution A/RES/45/111, bearing in mind the long-standing concern of the United Nations for the humanization of criminal justice and the protection of human rights and also that sour policies of crime prevention and control; viable planning for economic and social development, recognizing that Standard Minimum Rules for the Treatment of Prisoners, adopted by First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, are of great value and influence in the development of penal policy and practice, considering the concern of previous United Nations Congresses on the Prevention of Crime and the Treatment of Offenders, regarding the obstacles of various kinds that prevent the implementation of the Standard Minimum Rules, and believing that the implementation of the Standard

Minimum Rules would be facilitated by articulation of the basic principles underlying them.\textsuperscript{140} Amnesty International is a Non Governmental Organization playing a vital role in the protection of human rights in the world and working for the welfare of prisoners. The idea for establishment, Amnesty International was born when British law; Peter Benenson and other political activists launched an appeal for Amnesty, in 1961, a one-year worldwide campaign calling for the release of prisoners. Benenson started the campaign in response to the imprisonment of two students in Portugal who had made a toast to freedom in a public restaurant. The toast was considered to be a form of political opposition by Portugal's dictator Antonio Salazar, and both the students received seven-year prison sentences in 1960. Benenson also published an article titled "Forgotten Prisoners" in the London Observer in May, 1961, urging people to write letters to government officials around the world to protest against the imprisonment of all prisoners of conscience. The campaign gained much attention and the article was reprinted in numerous newspapers in many countries. By the end of 1961, more than 1,000 people had pledged their support to the campaign. Amnesty International was established at the end of that year.

In 1972, Amnesty International mounted a worldwide campaign to abolish all torture (including sexual abuse and rape) committed by law enforcement officials. The organization put together a 12-step programme that outlined the ways to eradicate torture in prisons. It included inter alia, recommendations to outlaw secret detentions to ensure that prisoners are held in "publicly recognized places", conducting of immediate investigations of any prisoner's allegations of torture, and enactment of legislation to make any abuse committed by law officials punishable under criminal laws. In 1974, the organization started the Urgent Action Network to make phone calls and send letters on behalf of prisoners, who need immediate medical or legal help. Also in 1977, the Organization launched a global campaign to abolish all court-ordered death sentences. Amnesty International claimed that the death penalty would never be proven as a deterrent.\textsuperscript{141} In 1990, Amnesty International had investigated more than 40,000 cases involving prisoners of conscience. In the same year, the organization developed numerous task forces to pay attention to specific human rights violations. Amnesty International Medical Network consisting doctors and

\textsuperscript{140} Maheswara Swamy, Criminology and Criminal Justice System, 2014, Asia Law House, Hyd
volunteers undertake investigation of medical-related misdeeds in more than 30
countries. The group found that doctors and nurses were sometimes forced by
government officials to give false medical evaluations of prisoners in order to conceal
the acts of torture. Other reports of the Network concluded that some health officials
voluntarily assisted Government leaders in covering up human rights abuses. In 1996,
the group published its first annual report, with the title "Prescription for Change".
Among the nations facing most serious allegations of medical abuse were Brazil,
Israel, Kenya, and Turkey. The organization has also campaigned to protect human
rights of women, refugees, and children.

In 1996, Amnesty International campaigned for establishment of a permanent
International Criminal Court. As a result, the Rome Statute of the International
Criminal Court was adopted in July, 1998. In 2000, Amnesty International launched
its third Campaign against Torture. In 2001, in its 40th anniversary year, Amnesty
International changed its Statute to incorporate, into its mission, work for economic,
social and cultural rights thus committing itself to advance both the universality and
indivisibility of all human rights enshrined in the Universal Declaration. Amnesty
International's "Stop Torture" website won a Revolution Award, which is recognized
as the best in digital marketing. In 2004, Amnesty International launched the Stop
Violence Against Women Campaign, By, 2007, Amnesty International had more than
2.2 million members, supporters and subscribers in over 150 countries and territories
in every region of the world.142 United Nations codified standards of treatment for
prisoners across different economic, social and cultural contexts in a number of
documents. These concern themselves with ensuring those basic minimum conditions
in prisons which are necessary for the maintenance of human dignity and facilitate the
development of prisoners into better human beings. International documents, which
have articulated the prisoners rights, are listed in the accompanying table. Principles
of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in
the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman
or Degrading Treatment or Punishment (UN Medical Ethics, 1982), Health personnel,
particularly physicians, charged with the medical care of prisoners and detainees have
a duty to provide them with protection of their physical and mental health and

