HUMAN RIGHTS AND PRISON

The subject of human rights, by no means, is a limited subject. There is hardly any branch of law today in which it does not get involved in some degree or other. It covers a wide range of topics and has far reaching consequences. The topic which the chapter deals with is one which is inextricably woven with human rights, Prison and prisoners’ rights. Human right is essentially a product of democracy. It is universal concern that cuts across major ideology of political and cultural boundaries. It has been described as touchstone of the development and recognized as the basic principle essential for the development of individuals. Meaningless to say that human right is not a new concept but is as old as the civilization itself.

[A] MEANING AND DEFINITION OF HUMAN RIGHTS

An understanding about the concept of evolution and development of human rights is all more essential in a study which focal point is human rights. The rights are essential and basic to the every well being of the individuals and their development, in the absence of these rights men would be enslaved and subjected to torture at the hands of the State. Human rights may be categorized as those fundamental rights to which every man or woman living in any part of the world is entitled by virtue of having born as human being. In other words, human right is the genus of which humanitarian law is a species. Below are given some of the definitions of human rights-
According to Encyclopaedia of Human Rights, human rights are the universally accepted principles and rules that support morality and that make it possible for each members of the human family to realize his or her full potential and to live life in an atmosphere of freedom, justice and peace.

As per Wikipedia the Free Encyclopedia, "human rights refer to universal rights of human beings regardless of jurisdiction or others factors, such as ethnicity, nationality, religion or sex."

Tiber Macham defines human rights as universal and irrevocable elements in a scheme of justice. Accordingly, justice is the primary moral virtue within human society and all rights are fundamental to justice.3

D. D. Raphael has stated that human rights constitute those very rights which one has precisely because of being a human being.4

Cranston asserts that human rights by definition is a universal moral rights, something, which all people, everywhere at all times ought to have, something of which no one may be deprived without grave affront to justice, something which is owing every human being simply because one is human.5

Apart from the definitions provided by scholars, the UDHR refers human rights as inalienable rights of all members of the human family. Protection of Human Rights Act of India defines human rights as the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India.6 Thus, the Act gives a definition of human rights which

5 M. Cranston, What are Human Rights, Delhi, National Academy, 1973 p. 7.
6 Section 2 (1) (d), Protection of Human Rights Act, 1993.
widen the scope of human rights enforceable by Courts in India. Human rights enforceable by Courts in India can be divided into three categories; (i) Enumerated Fundamental Rights- means the human rights embodied in the International Covenants on human rights and which are specified as Fundamental Rights in Part III of the Constitution; (ii) Other Fundamental Rights- means the human rights embodied in the International Covenants and recognized as Fundamental Rights by Courts in India even though they have not been specified as Fundamental Rights in Part III of the Constitution such as the right to compensation, right to privacy etc., and (iii) Unenumerated Rights- means the human right which have been enumerated in the International Covenants but are neither enumerated as Fundamental Rights in the Constitution nor have been so for recognized as Fundamental Rights by Courts in India.

From the above definitions it can be concluded that human rights are available to all persons because they are human beings. It derived from the worth, dignity and sanctity of the human person. In simple terms, whatever adds to the dignified and free existence of a human being should be regarded as human rights. Justice, J. S. Verma, has therefore, aptly said that, "human dignity is the quintessence of human rights."

[B] EVOLUTION OF HUMAN RIGHTS

The expression human rights, was previously known as natural rights. Legally speaking there can be no such thing as an abstract transcendental right. A right in the same way, as any normative system, is the product of given social order. It, therefore, possesses a historical character. There is a

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recorded history of human struggle and sacrifice for securing these rights. The idea to define and protect human rights is very old and may be traced back to 2130-2180 BC in the Code of Babylonian King Hammurabi. But, it is preferable to disregard this Code due to cruel and inhuman sanctions provided in trying to protect the worthy human rights. In the development of human rights notion, the theory of natural law has played a prominent role. It is remarkable that, before the formulation of this theory by the Stoic philosophers, the citizen of some Greek States had enjoyed some rights which are today claimed as fundamental, e.g., Isogoria, (equal freedom of speech), Isonomia (equality before the law), and Isotomia (equal respect for all).

The concept of right was first systematically developed in Rome where relative inviolability and equality with public realm were given importance. The human rights notion got its expression in the natural law theories of Cicero and other Stoic thinkers. It was to retreat from the Aristotelian theological approach where the State was interpreted in terms of fundamental goals for human beings, not the fundamental rights. The natural law theories sought human rights approach where the State was projected as a guarantor of human rights. Cicero claimed that there was in fact a true law namely, the right reason- which was in accordance with nature, applied to all men and was unchallengable and eternal. To invalidate this law by human legislation was never morally right, nor was it permissible to restrict

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its operation. In the light of this eternal law, Cicero insisted that all men were equal, not in learning, not in holding property, but in their possession of reason in their underlying psychological make up, and in their general capacity of discriminating between the good or bad. According to the doctrine of Stoicism, universal force pervaded all creation and all human conduct was to be judged according to the law of nature.

The view of natural law ensuring human equality was adopted by the fathers of the Church. They believed that individual human beings had inherent human dignity and worth and the same was not based upon the contingencies of race, nation, class, education, upbringing or any other contingent cultural factors about a person. However, the christian fathers throughout emphasised upon fact that whatever a person's empirical circumstances may be, he must be treated in ways compatible with the basic human dignity. One may vehemently dislike one's character, but he must respect his dignity as a human being.

The argument secured the idea that the feature by virtue of which human beings are bearers of right has to be both universal and morally relevant. After a temporary setback, the idea of natural law and natural right was revitalized by the appearance of social contract doctrine in the 16th and 17th century. When the political theorists turned the idea of contract into the relationship between the individual and community. John Locke's contribution lies in relating natural right to social contract and thereby giving the individual a more sacrosanct place in the grant of legal and political authority. For Locke, man by virtue of being rational was subject to the law

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13 Chandra Kala Padia,, *Supra* note 18, p. 3.
of nature even before, the establishment of the law of nature, and had lived in a state of freedom, equality and the possession of property.\textsuperscript{14}

The idea that natural law is foundation of human rights came under attack during the late 18\textsuperscript{th} century and this attack continued up to early 20\textsuperscript{th} century by John Stuart Mill, Frediderick Karl Von. Savigny, Sir Henry Maine and John Austin. By and large, the origin of human rights in modern time is traced back to documents which appeared in recent centuries. According to this point of view, human rights is a contract concluded by the State with the population and first of all with the nobility. These contracts are seen as preserving certain rights for individuals while preventing the State from interfering in the exercise of those rights.

