Chapter IV
Protection of Human Rights of prisoners- Constitutional and Judicial Perspective

The freedom fighters even before India became an independent Nation came into being have expressed their willingness to join attempts towards establishing peace and harmony all over the world ensuring basic Human Rights to all human society. The constitution of India instituted equality, provides right to freedom of speech and expression, peaceful assembly, freedom from arbitrary arrest, protection of life and liberty right against exploitation, freedom of conscience and free profession, practice and propagation of religion and educational and cultural rights. It also provided teeth to those rights by making them enforceable by direct access to the Supreme Court of India. In the comprehension of the Supreme Court the right to life and liberty includes, right to human dignity, right to privacy, right to speedy trial, right to free legal aid, right to be prisoner to be treated with dignity and humanity, right to bail, right to compensate for custodial death, right of workers to fair wage and human conditions of work, right to security, right to education and right to health environment. The Supreme Court of India interpreted Art 21 of the Constitution and shows much interest on prison reforms. The Supreme Court all the time balanced the reformatory theory of punishment, i.e., the Apex Court maintaining the severity of punishment wherever necessary and considering the gravity of crime and circumstances in which it is committed. The penological approach of the Indian Judiciary itself inhumane.

4.1 Protection of Prisoners Rights in India

A prison, jail or correctional facility is a place where individuals are physically confined or detained and usually deprived of a range of personal freedom. These institutions are an integral part of the criminal justice system of a country. There are various types of prisons such as those exclusively for adults, children, female, convicted prisoners, under trial prisoners, detainees and separate facilities for

181 A.P.Singh, Human Rights: The Indian Context, AIR 2000(Journal Section 8)
183 Dr.Gurbax Singh, Law relating to Protection of Human Rights and Human Values, Vinod Publicationos (p). Ltd.,2008
mentally ill offenders. They are also correctional facilities. The India’s penal system is still largely based on legislation from colonial times (Penal Code, 1860; Police Act, 1861; Prisoners Act, 1900; Prisons Act, 1894) and where new legislation has been put into place, there is a lack of adequate training relating to the new regulations creating an implementation gap. The Report of the recent Working Group of the UPR (2012) showed the Government’s acceptance of recommendations to ratify OPCAT, improve training on human rights and promote women’s rights and eliminate discrimination against women. The concept of protection of rights of the people accused of committing crime and rights of prisoners in the administration of criminal justice has been continuously changing and developing over time. The State is under an obligation for protecting the human rights of its citizens as well as to protect the society at large, and is authorized to do so. To protect the citizens from any possible abuse of this authority, they are given certain basic privileges recognized by the Constitution of India as Rights. Elevation of such claims to the status of Rights, gives the citizens the capacity to evoke the power of the Judiciary to protect themselves against violation of such rights, as well as to seek redressal for their restitution.

The Supreme Court of India, by interpreting Article 21 of the Constitution, has developed human rights jurisprudence for the preservation and protection of prisoner’s rights to maintain human dignity. Prison jurisprudence since the late ‘60s recognizes that prisoners do not lose all their rights because of imprisonment. There is a loss of rights within custodial institutions continue to occur. Beginning with the first few instances in the late 1970’s, the category of Public Interest Litigation (PIL) has come to be associated with its own people-friendly procedures. The foremost change came in the form of the dilution of the requirement of ‘locus standi’ for initiating proceedings. Since the intent was to improve access to justice for those who were otherwise too poor to move the courts or were unaware of their legal entitlements, the Court allowed actions to be brought on their behalf by social activists and lawyers. The need for prison reforms has come into focus during the

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184 violations of the rights of the accused and the convicted in India, Sudipto Roy Department of Criminology, Indiana State University, Terre Haute, IN 47809
185 Rights of prisoners and convicts under the criminal justice administration by Justice T.S.Sivagnanam Judge, High Court, Madras, National Judicial Academy Regional Judicial Conference, Organised by High Court, Madras, Tamil Nadu State Judicial Academy and The National Judicial Academy, 24.02.2012 to 26.02.2012
186 Judicial activism under the Indian constitution’, Address by Hon’ble Mr. K.G. Balakrishnan, Chief Justice of India (Trinity College Dublin, Ireland – October 14, 2009)
last few decades. The Supreme Court and the High Courts have commented upon the deplorable conditions prevailing inside the prisons, resulting in violation of prisoner’s rights. The problem of prison administration has been examined by numerous expert bodies set up by the Government of India. The most comprehensive examination was done by the All India Jail reforms Committee of 1980-83, popularly known as the Mulla Committee. The National and the State Human Rights Commission have also, in their annual reports, drawn attention to the appalling conditions in the prisons and urged governments to introduce reforms.

