The fundamental rights guaranteed under the Constitution are not absolute and many restrictions have been imposed on their enjoyment. Right to freedom of person is one of the most important rights among the fundamental rights. When a person is convicted or put in prison his status is different from that of an ordinary person. A prisoner cannot claim all the fundamental rights that are available to an ordinary person. Many people, including high ranking political leaders, sometimes argue that prisoners don’t have or should not be allowed to enjoy their human rights. Such arguments are wrong and have no basis in law. Prisoners are human beings and as such they retain their rights even when in prison. This is so because human rights are universal. This means that every person, including a prisoner, has human rights, no matter who he is, where s/he lives or his/her class, race, sex, age, social status, etc. Also, human rights are said to be inalienable. This means that they cannot be taken away from a person, including a prisoner. But these rights are restricted when a person is sentenced imprisonment. Such restrictions or limitations are lawful and in line with the Indian Constitution and the application of international human rights law.

3.1 Prisoners’ Rights: At a Glance

Trial awaiting prisoners or people who have been sentenced lose some of their rights, such as freedom of movement, but they keep other rights such as the right to dignity. Even though the Indian Constitution provides for the suspension or non – enjoyment of certain human rights in specific Circumstances, these circumstances do not include time spent in prison. The enjoyment of certain human
rights may only be suspended when India is in a state of national defense or when a state of emergency has been declared in the country. However, certain rights cannot be suspended under any circumstances. These rights include: the right to human dignity, the right life, the right to equality & freedom from discrimination and the right not to be tortured or treated cruelly or inhumanely. This means that a prisoner retains his human dignity in all circumstances. His right to human dignity is inviolable in all circumstances irrespective of the type of crime he has committed. He may also not be tortured or treated cruelly or inhumanely under any circumstances. This is so, because he remains a human being after all. In addition to the above, national and international laws relating to the prisoners, provides that a prisoner (i.e. a trial-awaiting prisoners, sentence awaiting prisoners and convicted prisoners) have the following rights:

i. To receive meals (from the State and his family);

ii. To receive clothing, bedding, soap and medicine;

iii. To receive visitors;

iv. To receive and write letters (subject to censorship);

v. To exercise;

vi. To medical treatment;

vii. If a prisoner is female, to be kept separate from male prisoner;

viii. If a female prisoner is to be admitted into prison custody, in certain instances, with her infant; such an infant must be supplied with clothing and other necessities by the State until she/he attains the age of two years;

ix. If an unconvicted juvenile, not to be detained in a prison unless special circumstances so demands;
x. Not to be assaulted by prison guards unless he has attempted to escape, been riotous or violent, or has disobeyed a lawful order;

xi. To be given an opportunity to state his case whenever a privilege and or benefit is withdrawn or amended;

xii. To make complaints to the Officer in Charge be afforded adequate facilities for the preparation and presentation of his defense; his legal representative must be given adequate facilities to privately interview him; where the prisoner is unable to communicate with his legal representative in English, a suitable interpreter must be provided;

xiii. No to have his documents or letters addressed to the Ombudsman or his lawyer censored;

xiv. When charged for a prison offence, to be informed in writing of the nature and particulars of the charge against him or her, and be given a fair hearing;

xv. To be informed of the provisions of the Prisoners Act (No 17 of 1998), the applicable rules, orders and directives relating to the treatment and conduct of prisoners; this information must be made available to every prisoner immediately on admission to a prison; where the prisoner is illiterate the contents of those provisions must be orally explained to him;

xvi. To be free from unreasonable searches at night.¹

3.2 International Standards for Prisoners' Rights

Prisoners have Right to be treated as a human being and as a person; this right has been stressed and recommended by various international conventions and treaties on human rights. In this chapter we shall discuss provisions of these conventions and treaties under various human rights categories.
3.2.1 Right to Physical and Moral Integrity

Prisoner’s right to be treated as a human being is based on the principle that all human beings are born free and they are equal in dignity and rights. Human rights are evolved from the concept that every human being inherent dignity. All persons deprived of their liberty shall be treated at all times with humanity and with respect for the inherent dignity of the human person. Prisoners have right to integrity of the body, immunity from use of repression and personal abuse, whether by custodial staff or by prisoners. They have right to integrity of the mind and immunity from aggression whether by staff or by prisoners. They cannot be deprived of their fundamental rights except in accordance with law prescribing conditions of confinement.²

Provisions of following international laws and treaties are worth to be mentioned here-

i. The preambles to the *Universal Declaration of Human Rights* and the two *International Covenants on Human Rights* emphasize that: *recognition of the inherent dignity and ... equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.*³

ii. Principle 1 of the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* provides that: *All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.*⁴

iii. This principle is confirmed in the *Basic Principles for the Treatment of Prisoners* and *Standard Minimum Rules for the Treatment of Prisoners*, adopted by the United Nations in 1955, which deal with the essential features of daily life in prison.⁵

We shall discuss the right to physical and moral integrity in two
categories i.e. - prohibition of torture & ill-treatment and admission & release. Detailed description is given below-

3.2.1.1 Prohibition of Torture and Ill-Treatment

The international instruments are unequivocal. Under no circumstances is there ever any justification for torture or cruel, inhuman or degrading treatment or punishment. The definition of torture is comprehensive. It includes any form of pain or suffering, whether physical or mental, other than that which is inherent in the fact of detention or imprisonment. This means that:

a) Prisoners must never be beaten or subjected to corporal punishment;

b) Corporal punishment may not be inflicted for disciplinary offences;

c) Force may be used only when it is essential to restrain a prisoner;

d) Staff should be trained in non-violent methods of dealing with intransigent prisoners;

e) Staff, when carrying out their duties, must always act within the law;

f) Staff found guilty of torturing or inflicting unjustified violence on prisoners should be prosecuted and sanctioned in accordance with the law;

g) Prisoners should be able to complain to independent persons about any ill-treatment without fear of future discrimination;