The founding father of international Law, particularly Fransciscus de Victoria and Hugo Grotius had advocated that all persons were entitled to enjoy certain natural rights.\textsuperscript{15} Some international lawyers of the early 20\textsuperscript{th} Century characterized close connection between human rights and International law and laid emphasis upon the law of nations while accepting human rights above the legal order of sovereign States. Throughout the 19\textsuperscript{th} and the early 20\textsuperscript{th} century numerous military operations and diplomatic representations done in the name of humanitarian intervention tried to protect the oppressed and persecuted minorities in the various part of the world. At the Congress of Vienna (1814-15) and between the two world wars, a series of treaties and international declarations sought the protection of certain racial, religious and linguistic minorities in the central and Eastern Europe and Middle East. In the international situation of World War I era


two notions of human rights emerged: The notion of individual rights and that of collective rights.

[C] EVOLUTION OF UNIVERSAL HUMAN RIGHTS

The Second World War witnessed not only tremendous loss of lives and properties but ruthless degradation of human rights. Then it was realized by the international community that, recognition of the inherent dignity and equal and inalienable rights of human family is the foundation of freedom, justice and peace in the world. This objective was shaped in various international instruments which may be studied as under:

(i) The U.N. Charter

The term "human rights" was first used in Declaration of United Nations of 1st January 1942 by the representatives of 26 Nations that were fighting against the Axis Powers (Germany, Italy & Japan). In this document, the signers spoke of the need "to preserve human rights and justice in our (own) lands as well as in others lands. At the close of World War II in 1945, representative of 50 nations met is San Francisco to draft U.N. Charter, to establish for a second time an intergovernmental organisation that would preserve peace through cooperation. In addition to it the Charter also states that one of the purposes of the U.N. is "to achieve international co-operation----- in promoting and encouraging respect for human rights and for fundamental freedoms of all without distinction as to race, sex, language or religion." The Charter, thus, made the rights and freedoms of every human beings, and of every people, matters not only of local and national interest but also of international concern. Never again could any Government validly maintain that whatever it chose to do with the

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individuals or peoples who lived within its jurisdiction was its own private affair or that the world community, no matter how outraged it might be, had no authority to intervene.\textsuperscript{17}

The Charter, however, did not answer one key question what are the rights and freedoms to which every man and woman is entitled? A partial answer to this question has been provided by Universal Declaration of Human Rights (UDHR).

(ii) Universal Declaration of Human Rights

The first concrete step of formulating the various human rights was taken by adopting the UDHR in 1948, which set out the common understanding of U.N. members concerning human rights and fundamental freedoms. The Declaration was especially far-reaching because it characterized as genuine human rights- a whole series of what had, up to that time, been considered little more than social and cultural aspirations.\textsuperscript{18} Again, it was merely the statement of ideals without any binding character and machinery for enforcement.

(iii) International Covenants Of 1966

To rectify the above deficiencies two Covenants were adopted by the U.N. General Assembly for the observance of human rights:

(i) The Covenant on Civil and Political Rights.


While the former, formulated legally enforceable rights of the individual, the latter addressed to the States to implement them by


legislation after ratifications. These Covenants are legally binding on the ratifying States and must be implemented by adopting legislative measures. These have laid the basis from which other covenants, conventions and declarations have been constructed.

[D] EVOLUTION OF HUMAN RIGHTS IN INDIA

The concept of the rights of human beings is neither entirely western nor modern. Human rights in one form or the other has always been a part of Indian ethos. One may use any terminology, the fact that Indian ethos is interwoven with all facets of so-called contemporary human rights since time immemorial. Evolution of human rights in India may be observed in following era.

(i) Ancient Era

The Ancient Indian Philosophers expounded a theory of higher moral law over and above positive law embodying certain values of universal validity like Dharama, Artha, Kama and Moksha, with a view to establish a harmonious social order by striking a balance between inner and outer, spiritual and material aspects of life. They evolved a system of legal theory which was based on higher values and ideals, i.e., on their conception of Dharma, which governed in an integrative manner all civil, religious and other actions of men in society, be it King or his subject. Every aspect of life was regulated by Dharma- the supreme law in ancient India. The King in India was subjected to the supremacy of the law of Dharma.

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It is Dharma which has impelled men since Vedic ages to strive for righteousness. The philosophy expounded by the saints of Vedic time is nothing but a reinstatement of Natural law with religious fervor. The philosophers of Vedic age endeavoured to define human rights as those rights which were inherent in our nature and without which we could not live as human beings.\textsuperscript{20} There are many references in Vedas which throw light on the existence of human rights. The Vedas proclaim Tan, Skridhi and Jibase.\textsuperscript{21} It is established beyond doubt that Vedic Indian had a strong tradition of respect for human rights. We find many references in Ancient scriptures and epics to the effect that 'सर्वेः भवल्ल सुखिनः सर्वेः संतु निरामयः.'

The ideal of human unity and world free from traces of conflicts and misery has always stirred the Indian hearts वहुधैव कुदुम्बकम् occupied a place of prime importance in India's legacy. Panini interpreted Dharma as an act of religious merit, custom and usage. Mahabharata describe it as being ordained for the advancement and growth of all creatures for restricting creatures from injuring one another and to uphold all creatures. The early Smrítíes inculcate upon the King principles and policies of government involving the principles and policies of government involving the conception of a welfare State and that of ruler's complete identification with his subjects.\textsuperscript{22} Kautilya, the author of the Arthashastra, not only affirmed and elaborate the civil and legal right first, formulated by Manu, but also added a number of economic rights. He categorically ordained that "the King shall provide the orphan, the aged, the infirm, the afflicted and the helpless with

\textsuperscript{21} Let every one be happy, let every one be free from all ills.
maintenance; he shall also provide subsistence to the helpless expectant mothers and also to the children they gave birth to.”

The post Vedic age however witnessed a downfall of human rights jurisprudence. In the post-Vedic period, the rise of Buddhism and Jainism were certainly a reaction against the deterioration of the moral order as against the rights of privileged class. A close scrutiny of Buddhist period reveals that people were equal in all fields of their life. Life was more human and liberal and repudiated caste distinctions. After Buddha, Ashoka protected and secured the most precious of human rights particularly right to equality, fraternity, liberty and happiness. Ashoka was champion of civil liberties. Even forest-folk in his dominion enjoyed security of life, peace of mind and were enjoying their life at par with other people in the society. Torture and inhuman treatment of prisoners were prohibited under Ashoka's administration. The study of 'Mudra-Raksha' shows that dispensation of justice was considered as one of the important duties of the rulers. No leniency was shown to the criminal; and the whole system worked so efficiently that Magasthenese says: "Kings employed spies not only to detect violators of human rights but gathered public opinion on various important matters." Vaisakha Dutta in his 'Mudra-Raksha' has depicted Chandragupta as a deity coming right from heaven to save his countrymen.