Prisoners’ rights have become an important item in the agenda of prison reforms. This is essentially due to the recognition of two important principles. Firstly, the prisoner is no longer regarded as an object, a ward, or a slave of the state, the law would leave at the prison entrance and who would be condemned to civil death. It is increasingly been recognized that a citizen does not cease to be a citizen just because he has become a prisoner. The Supreme Court has made it very clear in many judgments that except for the fact that the compulsion to live in a prison entails by its own force the deprivation of certain rights, like the right to move freely or to practice a profession of one’s choice, a prisoner is otherwise entitled to the basic freedoms guaranteed by the Constitution. Secondly, the convicted persons go to prison. Prison sentence has to be carried out as per courts orders and no additional punishment can be inflicted by the prison authorities without sanction. Prison authorities have to be, therefore, accountable for the manner they exercise their custody over persons in their care, especially as regards their wide discretionary powers. Under the Indian Constitution, the subject of prisons is transferred from central list to state list and is mentioned in the Seventh Schedule. Thus importance is given to the prisoners for their better maintenance and improvements in prisons. The State governments constituted committees on jail reforms for the protection of prisoner’s rights. The Protection of the prisoners is discussed under the Indian Constitution as well as Indian laws relating to the prisons. The Supreme Court and High Court decisions played a crucial role in protection of prisoners’ rights. In The

188 Charles Shobraj vs. Superintendent, Tihar Jail, AIR 1978, SC 1514
first decade, after the Independence great efforts are taken for the improvements of living conditions in prisons. For this, number of committees appointed on Jail reforms by the State Governments, to meet certain goals of humanization of prison conditions.

The Government of India invited from the United Nations an expert Dr. W. C. Reckless, a U.N. on Correctional Work and he visited India during the years 1951-52 to study prison administration in the country and to suggest ways and means of improving it. His report Jail Administration in India\textsuperscript{190} is another landmark document in the history of prison reforms. He made a plea for transforming prisons into reformation centers and advocated establishment of new prisons. He made the recommendations on Juvenile delinquents should not be handed over by the courts to the prisons are meant for adult offenders. A cadre of properly trained personnel was essential to man prison services. Specialized training of correctional personnel should be introduced. Outdated Prison Manuals be revised suitably and legal substitutes should be introduced for short sentences. Full time Probation and Revising Boards be set up for the after-care services and also the establishment of such boards for selection of prisoners for premature release. An integrated Department of Correctional Administration be set up in each State comprising of Prisons, Borstals, Children institutions, probation services and after-care Services. An Advisory Board for Correctional Administration should be set up at the Central Government level to help the State Governments in development of correctional programmes. A national forum is to be created for exchange of professional expertise and experience in the field of correctional administration. A conference of senior staff of correctional departments should be held periodically at regular intervals.\textsuperscript{191} After the, Dr. W. C. Reckless recommendation on Jail conditions in India, the central government appointed committee on All India Jail Manual Committee in 1957 to prepare a Model Prison Manual for usage of all state governments and Union territories. This committee examined the prison administration problems and to make suitable suggestions for improvements of prison conditions in India. The major and important committee on prison reforms, which the Government of India has constituted All India Committee on Jail Reforms under the chairmanship of Mr. Justice A. N. Mulla in 1980 the

\textsuperscript{190} Orissa Jail Reforms Committee Report, 1981, (Chairmen Harihar Mahapatra), op.cit. p 4
\textsuperscript{191} Draft National Policy on Prison Reform and Correctional Administration Part – I, Historical Review of Prison Reforms in India
committee submitted their report in 1983. This committee examined all aspects of prison administration and made suitable recommendation respecting various issues involved. A total of 658 recommendations made by this committee on various issues on prison management were circulated to all State governments and Union Territories for its implementation, because the responsibility of managing the prisons is that of the State Governments.\textsuperscript{192} This committee strongly suggested in proposing the Model Prison Manual and the purpose and justification of a sentence of imprisonment is to protect society against crime. The punishment inherent in imprisonments primarily consists in deprivation of liberty involving compulsory confinement and consequent segregation from normal society. In carrying out that punishment, the Prison Administration should aim at ensuring the return of an offender in society not only willing but also able to lead a well adjusted and self supporting life. Imprisonment and other measures results in cutting-off an offender from the outside world are afflictive by the very fact of taking away from him the light of self determination.\textsuperscript{193}

