CHAPTER – VII

CONCLUSION AND SUGGESTIONS
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Prisons are built with stone of law and so it behoves the court to insist that, in the eye of law, prisoners are persons, not animals and punish the deviant “guardians” of the prison system where the so berserk and defile the dignity of the human inmate.¹

Incarceration in its pure and simple form is a kind of cruel sanction, its object being primarily to deprive the offender of his liberty, which is the most serious damage, which can be caused to a human being. Prior to the arrival of British, there were no prisons, in the modern sense in India. Imprisonment as a mode of punishment was not the normal feature. Only under trials, political defectors war offenders were kept in custody as prisoners in ancient India. The pre-Buddhist prison system was most inhuman. Although the imprisonment was a very usual from of punishment in Mughal India, there were no specific rules governing it. Prisoners were treated as animals because there was no regard for their rights. The Prisons in India, at the time of the takeover of the country by the East India Company were in a terrible condition. This was inevitable in the criminal justice system where deterrence was the only aim of the Prison system.

In 1786 Cornwallis formulated a new scheme, which may be referred to as” the trying birth of the modern Prison System in India.” Accordingly the control and management of the jails were transferred to European hands. He had tried to secure health and moral as well as safety of the prisoners. During 19th century the prison was a well-recognized, separately identifiable institution for the detention of under trials as well as convicts For the internal organization of the modern Prison System, and for achieving the objectives of imprisonment , various Commissions and Committees

¹ Krishna Iyer, V.R.Justice
were appointed and upon their recommendation Indian Penal Code, the 
Prison Act of 1894 and the Prisoners Act of 1900 were passed which are the 
current laws regarding the Prison.

After the First World War, All India jail Manual Committee 1919-20 
was formed. In its reports, a clear departure from earlier stands on deterrent 
aspect was made and the principle of reformation of prisoners was accepted. 
The committee observed:

The Indian Prison Administration has lagged behind on the reformative 
side of Prison work. It has failed so far to regard the prisoner as an 
individual. ………. It has lost sight of the effect, which humanizing and 
civilizing influences might have on the mind of the individual prisoner. 
…………. they tend to harden if not to the great and that most men come 
out of prison worse than they went in. 
The report of the Committee of 1919-20 it may be remarked, “laid the 
foundation stone of modern Prison system in India.” The need for 
humanizing jail administration was universally recognized at the threshold 
of independence. After the independence the thought and movement for 
prisoners’ rights got momentum. It is being recognized that a criminal must 
be considered a victim of social circumstances, a person requiring treatment 
rather than punishment. The Mulla Committee has recommended that the 
condition of Prison should be improved by making adequate arrangement for 
food, cloth, sanitation, ventilation etc. Probation, after care, rehabilitation 
and follow-up of offenders should from an integral part of prison service.

Despite the reformative measure taken by the Government the general 
condition of prisoners in India is far from satisfactory. Thus, the history of 
prison clearly reflects the change in societal reaction to crime from time to 
time. Whatever has happened in India for the protection of fundamental 
rights of prisoners and humanizing the prisons atmosphere is the direct
outcome of development taking place in these fields in various countries particularly in England and America.

Imprisonment can be used as a method of reducing the incidence of criminal behavior either by deterring the offenders as well as potential offenders or by incapacitating and preventing those from repeating the crime or by reforming them into law abiding citizens. Four important justifications are put forward for imprisonment as a mode of punishment, i.e., retribution, deterrence, general and specific, prevention and reformation. The theory of retribution has its origin in the crude animal instinct of individual or group to retaliate when hurt. Accordingly the evil should be returned for evil. The legal discrimination against ex-convicts, the loss of civil and political rights and frequent harassment by authorities undermine the legitimacy of retributive punishment.

During medieval period the deterrence was the cardinal rule of criminal justice which meant considerable torture and harassment to inmates. Today, also to some extent, the main objective of imprisonment is to deter all men from crime who are capable of committing it. But the charge is made that deterrence apparently does not function effectively. Even assuming that imprisonment could be swift and sure for all convicted offenders, the high recidivism rate of released criminal raised serious question about the effectiveness of deterrence model of imprisonment.