It is however unfortunate that human rights jurisprudence witnessed downfall with the decline of Mauryan Empire. Harsh Vardhan was the last Emperor of Hindu India. His reign marks the culmination of Hindu culture.

26 Id., p. 16.
He never forgot that the aim of the government was the welfare of the governed. He provided food and drinks, and stationed physicians with medicines for the poor persons without any cost. He devoted his whole time to promote the welfare of his people. Men of merit and ability were patronized irrespective of their caste, colour and creed. After the break up of his empire the whole India was split up and the society, too, in general degenerated wherein the philosophy of human right lost sight.

(ii) Medieval Era

The advent of Muslim rule led to systems and ideals totally different from Hindu view of society and life. Muslim conquerors—especially Mahmud Gaznavi and other made frontal attacks on Ancient way of life and religion. The destruction of temples, idols and large scale conversion to Islam alienated the masses. It was, however, at a later stage that Muslim State in India became considerably modified in its form. The Mughal rulers especially with Akbar a new era began in Mughal history of India in the field of human rights, with his policy of universal reconciliation and tolerance. He was earnestly concerned with the welfare of his subjects. At one place, Akbar went to the extent of saying that if he was guilty of an unjust act; he would rise in judgment against himself. His justice loving tradition was followed by Jehangir too.

The trend initiated by Akbar came to be reversed by Aurangzeb though the Marathas and the Sikhs opposed and fought the fanaticism of Aurangzeb and his successors. The sheer indifference to human rights

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27 Ibid.
28 S.N. Dhayni, Supra note 19, p.183.
ultimately gave rise to *Bhakti* movement in India. It revived and regenerated the old Indian value of truth, righteousness, justice and morality. Great Saints like Shankara, Ramanuja, Madhava, Tulsidas, Kabir, Guru Nanak and others reinterpreted the Vedic *Dharma* to re-establish the supremacy of Indian Vedic values over alien ideals and philosophy. The philosophy of these social reformers and leaders was nothing but a reinstatement of natural law with religious fervour to enthuse people towards the path of *Dharma* enlightenment and unity at a time when Hindu society was dominated and divided by the foreigners.

(iii) During British India

The modern version of human rights jurisprudence may be said to have taken birth in India at the time of British Rule. The origin of this ideal in India lies in the history of India, especially in the struggle for freedom against the British rulers. Under the British rule, human rights and democracy was suspect, and socialism was anathema for the processes of administrative and judicial justice.

When the British ruled India, resistance to foreign rule was manifested in the form of demand for fundamental freedoms and civil and political rights for the people. There was no fundamental law guaranteeing the subject's rights and liberties and they were humiliated and discriminated against in many ways, in their own country. British resorted to arbitrary acts such as brutal assaults on unarmed satyagrahis, internments, deportations, etc. The freedom movement and the harsh repressive measures of the British

29 *Id*, p. 84.
30 *Id*, p. 243.
rulers encouraged the fight for civil-liberties and the demand for constitutional guarantees of some fundamental rights.

The British looked down upon Indian values, myths, mores and lores as a lump of loathsome and demeaning thought. The British Indian rulers discriminated against Indians in matters of their political and civil liberties and rights. The legislature, executive and judiciary were oriented to protect and promote the interests of the British. The Courts administered justice according to law pretending to be impartial and neutral a veneer of justice between unequal interests the landlord and the peasants, rich and poor, master and servant.

Gandhiji condemned British rule over India as 'satanic', 'adharmik' (unjust) and coercively violent (himnsa). Therefore, he expounded the theory of peaceful resistance (satyagraha) to fight British laws, for they deprived Indians a meaningful life, liberty and national independence. The right to life, liberty and pursuit of happiness as inalienable rights aroused the spirit of self-respect, nationalism and patriotism in the hearts of Indians. The people of India under the leadership of Mahatma Gandhi launched non-violent struggle to achieve self-government and fundamental rights for themselves.

The Government of India Act, 1915, in pursuance of the demands for fundamental rights, guaranteed equality of opportunity in the public service regardless of race or religion. Only this guarantee did not satisfy the people of the country, so a series of resolutions adopted by the National Congress between 1917 and 1919 repeated "the demand for civil rights and equality of status with English."

31 *Id*, p. 87.
Constitution of the Irish State having a list of Fundamental Rights had profound influence on the thinking of the Indian National Congress, which in 1925 finalized the draft of 'Commonwealth of India Bill' embodying a Declaration of Rights.\(^{32}\) Further, Committee under Motilal Nehru was appointed. Reporting in 1928, this Committee declared that the first concern of the people of India was to secure Fundamental Rights. It is interesting to note that the Constitution of the Republic of India enacted in 1950, incorporated ten of the nineteen Rights enumerated in the Motilal Nehru Committee Report, 1928.

The Simon Commission, appointed by the British Government in 1927, however, totally rejected the demand voiced by the Nehru Committee Report.\(^{33}\) At the time, when Government of India Act, 1935, was on the anvil, it was proposed that Fundamental Rights were to be enumerated in the Constitution. Government of India Act, 1935 was passed without any bill of rights much to the disappointment of the Indian leaders. It was subsequently that Sapru Committee in 1945 stressed on the need for written Code of Fundamental Rights and Constituent Assembly raised a forceful demand for the inclusion of human rights in the Constitution.\(^{34}\) With the commencement of the new Constitution on January 26\(^{th}\), 1950, the Natural law rights have been incorporated in the Preamble in Chapters III and IV concerning Fundamental Rights and Directive Principles of State Policy.

(iv) Post Independent Era

The founding fathers of the Constitution conceived the Constitution not only as a mechanism for governing the country but also a potent instrument for social change and a code of human rights. During the whole

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\(^{32}\) Id, pp. 386-389.

\(^{33}\) Ibid.

\(^{34}\) P.L. Mehta and Neena Mehta, Supra note 22, p.23.
period of Constituent Assembly, the members took a serious note of various national as well as international developments particularly in the area of human rights. It is imperative to note here that in spite of the long association of the Indian intellectuals and Indian statesmen and politicians with the British political philosophy and British parliamentary practice and constitutional law, respectively, the Constituent Assembly deliberately departed from the British conception and adopted a formal declaration of Fundamental Rights in the Constitution in accordance with the American practice.