Officials, such as judges, should be able to visit prisons to ensure that torture or inhuman treatment or punishment is not taking place. Provisions of following international laws and treaties are worth to be mentioned here-
i. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. There are no exceptions. Article 5 of the *Universal Declaration of Human Rights* provides that: *No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*

ii. Torture is defined as any act by which severe physical or mental pain or suffering is intentionally inflicted on a person, other than that which is inherent in or incidental to lawful sanctions. Article 1, paragraph 1, of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* 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.*

iii. Ill-treatment is defined as other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture. Article 16, paragraph 1, of the Convention defines other cruel, inhuman or degrading treatment or punishment as: *other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.*
iv. No prisoner shall be subjected, even with his or her consent, to any medical or scientific experimentation which may be detrimental to health. Article 7 of the *International Covenant on Civil and Political Rights and* Principle 22 of the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* confirms this right of prisoners.\textsuperscript{10}

v. The *Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines)* confirms that orders from a superior officer may not be invoked as a justification for torture.\textsuperscript{11}

vi. Article 3 of the *Code of Conduct for Law Enforcement Officials* confers that Law enforcement officials may use force only when it is strictly necessary.\textsuperscript{12}

vii. Principle 34 of the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* provides that all deaths in custody, incidents of torture and ill-treatment, and disappearances of prisoners shall be properly investigated.\textsuperscript{13}

### 3.2.1.2 Admission and Release

Prisoners can be admitted to prison only after fulfilling the requisite conditions. Prisoners should be held in a recognized prison, they should be presented before the judiciary, prisoners and their family members or their representatives should be informed about all facts of their arrest and they should be medically examined before admission to any type of prison. Provisions of following international laws and treaties are worth to be mentioned here-

i. Persons deprived of their liberty should be held in places which are officially recognized as places of custody. Principle 6 of the
Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions states that: Governments shall ensure that persons deprived of their liberty are held in officially recognized places of custody, and that accurate information on their custody and whereabouts, including transfers, is made promptly available to their relatives and lawyer or other persons of confidence.\textsuperscript{14}

ii. A detailed register shall be kept of every person deprived of liberty. Article 10, paragraph 3, of the Declaration on the Protection of All Persons from Enforced Disappearance requires that in any place where a person is deprived of liberty an up-to-date register shall be kept.\textsuperscript{15} This requirement is confirmed in rule 7 of the Standard Minimum Rules for the Treatment of Prisoners.\textsuperscript{16}

iii. All prisoners shall be provided promptly with written information about the regulations which apply to their treatment and about their rights and obligations. Rule 35 of the Standard Minimum Rules provides:

a) Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution.

b) If a prisoner is illiterate, the aforesaid information shall be conveyed to him orally.\textsuperscript{17}
iv. The families, legal representatives and, if appropriate, diplomatic missions, of prisoners are to receive full information about the fact of their detention and where they are held. This requirement is confirmed in principle 13 of the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.*

v. All prisoners shall be offered a proper medical examination and treatment as soon as possible after admission. The requirement for medical examination and treatment as soon as possible after admission is confirmed by rule 24 of the *Standard Minimum Rules for the Treatment of Prisoners.*

3.2.2 Right to an Adequate Standard of Living

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. All persons deprived of their liberty have the right to an adequate standard of living, including adequate food, drinking water, accommodation, clothing and bedding. Prisoners have right to fulfillment of basic minimum needs such as adequate diet, health, medical care and treatment, access to clean and adequate drinking water, access to clean and hygienic conditions of living accommodation, sanitation and personal hygiene, adequate clothing, bedding and other equipment. Provisions of following international laws and treaties are worth to be mentioned here:

i. Article 25 of the *Universal Declaration of Human Rights* provides: *Everyone has the right to a standard of living adequate for [his] health and well-being including food, clothing, housing and medical care and necessary social services, and the right to security in the event of lack of livelihood in circumstances beyond his control.*
ii. Article 10 of the *International Covenant on Civil and Political Rights* provides: *All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.*\(^{21}\)

The deprivation of adequate food, water, clothing and proper accommodation can often result in ill-treatment of prisoners which may amount to torture in severe cases. It is important to realize that physical infliction of torture or other cruel, inhuman or degrading treatment is not the only manner of violating the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. We shall discuss the right to an adequate standard of living in three categories i.e. - accommodation, right to adequate food & drinking water and right to clothing & bedding. Detailed description is given below-

3.2.2.1 Accommodation

Accommodation for prisoners shall provide adequate cubic content of air, floor space, lighting, heating and ventilation. Prisoners required to share sleeping accommodation shall be carefully selected and supervised at night. Regarding accommodation facility for prisoners following provisions are mentioned in various international treaties and conventions on prisoners' human rights-

i. Article 16 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* provides: *Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.* \(^{22}\)
ii. The *Standard Minimum Rules for the Treatment of Prisoners* require as follows:

1. Where sleeping accommodation is in individual cells or rooms each prisoner shall occupy by night a cell or room by himself.

2. Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. There shall be regular supervision by night, in keeping with the nature of the institution.

3. All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.²³

### 3.2.2.2 Right to Adequate Food and Drinking Water

Adequate food and drinking water are human rights. All prisoners have the right to wholesome and adequate food at the usual hours, with drinking water available whenever needed. Regarding adequate food and drinking water facility for prisoners following provisions are mentioned in various international treaties and conventions on prisoners’ human rights-

i. Article 11 of the *International Covenant on Economic, Social and Cultural Rights* ensures the right to adequate food as a component of the right of everyone to an adequate standard of living. Article 11, paragraph 2, specifically provides that States parties recognize the fundamental right of everyone to be free from hunger.²⁴
ii. The right to adequate food is further developed by the Committee on Economic, Social and Cultural Rights which provides:

The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement. The right to adequate food shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients.

The Committee considers that the core content of the right to adequate food implies: (a) the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; (b) the accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.25

iii. Rule 20 of the Standard Minimum Rules for the Treatment of Prisoners requires:

(1) Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.