142 Maheswara Swamy, Criminology and Criminal Justice System, 2014, Asia Law House, Hyd
treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained. It is a gross contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to, or attempts to commit torture or other cruel, inhuman, or degrading treatment or punishment. It is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees, the purpose of which is not solely to evaluate, protect, or improve their physical and mental health. It is a contravention of medical ethics for health personnel, particularly physicians, to apply their knowledge and skills in order to assist in the interrogation of prisoners and detainees in a manner that may adversely affect the physical or mental health or condition of such prisoners or detainees and which is not in accordance with the relevant international instruments; and to certify, or to participate in the certification of, the fitness of prisoners or detainees for any form of treatment or punishment that may adversely affect their physical or mental health and which is not in accordance with the relevant international instruments, or to participate in any way in the infliction of any such treatment or punishment that is not in accordance with the relevant international instruments. It is a contravention of medical ethics for health personnel, particularly physicians, to participate in any procedure for restraining a prisoner or detainee unless such a procedure is determined in accordance with purely medical criteria as being necessary for the protection of the physical or mental health or the safety of the prisoner or detainee himself, of his fellow prisoners or detainees, or of his guardians, and presents no hazard to the physical or mental health of the prisoner/detainee.143 There may be no derogation from the foregoing principles on any ground whatsoever, including public emergency.

Declaration on the Protection of All Persons From Being Subjected to Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

Adopted by the United Nations General Assembly, for the purpose of this Declaration, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official.

143 Prof. N.V. Paranjape, Criminology and Penology, 12th Edition, Central Law Publication
on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners. Torture constitutes an aggravated and deliberate form of cruel, inhuman, or degrading treatment or punishment.


3.3 Role of Prison Administration in Protection of Prisoners Human Rights in India

Prisonisation symboises a system of punishment and also a sort of institutional placement of under trails and suspects are during the period of trail. The history of prisons in India and elsewhere clearly reflects the changes in society’s reaction to crime time to time. The prison is used as an institution to treat the criminal as a deviant; there would be lesser restrictions and control over him inside the institution. The modern progressive view, however, regards crime as a social decease and favors treatment of offenders through non penal methods such as probation, parole and open jails etc., whatever be the reaction of society to crime, the lodging of criminals in prison gives rise to several problems of correction, rehabilitation and reformation which constitute vital aspects of prison administration.

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144 Sharma P.D, Police and Criminal Justice Administration in India, 1985, p. 145
145 Prof. N.V.Paranjape, Criminology and Penology, 12th Edition, Central Law Publication
In the prison administration in Independent India, the Government of India took some interest in the matters of changes in the prison system. The Government of India passed the Exchange of Prisoners Act, 1948. In 1950, the Transfer of Prisoners Act was passed by the central government. This act made provision for the removal of prisoners from one state to another. In the Constitution of India, prison administration has been included in the State List. As prison rules and regulation vary from one state to another, the much needed co-ordination was lacking. Pre-Independence there is no uniformity in prison laws, after the independence the states appointed several prison reform committees. The responsibility of prisons for the custody of prisoners and for the protection of society against crime shall be discharged in keeping with a State's other social objectives and its fundamental responsibilities for promoting the well-being and development of all members of society.

The modern prison in India originated with the Minute by TB Macaulay in 1835. A committee namely Prison Discipline Committee, was appointed, which submitted its report on 1838. The committee recommended increased rigorousness of treatment while rejecting all humanitarian needs and reforms for the prisoners. Following the recommendations of the Macaulay Committee between 1836-1838, Central Prisons were constructed from 1846. The contemporary Prison administration in India is thus a legacy of British rule. It is based on the notion that the best criminal code can be of little use to a community unless there is good machinery for the infliction of punishments. In 1864, the Second Commission of Inquiry into Jail Management and Discipline made similar recommendations as the 1836 Committee. In addition, this Commission made some specific suggestions regarding accommodation for prisoners, improvement in diet, and clothing, bedding and medical care. In 1877, a Conference of Experts met to inquire into prison administration. The conference proposed the enactment of a prison law and a draft bill was prepared. In 1888, the Fourth Jail Commission was appointed. On the basis of its recommendation, a consolidated prison bill was formulated. Provisions regarding the jail offences and punishment were specially examined by a conference of experts on Jail Management. In 1894, the draft bill became law with the assent of the Governor.
General of India. The Prison Reforms in India was changed through British ruling, before the colonial rule, there was no uniformity in penal system, accused or prisoners houses treated as jails and some of them used mostly war prisoners.