Further, on 10th December, 1948, when the Constitution of India was in the making, the General Assembly proclaimed and adopted the Universal Declaration of Human Rights, which surely influenced the framing of India's Constitution. The Constituent Assembly pledged to draw up a Constitution for the country wherein there shall be a guarantee to secure to all the people of India, Justice, Social, Economic and Political; Equality of Status, of opportunity and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality and wherein adequate safeguards would be provided for the minorities, backward and tribal areas and depressed and other classes. The Indian constitutional format in respect of human rights is remarkable as a significant and unique attempt at conflict resolution for the delicate balance, it sought to achieve between political and civil rights on the one hand and social and economic rights on the other or between the individual rights and social needs. The Constitution-makers believed in the equal importance of the two sets of rights as a cardinal tenet of their philosophy. Human rights

for them were indivisible and civil and political as well as social and economic rights had got to co-exist to make for true human happiness and lead to the fullest flowering of each human personality not only in individual but in wider community interest. They intended to make India's Constitution a viable, instrument of the Indian people's salvation, and to secure all persons basic human rights in the light of philosophy contained in most of the Articles of Universal Declaration of Human Rights, 1948, and two International Covenants.\textsuperscript{36}

\textbf{[F] HUMAN RIGHTS AND PRISON}

The evolution, growth, and development of human rights had been marked by the gradual erosion of absolutism, rise of democratization of decision-making the common people at the social and political level; the universalization along with on-going legitimization of the rights ranging from individual liberty and freedom to collective rights and national rights to self-determination, etc. These phenomenal changes at the national and international level have not only contributed to the development of human rights as a part of the international legal system, but also that development of principles concerning protection of prisoners in course of time. Two significant approaches, among others, had been adopted by members of the international community concerning human rights, \textit{firstly}, freedom from want and exploitation or the elementary human right to distribution of justice had been widely accepted as a major commitment of legal systems; \textit{secondly}, the legal systems by and large had incorporated the human rights as the goal of the modern, progressive governments. Another trend is that

the international community, while outlawing despotism, colonialism of all kinds and absolutism had consistently made efforts towards realizing the unity and oneness of the humankind in both letter and spirit.37

The Human Rights have come to stay in the international arena and found their way to the national Constitutions of the world. Apart from giving legal sanctity to the victims of human rights violations. Though traditionally, an individual was considered to be not a subject of international law, the modern international law is encompassing within itself an individual as a subject, who can have rights and duties under international law. Thus, the international humanitarian and human rights law has taken shape and strengthening the municipal legal systems to protect the human rights of individuals across the nations.

The increasing role of States and their participation in socio-economic, commercial and political activities and of undertaking even the private activities here often resulted in an encroachment on the rights of the citizens and also scope for abuse of power by the State agencies. The magnitude of the problem has become so intensified that there has been even large scale violation of human rights often penetrated like genocide, the problem of refugees, the victims of terrorism, the war crimes, apartheid, etc. Particularly the post-second world war has witnessed violation of human rights in large scale. In other words, the issue of violation of human rights has crossed the national frontiers and attracted the international legal system to find an effective solution not only to protect the human rights of the individuals but also to rehabilitate such victims, so as to enable them to recoup their losses of any nature and dimensions.38

Human rights and fundamental freedoms allow the prisoners to fully develop and use their human qualities and conscience and to satisfy their physical, moral, mental and spiritual needs. Human rights of prisoners are based upon mankind’s increasing demand for a life in which inherent dignity and worth of each prisoner will receive respect and protection. The Human rights of prisoners have drawn much attention as a result of widespread tortures and tyrannies committed during the Second World War. Most of the democratic countries have given due consideration to the International instruments provided certain basic principles of law, which should be applied in order to protect the human rights of the prisoners all over the world.

The provisions made in the following international instruments are directed to protect the human rights of the prisoners.

(i) Charter Of United Nations

The United Nations which came into existence in 1945 was based on humanitarian ground; its very basic purpose is to give equality and good treatment to every person of world community. In the United Nations Charter’s Preamble itself we find the provisions regarding the fundamental human rights of the prisoner without mentioning the word “prisoners” “We the people: of the United Nations determined to reaffirm faith in fundamental human rights, in the dignity and the worth of the human person…”

Article 1

The purposes of the United Nations are
3. To achieve international cooperation … in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction.

**Article 13.**

1. The General assembly shall initiate studies and make recommendations for the purpose of

   (a) …

   (b) … assisting in the realization of human rights and fundamental freedoms for all.

**Article 62.(2)** The Economic and Social Council may make recommendations for the purpose of promoting respect for, and observance of human rights and fundamental freedoms for all.

**Article 68.**

The Economic and Social Council shall set up commissions for the promotion of human rights.

Thus without making any special reference the United Nations Charter provides for the protection of human rights and to maintain dignity of the prisoners.
(ii) **Universal Declaration Of Human Rights**

Universal Declaration of Human Rights elucidates the aim of the United Nations regarding the human rights and dignity and worth of the human person. The preamble refers to the “faith in fundamental human right, in the dignity and worth of human being,” which the people of United Nations have reaffirmed in the Charter of the United Nations. Prisoners’ rights are not specially mentioned in the Universal Declaration for Human Rights. But since it is applied on every person without any distinction and the prisoners are also human being, they are entitled to get the protection of this Declaration.

**Article 1.** All Human beings are born free and equal in dignity and rights.

**Article 3.** Everyone has the right to life, liberty and security to person.

**Article 5.** No one shall be subjected to torture, or to cruel, inhuman or degrading treatment or punishment.

**Article 6.** Every-one has the right to be recognized everywhere as a person before law.

**Article 8.** Everyone has the right to an effective remedy by the competent national tribunal for acts violating the fundamental rights guaranteed to him by the constitution or by law.

**Article 9.** No one shall be subjected to arbitrary arrest, detention and exile.

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39 It was adopted by General Assembly Resolution 217-A (III) of 10 Dec. 1948.
Article 18. Everyone has the right to freedom of thought, conscience and religion.

Article 19. Everyone has the right to freedom of opinion and expression.

Article 23 (3). Everyone who works has the right to just and favorable remuneration ensuring for himself and his family on existence worthy of human dignity.

Thus the universal Declaration of Human Rights embodied certain important concepts like equality of treatment, right to life, liberty and security of prisoners and freedom from torture, cruel, inhuman or degrading treatment.

(iii) International Covenant on Civil and Political Rights (ICCPR)\(^{40}\)

Article 10 (1). All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

(2) (a) Accused persons shall be segregated from convicted person and shall be subject to separate treatment.

(3) The Penitentiary system should comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders should be segregated from adults and be accorded treatment appropriate to their age and legal status.