(2) Drinking water shall be available to every prisoner whenever he needs it.

iv. Furthermore, rule 26 of the Standard Minimum Rules requires:

(1) The medical officer shall regularly inspect and advise the director upon: (a) The quantity, quality, preparation and service of food.26
In countries where the quality of food available to many law-abiding members of the community is inadequate, the question may be asked why prisoners should be guaranteed adequate food. The answer is rooted in a respect for the right to adequate food. If the State has taken from prisoners the opportunity to provide for their own basic needs, these must be supplied by the State. The Special Rapporteur of the Commission on Human Rights on the right to food has stressed the inclusion of the right to adequate drinking water as part of the definition of the right to adequate food. In his report to the Commission at its fifty-eighth session, in 2002, the Special Rapporteur wrote: drinking water is essential for healthy nutrition, so that it should be considered a public good. Both the quality and the quantity of water available are fundamental. Setting standards for water quality is extremely important, as is ensuring equitable access to water resources to protect social justice. Including drinking water in the right to food is an important way of ensuring such accountability and justifiability. It should be noted that modern legal opinion holds that reduction of diet equates with corporal punishment and constitutes inhuman punishment.\(^{27}\)

3.2.2.3 Right to Clothing and Bedding

Clothing, as a component of the right to an adequate standard of living, is a human right. All prisoners not allowed to wear their own clothing shall be provided with suitable clothing. There shall be facilities for keeping clothing clean and in proper condition. All prisoners shall be provided with a separate bed and clean bedding, with facilities for keeping bedding clean. There must be facilities to wash and dry clothing and bedding regularly. Regarding adequate food and drinking water facility for prisoners following provisions are mentioned in various international treaties and conventions on prisoners' human rights-
i. Article 11, paragraph 1, of the *International Covenant on Economic, Social and Cultural Rights* provides for the right to clothing as a component of the right of everyone to an adequate standard of living.\(^{28}\)

ii. The *Standard Minimum Rules for the Treatment of Prisoners* require as follows:

17 (1) Every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating.

17 (2) All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene.

17 (3) In exceptional circumstances, whenever a prisoner is removed outside the institution for an authorized purpose, he shall be allowed to wear his own clothing or other inconspicuous clothing.

18 If prisoners are allowed to wear their own clothing, arrangements shall be made on their admission to the institution to ensure that it shall be clean and fit for use.

19 Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.\(^{29}\)

3.2.3 Health Rights of Prisoners

The enjoyment of the highest attainable standard of physical and mental health is a human right. This is as equally important for prisoners as well as for other citizens. Article 12, paragraph 1, of the
International Covenant on Economic, Social and Cultural Rights recognizes: the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The state of health, both physical and mental, of any human being affects how he or she lives, works and behaves. This is true in the case of both prison staff and prisoners. A person's state of health may affect other people. Sick people need special care and cannot contribute fully to the society in which they live. Some health problems affect people's behaviour. This can affect relations with other people. This is particularly the case with mental health problems, which may affect a significant proportion of prisoners.

Some health problems can be transmitted to other people. This is particularly true of some illnesses which are prevalent in some prison systems. HIV/AIDS and tuberculosis are examples of such illnesses. The vast majority of prisoners leave prison at some point. Staff in prisons come and go between prisons and the outside world, as do visitors to the prison. This means that health problems in prisons can become community health problems. Thus, maintaining health in prisons is in everyone's interests. When prison staff is healthy, they are better able to do their work. When prisoners are healthy, they are fit for work and better able to cope with imprisonment. Health rights of prisoners are divided into three categories i.e. health screening for all new prisoners, the right of prisoners to have access to health care and healthy conditions in custody.

3.2.3.1 Health Screening for all New Prisoners

It is a basic requirement that all prisoners should be given a medical examination as soon as they have been admitted to a prison or place of detention. Any necessary medical treatment should then be provided free of charge. Prisoners should generally have the right to request a second medical opinion.
i. Principle 24 of the *Body of Principles for the Protection of All Persons Under any Form of Detention or Imprisonment (9 December 1988)*, which provides that detained or imprisoned persons shall be offered a proper medical examination as soon as possible after admission and that medical care and treatment shall be provided free of charge.  

ii. Principle 25 of the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* provides that: A detained or imprisoned person or his counsel shall, subject only to reasonable conditions to ensure security and good order in the place of detention or imprisonment, have the right to request or petition a judicial or other authority for a second medical examination or opinion.  

The purpose of screening new prisoners on admission is for the sake of the prisoners' health and not for the benefit of the prison authorities. Having deprived a person of his or her liberty, there is an obligation on the State to care for that person. This obligation extends to health care. A number of persons who are admitted to prison will already be suffering from some form of physical or mental illness. There is an obligation on the prison system to ensure that these illnesses are dealt with as soon as possible. In some societies there is a great reluctance on the part of judicial authorities to send women to prison. When this is done, it is sometimes justified on the basis that the woman involved is mentally unstable. Medical officers should take particular care in respect of women prisoners that there is not an improper diagnosis of mental illness.

### 3.2.3.2 The Right of Prisoners to Have Access to Health Care

All prisoners and detained persons have the right to the highest attainable standard of physical and mental health. Prisoners should
have free access to the health services available in the country. Decisions about a prisoner's health should be taken only on medical grounds by medically qualified people.

i. Article 25, paragraph 1, of the *Universal Declaration of Human Rights* guarantees to everyone, including prisoners: the right to a standard of living adequate for health and well-being including medical care and necessary social services.\(^33\)

ii. In addition, article 12, paragraph 1, of the *International Covenant on Economic, Social and Cultural Rights* recognizes the right to health of everyone, including prisoners.\(^34\)

iii. Principle 9 of the *Basic Principles for the Treatment of Prisoners* provides that: Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.\(^35\)

In countries where health care in the population at large is not of a high standard, there must be particular concern about health-care standards in prisons. It is not appropriate to argue that, because a person is in prison, he or she is entitled to a lower standard of health care than that provided in the community. On the contrary, in depriving a person of his or her liberty, the State takes on a special responsibility to provide adequate health care.