According to preventive theory the incarceration is the best mode of crime prevention as it seeks to seclude offenders from society thus disabling them from repeating crime. In order to achieve this end the offenders are imprisoned which resulted in the violation of their fundamental rights. The offender is served from his family and friends his accustomed occupations, interests and recreations. Thus in order to prevent the occurrence of crime
we put the offender in inhuman, miserable and degrading conditions which is against the policy to maintain dignity and assure freedom of every citizen.

As against the retributive, deterrent and preventive aspect of incarceration the reformatory approach seeks to bring about a change in the attitude of offender so as to rehabilitate him as a law abiding citizen. Thus the sole aim of prisons should be the reformation and rehabilitation of the offender. Mahatma Gandhi thus emphasized that:

All punishment is repugnant to Ahinsha. Under a state governed according to the principal of ahisma, therefore, a murderer should be to a penitentiary and there given every chance of reforming himself. All crime is a kind of disease and should be treated as such.

The reformative view of penology suggests that imprisonment is justifiable only if it looks to the future and not to the past. According to Peter Kropotkin,” prison are seen as symbols of our hypocrisy regarding rehabilitation our intolerance of deviants or our refusal to deal with the root cause of criminal such as poverty, discrimination, unemployment, ignorance, overcrowding and so on. The prison should be a centre of correctional treatment where major emphasis shall be given on the re-education and reformation of the offender, as would be having profound and lasting effect on his habits, attitudes, approaches and his total value scheme of life. According to the Report of the Rajasthan Jail Reforms Commission, ”Jail are social institutions where the social person recovers by a therapeutic treatment. Recovery means rehabilitation through trio logy of modern correctional methods, viz., education, discipline and individual attention which lead him or her social life so that the offender rejoins his sense of self-respect.
In India after independence the main objective of imprisonment being reformatory, and as little as possible deterrent. In this context the observations of Justice V.K. Krishna Iyer are apposite.

The retributive theory has had its day and is no longer valid. Deterrence and reformation are the primary social goals which make deprivation of life and liberty reasonable as penal panacea\(^2\).

Ours is a crusade for a noble cause, human and just. The reformation and rehabilitation are an appeal for the acceptance of an ideology - the ideology which is nurtured in our own civilization and culture. On the legal front it is a fight to secure to a neglected and off forgotten sector society - the prisoners-their fundamental rights granted under our Constitution-the right to justice, liberty and humanity.

According to Justice V.R. Krishna Iyer, justice should be tempered with mercy and that in sentencing an accused the reformatory aspect of punishment shall be born in mind.

Prisons are characteristically associated with loss of various civil and fundamental rights, spiritually dehumanizing and physically brutalizing prison milieu, status degradation and deculturisation sexual perversions and secondary criminalization. Condemnation of prison conditions is so universal that even to ask how serious the harm they cause is sound heretical.

The deplorable condition in jails is an admitted fact. Absence of proper and sufficient building creates overcrowding and due to mingling of all grades of prisoners fresher gets trained to become hard core criminals. When the prisoners return to free society they are suspected, scorned and

\(^2\) Rajendra Prasad v. State of U.P., AIR 1979 SC 916
called ex-convicts. No feeling of obligation to society or ambition to reform can develop under these circumstances.

Of all the painful conditions imposed on inmates none is more immediately obvious than their loss of liberty—first, by confinement to the prison and second, by confinement within the prison. Today, despite progress in other areas, the law regarding free expression in prisons remains virtually unchanged. The right to communicate with the outside world is subject to restriction. Due to incarceration the prisoners, right to privacy as well as freedom of religion is generally violated. A prisoner is not allowed to attend a place of worship or pilgrimage outside the prison. Prisoners are generally treated as now human beings. Besides the deprivation of right and liberty of the prisoners, imprisonment frustrates the economic life of offenders’ dependents making them as also the offender a social liability.

The prison inmates the most disillusioned victims or beneficiaries of our prison reform effort, even today, are incessantly begging for humane treatment, better food, adequate medical service, protection of fundamental rights and end of brutality. The inmates conception of self as an acceptable, respectable, morally worthy individual is the ultimate target of the deprivation and degradations of imprisonment.