\(^{40}\) Adopted and opened for signature and accession by General Assembly Resolution 2200A (XXI) of 16 Dec., 1966.
Article 14 (2). Everyone charged with criminal offence shall have the right to be presumed innocent until proved guilty according to law.

(iv) Standard Minimum Rules for the Treatment Of Prisoners.41

Rule 6(2). It is necessary to respect the religious beliefs of moral precepts of the group to which a prisoner belongs.

Rule 8. The different categories of prisoners shall be kept in separate constitution of parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment.

Rule 10. 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.

Rule 20. Every prisoner shall be provided by the administration at the usual hours with food of nutritional value & water adequate for health and strength, of wholesome quality and well prepared and served.

Rule 22. Every prisoner shall be provided medical help.

Rule 31. Corporal punishment, punishment by placing in a dark cell and all cruel, inhuman or degrading punishments shall be completely prohibited as punishment for disciplinary offence in prisons.

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Rule 33. Instrument of restraint such as handcuffs, chains, irons and straitjackets shall never be applied as a punishment.

Rule 37. Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends and regular intervals both by correspondence and by receiving visits.

Rule 55. The purpose and justification of a sentence of imprisonment or similar measure derivative of liberty is ultimately to protect society against crime. This end only can be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but also to be used to lead a law-abiding and self-supporting life.

Rule 60(1). The regime of the institution should seek to minimize every difference between prison life and life at liberty which tend to lesson the responsibility of the prisoners or the respect due to their dignity as human beings.

Rule 61… Steps should be taken to safeguard to the maximum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners.

Rule 70(1). Prison labour must not be of an afflictive nature.

Rule 78. Recreational and cultural activities shall be provided in all institutions for the benefit of the mental and physical health of the prisoners.
Rule 79. Special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his family as are desirable in the best interest of both.

Rule 82(1). Persons who are found to be insane shall not be detained in prisons and arrangements shall be made to remove them to mental institution as soon as possible.

Rule 84(2). Unconvicted prisoners are presumed to be innocent and shall be treated as such.

Rule 85(1). Untrial prisoners shall be kept separate from convicted prisoners.

Thus this is a landmark step towards the protection of prisoners’ rights and to maintain their dignity.

(v) European Convention on Human Rights

It is one of the many documents which gave fire to the human right movement. It provides for the human treatment of the prisoners and prescribes some important safeguards against arbitrary and fanciful acts of the State. The major achievement of this document is that it provides a machinery to the protection of the human rights in the form of Human Rights Commission, where the subjects of the members countries can ask for the remedies for the violation of the various Article of this convention which guaranteed certain rights to them.
(vi) Declaration on the Protection of All Persons from Being Subjected To Torture and Other Cruel Inhuman or Degrading Treatment of Punishment. 42

**Article 1(2).** Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.

**Article 2.** Any act of torture or other cruel, inhuman or degrading treatment or punishment is an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human rights.

**Article 11.** Where it is proved that an act of torture or other cruel, inhuman or degrading treatment or punishment has been committed by or at the instigation of a public official, the victim shall be afforded redress and compensation in accordance with national law.

Thus this document asked for the human treatment of subjects and provided many protections against the torture, inhuman, cruel or degrading treatment or punishment to the prisoners.

(vii) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 43

The State Parties of this convention, considering that in accordance with the principles proclaimed in the Chapter of the United Nations,

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recognition of the equal and inalienable rights of all members of human family is the foundation of freedom, justice and peace in the world. Recognising that those rights derive from the inherent dignity of the human person. Desiring to make more effective the struggle against torture and other cruel, inhuman and degrading treatment or punishment throughout the world, have agreed to adopt this convention.

(viii) Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Tribunal or Otherwise

Preamble – The purpose of these Rules of Detention is to govern the administration of the detention unit for detainees awaiting trial or appeal at the Tribunal or any other person detained on the authority of the Tribunal and to ensure continued application and protection of their individual rights, while in detention. The primary principle on which these rules of detention rest reflect the overriding requirements of humanity, respect for human dignity and the presumption of innocence.

Rule 60. Right to communication with the visits from the family and friends

Rule 67. Each detenu shall have the right to legal assistance.

Thus, International Covenants, rules and Charters have platted a commendable role to protect the prisoners form inhuman, cruel and degrading treatment and to safeguard their fundamental rights.

[G] NATIONAL HUMAN RIGHTS COMMISSION

Adopted on 5 May, 1994 by Int. Tribunal.
Indian system of human rights protection is unique where human rights are constitutionally guaranteed and judicially protected. In spite of it, the world community was not satisfied with the result of Indian system and always accused for human rights violations and non-creation of a National Commission of Human Rights to redress human rights grievances. Even, Indian intellectuals and human rights activists were not satisfied and pleaded for a better system that may effectively protect human rights of even the rural illiterates and poors. In order to meet this criticism, the Government of India passed the Protection of Human Rights Act, 1993 (POHRA) for "better protection of human rights and for matters connected therewith or incidental thereto." The Act provides for the constitution of a National Human Rights Commission at the national level and State Human Rights Commission in States and Human Rights Court in every district of the country. The enactment of POHRA forms the basis of modern human rights protection regime in the country.

(i) Statutory Role, Power and Functions of NHRC

The functions of the Commission are laid down under Section 12 of the Act which is as follows-

(a) inquire, *suo moto* or on a petition presented to it by a victim or any other person on his behalf, into complaint of:

(i) violation of human rights or abetment thereof; or

(ii) negligence in the prevention of such violation by a public servant;

(b) intervene in any proceeding, involving any allegation of violation of human rights pending before a Court with the approval of such Court;

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(c) visit under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of inmates and make recommendations therein;
(d) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation.
(e) review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures.
(f) study treaties and other international instruments on human rights and make recommendations for their effective implementation.
(g) undertake and promote research in the field of human rights.
(h) spread human rights literacy among various sections of the society and promote awareness of the guards available for the protection of these rights through publications, the media, seminars and other available means.
(i) encourage the efforts of non-governmental organisations and institutions working in the field of human rights; and
(j) such other functions as it may consider necessary for the promotion of human rights.\textsuperscript{46}

But there are certain matters which are not subject to the jurisdiction of the Commission. The Commission cannot inquire into any matter which is pending before a State Commission or any other Commission duly

\textsuperscript{46} Section 12, The Protection of Human Rights Act, 1993.
constituted under any law for the time being in force.\footnote{Id., Section 36 (7).} Besides this, the National Commission or the State Commission shall not enquire into any matter after expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed.\footnote{Id., Section 36 (2).}