### 3.2.3.3 Healthy Conditions in Custody

All prisoners are entitled to be held in conditions which are decent and humane. The medical officer has an important responsibility to ensure that proper health standards are met. He or she can do this by regularly inspecting and advising the director of the prison upon the suitability of food, water, hygiene, cleanliness, sanitation, heating, lighting, ventilation, clothing, bedding and opportunities for exercise. Rule 26 of the *Standard Minimum Rules*
for the Treatment of Prisoners requires the medical officer shall regularly inspect and advise the director upon;

(a) The quantity, quality, preparation and service of food;
(b) The hygiene and cleanliness of the institution and the prisoners;
(c) The sanitation, heating, lighting and ventilation of the institution;
(d) The suitability and cleanliness of the prisoners’ clothing and bedding;
(e) The observance of the rules concerning physical education and sports, in cases where there is no technical personnel in charge of these activities.\(^{36}\)

3.2.4 Making Prisons Safe Places

Prisons are part of the criminal justice system. Behind their high walls and fences one group of human beings, acting on behalf of the judicial authority, deprives another group of human beings of their liberty. Given a choice, the vast majority of people in the second group, the prisoners, would leave prison. The first group of people that is staff therefore have to impose security restrictions to prevent them from escaping. Some prisoners are violent individuals who pose a danger to themselves or to others. In the final analysis, staff can impose control over prisoners by coercive means. But this should not be the norm. Good order involves much more than control. It presumes the existence of a set of rules and regulations which govern the daily lives of those who are in prison in order to ensure that everyone- staff, prisoners and visitors can go about their business without fear for their personal safety. Provisions regarding making prisons safe places are divided in three categories i.e. - security, good order & control and discipline & punishment.
3.2.4.1 Security

Use of force, including use of firearms, to prevent escape should be employed only when less extreme means are insufficient to prevent the escape. Restraints may be used as a precaution against escape during transfer for no longer than strictly necessary, provided that they are removed when the prisoner appears before a judge or administrative authority, or on medical grounds. Instruments of restraint shall never be applied as a punishment. Chains and irons shall not be used as restraints. Provisions of following international laws and treaties are worth to be mentioned here-

i. Principle 9 of the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* requires that: Law enforcement officials shall not use firearms against persons except to prevent his or her escape, and only when less extreme means are insufficient to achieve [this objective].

ii. Rule 33 of the *Standard Minimum Rules for the Treatment of Prisoners* provides that: Instruments of restraint, such as handcuffs, chains, irons and straitjackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints.

3.2.4.2 Good Order and Control

Prison authorities have a responsibility to ensure the physical safety of prisoners, staff and visitors. This means that prisons should be places where there is good order. Prisons should be safe environments for all who live and work in them, i.e. for prisoners, for staff and for visitors. No one in a prison should fear for his or her physical safety. Chains and irons shall not be used as restraints. Discipline and order shall be maintained with firmness but with no more restriction than is necessary for safe custody and well-ordered community life.
Articles 1 and 16 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, discussed in chapter 3 of this Manual, are relevant when instruments of restraint and other control techniques are abused by prison staff.\(^{39}\)

Men and women who break the law, or who are accused of having done so, are likely to be frightened and to feel personally threatened by being in prison alongside other people who are accused of having broken the law. There must be a balance between positive encouragement and discipline. The vast majority of prisoners will respond positively to being treated in a decent and humane manner.

### 3.2.4.3 Discipline and Punishment

All disciplinary offences and punishments must be specified by law or by published legal regulations. No prisoner shall be punished before being informed of the alleged offence and before being given the opportunity to present a proper defence. No prisoner shall be employed in any disciplinary capacity. All cruel, inhuman or degrading punishments are completely prohibited, including corporal punishment or placing the prisoner in a dark cell. Punishment by close confinement or reduction of diet shall never be inflicted unless the prisoner is certified by the medical officer as medically fit to sustain it. Instruments of restraint, such as handcuffs, chains, irons and straitjackets, shall never be applied as a punishment. Prisoners who are subject to disciplinary action should have the right of appeal to a higher authority. Provisions of following international laws and treaties are worth to be mentioned here-

i. The *International Covenant on Civil and Political Rights. (23 March 1976).* in article 8, paragraph 3, makes one further restriction on the type of punishment which may be imposed: *(a)*

*No one shall be required to perform forced or compulsory labour.*\(^{40}\)
ii. Principle 7 of the *Basic Principles for the Treatment of Prisoners* refers to the use of solitary confinement as a punishment: Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.⁴¹

### 3.2.5 Making the Best Use of Prisons

Deprivation of liberty is a punishment in itself. It is not the task of the prison administration to inflict further punishment on the prisoner. On the contrary, prisoners should be encouraged to use their time in prison to learn new skills, to improve their education, to reform themselves and to prepare for eventual release. The main aim of the prison authorities in their treatment of prisoners should be to encourage personal reformation and social rehabilitation. The purpose of the prison regime should be to help prisoners to lead law-abiding and self-supporting lives after their release.

Article 10 of the *International Covenant on Civil and Political Rights* provides: 3. *The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.* ⁴²

Prison authorities are entitled to take all necessary steps to ensure that prisoners do not escape from lawful custody and that there is good order in prisons. In addition, however, they have an obligation to give prisoners opportunities to make good use of the time they are in custody. This means that there should be a full programme of activities, including education, skills training, work and physical education. Prisoners should not spend all day locked in a cell or dormitory or sitting in a yard. They should be kept occupied. Provisions regarding making best use of prisons are divided into three categories i.e. - work, education & cultural activities and religion.
3.2.5.1 Work

All sentenced prisoners who are medically fit shall be required to work. As far as possible, this work should give them skills so that they can earn an honest living after their release. National legislation regarding health and safety at work shall apply in prisons in the same way as it does in the community. Vocational training shall be provided, especially for young prisoners. Prisoners should be remunerated for the work they do. Prisoners should be allowed to spend at least part of their earnings, to send a part to their families and to save a part. Provisions of following international laws and treaties are worth to be mentioned here-

i. The right of all people to work is enshrined in article 23 of the Universal Declaration of Human Rights:

a) Everyone has the right to work

b) Everyone, without any discrimination, has the right to equal pay for equal work.

c) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.43

ii. The Standard Minimum Rules for the Treatment of Prisoners provide as follows:

a) Prison labour must not be of an afflictive nature.

b) All prisoners under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer.

c) Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.
d) So far as possible the work provided shall be such as will maintain or increase the prisoners' ability to earn an honest living after release.

e) Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners.

f) Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, the prisoners shall be able to choose the type of work they wish to perform.\textsuperscript{44}

The international instruments make a distinction between "hard labour", which may be imposed as part of a court sentence, and "forced or compulsory labour", which is prohibited. Prisoners should be paid a fair wage for their work. The principle underlined is that the work of prisoners should not be subordinated merely to making a profit either for the prison authorities or for a private contractor.