Prison Administration in Independent India was towards the reformation of the prison administration and the Government of India took some interest in the matters of changes in the prison system. The Government of India passed the Exchange of Prisoners Act, 1948. In 1950, the Transfer of Prisoners Act, was passed by the Government of India. This Act made provision for the removal of prisoners from one State to another. The leaders of the movement of the Indian independence and internationalism specially UNO repeatedly suffered incarceration at the hands of imperial rulers. Prison under foreign rulers was "The Goal a place of dread". It was, therefore, legitimately assumed that the leaders of movement of Indian independence and upholders of internationalism and the UNO who became rulers of independent India would accord highest priority to prison reforms by converting them from institution of horror to modern reclamation and correctional centers. As prison rules and regulations vary from one State to another, the much-needed co-ordination was lacking. However, it was realized soon after independence that the Jail Manuals of the States of the Union Territories based on the antediluvian Prisons Act of 1894, could not cope with the changing times. It was felt very strongly that some broad guidelines should be given from the Centre with a view to co-ordinating the prison reform programmes of the different State Governments. The decade 1951-60 in India was a decade of enthusiasm for prison reforms. Local committees were appointed by some State Governments (viz., Madras, Orissa, Uttar Pradesh and Maharashtra) to suggest prison reforms.

In 1951, the Government of India invited the United Nations expert on correctional work, Dr. W.C. Reckless, to undertake a study on prison administration and to suggest policy reform. His report titled 'Jail Administration in India' made a plea for transforming jails into reformation centers. He also recommended the revision of outdated jail manuals. In 1952, the Eighth Conference of the Inspector

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General’s of Prisons also supported the recommendations of Dr. Reckless regarding prison reform.\textsuperscript{148} Prison jurisprudence since the late ‘60s recognises 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 Government of India appointed the All India Jail Manual Committee in 1957 to prepare a model prison manual. The committee submitted its report in 1960. The report made forceful pleas for formulating a uniform policy and latest methods relating to jail administration, probation, after-care, juvenile and remand homes, certified and reformatory school, borstals and protective homes, suppression of immoral traffic etc. The report also suggested amendments in the Prison Act 1894 to provide a legal base for correctional work. In 1955, the Government of India passed Prisoners (Attendance in Courts) Act and whipping was also abolished in 1955 and the probation of offenders act was enacted in 1958 by the Govt. of India. The Committee prepared among the various recommendations of the Committee, the following are the important ones: The Correctional Services, i.e. the prisons, probation, after-care and institutional services for children should be integrated under a Director or Commissioner of Correctional Administration and be under the control of the Home Department, An O&M Division should be established to devote exclusive attention to the orderly growth and dynamic development of the organization, the Deputy Inspectors-General should be incharge of various divisions and there should be a separate Deputy Inspector-General for health services in prisons, the probation system should be used on a more extensive scale than at present in order to reduce the pressure on prisons, there should be a well arranged network of diversified institutions, a Central Bureau of Correctional Services should be organized at the Union level, a Central Advisory Board should be set up by the Government of

\textsuperscript{148} Encyclopaedia of India and Her States, Vol.11, ed. by Verinder Graver & Ranjana Arora, Deep & Deep Publications, New Delhi, 1996, p. 447
India and there should be a Research and Planning unit in each state, an All India Correctional Services should be set up, there should be a separation of executive and clerical functions and of executive and accounts functions, there should be a State After Care Organization in each state, the Jail Manual should be revised periodically, Classification of prisoners should be dynamic.

Another major post-Independence development in the Indian prison administration took place, i.e., in pursuance of the recommendations of the All India Jail Manual Committee, the Government of India set up a Central Bureau of Correctional Services in 1961 as a central technical advisory body. Its main functions are to coordinate and develop uniform policy, to standardize the collection of statistics on a national basis, to exchange information with foreign government and the UN agencies and to promote research, training and studies and surveys in the field of prevention of crime and treatment of offences. The Bureau functioned under the Government of India's Ministry of Home Affairs until 1964, when it was transferred to the newly created Department of Social Security, now known as the Ministry of Social Welfare. It was reconstituted in 1975 as the National Institute of Social Defence. Its functions were enlarged to include preventive, correctional and rehabilitative aspects of social defence, viz., welfare of prisoners, prison reforms, prison administration, juvenile vagrancy, probation, beggary, social and moral hygiene, alcoholism, gambling, drug addiction etc. The Institute continues to work under the Ministry of Social Welfare and has been playing "a useful role" in its enlarged field of social defence.\textsuperscript{149}