The wide jurisdiction of the NHRC must be treated as not just an empowerment but a power coupled with a duty requiring positive action by the Commission. The NHRC has also been used by the Supreme Court in areas which are, otherwise, in excess of its complaint jurisdiction.\footnote{Paramjit Kaur v. State of Punjab, AIR 1999 SC 340}

(ii) NHRC in Action

The Commission has now completed eighteen years of its meaningful active existence. In these days, under the able guidance of successive chairpersons and the support of the members, it has relentlessly endeavoured to provide better protection and promotion of human rights, true to the letter and spirit of the POHRA. It has built an edifice of human rights accountability on the foundation of autonomy and transparency. It has also struck a fruitful collaboration and co-operation with non-governmental organisations both in India and abroad. The NHRC has given priority to\footnote{National Human Rights Commission, Annual Reports, 1993-94 to 2004-05.} terrorism and insurgency, protection of civil liberties, custodial death, rape and torture, reforms in police administration, administration of criminal justice, systematic reform in prison system, review of legislations repugnant to human rights principles, freedom from discrimination, concentration on human rights of women and children. Keeping in view the subject of the research, researcher has limited the role of the NHRC regarding prison.

(iii) Regarding Custodial Violence
The Commission has repeatedly and unequivocally condemned the terrible occurrence of custodial death, rape and torture that have scarred the record of the law and order apparatus of our country and diminished its standing in the eyes of our people. Indeed, one of the first instructions of the Commission issued on 14th December, 1993 required all State Governments and Union Territory Administration to ask that reports be sent by the DM/SP to the Commission within 24 hours of any occurrence of custodial death or rape, failing which an adverse inferences would be drawn by the Commission.\textsuperscript{51}

In addition to its efforts of prompt and accurate reporting of custodial deaths, the Commission has been deeply concerned that there exists a tendency amongst doctors to manipulate post-mortem reports under the influence or pressure of police or jail officials. Keeping in mind that, there is hardly any independent evidence in case of custodial violence, it had recommended about videography of post-mortem examination. Further, the Commission noted that Autopsy Report Performa of the various States is not comprehensive and left scope for doubt and manipulation. To meet out this lacuna, the Commission prepared a "Model Autopsy Form" and circulated it amongst the States for adoption and utilization.\textsuperscript{52} In all over India, 5500 cases of custodial deaths have been reported to the Commission since it was established.\textsuperscript{53} These cases have been meticulously reviewed in the Commission with the help of its Investigation Division and appropriate orders were passed in respect of them. Since it is not enough for the Commission to react to custodial violence after they have occurred therefore, for better prevention of such acts before they occur, the Commission

\textsuperscript{53} Ibid.
recommended for adoption of the recommendation of the Indian Law Commission made in its 113th report regarding insertion of Section 114 (B) in the Indian Evidence Act to introduce a rebuttable presumption that injuries sustained by a person in police custody may presume to have caused by a police officer, because such a provision could well have a restraining effect on officer engaged in torture.  

The Commission further supported the recommendation of Indian Law Commission to amend Section 197 of the Cr.P.C. to obviate the necessity of governmental sanction for the prosecution of police officer where a prima-facie case has been established in an inquiry conducted by Sessions Judge concerning the Commission of a custodial offence.

The Commission also endorsed the view of the National Police Commission in its first report of 1979 that there should be a mandatory inquiry by a Sessions Judge, in each case of custodial death, rape or grievous hurt. In its continuing effort to end custodial violence, the Commission has taken the view that liability to pay compensation due to the next of kin, of those who have died in custody, should not merely be fixed upon State Governments but the offending police officials should also be held responsible for the same.

Guidelines were also issued in respect of certain other practices having a bearing on human rights. For instance, on 11 January 2000, guidelines were issued in regard to the use of polygraph tests.

(iv) Regarding Prison Administration

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55 Ibid.
56 Ibid.
57 Id., p. 15, (para 3.21).
58 Supra note p. 18, (para 2.26).
Prisons in India are hotbeds for the denial of human rights. Over the year conditions have improved. The Commission has continued to discharge its responsibility to visit, under intimation to the State Government any jail or institution used to detained persons and feels that the State of prison in India is generally marked by gross overcrowding, squalor and maladministration and system cries out for reform.

The need to rewrite the Indian Prison Act, 1894 was initially raised by the Commission in 1994-95 accordingly, the Commission had prepared outline of a Model Prison Bill which would be uniformly applicable throughout the country. It has been pursued ever since, progress to alter the Acts and Manuals on Contemporary lines having recently been made in certain States. In addition, the Commission has made continuous efforts to address issues such as over crowding in jails, lack of sanitation, delay in trial, the payment of wages to prisoners, the remission of sentence and the release of prisoners sentenced to life imprisonment.

[H] HUMAN RIGHTS OF PRISONERS

Human rights are about everyone, including people who are in prison. A prisoner, be he a convict or under-trial or a detenu, does not cease to be a human being. They also have all the rights which a free man has but under some restrictions. Just being in prison doesn’t deprive them from their fundamental rights. Even when lodged in the jail, he continues to enjoy all his Fundamental Rights. On being convicted of crime and deprived of their liberty in accordance with the procedure established by law, prisoners still retain the residue of constitutional rights Some of the human rights and freedoms particularly relevant to prisoners include the rights59:

• Right to be treated with humanity and respect for their dignity
• Right not to be subjected to torture, or cruel, inhuman or degrading treatment
• Right not to be subjected to arbitrary arrest or detention
• Right for accused persons to be separated from convicted persons
• Right to be lodged appropriately based on Proper Classification
• Right to Legal Aid
• Right to Speedy Trial
• Right to reasonable wages in prison
• Right to expression
• Right to meet friend and consult lawyers
• Right to the enjoyment of culture
• Right to the highest attainable standard of physical and mental health
• Right to be free from discrimination.

Prisoners should be able to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits. Thus for a prisoner all fundamental rights are an enforceable reality, though restricted by the fact of imprisonment\(^{60}\).

PRISONERS WITH SPECIAL NEEDS AND THEIRS HUMAN RIGHTS

All prisoners are vulnerable to a certain degree. When the liberty of a group of individuals is restricted and they are placed under the authority of another group of people, and when this takes place in an environment which

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\(^{60}\) Edward Lawson (ed) *Encyclopaedia of Human Rights*, Washing for D.C. and Francis Publication, 1998,
is to a large extent closed to public scrutiny, the abuse of power has proven to be widespread. This is why a range of international and regional instruments have been adopted by the United Nations and regional bodies to ensure that the fundamental human rights of prisoners are protected. It is also why such instruments provide for a variety of mechanisms to safeguard these rights, such as the independent oversight of prisons both by international and national bodies.