In the modern times the State has undertaken the task of affording adequate protection of the individual and providing reasonable opportunities to every one for full development of individual’s freedom that the concept of Human Rights has been evolved. Prisons are built with stones of law and so, when human rights are hashed behind bars, constitutional justice impeaches such law. In this sense, courts which send citizen into prisons have an onerous duty to ensure that, during detention and subject to the constitution,
freedom from torture belongs to the prisoners. It is a crime of punishment to further torture a prisoner undergoing imprisonment as the remedy aggravates the malady and thus ceases to be a reasonable justification for confiscation of personal freedom and is arbitrary because it is blind action and geared to the goal of social defence, which is one of the primary objectives of ends of punishment.

Prisoners should have human rights in order to learn to respect the human rights of others after release. Whatever we require from them we should give to them first. Treatment of criminal is one of the tests of civilization of the country, so by maintaining the rights of prisoners we contribute towards positive development of civilization. If we debar a prisoner from human rights only because the prisoner has committed a crime, then we shall threaten out own humanity. A prisoner is sent to jail as a punishment, and curtailment of liberty is itself a punishment, so a prisoner cannot be punished more by debarring him/her rights.

Various Laws, Rules, Acts, Characters, and Regulation have been made, passed and enacted at national and international level in order to protect the fundamental rights of the people including prisoners. The fundamental rights are based upon making increasing demand for alive in which inherent dignity and worth of each prisoner receive respect and protection. Human Rights and fundamental freedom allow the prisoners to fully develop and use their physical, mental, moral and spiritual needs.

In 1948, a movement was started in the form of Universal Declaration of Human Rights. The document provides certain basic principles of law which should be applied in order to protect the fundamental rights of prisoners all over the world. Amnesty International

Besides the Constitution there are certain Statutes like the Prisons Act, 1894, Prisoners Act, 1900 and the Probation of Offenders Act, 1958 where rights are conferred to the prisoners. Accordingly all prisoners deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of human person.

The Indian Constitution does not, however, enumerate specific fundamental rights to the prisoners. The judiciary, particularly the Supreme Court and High Court, through the process of judicial activism have expanded the scope of various freedoms enshrined in Part-III of the Constitution and also extended their applicability to the prisoners. The Supreme Court’s power of judicial review has come as a boon to prisoners since its verdicts have been in consonance with basic freedoms and liberties of the prisoners. Justice V.R.Krishna Iyre observed: “Basic Constitutional rights cannot be halted at the prison gates and can be enforced within the prison campus.” Thus the development of law relating to fundamental rights of prisoners has been achieved by the judiciary to assuming its law-making role through the process of creative interpretation. Article 21 together with Articles 19 & 14 from the foundation on which the edifice of human rights jurisprudence regarding the prisoners is erected.
Prisoners are sentenced by the court; hence, they belong to the constituency of the judiciary. In *A.K. Gopalan v State of Madras*, justice Mukherji said that a person detained in prison under the sentence of court or under a valid law of preventive detention did lose all his rights.

In *State of Maharashtra v Prabhkar Pandurang*, the Court ruled that a prisoner has such residuary right as are consistent with the fact of detention. The Court said that if argument of State, that detention placed a restriction on personal liberty were to be accepted; it would mean that detenu could be starved to death, if there was no condition providing for giving food to the detenu.

In *D.B.M Patnaik v. State of A.P.*, Justice Chandrachud observed:

> Convicts are not by mere reason of conviction, denuded of all the fundamental rights which they otherwise possess......... Even a convict entitled to the precious right guaranteed by Article 21 of the Constitution that he shall not be deprived of his life or personal liberty except according to procedure by law.

But in reality the court did not in their actual decision provide much relief to the prisoners. However, in their letter decisions the courts have recognized specially the protection of fundamental rights of the prisoners. The post-emergency court has taken rapid strides in claiming prison justice as its own province. The transformation owes tremendously to the crusading spirit of Mr. V.R. Krishan Iyer. While confirming or reducing Sentence, the Supreme Court has taken upon it the inevitable task of protecting the fundamental rights of the prisoners. This liability towards the prisoners has been possible because of the wide interpretation of Article 21 of the Indian Constitution by the Apex Court in *Maneka Gandhi v. Union of India*, where

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4 (1950) SCR 88
5 AIR 1966 SC 424
6 AIR 1974 SC 2093
7 Id. at 2094
the court laid down that the word ‘law’ in Article 21 denotes a just, fair and reasonable law, hence the procedure which is followed by the state to deprive the life and personal liberty of the prisoner must be prescribed by a just, fair and reasonable law. In the light of the interpretation, much of the laws regarding the prisoners’ fundamental rights have developed and still to develop.