The Model Prison Manual (MPM) and presented it to the Government of India in 1960 for implementation. The MPM 1960 is the guiding principle on the basis of which the present Indian prison management is governed. On the lines of the Model Prison Manual, the Ministry of Home Affairs, Government of India, in 1972, appointed a working group on prisons on prisons for examining the physical and administrative conditions of the jails in the country and suggesting ways and means of their improvement, laying down standards in respect of different services and facilities in the jails, laying down an order of priorities for the prison development schemes, and considering their allied matters concerning prisons and prisoners. This

Committee submitted its report in 1973. The Working Group on Prisons made a number of recommendations and the State Governments were asked by the Central Government to implement such recommendations. This Committee 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. The most remarkable recommendation of this Working Group was that it recommended the inclusion of prisons in the Five-Year Plan and a provision of Rs. 100 crore. It thought that a prison administration could not be streamlined unless the Government of India and the State Governments made available more resources for developing every aspect of the existing system. As a follow up of this report, the Ministry of Home Affairs initiated efforts for the improvement and modernization of jail administration by making a grant of Rs. 2 crore in the budget for 1977-78 and of Rs. 4 crore in the budget of 1978-79. The Working Group on Prisons emphasized the need for a National Policy on Prison and Correctional Administration, it discarded the traditional prison-based policy. The report of the Group identified the main elements of proposed National Policy.\(^{150}\)

A suitable system established for coordination among the three organs of the criminal justice system i.e. the police, the judiciary and the prison and correctional administration, for the effective prevention of crime and treatment of offenders. The supreme aim of punishment was to be the protection of society through the rehabilitation of offender. The principal goals of the criminal justice system were there assimilation of the offender in society and the prevention of crime. Accordingly, the aim of the prison administration was to be the employment of all resources, human and material, to provide scientific treatment to every offender according to his peculiar needs and circumstances. The deprivation of liberty and segregation from society was to be limited mostly to the habitual, the incorrigible and the dangerous criminals and the Government should make fullest possible use of various alternatives to imprisonment as a measure of sentencing policy. Non-institutional and semi-institutional forms of treatment should be resorted to as far as possible. There was to be close coordination between the prison and the probation and other correctional

\(^{150}\) M.R. Mahaworkar, Prison Management, Problems and solutions, Kalpaz Publications, Delhi. 2006
services. Free legal aid to all indigent prisoners. Undertrial prisoners were to be kept in separate institutions as far as possible. Facilities were to be provided to them for work on a voluntary basis. The Union and State Governments declare that there was to be no bar or restriction on the employment of ex-convicts of specified categories in the public services. The prison administration should systematically involve enlightened individual citizens, associations, societies and other community agencies on the treatment, after-care and rehabilitation of offenders.\textsuperscript{151}

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, 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. In response to a national demand in 1979, the former Prime Minister Morarji Desai dedicated the cellular jail of Andaman and Nicobar Islands as a National Memorial.\textsuperscript{152} The planning and monitoring of the schemes recommended by the Seventh Finance Commission were assigned to the National Institute of Social Defence through the Ministry of Home Affairs. It brought out in its report the need for a national policy on prisons. It also made an important recommendation with regard to the classification and treatment of offenders and laid down principles.\textsuperscript{153} In 1980, the Central Government was setup a Committee on Jail Reform, under the chairmanship of Justice A. N. Mulla. The basic objective of the Committee was to review the laws, rules and regulations keeping in view the overall objective of protecting society and rehabilitating offenders. The Mulla Committee submitted its report in 1983, his recommendation relating to prison administration the prison staff should be properly trained and organized into different cadres. It would be

\textsuperscript{152} Manorama Year Book, 1994, pp. 695-99.
\textsuperscript{153} Dr. N. Maheswara Swamy, Criminology and Criminal Justice System, 2013, Asia Law House, Hyd
advisable to constitute an All India Service called the Indian Prisons & Correctional Service for recruitment of Prison officials. After care, rehabilitation and probation should constitute an integral part of the prison system. This committee is corner stone of the Indian prison reforms and also various High Courts and Supreme Court upheld the recommendations in their decision relating to the prisoner’s rights and the state governments show much interest to prevent atrocities and to protect the rights of prisoners’ rules and regulations were framed in their states for the prisoner reformation.