However, there are certain groups that are in a particularly vulnerable position in prisons and who therefore need additional care and protection. Some people may experience increased suffering due to inadequate facilities and lack of specialist care available to address their special needs in prison. The prison environment itself will exacerbate their existing problems. These include prisoners with mental health care needs, prisoners with disabilities and older prisoners. Some are at risk of abuse from other prisoners and prison staff, due to prejudicial attitudes and discriminatory perceptions entrenched in society itself, which are more pronounced in the closed environment of prisons. Such groups may suffer from humiliation, physical and psychological abuse and violence, due to their ethnicity, nationality, gender and sexual orientation. Those under sentence of death constitute a special category. They have particular needs relating to the anguish caused by the sentence itself and the intense psychological distress caused by the isolated conditions in which they are held, often for years or decades. Most of these prisoners are, in fact, vulnerable due to more than one reason. They suffer both due to their existing special needs, which are intensified in

prisons, and due to the additional risks they confront, stemming from their particular status\textsuperscript{63}.

To understand their human rights it would not be out of context to deal with some of the categories and their special needs.

1. Prisoners with mental health care needs

Prisoners with mental health care needs comprise a particularly vulnerable group in prisons and have a complex set of needs relating to the protection of their human rights, including provision of appropriate mental health care.

Access to justice: People with mental health care are disadvantaged in their access to justice. They may not be sufficiently aware of their legal rights, may be unable to gain access to legal counsel without assistance, face stigmatization, discrimination and ill-treatment at the hands of law enforcement officials and even at the hands of some health professionals. Since mental disabilities are prevalent among the poor, due to the economic challenges they face in accessing treatment, as well as underlying determinants of mental health, such as adequate nutrition, sanitation and shelter, among others defendants with mental health care needs are likely to need free legal aid, which may not be offered. In the absence of qualified legal assistance, they may be coerced into confessing to an offence, much more readily than other prisoners, due to their mental disability. People with intellectual disability are particularly vulnerable. They may incriminate themselves even if they are innocent. Some studies have shown that most defendants with intellectual disabilities are more often convicted of the offence for which they were arrested, rather than a reduced charge, and plead guilty more readily.

\textsuperscript{63} Id,
**Prison environment:** Prisoners’ right to health is a fundamental human right recognized by numerous international instruments. The right to health encompasses the right to proper health care, equivalent to that in the community, as well as the underlying right to live in an environment, which does not generate or exacerbate disease and mental disabilities. Unfortunately the large majority of prison systems worldwide fail to provide an environment which promotes the physical and mental well-being of its inhabitants. In many countries of the world prisoners are accommodated in overcrowded, poorly ventilated and unsanitary prisons, in an atmosphere that is charged with the perceived or real risk of violence and abuse. Such conditions induce stress, depression and anxiety, which may develop into more serious mental disabilities, if appropriate action is not taken.

**Health care:** Equivalence of health care is a principle that applies to all prisoners, who are entitled to receive the same quality of medical care that is available in the community. However, this right is rarely realized in prisons, where usually health care services, and especially the provision of mental health care, are extremely inadequate. Prison health services are far too often severely under-funded and understaffed and frequently rely solely on medications to manage the symptoms of mental disabilities, rather than providing the type of inter-disciplinary care and supervision which the treatment of mental disabilities requires. Beyond the principle of equivalence, the greater mental health care needs that have been described within prisons, should necessitate the provision of greater mental health care resources, but, in fact, most prisons worldwide are unable to provide any treatment for mental disabilities at all. Adequate screening and monitoring of mental disabilities is key to successful health treatment.
**Discrimination and stigmatization:** The discrimination and stigmatization encountered by people with mental disabilities from the general public are magnified in the closed environment of prisons. Other prisoners are often unwilling to associate with prisoners with mental disabilities, due to similar misconceptions and fears most people in society have about them. This can lead to the isolation of such prisoners, leading to the further deterioration of their mental health and further stigmatization. The same attitudes are often shared by prison staff, hindering a positive and constructive relationship to be formed between staff and prisoners with mental health care needs, thus perpetuating staff’s lack of understanding of the situation of such prisoners. It is also possible that health care staff themselves may discriminate against those patients with mental disabilities as they may be perceived to be more disruptive, too demanding of time and attention, or because they may be unable to easily communicate their problems and their needs.

**Safety and security:** Persons with mental disabilities are at risk of human rights violations in closed institutions, including in prisons. Prisoners with mental disabilities are vulnerable to abuse, sexual assault and violence by other prisoners. They have difficulty in understanding the prison code, may be intimidated by staff into acting as informers or forced by other prisoners into performing acts that are harmful to them or that get them into trouble. Both male and female prisoners with mental disabilities often become victims of rape in the prison setting. Female prisoners are particularly vulnerable. Despite differences, persons with all sorts of mental disabilities are vulnerable to many similar human rights abuses although, because of their varying ability to protect their own interests without assistance, persons with intellectual disabilities are often especially vulnerable.
Risk of suicide: and self-harm International studies indicate that suicide rates in prisons significantly exceed those in the general population and have been increasing within the last decades in some countries. Long-term sentences, single-cell use, mental disabilities, substance abuse and a history of suicidal tendencies are associated with an increased suicide risk.25 Although suicides and incidents of self-harm in prison settings are not only associated with mental disabilities, suicide, and in most cases also self-harm, are clearly associated with depression, at least, if not with more serious psychosocial or psychiatric disabilities. Research in some countries indicates that prisoners who commit suicide suffered from some form of mental disability or substance dependence (or both) on entry to prison.

2. Prisoners with disabilities

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. The special needs of prisoners with disabilities naturally depend on the nature of their disability, though there are some key concerns that are common to all.

Access to justice: Offenders with disabilities face disadvantages at various stages of the criminal justice system. They may be indirectly discriminated against in their access to justice, if the special assistance they need is not provided. In the absence of appropriate training and sensitization, law enforcement officials may demonstrate lack of understanding or even be actively hostile in their treatment of individuals with disabilities.64

64 Handbook on Prison with Special Need, Newyork, UN Publication, 2009
Protection needs: Due to their vulnerable physical condition, prisoners with disabilities are easy targets for abuse and violence from other prisoners and prison staff. Prison guards may, for example, confiscate from prisoners wheelchairs, crutches, braces, hearing aids, glasses and medications. Prisoners who need special assistance with daily activities, such as eating, dressing and bathing, may be simply ignored. They may be left without meals and forced to urinate on themselves in the absence of bathroom assistance. Prisoners with disabilities may be psychologically abused, for example, by the moving around of furniture in the cell of a visually impaired prisoner or by verbal taunts. Women prisoners with disabilities are at a particularly high risk of manipulation, violence, sexual abuse and rape.