The Supreme Court took to big stride forward on the issue of prison reform and fundamental rights of prisoners in _Sunil Batra v. Delhi Adm_8. For the first time in the Indian prison history the Chief Justice of India Justice Beg with other judge visited the Tihar Jail to ascertain the actual condition.

The Court held in this case that prisoners are entitled to all fundamental rights consistent with their incarceration and the legal regime of prison is as much subject to constraints of legality and Constitutionality. The following principles were accepted by the Court in this case:

1. **Prisoner could not be wholly denuded of fundamental rights.** No “iron curtain” could be drawn between the prisoner and the Constitution.

2. **The prisoners’ liberty was circumscribed by the very fact of his confinement.**

3. **Conviction of a person did not reduce him to a non-person.**

4. **The question of prisoners’ fundamental rights must be viewed against the background of modern reformist theory of punishment.**

The Court held that where rights of a prisoner either under the Constitution or under other laws are violated, the power of the court can and

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8 AIR 1978 SC 1675
should run to his rescue. Thus Batra’s case has significantly highlighted judicial concern for condition of detention.

In Sunil Batra-II case the dynamic role of judicial remedies after first Batra’s case, imparts to the habeas corpus writ to versatile vitality and operational utility that makes healing presence of the law live up to its reputation as bastion of liberty even within the secrecy of the hidden cell. Prison are build with stones of law and so it behaves the court to insist that in the eye of law, prisoners are person, not animals. Prison houses are the part of Indian earth and the India Constitution cannot held at bay by jail officials dressed in a little brief authority when Part-III is invoked by a convict. For when a prisoner is traumatized, the Constitution suffers a shock.

He further observed:

Are prisoners person! Yes, of course. To answer in the negative is to convict the nation and the Constitution of dehumanization and the repudiate the world legal order, which now recognizes rights of prisoners in the international. Covenant on Prisoners’ Rights to which our country has signed assent. The jurisdictional reach and range of this Court’s writ to hold prison caprice and cruelty in constitution leash is incontestable.

After two Sunil Batra cases the court is being tried to recognize the fundamental rights of prisoners in almost each and every cases. The Court, hence, recognized the rights to speedy trial, right to free legal aid, right to counsel, right to compensation, right to life and liberty, freedom of expression, right to meet the family members and near friends, right to reasonable wages and the right to be treated as human being. In fact, the prisoners’ fundamental rights are judicial creation.

In Sunil Btra-I v. Delhi Adm. The Court unanimously condemned the solitary confinement of Batra and considered it as an extreme punishment: it deplored it as “gruesome”, “revolting”, “anachronistic” and having “degrading and dehumanizing effect”. According to justice V.R.Krishna Iyer such confinement is a “near-strangulation of the slender liberty of
locomotion inside the prison”. It is “counter – productive”, an aspect of “bloodthirsty prison behavior” and a “revolt against society’s human essence.”

The court is of the view that a person is send to prison as a punishment and not for the punishment. The solitary confinement violates the prisoners fundamental right of liberty guaranteed under Article 21. The Courts through their decision sought to humanize the prisons. Solitary confinement and bar fetter should be resorted to only in rarest of rare cases for security reasons.

In Charles Sobraj’s case the court held that handcuffing is violative of Articles 14, 19 and 21 and be used only in exceptional cases that with the prior judicial sanction. The locomotion is one of the facets of personal liberty and should not be curtailed as far as possible.