In 1986, the Government of India constituted another committee under chairmanship of Justice Krishna Iyer\textsuperscript{154} to undertake a study on women prisoners in India. The committee submitted report in 1987 and recommended various immunities for women in the police force in view of their special role in tackling women and child offenders. To prepare National policy for the women prisoners, special rules and regulation for them, co-ordination between police, court and prison authorities, and legal aid to the needy, facilities to the child’s of imprisoned mothers. The Supreme Court in Ramamurthy vs State of Karnataka\textsuperscript{155} stated that uniformity in law for the prison laws in national level is necessary and prepare a draft model prison manual. For this, the Government of India was appointed a committee in the Bureau of Police Research and Development (BPR&D). The jail manual prepared by the committee and that was accepted by the Government of India and circulated to State governments. In 1996, Mr. Rahi, after reviewing the problems of jails at the National Conference of Inspectors-General of Prisons, said there was need for a one-time review of all cases. He said there were 2,26,580 prisoners in the country and the ratio of undertrials was around 70 per cent. Most of them were without trial for a long period of time and it was necessary to provide them justice by reviewing their cases.\textsuperscript{156} The conditions of Indian prisons are highly deplorable. These are the walled houses of cruelty, torture and defiled dignity. The jail manuals are antiquated, the architecture is primitive and the attitude of the jail authorities towards crime and criminals is not only indifferent, but unpardonably dehumanising. Sub-human living conditions, prison riots, jail breaks and frequent escape of detained are other disturbing

\textsuperscript{154} Justice V.R.Krishna Iyer committee on women prisoners, (1986-1987)
\textsuperscript{155} AIR, 1997 SC 1739
\textsuperscript{156} Indian Express, 9th August 1998, Bangalore.
aspects. As per our judicial philosophy, all the jails are expected to serve the four major objectives: retribution, incapacitation, deterrence and rehabilitation. Crimes against society have to be punished and, therefore, criminals have to pay to society by losing part of their freedom. The law-breakers have to be segregated. The ground realities are no jail in the country has the sources for keeping prisoners in healthy surroundings. No prison has an imaginative reformatory system governed by officers and men who want to bring about a change of heart, or of attitude towards self and society, in a criminal. In fact, casual wrong-doers become hardened criminals during their period of stay in jails. The plight of women inmates and young persons less said the better. The funds made available for jail inmates are often misappropriated. The Central Government has been adopting some outdated methods in the name of reformation of prisoners. The Central Government told the States in January 1996 to play cassettes containing excerpts from religious scriptures and sermons of spiritual leaders in all prisons and spiritual leaders be invited once or twice a week to personally address the jail inmates to inculcate the ideals of tolerance and compassion, among the prisoners. Mr. H.D. Devegowda's Central Government announced the United Front's Common Minimum Programme in 1996. In this programme, Backlog of all court cases to be cleared within three years, United Nations Convention on Torture to be adopted, Penal laws to be reviewed and amended with human rights protected. The National Commission of Women in 1996 visited several jails and talked to women undertrials and prisoners who were languishing in various jails as undertrials for over five years which meant they had already spent more years in prison than they could had if they had been convicted. As a ray of hope, by the end of 1996 the Commission hoped to get 5,000 women released.

3.3.1 National Human Rights Commission in Prison Administration

The Central Government enacted the Protection of Human Rights Act, 1993, according to the National Human Rights Commission (NHRC) has been established. Since its inception, the NHRC has been playing an important role in prison
administration. The "Commission shall visit, under intimation to the State Government, any jail or institution under the control of State Government where persons are detained or lodged for purpose of treatment, reformation or protection to study the living conditions of the inmates and make recommendation there on. 161"

Accordingly, the NHRC in a letter to chief secretaries of all States and administration of Union Territories, in 1997 urged them to help NHRC investigating teams to undertake visits to police lock-ups in the country to eliminate incidents of custodial violence.162