\textbf{3.2.5.2 Education and Cultural Activities}

To make best use of prisons education and cultural activities shall be provided and encouraged, including access to an adequate library. Provisions of following international laws and treaties are worth to be mentioned here-

i. The right of all people to education and to participation in cultural life is enshrined in the \textit{Universal Declaration of Human Rights}:

\textbf{Everyone has the right to education. ... [art. 26, para. 1]}

\textbf{Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. ... [art. 26, para. 2]}

\textbf{Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. [art. 27, para. 1]}\textsuperscript{45}
ii. These rights are confirmed in article 13 of the *International Covenant on Economic, Social and Cultural Rights*.46

iii. The right of prisoners to cultural activities and education is also laid down in principle 6 of the *Basic Principles for the Treatment of Prisoners*: All prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality.47

3.2.5.3 Religion

All prisoners have the right to observe the tenets of their religion and to have access to a minister of that religion. Prisoners shall be allowed access to qualified representatives of any religion. Provisions of following international laws and treaties are worth to be mentioned here-

i. Article 18 of the *Universal Declaration of Human Rights* provides that: Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.48

ii. Article 18 of the *International Covenant on Civil and Political Rights* also provides for the right to freedom of religion. In paragraph 2, it specifically provides that: No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.49

3.2.6 Prisoners’ Contact with the Outside World

No one shall be subjected to arbitrary interference with his or her privacy, family, home or correspondence. All prisoners shall have the right to communicate with the outside world, especially with their
families. Foreign prisoners shall be allowed to communicate with their diplomatic representatives. A prisoner's request to be held in a prison near his or her home shall be granted as far as possible. Prisoners shall be kept informed of important items of news. Provisions of following international laws and treaties are worth to be mentioned here-

i. Article 12 of the *Universal Declaration of Human Rights* provides that: **No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence**\(^{50}\)

ii. Article 17 of the *International Covenant on Civil and Political Rights* states:

a) **No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence**

b) **Everyone has the right to the protection of the law against such interference or attacks.**\(^{51}\)

Imprisonment will often break up family relationships and break down links with the community. If men and women can maintain links with family, friends and the community while in prison, this will reduce the harmful effects of imprisonment and make it more likely that they will be reintegrated into the community when they are released.\(^{52}\)

### 3.2.7 Prisoners’ Complaints and Inspection Procedures

Anyone whose rights or freedoms have been violated has the right to an effective remedy, determined by a competent court. Every prisoner shall have the right to make a complaint regarding his or her treatment and, unless the complaint is evidently frivolous, to have it dealt with promptly and, if requested, confidentially. If necessary, the
complaint may be lodged on behalf of the prisoner by his or her legal representative or family. Every prisoner on admission shall be provided with written information on rules and on complaints and disciplinary procedures in a language which he or she understands. If necessary, these regulations should be explained orally. If a complaint is rejected or not responded to in a timely manner, the complainant shall be entitled to bring it before a judicial or other authority. Provisions of following international laws and treaties are worth to be mentioned here-

i. Article 13 of the **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** requires that:

   Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities.

ii. The general principles relating to remedies are laid down in Article 2 of the **International Covenant on Civil and Political Rights**-

   (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

   (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
(c) To ensure that the competent authorities shall enforce such remedies when granted.54

3.2.8 Non-Discrimination

Discrimination on the grounds of race, colour, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth or other status is prohibited by all the global and regional instruments on human rights. In addition, there should be specific protection for the rights of minorities as groups, as a safeguard for their identity and culture. All persons are equal before the law and are entitled, without discrimination, to equal protection of the law. Everyone has the right to freedom of thought, conscience and religion, and persons from ethnic, religious or linguistic minorities have the right to their own culture, religion and language. Provisions of following international laws and treaties are worth to be mentioned here-

i. Article 2 of the *Universal Declaration of Human Rights* confirms that these rights apply to all human beings without exception: **Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.** The same principle of non-discrimination is enshrined in the *International Covenant on Civil and Political Rights.*

ii. Article 18 of the *Universal Declaration of Human Rights* also provides that: **Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.**55
There are many other international instruments which deal with issues of discrimination. Their provisions also apply to prisoners. They include:

a) Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief;

b) Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities;

c) Convention on the Elimination of All Forms of Discrimination against Women;

d) Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live.\(^{56}\)

Society regards each of its citizens as equal and it is the duty of the State to safeguard the equal rights of all individuals, regardless of their differences. Because people are different from each other, some individuals need special protection to ensure their equal treatment. Prison populations may reflect the ethnic, linguistic and religious prejudices of society. In particular, people from ethnic minorities tend to be overrepresented in prison populations in many countries. Imprisonment makes people vulnerable to discrimination. If prisons are to be just and humane places, protection against discrimination is vital. Prisons are designed and run for the majority of prisoners, so the needs of minorities risk being overlooked. Minority status should not be used as an excuse for unfair treatment. Prisoners from minority groups may have special needs which should be recognized and provided for. Many features of prison life give scope for the practice of discrimination. Facilities and resources may be scarce. Prison staff have substantial discretion to allocate desirable locations, work, privileges and access to activities. In some prison systems, staff are required to write reports about individual prisoners which can affect their chance of early or conditional release or parole.
3.2.9 Women In Prison

Women are entitled to equal enjoyment and protection of all human rights in the political, economic, social, cultural, civil and all other fields. As per provisions of various national and international laws Women prisoners shall not suffer discrimination and shall be protected from all forms of violence or exploitation. Women prisoners shall be detained separately from male prisoners. Women prisoners shall be supervised and searched by female officers and staff. Pregnant women and nursing mothers who are in prison shall be provided with the special facilities which they need for their condition. Whenever practical, women prisoners should be taken to outside hospitals to give birth. Provisions of following international laws and treaties are worth to be mentioned here-

i. Article 2 of the *Universal Declaration of Human Rights* states:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.  