In Prem Shankar Shukla v. Delhi Adm. The Court held that the minimal freedom of movement which even a detainee is entitled to under Article 19 cannot be cut down cruelly by application of handcuffs or other hoops. Justice Krishna lyer observed:

To wipe every tear from every eye ” has judicial dimension. Here is a prisoner who bitterly complains that he has been publically handcuffed while being escorted to court and envoques the Court’s power to protect the integrity of his person and the dignity of his humanhood against custodial curtly contrary to Constitutional prescriptions. He further observed:

Handcuffing is prima facie inhuman and , therefore ,unreasonable is overharsh and at the first flush arbitrary. Absent of fair procedure and objective monitoring, to inflict “irons ” is to resort zoological strategies repugnant to Article 21. To bind a man hand and foot , fetter his limbs with hoops of steel, shuffle him along in the streets and him for ours in the

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12 Supra 8 at 1693 - 1700
13 AIR 1980 SC 1535
courts is to torture him, defile his dignity, vulgarize society and foul the soul of our Constitutional culture.\textsuperscript{14}

Thus’ imprisonment does not spell farewell to fundamental rights. When a prisoner was introduced in the prison, it was regarded primarily as a means of punishment to disgrace, humiliate and crush the prisoners. But today, in the light of human rights developments, it is to be designed as to suit the prisoners’ health and dignity and to help them in their after release prospects. Any labour assigned to the prisoner in contravention of these principles is violation of his fundamental rights and may be turned as the product of unfair and unreasonable laws and forced labour under Articles 21 and 23 of the Constitution respectively. So care must be taken regarding the nature of the work to be carried on by a prisoner and reasonable, fair and living wages must be paid to him in the light of various decisions of the Supreme Court and High Courts.

Articles 32 and 226 are the important means to access to court and other facilities which include mainly the right to free legal aid and speedy trial. Today these are the fundamental rights of prisoners, due to the creative interpretation of various provision of Constitution by the apex court. In \textit{Hussinera Khatoon v. Home Secretary, Bihar}\textsuperscript{15} the Supreme Court observed:

\begin{quote}

It is constitutional right of every accused person who is unable to engage a lawyer and secure legal service on the account of such reasons as poverty, indigence or incommunicado situation, to have free legal services provided to him by the State and the State is under a Constitutional mandate to provide a lawyer to such accused person if the needs of justice so require. Let it not be forgotten that if law is not only to speak justice but also deliver justice, legal aid is an absolute imperative.
\end{quote}

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\textsuperscript{14} Id. at 1541
\textsuperscript{15} (1980) 1 SSC 98
In the same case Supreme Court held that speedy trial of unconverted prisoners is a fundamental right under Article 21 of the Constitution. Regarding the right to compensation to prisoners Chief justice Chandrachud in *Rudul Sah v. State of Bihar*\(^{16}\) observed:

> Article 21 which guarantees the right to life and personal liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mullet its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringement of fundamental rights cannot be corrected by any other method open to judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities\(^{17}\).

But the law regarding compensation to prisoners is still in fluid state. The Court has sent signals through its compassionate approach human dignity and liberty.

In *Shri Ram Murthy v. State of Karnataka*\(^{18}\) the Supreme Court reviewed almost every cases regarding prisoners’ rights decide by it and various High Courts. Nine major problems which afflict prison system was brought to the notice of the Court, *viz.*, overcrowding, delay in trial, torture and ill-treatment, neglect of health and hygiene, insubstantial food and inadequate clothing, prison vices, deficiency in communication, streamlining of jail visit and management of open air prisons. The Court issued following direction in this regard.

1. To take appropriate decision on the recommendations of Law commission of India in its 78\(^{th}\) Report on the subject of “under trial prisoners in jail.”

\(^{16}\) AIR 1983 SC 1086
\(^{17}\) Id. at 1089
\(^{18}\) (1997) 1 SCJ 172.
2. To apply mind to suggestion of the Mulla Committee relating to streamlining the remission system and premature release (parole) and then to do the needful.

3. To deliberate the enacting of new Prisons Act to replace sentencing old Indian Prisons Act, 1894. We understand that National Human Rights Commission has prepared an outline of an all India Statue, which may replace the old Act and some discussions at national level conference also took place in 1995. We are of view that all the States must try to amend their own enactments if any, in harmony with all India thinking in this regard.