The NHRC in its annual report of 1994-95, had recommended that the Indian Prisons Act of 1894 revised to reform the prison system and a new all-India jail manual be prepared to serve as a model. It concluded that the prison system is "seriously in need of reform, nationwide. It is mired in attitudes and practices that are antiquated at best, but that often border on the intolerable." The report of the NHRC on the state of jails in the country may not add much to the information on the matter but it serves as yet another reminder of the urgent need to improve the country's prison system and the conditions in the prisons. Most of the ills and problems in the jails have been well documented in the past and suggestions for improvement had also not been lacking. However, the situation has only progressively deteriorated and every ill of the jail system had in the past only became worse or grew bigger in spread and magnitude. The Human Rights Commission's report also detailed them and proposed changes in laws and altitudes, adoption of measures by the Government and creation of public awareness to rectify the situation. What was needed was the willingness and wherewithal to translate the proposals and decisions that emerge out of such meeting into concrete measures. The conditions in our jails help only to perpetuate criminal conduct and to make inmate a life-long outlaw. The situation will not change as long as jails continue to be centers for punishment as opposed to these for reforming errant individuals.163 The NHRC had recommended systematic reforms of police and prisons and far reaching measures for protection of civil liberties in areas hit by terrorism and insurgency. In its annual report for 1994-95, the Commission recommended to the Government that in States where security forces

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161 Section 12(c) of the Protection of Human Rights Act, 1993
162 Indian Express, 27th August 1995, Bangalore
163 Deccun Herald, 29th August 1995, Bangalore
were called to assist the civil authorities, local magistrates or police officers should be associated, particularly with cordon-and-search operations. Further a suggestion was made to celebrate December 10 as Human Rights Day in all schools, colleges and universities. The National Human Rights Commission, in March 1999, has reiterated that the State Human Rights Commission (SHRC) should be set up in States as expeditiously as possible. The reiteration comes in the wake of the delay on part of the States in setting up the commissions. Only eight States in the country have set up SHRCs, while Kerala, Gujarat, Rajasthan, Andhra Pradesh, Karnataka and Sikkim are yet to take action, despite expressing their intention to set up the Commission.

The Indian prison system followed reformative method for release of prisoners, the judiciary and prison authorities and legislatures also highlighting the reformation and rehabilitation methods; it will help the prisoners after their release to lead normal life in society. For this, early release who is good character in prison, first time offenders, old age persons, women prisoners, insane prisoners etc., some of instruments for early release of prisoners them are like, Probation (under the Probation of Offenders Act, 1958), Parole and Remission. Probation System in India:- seen to reform the criminals. Probation, as a mode of reform of offenders teen introduced for the first time under Section 562 of the old Code Criminal Procedure, 1898 and it was reincorporated under Sections 360, 361 of the new Code of Criminal Procedure, 1973. According to section 562 of the old Code the benefit of probation was extended to the offenders convicted for the offences of theft, dishonest misappropriation other offences under the Indian Penal Code punishable with not more two years imprisonment. Section 562 of the old Code of 1898 was dead on the recommendation of the Committee appointed by the Central Government in 1916, providing the benefit of probation in other cases also, benefit depends upon the good conduct of the offenders and the creation of the Court. Later on the Children Act of 1908 and of 1960, h were repealed consequent upon the passing of the Juvenile Justice 1986, which Act was again substituted by the Juvenile Justice (Care Protection of Children) Act, 2000 also empowered the Court to release offenders on probation of good conduct.

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164 The Hindu, 6th March 1999, Bangalore, p. 5
The Indian Jail Reforms Committee in its report of 1919-1920 intended that the first offenders were to be treated more liberally and even be released unconditionally after admonition. It had classified the offenders under two categories namely, male adults over twenty one years of age and young male adults under twenty one years of age female offenders of any age. The benefit of probation was also fed to offences falling under special enactments. The number of remand rescue homes, certified schools and industrial schools were established Bombay, Madras and Calcutta being the then Presidency Towns.

In British Government was asked the local Governments to enact suitable for the prisoners in draft Bill of 1931 prepared by the Government of As a result some of the Provincial Governments enacted probation but there was no uniformity among them. In 1952, a Probation was held in Bombay on the advice of Dr. Walter Reckless, technical expert of the UNO, (an American) on correctional services. The All India Jail Manual Committee in its report of 1957 recommended Probation, Parole, Remission and Commutation of Sentence In India, the objective of the punishment is to reform the criminals. Probation was incorporated under section of 360\(^{165}\) and 361\(^{166}\) of code of criminal procedure, 1973, the accused persons who is first time offender is convicted by magistrate court and also who is below the age of 21 years. The advantages of this, the offender under supervision of probation officer, it will reduce financial burden of government and also social security. Parole is a release from prison after part of sentence has been served, the prisoner still remaining in custody and under the stated conditions until discharged and he is liable to return to his institution for violation of any of these conditions. The parole is a method of temper very release after completion of sum of his sentence and also based on his good behavior in prison. This granted by parole board constituted by the state government.