Justice A.N.Mulla Committee recommendations were on Prisons reforms for the Development of prisoner rights and for the consideration of Central and State Governments. Among the important suggestions were made by the committee. Those are Development Principle of National Policy on Prisons should be formulated and embodied in Part IV of the Constitution of India, the subject of prisons and allied institutions should be include in the Concurrent List of the Seventh Schedule to the Constitution of India, provision for uniform framework for correctional administration by a consolidated, new and uniform Comprehensive legislation to be enacted by the Parliament for the entire country, Revision of Jail Manuals should be given top priority and Suitable amendment of Indian Penal Code.\textsuperscript{194}

Justice A.N.Mulla Committee examined conditions of the prisons, prisoner position in law and their living conditions in jails. The Committee visited number of jails in India prepared a report containing suggestions to all areas of prisons, like legislation amendment in criminal laws, protection to women prisoners, convicted prisoners, Right of undertrail prisoners and prison administration. The committee strongly recommended to the central government to issue directions to the State

\textsuperscript{192} The All India Committee on Jail Reforms (1980-1983)
\textsuperscript{194} Justice. A.N.Mulla, All Indian Committee on Jail Reforms(1980-83) Vol.II, Government of India Press, Minto Road, New Delhi.
Governments and Union Territory Governments to take necessary steps to prevent violations of prisoner rights in prison and adopt committee recommendations for the protection of prisoners and prison administration. This committee recommendation resulted in the improved protection of prisoners rights and conditions in jails. The states also has undertaken appropriate steps to prevent atrocities in prisons and the judiciary also identified the prisoners basic human rights by interpreting constitutional provisions in their favour.

The Government of India further constituted a Committee on women prisoners in May 1986 under the Chairmanship of Justice V.R.Krishna Iyer. This committee submitted its report on 01-06-1987. The major recommendations of this committee were to make provisions of a national policy relating to women prisoners in India, formation of new rules and regulations relating to their punishment and conduct; Maintenance of proper co-ordination among the Police, Law and Prison for providing justice to women prisoners. Provision of Legal Aid, Construction of separate Prisons or separate building in same prison for the women prisoners, Proper care of the baby born in jail to a women prisoner and provisions of nutritious diet for the mother and the child. Justice V.R.Krishna Iyer committee gave suggestions to the central government for the protection of women prisoners, and also the protection of children of the women prisoners who are residing with their mothers in jails. The committee mainly suggested that to provide diet to the children of the women prisoners, for the protection measures of women prisoners, construct separate building for them and for guarding them only female jail staff to be appointed. In 1999, a draft Model Prisons Management Bill (The Prison Administration and Treatment of Prisoners Bill- 1998) was circulated to replace the Prison Act 1894 by the Government of India to the respective states. In 2000, the Ministry of Home Affairs, Government of India, appointed a Committee for the Formulation of a Model Prison Manual would be a pragmatic prison manual, in order to improve the Indian prison management and administration. The All India Committee on Jail Reforms, the Supreme Court of India and the Committee of Empowerment of Women have all highlighted the need for a comprehensive revision of the prison laws but the pace of any change has been disappointing. The committee was set up by the Ministry of Home Affairs in the

\[195\] Amrendra Mohanty and Narayana Hazary, Indian Prison System,p30
Bureau of Police Research and Development for the new prison policy for all the states and union territories. The jail manual drafted by the committee was accepted by the Central government and circulated to State governments in late December 2003. The Supreme Court of India has however expanded the horizons of prisoner rights jurisprudence through a series of judgments.