4. To think about introduction of liberalization of communication facilities.

5. To take needful steps for streamlining of jail visits.

Many other directions were also issued by the apex court. This is a very landmark judgment as far as prisoners’ rights humanization of prisons is concerned. But the Government has not taken any proper step in this regard even till today. In respect of fundamental rights of prisoners the Court has been acting as the leader preceptor and path finder while the Govt. has been only reacting, stalling or at times prevaricating. In these circumstances it is the onerous duty of the Court to ensure that prisoners’ fundamental rights should not be violated at any cost.

This study has shown, prisoners were declared person entitled to all the rights except those curtailed by the very nature of imprisonment. The Protection of Human Rights Act, 1993 declares that only those rights are
Human Rights as enumerated in the Constitution and recognized by the court in India. Indian judiciary in giving effect to Article 21 of the Constitution with respect to the prisoners have evolved several rights in favor of prisoners with a view to reform and rehabilitate the prisoners subsequent to release form prison. The rights which have emerged through various pronounced of the courts, may be enumerated as under:

- Freedom of Speech and Expression.
- Rights to Counsel: Free Legal Aid.
- Rights to be treated as Person: Right to Human Dignity.
- Rights against Bar-fetters, Solitary confinement and Hand Cuffing.
- Rights to know the Grounds of Punishment.
- Rights against Torture.
- Rights to Protection from Violent Prisoners.
- Rights to Wages for Prison Labours.
- Rights to Contest Election.
- Rights to Procedural Fairness.
- Rights to Mail.
- Rights to Health Care.
- Rights against Discrimination.
- Right to Access to Court.
- Right to Speedy Trial.
- Right to Compensation.
- Right to be released on Bail.
- Right to get free copy of prisoners’ hand-book

In this study attempts have been made to search the possibilities to answer those issues, which have been raised in the introductory part of this study. By way of going further into these it is clear that, with the changing time concept of Indian judicial system has also been changed form initial thinking that prisoners are non-human beings. The impact of various declarations in this regard has impact on judicial mindset which can be seen
after the case of *Gopalan* till today. Now they are being treated as human beings. The legislative developments in this regard are not very much object achieving because they mainly talks about regulation of the administration of prison system, rather giving direct emphasis on the availability of prisoners’ rights. The need of present time is to treat a prisoner in such a way so that his mind may become pure, which is never seen in the mentality of legislature. Indian judicial system regarding offender is still not based on the thinking that some inevitable circumstances are responsible to make a person as offender, it may be taken into consideration by court while granting a sentence to him but once he become a prisoner it remains no consideration for the recognition of the new and unavailable rights of a prisoner. It is a major lacuna in our country which is a hurdle to place a prison in the place of an institution which should be reformatory house.

It is universally known that condition inside the prisons is far from satisfactory. This is testified even by the *Mulla Committee*. Shockingly poor and miserable conditions prevailing in jails and maltreatment meted out to prisoners have also attracted considerable attention recent years. About a century ago when Swami Vivekanand visited a prison in America he wrote to his disciple of his thoughts and impression of the visit as follows:

They do not call it prison but reformative here. It is the grandest think, I have seen in America. Now the inmates are benevolently treated: how they are reformed and sent back as useful member of society; how grand, how beautifully, you must see to believe it. And, oh my heart ached to think of what we think of poor the low India. They have no chance, no escape, no way to climb up… they sink lower and lower every day, they feel the blows showered upon them by a cruel society and they do not know whence the blow comes. They have forgotten that they too are men.\(^\text{19}\)

\(^{19}\) Quoted in *Rajesh Khaitan v. State of W.B.* 1983 Cr.L.J. 877(Cal.) at 833.
The situation has not changed even after hundred years in the independent India. The conditions prevailing in Indian jails have been graphically described by a team of journalists in the following words:

Once again several scandalous events have shown that many jails in the country continue to be a by end for human degradation and debasement on the one hand and dens of corruption, callousness and cruelty on the other. Numerous and repeated attempts to reform have failed even to make a dent in the harsh and dehumanizing situation, leave alone bringing about a through reform of the prison system. So much so that an experienced observer of the prison scene has been constrained to remark that a “jail sub-culture” has grown in India which sanctifies barbaric treatment of inmates including torture, forced labour, sexual perversion, starvation diet and large scale aggrandizement and exploitation by petty jail officials protected by powerful mentors.