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ii. Article 2, paragraph 1, of the *International Covenant on Civil and Political Rights* and article 2, paragraph 2, of the *International Covenant on Economic, Social and Cultural Rights* contain a similar provision. Article 3 of both Covenants provides that States parties "undertake to ensure the equal right of men and women to the enjoyment of all" civil and political rights, and economic, social and cultural rights, respectively, set forth in the Covenants.  

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iii. The *Standard Minimum Rules for the Treatment of Prisoners* apply to all prisoners, whatever their gender. However, they include special requirements regarding women. First, the Rules require that men and women should be kept separate.
iv. The situation of women in prison does not receive a great deal of attention in the international instruments. However, the general requirements of non-discrimination and equal treatment are set out clearly in the *Convention on the Elimination of All Forms of Discrimination against Women*. The Convention prohibits any discrimination which denies to women the same protections and fundamental freedoms in all fields—political, economic, social, cultural and civil—as are accorded to men.

**3.2.10 Juveniles in Detention**

The definition of who is a juvenile or a child may vary from country to country. Similarly, the distinction in law between a child and a juvenile is not always clear. For the purposes of this Manual, we use the definition contained in article 1 of the *Convention on the Rights of the Child*: *a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.* and that contained in rule 11 (a) of the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*: *A juvenile is every person under the age of 18.*

The fundamental consideration is that the imprisonment of young people should be avoided whenever possible, and the younger the person, the greater should be the determination to avoid detention. Young people are in their formative years, learning and developing into adults. If these years are spent in an institution for those who have broken the law, there is a danger that the young person will absorb a criminal identity and grow up expecting to lead a criminal way of life. When it is necessary to deprive a young person of his or her liberty, certain special considerations apply. Children are to benefit from all the human rights guarantees available to adults. Children who are detained shall be treated in a manner which promotes their sense of dignity and worth, facilitates their
reintegration into society, reflects the best interests of the child and takes their needs into account. Children shall not be subjected to corporal punishment, capital punishment or life imprisonment without chance of release. Children who are detained shall be separated from adult prisoners. All the protections accorded to adults under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights apply to children. The Convention also contains a range of safeguards related to children and juveniles being dealt with under penal law.

*Convention on the Rights of the Child* provides that states parties shall ensure that:

a) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and provides for the shortest appropriate period of time;

b) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

c) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.
3.2.11 Persons Under Detention Without Sentence

People who are detained without sentence are entitled to specific legal safeguards. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty. Everyone has the right to liberty and security. No one shall be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established by law.

i. The most important consideration about the status of pre-trial prisoners is that they should be considered innocent. Article 11, paragraph 1, of the *Universal Declaration of Human Rights* states: *Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.*

ii. Article 3 of the Universal Declaration states: *Everyone has the right to life, liberty and security of person.*

iii. These rights are described in article 9 of the *International Covenant on Civil and Political Rights*:

a) *Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*

b) *Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.*

c) *Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to*
trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

d) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

e) Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.62

Human rights provisions for undertrial prisoners are divided in three categories i.e. - access to lawyers & the outside world, treatment of pre-trial prisoners and release on bail. Detailed description of these provisions is given below-

3.2.11.1 Access to Lawyers and the Outside World

In order to receive a fair trial it is particularly important that pre-trial prisoners are able to keep in contact with legal advisers, family and friends so as to prepare their defence properly and without undue hindrance. All arrested or detained persons shall have access to a lawyer or other legal representative and adequate opportunity to communicate with that representative. Untried prisoners shall be allowed immediately to inform their families of their detention and shall be given all reasonable facilities for communicating with their families and friends. Article 14 of the International Covenant on Civil and Political Rights provides-
a) In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality;

b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

c) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.\textsuperscript{63}

3.2.11.2 Treatment of Pre-Trial Prisoners

Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment. Untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate. Untried prisoners may, if they so desire, have their food procured at their own expense from outside. Untried prisoners shall be allowed to wear their own clothing if it is clean and suitable. If an untried prisoner wears prison clothing, it shall be different from that supplied to convicted prisoners. Untried prisoners shall always be offered the opportunity to work, but shall not be required to work. Untried prisoners shall generally be allowed to procure at their own expense books, newspapers and writing materials. Untried prisoners shall generally be allowed visits from their own doctor or dentist.

Article 10 of the \textit{International Covenant on Civil and Political Rights} requires- 2. \textit{(a) Accused persons shall, save in exceptional
circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;\textsuperscript{64}

It is clear from the international instruments that form the basis for the detention of pre-trial prisoners is different from that of the detention of sentenced prisoners, and certain requirements flow from this. The first is the need for separation from convicted prisoners. The reason for this separation is to ensure that the treatment of pre-trial prisoners is appropriate to the presumption of innocence. They are not convicted persons and should not be kept in a place where there are also practical reasons. Pre-trial prisoners have a number of rights—to see lawyers, to have food brought in, to wear their own clothes, not to be required to work—which do not apply in the same way to convicted prisoners, and mixing the two categories of prisoners would cause difficulties. The main preoccupation of pre-trial prisoners would normally be their impending trial and making adequate preparations for it. Different expectations would apply to the daily routine and regime for convicted prisoners. In addition, pre-trial prisoners are entitled to all the protections which apply to all prisoners.