Discrimination: People with disabilities are liable to face discrimination directly or indirectly throughout their lives. Prisoners with disabilities encounter difficulties in accessing services, complying with rules and participating in prison activities that do not take account of their special needs. Due to architectural barriers, prisoners with mobility impairments may be unable to access dining areas, libraries, sanitary facilities, work, recreation and visiting rooms. Prisoners with visual disabilities cannot read their own mail unassisted or prison rules and regulations, unless they are provided in Braille. They are unable to use the library, unless taped materials or books in Braille are available. Prisoners with a hearing or speaking disability may be denied interpreters, making it impossible for them to participate in various prison activities, including counseling programmers, as well as their own parole and disciplinary hearings. Prisoners with disabilities can be routinely denied participation in work programs outside prison, sometimes significantly lengthening their periods of imprisonment.

\[^{65}\text{Id}\]
**Health care:** Prisoners with disabilities may have particular health care needs related to their disability, such as physiotherapy, regular eyesight and hearing examinations and occupational therapy, some of which may be difficult to meet in prisons. They also need access to tools and services that enable them to enjoy their human rights in prisons to the fullest possible extent, such as hearing aids, wheel chairs, canes and orthotics.

3. **Prisoners under sentence of death**

The term prisoners under sentence of death covers all prisoners who have been sentenced to death by a court of law and who are held in prison awaiting execution, pending a decision by the higher courts confirming or commuting the sentence, or pending a decision by legislators to abolish the death penalty. Such prisoners include those who are awaiting the decision of an appeals court, those who are awaiting the result of an application for pardon or commutation and those who are being held in prison due to a moratorium on executions in the country of imprisonment.\(^6^6\)

**Isolation and mental health:** Prisoners under sentence of death spend over a decade awaiting execution. Some prisoners have been on death row for well over 20 years. In most countries, prisoners on death row are segregated from others and held in some form of solitary confinement. Prisoners under sentence of death often spend 23-24 hours a day alone in their cells. Thus in practice prisoners under sentence of death are often subjected to two distinct punishments: the death sentence itself, and the years of living in conditions tantamount to solitary confinement, which is a severe form of punishment that may be used only for very limited periods for general population

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prisoners. Psychologists and lawyers have argued that lengthy periods spent in these conditions can make inmates suicidal, delusional and insane.

**Informing the date of execution:** In some countries prisoners are not informed of their date of execution to give them time to prepare, including by meeting with family members and a religious representative, if they so wish. The anguish and suffering involved in not knowing when the execution might take place is shared by the family of the prisoner. In a number of countries there is complete secrecy surrounding the date of execution, an absence of any formal notification prior to and after the execution and the refusal to hand over the body to the family for burial, causing family members turmoil, fear and anguish over the fate of their loved ones. The practice of maintaining families in a state of uncertainty amounts to cruel and inhuman treatment. The United Nations has expressed its concerns about such practices in a number of countries.

**Methods of execution:** Where capital punishment occurs, it must be carried out so as to inflict the minimum possible suffering\(^\text{67}\). In resolution 2005/59, adopted on 20 April 2005, the United Nations Commission on Human Rights urged all states that still maintain the death penalty “to ensure that any application of particularly cruel or inhuman means of execution, such as stoning, be stopped immediately”. (Article 7(i)). In the same resolution the Human Rights Commission urged to ensure that, where capital punishment occurs, it “shall not be carried out in public or in any other degrading manner” (article 7 (i)). Unfortunately, death by stoning, public hanging, flogging and amputations prior to execution, are practices used in a number of countries worldwide, causing immense suffering to those being executed,

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while forcing public participation and complicity in an act that violates the right to life and the right not to be subjected to cruel and inhuman treatment.

4. Women Prisoners

Because the majority of prisoners are male, prison programs often focus on issues faced by male prisoners and overlook those faced by female prisoners. Yet women have very different needs from men they have specific health needs for gynecological and obstetric care; they are more likely to have been the primary caretakers for children before their incarceration, and many give birth while in prison; they are particularly vulnerable to sexual and physical abuse and have often been the victims of abuse before coming to prison; they are more likely to suffer from mental and emotional problems; they are more likely to be ostracized than men in the same situation when they try to return to their families and communities. Although women remain a small percentage of the total number in prison, their numbers are growing, and there is increasing concern among penal reformers about the problems and how to work to improve their situation.

Types of Civil Rights Abuses Occur in Female Prisons

- Sexual harassment or assault of female prisoners by prison guards, employees, or officers
- Inadequate medical or mental health treatment of prisoners
- Keeping prisoners in unsafe or unsanitary conditions
- Denying prisoners their right to contest the treatment they receive and the conditions in which they are kept

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• Inaccessibility of Legal Services
• Torture in Custody

Women Prisoners’ Rights: The different types of human rights.
Constitutional rights and statutory rights of women prisoners are discussed as under:

1. The search and examination of the female prisoners shall be carried out by the Matron under the general or special order of the Medical Officer;
2. The female prisoners have the right to live separate from the male prisoners.
3. All the prisoners have the basic human rights such as hygienic food, shelter, medical facilities and facilities of reading and writing. They must be treated with dignity in the custody and cannot be isolated in a separate cell, except on medical grounds or if he/she has proven to be dangerous to other prisoners
4. It is the human right of a pregnant lady to have full facility (medical and personal) at the time of delivery. Women prisoners who are pregnant cannot be provided the full facilities during the pregnancy. Hence at the time of delivery they can be released on bail for the delivery.
5. In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution. No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer. Women prisoners shall be attended and supervised only by
women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women.  

6. In women’s institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate. Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.  

7. The National Commission for Protection of Child Rights (NCPCR) has recommended that women in jail who are pregnant, ill or have children dependent on them should be considered for early release on personal bonds.  

8. The guidelines prepared by NCPCR state that while the nature of the crime cannot be overlooked, the condition of women prisoners could be considered when they have few means and are responsible for young children.  

9. Article 39 A of the Constitution of India empowers the women prisoners to secure free legal aid.  

10. Before sending a woman who is pregnant to a jail, the concerned authorities must ensure that jail in question has the basic minimum facilities for child delivery as well as for providing pre-natal and post-natal care.

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70 Id , Rule 23(1) & 23(2)
post-natal care for both, the mother and the child. Gynecological examination of female prisoners shall be performed in the District Government Hospital\textsuperscript{71}.