No doubt judicial patronage to prisoners is quite appreciable, but it needs to be accompanied by an improved legal system, better social economic condition, increased public awareness and a radical overhauling of jail administration as a whole. The Court judgments are not by themselves enough to protect the fundamental rights of the prisoners because unfortunately the law enforcement agencies are as apathetic and indifferent to courts’ directions as to public. Thus we cannot deny the truth that in a situation of callous and near total disregard of fundamental rights in the administration of Indian prison system, one would have expected that only judiciary would provide a major forum for vindication of prisoners’ grievances, protection of their fundamental rights and amelioration of prison conditions. In Prem Shankar Shukla v. Delhi Adm. Justice V.R.Krishna Iyer observed:

We must investigate the deeper issued of the detainee’s right against custodial cruelty and infliction of indignity within the human rights parameter of part-III of the Constitution enforced by the compassionate international Charters and Covenants. The raw history of human bondage and roots of habeas corpus writ have enlighten the wise exercise of Conditional power of the men in unlawful custody. That is why in India as
in America, the broader horizons of habeas corpus spread out, beyond the orbit of release from illegal custody, into every trauma and torture on persons in legal custody, if the cruelty is contrary to law, degrades human dignity, defile his personhood to a degree that violates Articles 14, 19 and 21 enlivened by the Preamble.

Thus, barring a few decisions the judiciary, in each and every cases, has recognized the fundamental rights of the prisoners. If we analyse the various decision of the courts we come to conclusion that offenders should be sent prison as a punishment and not a punishment. The judicial determination in India is greatly influenced by the Human Rights Jurisprudence. International pressure and catastrophic influence on the minds of human race have made the human beings realise the importance of human rights, peaceful co-existence and just means of exercising powers. Therefore, in contemporary era, efforts have been designed to promote the humane ideals. The derogatory practices of past have been in the process of according a decent burial. In order to achieve the higher ideals of just and peaceful life for all, majority of the governments including India have formulated Human Rights Commission not only to set right their chart of excesses violating human rights but also to keep a vigil on the human rights violations as well as to impose fine and punishment especially if such violations take place at the hands of State machinery. The National Human Rights Commission and State Human Rights Commissions in India have played a significant role in booking the violators and in suggesting the measures to reduce the chances of violations. They enjoyed the autonomy in functioning and inquired into any complaint of human rights violation. The procedural formalities have been given a good bye for the purposes of inquiry. Though the job of Human Rights Commission is limited to the submission of report of inquiry, yet the legislatures pressurises the government to initiate action. Therefore, neither
the government nor its officials can misuse the powers to the detriment of common masses. The co-ordination as envisaged between the Human Rights Commission and Higher Judiciary is a significant development in matters concerning the excesses committed by police authorities and the frequent use of this complimentary provision can fester strike a death nail in the coffin of misuse of powers by the State machinery.

By this study it is also clear that there is a great impact of the international perspective on the judgments of Indian courts. But the progress is very less in those comparisons. It is clear that prisoners of foreign countries enjoy much more right than the prisoners of India. The reason behind it is that Indian social economic and political condition are very much different but the another more important factor is that statutes in this regard are not supportive in nature to these rights and Indian judiciary rarely takes a risk to go beyond the limited and congested area of those Statutes. By the study it is clear that in Indian situation where legislative measures are not sufficient, the burden of reformation mainly shifts upon the judiciary to mention its rhythm to go forward, because till today there is a long journey uncovered which has to be gone through.

The study has evaluated the present condition of rights of prisoner and during this way it has been searched out that there are many vacant corners in this field so by the way of suggestions a humble effort has been made for the improvement in this area and those suggestions are as follows:

- Since the Indian Prison System is criminogenic in its present form with little hope of improvement due to inherent deficiencies contained it, therefore only those convicts should incarcerated who are beyond
redemption and also beyond the redeeming reach of therapeutic measures.

- There is an urgent need of an Inmates Grievance Committee in each prison. It should be comprised of elected inmates to speak to the administration without fear of reprisal, concerning grievances and simultaneously causing development of other procedure for inmates participation in the operation and decision making process of the jail.