3.2.11.3 Release on Bail

The international instruments make it clear that, whenever possible, accused persons should not be detained in custody while awaiting trial. One method of achieving this is by allowing them to continue to live in their communities but requiring them to provide a guarantee, financial or otherwise, that they will not abscond and will be available when needed for investigation and for trial. This arrangement is usually called "bail". Persons awaiting trial shall not be detained in custody as a general rule. Release pending trial shall be envisaged as early as possible. A pre-trial prisoner shall have the right
to appeal to a judicial or other independent authority against his or her detention. The principle in the international instruments is that a person accused of a crime will be held in custody only if absolutely necessary.

Article 9, paragraph 3, of the *International Covenant on Civil and Political Rights* states—*It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial.*

This provision is confirmed in principle 39 of the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*: Except in special cases provided for by law, a person detained on a criminal charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law. Such authority shall keep the necessity of detention under review.

On first admission into custody, pre-trial prisoners are often confused and distressed, particularly if they have no experience of imprisonment. Prison staff has an obligation to ensure that such prisoners are aware of their legal situation and of their rights as unconvicted prisoners.

### 3.3 National Provisions

The rights guaranteed under the international legal system are theoretically provided in India too. As India has either ratified or is signatory of most of the international human rights treaties and conventions. But in India prison is a state list subject so provisions regarding prisoners’ rights vary from state to state. For prisoners’ rights in India we can refer fundamental rights mentioned in

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Indian constitution doesn’t mention particular rights of prisoners. But the fundamental rights mentioned in our constitution are available to every citizen. Prisoners are not kept out of this purview. So in this way Indian constitution protects their rights. With this Indian constitution provides for administration of prisons in India. Through this mechanism also it preserves prisoners’ rights. Detailed discussion of the fundamental rights which prisoners also have and the Article 246 in which provisions regarding prisons are mentioned is given below-

3.3.1.1 Fundamental Rights

Being Indian nationals prisoners can’t be deprived of their fundamental rights during imprisonment also. Here these rights are given to them under some restrictions. But availability of fundamental rights secures their human rights. Prisoners also have following fundamental rights-

i. **Article 14 Equality before law**– The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

ii. **Article 19 Protection of certain rights regarding freedom of speech etc.**

   All citizens shall have the right to-
   (a) freedom of speech and expression;
   (b) assemble peaceably and without arms;
(c) form associations or unions;
(d) move freely throughout the territory of India;
(e) reside and settle in any part of the territory of India;
(f) practice any profession, or to carry on any occupation, trade or business.

iii. Article 20 Protection in respect of conviction for offences

1. No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

2. No person shall be prosecuted and punished for the same offence more than once.

3. No person accused of any offence shall be compelled to be a witness against himself.

iv. Article 21 Protection of life and personal liberty

No person shall be deprived of his life or personal liberty except according to procedure established by law.

v. Article 22 Protection against arrest and detention in certain cases

1. No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

2. Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such
person shall be detained in custody beyond the said period without the authority of a magistrate.

3. Nothing in clauses (1) and (2) shall apply–
   (a) to any person who for the time being is an enemy alien; or
   (b) to any person who is arrested or detained under any law providing for preventive detention.

4. No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless-
   (a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High court has reported before the expiration of the said period of three months that there is in its opinions sufficient cause for such detention: Provided that nothing in this sub-clause shall authorise the detention of any Parliament under sub-clause (7); or
   (b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

5. When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

6. Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

7. Parliament may by law prescribe–
   a) The circumstance under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without
obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4); b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).

3.3.1.2 Seventh Schedule (Article 246) List II-State List

Prisons in India and their administration, is a state subject covered by item 4 under the state list in the Seventh Schedule of the Constitution of India. Item 4 provides that prisons, reformatories, borstal institutions and other institutions of a like nature, and persons detained therein arrangements with other States for the use of prisons and other institutions. Thus management and administration of prisons falls exclusively in the domain of the state governments.

3.3.2 Centre/States Acts, Rules and Manual on Prisons/ Prisoners

Indian Constitution assigns the management and administration to states and union territories. Management and administration of prisons runs on the principles mentioned in the Prisons Act of 1894, the Prisoners Act of 1900, the Transfer of Prisoners Act of 1950, and The Prisoners (Attendance in Courts) Act, 1955 and various other related acts. Detailed description is given below-

3.3.2.1 The Prisons Act, 1894

Prisons Act, of 1894 is the first legislation regarding prison regulation in India. Commenting upon the Prisons Act, of 1894, Dr. Amarendra Mohanty in her book Prison system in India observed the following: “This Act was largely based on deterrent principles reflected mainly the British policy on the subject. The legislators took
little pains to look into the other side of the problem. They were concerned more with the prison working than with treatment of the prisoners. This Prisons Act remained unchanged for last more than one hundred years except very minor change.” Among the various other provisions under the Prisons Act, 1894, the following sections are related with the reformation of prisoners in one-way or the other.

i. Accommodation and sanitary conditions for prisoners Sec. 4.

ii. Provision for the shelter and safe custody of the excess number of prisoners who cannot be safely kept in any prison Sec. 7.

iii. Provisions related mental and physical state of prisoners Sec. 14.

iv. Provisions related to the examination of prisoners by qualified Medical Officer Sec. 24(2).

v. Provisions related to separation of prisoners, containing female and male prisoners, civil and criminal prisoners and convicted and undertrail prisoners (Sec. 27).

vi. Provisions relating to treatment of undertrials, civil prisoners, parole and temporary release of prisoners (Sec. 31 & 35).