165 Order to release on probation of good conduct or after admonition. (1) When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behaviour.

166 Special reasons to be recorded in certain cases. Where in any case the Court could have dealt with (a) an accused person under section 360 or under the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or (b) a youthful offender under the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders, but has not done so, it shall record in its judgment the special reasons for not having done.
with all jail officers. The Remission and Commutation of Sentence means the period of sentence was being reduced by the period spent by a prisoner. It is in the nature of grace and not a right and depends upon the good character of the prisoner and other circumstances and seriousness of the grounds provided in the application. The prison administration is maintained well but the conditions are not satisfactory, because of overcrowding, inadequate food, prisoners are suffering with sexual diseases, Health problems in prisons, Abuse of prisoners and Lack of legal aid.

Classification of Offenders for Correctional Treatment modern correctional methods adopted for treatment of offenders classified into the following seven categories, innocent; insane; accidental; occasional; habitual; white collar; and political. In Indian Prison system, the early release of prisoner is there, the prison authorities recommend to the government and the State Government issued certain guidelines for the release of prisoners on the occasions of Independence Day and Republic day. Release on probation and premature release are based on the principles of licence, clemency and pardon. The word Release' has not been defined anywhere in the Code or the Act and, therefore, it has to be assigned the meaning as given in dictionaries and used in common parlance. 'Release' means "discharge of an existing obligation". It implies that the person so released is not in prison after such release and he is set at liberty with absolute freedom without conditions and once a person is released absolutely he cannot be taken back in prison again. Each State has its own guidelines for release of prisoners prematurely and judged by the guidelines. In one State a prisoner who may earn premature release in that State may not earn premature release in another State at that time. The aim of the premature release is reformation of offenders and their rehabilitation and integration into the society, while at the same time ensuring the protection of society from criminal activities. These two aspects are closely interlinked. Incidental to the same is the conduct, behavior and performance of prisoners while in prison. These have a bearing on their rehabilitative potential and the possibility of their being released by virtue of remission earned by them, or by an order granting them premature release. The most
important consideration for premature release of prisoners is that they have become harmless and useful member of a civilized society. The prisoner conduct is a matter which cannot be lightly viewed and when the matter concerns exercise of clemency and premature release it is not possible to overlook that factor. The overstay of a prisoner after expiry of the period of his parole period would amount to a gross abuse of the licence given to the detenu and it may certainly weigh as an adverse factor, while considering the matter of exercise of clemency or pardon. The opinion regarding release on licence has to be formed by the State Government. That can be done by the State Government only on a consideration of facts relevant to formation of opinion and not on the basis of mere certificate or opinion of other authorities which do not disclose facts.

Humanitarian approach to be adopted for Each authority involved in the process of consideration of premature release, are expected to adopt a humanitarian approach. They are required to be sensitized, in discharge of their duty of dispensation of justice. It should be considered liberally with reformatory zeal: The premature release on licence under the Probation Act and the Probation Rules should be considered rather liberally with a reformatory zeal. The concerned authorities and the State Government need not take technical view of the matter but must apply their mind keeping in view the broad objects of such premature release. If, for example, a person has conducted himself satisfactorily in jail and there is nothing adverse, by way of tangible fact, against his antecedents, apart from the offence for which he has been convicted, if he is considered to be fit enough to be sent to the model jail or to the open farms or on home leave without any adverse report against him and family members of the deceased state no objection to such release, it would do violence to commonsense if a report were to come from the superintendent of Police or the District Magistrate that, if released, he may create law and order problem or his release on licence will not be in the interest of the habitants of the village or that, if released he may wreck vengeance or vengeance may be wrecked against him.