- In India, there is an urgent need to enact a new Prison Act, with adequate provisions regarding the rights of the prisoners with the trend in modern times, to replace century old Prison Act, 1894. The National Human Rights Commission has prepared an outline of an all India Statute, which may replace the old Act.

- A model new All India Jail Manual should be framed according to the direction of the Supreme Court.

- Appropriate amendment should be made in Criminal Procedure Code to liberalize the bail procedure so as to maximum prisoners could be released on bail. It is the fundamental principle of natural justice that “an offender is deemed innocent unless his guilt is proved”. Hence an unconvicted offender should not be sent into prison for bailable offences an offender should never be sent to jail.

- “Justice delayed is justice denied,” therefore, a maximum time period should be fixed for the trial of the offenders. The speedy trial should be made the fundamental right of prisoners through legislative enactment.
Prisoners are treated as non persons and denied the access to court and legal facilities because of their own position in life. Their grievances can only be redressed through public interest litigation. The benefit of PIL to prisoners should not be denied. PIL jurisprudence should be strengthened not stultified, developed not minimized. Free legal aid should be a fundamental right in conformity with the judgments of the Apex Court.

There is a grave necessity that the Government should make suitable rules and regulations to protect the prisoners’ fundamental rights in conformity with the decisions of the Supreme Court and various High Courts in this regard. The prisoners should be adequately compensated for violation of their fundamental rights.

Since the sole aim of prison is reformation and rehabilitation of offenders. The objective of imprisonment should be to devise and use technique of correcting the effects of the long drawn causative factors in the controlled atmosphere of the campus, utilizing the helpful factors in his personality, family situation and attitudes and approaches, thus helping the prisoners to reconstruct his life pattern with increased capacity for adjustment to the socioeconomic situation and healthy interpersonal relationship and skills to earn an honest livelihood, to live as an honest and law abiding citizen.

Since we have already ushered in the arena of human rights jurisprudence and any violation thereof is seen as a serious phenomenon world wide. Therefore, the police, prison officials etc.
should be educated in this behalf and such a sensitization programme is of urgent necessity.

- The prisons officials have to take care of an inmate, therefore, they should be made conscious and emotional about prisoners’ fundamental rights through proper training and education. They should realize that convicts are not by reason of mere conviction denuded of all the fundamental rights which they possess as citizens of the country, nor they stand stripped off the divinity which has been bestowed upon every human being by birth. He deserves human treatment so that his personality continues to develop during detention and does not die.

- The prison reform should be an agenda of the Central Government for uniform and effective implementation of various directives issued by the Supreme Court of India from time to time, and thus “prisons” and “reformatory institutions” must, at least, be brought on the Concurrent list of Seventh Schedule of Indian Constitution.

- Some provision should be made so that the prisoners should not cut-off from the society where in they have to return ultimately. Such a provision may take care of the maladjustment of prisoners after their release due to their prisonisation and adoption of the prison culture.

- The right of conjugal visit of prisoners should be recognized and spouses should be allowed to visit the prisoners.

- A special Act should be passed by Parliament incorporating all the rules framed under the Standard minimum Rules for the Treatment of Prisoners, adopted and approved by the United Nation, in order to
protect the prisoners from inhuman, cruel and degrading treatment and to safeguard their fundamental rights.

- And finally, every effort should be made for mental, moral and spiritual upliftment and physical betterment of prisoners through “Yoga” and other creative activities.

It should also be kept in mind that Law is not merely the solution to all the problems existing in our society. So, there is a need that society should also change its perceptions and attitude towards prisoners. It would be unreasonable to assume that merely because a person is moderately well fed and looked after under humane conditions in the jail he is unconcerned with the sentence or feels happy in the jail. To a person under restraint the most valuable right, the absence of which feels deeply, is his personal freedom, the freedom to move about freely in society, the freedom to associate with his kith and kin and the freedom to work as he likes. The absence of access to the affection of his family members makes him emotionally upset and he waits for the day when he will be able to back to his home for a reunion with his close relatives and the friends. Everyday of his sentence is of count to him materially.

“INJUSTICE ANYWHERE IS A THREAT TO JUSTICE EVERY WHERE”