3.3.2.2 The Prisoners Act, 1990

For the purpose of prison reformation and prison justice under this Act, following sections are relevant here to mention:

i. That all reference to prisons or the imprisonment or confinement shall be construed as referring also to reformatory schools to detention therein Section 28.

ii. That it is the duty of Government for the removal of any prisoner detained under any order or sentence of any court, which is of unsound mind to a lunatic asylum and other place where he will be given proper treatment 55 Section 30.
iii. That any court which is a High Court may in case in which it has recommended to Government the granting of a free pardon to any prisoner, permit him to be at liberty on his own cognizance Section 33.69

3.3.2.3 The Transfer of Prisoners Act, 1950

This act was enacted for the transfer of prisoners from one state to another for rehabilitation or vocational training. This Act is also helpful for transfer of prisoners from over-populated jails to less congested jails within the state.70

3.3.2.4 The Prisoners (Attendance in Courts) Act, 1955

This Act contains provisions authorizing the removal of prisoners to a civil or criminal court for giving evidence or for answering to the charge of an offence. Thus, apart from the substantive prison laws, the Government of India appointed a National Expert Committee on women prisoners (1968-87) under the chairmanship of Justice Krishna Iyer to examine the conditions of women prisoners. The committee among other things recommended the following suggestions particularly towards reformation and rehabilitation of women prisoners.

i. In women's rehabilitation, employment training has a pivotal role. Consequently, work in prison has to be given such potential economic worth and utility that all women in custody are willing to engage in work programmes.

ii. Training of women prisoners in an area of great relevance to correctional work and to the process of restoration of dignity of the women offender.

iii. Probation, Parole and other non-institutional modalities of corrective treatment shall be widely used in case of women offenders.71
3.3.3 Supreme Court Rulings Regarding Prisoners Rights

Indian judiciary mostly Supreme Court plays a vibrant and active role in the reformation and administration of prisons. One can say that till eighties Indian judiciary adopted status quo jurisprudence and showed a lack of appreciation and concern by its “hand-off” approach to the operations of prisons. It was in 1974 when Apex Court came up with new prison jurisprudence. In a major breakthrough Court in D.B.M. Patnaik’s case\textsuperscript{72}, asserted that the mere detention does not deprive the convicts of all the fundamental rights enshrined in our Constitution. Supreme Court again in 1977 in Hiralal’s case\textsuperscript{73} stressed for the rehabilitation of prisoners and reformation of prisons. This judicial wave continued. In Sunil Batra’s case\textsuperscript{74} which is taken as a milestone in the field of prison justice and rights of the prisoners in India, Court held that “the fact that a person is legally in prison does not prevent the use of Habeas Corpus to protect his other inherent rights”. In Prem Shankar Shukala’s case\textsuperscript{75}, Court observed that no person shall be hand-cuffed, fettered routinely for convince of the custodian’s escort. Supreme Court again in R.D. Upadhyay’s case\textsuperscript{76} has held that right to fair treatment and right of judicial remedy are pre-requisites of administration of prison justice. In Hussain Ara Khatun’s case\textsuperscript{77} Court adopted a dynamic and constructive role with regard to prison reforms. Court apart from other things stressed on the improvements of the conditions of the prisons in India. Therefore, this vibrant role of Indian Judiciary shows the change of attitude towards the rights of prisoners and reformation of prisons by treating prisons as correctional rehabilitative institutions.

3.3.4 Miscellaneous Provisions

3.3.4.1 Acts Related to Prisoners

ii. Exchange of Prisoners Act, 1948 (No. 58 of 1948)

iii. Identification of Prisoners Act, 1920 (No. 33 of 1920)

iv. Indian Penal Code Act, 1860 (No. 45 of 1860)


vi. Mental Health Act, 1987 (No. 14 of 1987)


viii. Prison Act, 1894 (No. 9 of 1894)

ix. Prisoners (Attendance In Courts) Act, 1955 (No. 32 of 1955)

x. Prisoners Act, 1900 (No. 3 of 1900)

xi. Probation of Offenders Act, 1958 (No. 20 of 1958)


xiii. Reformatory School Act, 1897 (8 of 1897)


xv. Representation of People’s Act, 1950 and 1951 (No. 43 of 1950 and

xvi. 43 of 1951)

xvii. Transfer of Prisoners Act, 1950 (No. 29 of 1950)\(^8\)

3.3.4.2 Law Commission Reports


iii. Report No.-87-: Identification of Prisoners Act, 1920


v. Report No.-152-: Custodial Crimes.\(^9\)

3.3.4.3 Commissions/Committees Report:--

i. All India Committee on group on prison administration security
and discipline, 1986 Chairman: R. K. Kapoor

ii. All India Committee on jail reforms, 1980-83 Chairman: A. N. Mulla

iii. Committee on reforms of Criminal Justice system [Ministry of Home Affairs, India 2003] Chairman: Justice V. S. Malimath

iv. Committee report on classification of prisoners, 1998 Chairman: Justice Santosh Duggal


Appraisal

We can conclude that internationally, it has become a well accepted rule that the correctional mechanism in criminal justice administration should comply with reformative policies. It is also declared that all prisoners shall be treated with respect due to their inherent dignity and value as human beings. There are a set of rights identified by the international legal system so as to save the human dignity and value of prisoners and thereby the reformative theme of correction. It is also strongly argued that the community can never tolerate a scheme of correction that does not maintain a connection with the evilness of the crime done. Thus punishment always maintains a subjective perspective. The rights of the imprisoned person have to be read despite of this perception. It is truly meant that there can be varied punishments for same offence; but one
should not be treated bad while the sentence once declared by the
court goes on. In this purview, the rights guaranteed under the
international legal system are theoretically provided in India too.

India is a signatory to most of the international human rights
treaties and conventions. But in India prison is a state list subject so
provisions regarding prisoners’ rights vary from state to state.
Legislations if made by the states will always lack the unique
standards for the protection of prisoner’s rights. There should be a
national policy frame work that substitutes the varying state
legislations. To have a satisfactory human right regime in states there
is need to enact national legislations duly incorporating the
international provisions of prisoners which in turn will serve as
model for state legislation of human rights.
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22. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (26 June 1987). Article 16.


39. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (26 June 1987). Articles 1 and 16.


44. The Standard Minimum Rules for the Treatment of Prisoners.


60. The Convention on the Rights of the Child art 28 and 35.


68. The Prisons Act, 1894.


70. The Transfer of Prisoners Act, 1950.


74. Sunil Batra v. Delhi Administration., AIR 1978 (SC 1675)

75. Prem Shankar Shukla v. Delhi Administration., AIR 1980 (SC 1535)


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79. http://lawcommissionofindia.nic.in/

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