Principles of natural justice need not be followed by the prison authorities. If the Government intends to reject the representation of the prisoner for premature release

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172 “Model prison manual for the superintendence and management of prisons in india, 2003” formulated by bureau of police research and development ministry of home affairs, government of india.
173 peoples’ union of civil liberties, allahabad & anr. V. State of up. & anr., 1983 cr.L.J 1166
174 mehandi hasan v. The state of up. And others, 1996 cr.L.J 687
based on certain material, before passing such an order, it need not give an opportunity to the prisoner to rebut the same. If it is held otherwise, on practical application it means that the Government shall in the first instance pass a proposed speaking order and serve the same on the prisoner inviting his representation. This means that the Government is obliged to cause inroads on its sovereign or constituent power as conferred under the Constitution and its laws. So the Government in a way turns itself into a quasi-judicial Tribunal, if not a Court. Enjoining the executive Government to assume such a role would obviously be requiring it to do something which the basics of our laws and the Constitution prohibit. When a convicted person on parole is arrested for another offence and put in jail, whether he is entitled for set off of his period of detention under Section 428 Cr.P.C. In Omkar Singh Vs Police Officers the High Court held that he was entitled to count this period in jail against the sentence he has already undergone.

It is common practice to pick up people for questioning, and not record their presence in the police station till the police is ready to present prisoners before a magistrate. A way of uneasy the constitutional requirement that every person taken into custody be produced before a magistrate within 24 hours. Apart from the illegality of such detention, it makes difficult proving torture in custody of illegal, unrecorded, detention. Human rights jurists said that telegrams be dispatched to the Chief Minister, the Director General of Police, the Superintendent of Police, and the Governor for instance, illegal detention is obtained, to establish the time of detention. The conditions of persons with mental illness in institutions have been cause for human rights concern. In Gwalior Mental hospital, for instance, it was found that persons with mental illness were left in nakedness; the explanation was that they tore their clothes if they were given them. The press raised the issue. Chaining of mentally ill patients was also a practice, and this was outlawed by an order of the court. One difficulty in ensuring that such violations do not occur, and in getting the law implemented, is access. The human rights community has not engaged with the problems faced within the walls of custodial institutions. The open institutions are

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178 1979 Cr.L.J. 1098. Here the petitioner was undergoing imprisonment for a term of four years. His contention in the writ petition was that the period of four years has expired, but he was not released from jail. According to the petitioner he was put into hospital for some time while he was in custody because of his illness he was not released period for the purpose of serving out the sentence. Allowing the petition the court held that once a person has been convicted and sentenced to jail then all the period which he spends in jail will be deemed to be the period spent in serving out the sentence. lg. p.1099
179 Supreme Court Legal Aid Committee v. State of M.P. (1994) 5 SCC 21
bureaucratic, and closed, institutions is an imperative. The hysterectomy controversy in the early 1990s in Pune represents another aspect of the control and decision making within custodial institutions. The hysterectomy of girls below 18 years of age, those were mentally retarded, raised controversy about the decision made by the professionals. The professionals did not involve in making the decision neither denied that the hysterectomy was being done, nor did they did see it as a violation. It was justified as being in the best interests of the hygiene of the mentally retarded girl, as making practicable the care of the mentally retarded. The response did not rule out the possibility of sexual abuse within the institutions, but said it would protect the girls from pregnancy in the event of such an encounter. The persons responsible for the decision responded angrily to the charges of human rights violations. The Medical Council of India, however, distanced itself from this position, and declared the practice as being against their norms. The intervention of the media and the human rights community precluded further hysterectomies from being done.

The Home Ministry can do precious little if there is no political will on the part of States to push through both police and prison reforms. In 1999, a draft Model Prisons Management Bill (The Prison Administration and Treatment of Prisoners Bill-1998) was circulated to replace the Prison Act 1894 by the Government of India to the respective states but this bill is yet to be finalized. In 2000, the Ministry of Home Affairs, Government of India, appointed a Committee for the Formulation of a Model Prison Manual which would be a pragmatic prison manual, in order to improve the Indian prison management and administration. The All India Committee on Jail Reforms, the Supreme Court of India and the Committee of Empowerment of Women have all highlighted the need for a comprehensive revision of the prison laws but the pace of any change has been disappointing. The Supreme Court of India has however expanded the horizons of prisoner rights jurisprudence through a series of judgments. The human rights of the prisoners nothing but fundamental rights of the state, in U.S.A was having written constitution, the constitution law is the law of the land. But in United Kingdom was no written constitution, but the common law of England was prevailed for them. Every state is having different laws according to the needs of their society. Similarly, International Perspective on Human Rights of the Prisoners was different as prison system which prevailed in World War I and II, the atrocities on

180 http://www.ielrc.org/content/w0103.pdf
prisoners and applying Genocide on opposite states. After the United Nations formation, the new era was started in human rights history. The Universal Declaration of Human Rights (1948) was framed by the United Nations for the promotion and protection of Human Rights in World.