The Govt. of India was undertaken necessary steps to prevent, the violations on prisoners in prisons by the prison authorities. For this, Model Prison Manual for all the states and Union Territories for uniform reforms throughout India. The Model Prison Manual Prepared by the Bureau of Police Research and Development under the Ministry of Home Affairs, New Delhi was enacted number of statutes for the protection of prisoners and their rights violations by the prison authorities and others. Some of the statutes are The Prisons Act, 1984, The Prisoners Act, 1900, The Code of Criminal Procedure, 1973 and The Juvenile Justice Act etc., In India, the framers of the Constitution are well aware of the significance of the right to life and personal liberty. They have placed this right in a pivotal position in Article 21 of the Constitution. The Supreme Court has ruled that the Right to Life and liberty guaranteed under the Art 21 of the Constitution of India includes. Cruel, inhuman, degrading treatment, or punishment is not permissible. The rights include those expressly recognized under the various Indian laws governing prisoners, the Supreme Court and High Court rulings as well as those recommended by expert committees. Each category lists the corresponding duties of the prison staff and other officers of the criminal justice system. The broad categories of rights are not exhaustive as this field is still developing. The Govt. of India has taken serious steps on Prison Reforms, constituted number of experts committees on prison conditions and protection of prisoners rights, including women prisoners. All the states and union territories also framed separate rules and regulations for the administration of prisons, the protection of prisoner rights from violation of their rights. The central government enacted several statutes for the protection of prisoner rights and prison administration. The constitution of India guaranteed certain

196 Francis Coralie Mullin Vs Adm, inistration, Union Teritory of Delhi, AIR 1981 SC 746
197 These are-Prisons Act, 1894, The Prisoners Act, 1900, Identification of Prisoners Act,1920, Transfer of Prisoners Act 1950, Prisoners (Attendance in Courts) Act 1955, Civil Jails Act 1874, Borstal Schools Act and Habitual Offenders Act, the Jail Manuals of each state and day to day administration of prisons in states.
198 R. SreeKumar, Handbook for Prison Visitors, pp. 5-14
fundamental rights to the prisoners under Art.21 right to life and personal liberty. The Supreme Court of India identified various rights of prisoners and interpreted them under the constitutional provisions and protection of those rights issued directions to the central and state governments. The prisoners position after independence is changed from barbaric to reformation. The State of Andhra Pradesh also enacted the Andhra Pradesh Prison Rules, 1979 for the day to day administration of prisons and protection of prisoners rights in prisons. The Committee on Reforms of the Criminal Justice System was constituted by the Government of India, Ministry of Home Affairs by its order dated 24 November 2000, to consider measures for revamping the Criminal Justice System. The Committee was constituted under the Chairmanship of Justice V.S.Malimath former Chief Justice of Karnataka and Kerala High Courts, Chairman, Central Administrative Tribunal and Member of the Human Rights Commission.

4.2. Constitutional and Judicial Approach:

A society that believes in the worth of the individuals can have the quality of its belief judged, at least in part, by the quality of its prisons and made available to them. It is the human life that necessitates human rights. Civilized society organized with law and a system as such, it is essential to ensure for every citizen a reasonably dignified life. Thus every right is a human right as that helps a human to live like a human being. Even the person is deprived some of his rights due to commission of some wrongs, he is entitled to their rights unaffected by the punishment for wrongs. Particularly the principles and objectives of criminology and penology are acquiring a human face the enforcement of human rights assume a very great relevance. The basic conception is a person is under trial or convicted, his rights cannot be discarded as a whole. The Indian socio-legal system is based on non-violence, mutual respect and human dignity of the individual. If a person commits any crime, it does not mean that by committing a crime, he ceases to be a human being and that he can be deprived of those aspects of life which constitutes human dignity. Field, J. has expanded the connotation of life and rightly said that it is something more than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed.
The Constitution of India was adopted on November 26, 1949 and all its provisions came into force on 26th January, 1950, is referred as commencement of constitution. The framers of Indian Constitution were deeply concerned with the minority problem in India, economic and political exploitation of the people under British rule and the prevailing social disparities among the different segment of the population. Thus, keeping in view the great ideals of Mahatma Gandhi and the growing consciousness towards international human rights movement, the framers of the constitution provided for fundamental rights in the constitution. These rights though initially influenced by the American Bill of Rights, differ from them in some important respects. The provisions for reasonable restrictions are provided in the constitution. Itself\(^9\) the advent of independence, the constitution of India not only recognized and incorporated in its part III various human rights and fundamental freedoms contained in international instruments but also provided mechanism for their enforcement.

The fundamental rights guaranteed under the Constitution are not absolute and many restrictions have been imposed on their enjoyment. Right to freedom of person is one of the most important rights among the fundamental rights.\(^{200}\) Articles of 19 to 22 as contained in part III of the Constitution of India, the constitution has guaranteed certain rights to the accused. Art 19 of the Constitution has guaranteed certain freedoms to the citizens only and also the restrictions that may be imposed on them by the State. Art 20 deals with the protection in respect of conviction for offences under certain circumstances. Art 21 specifically deals with the protection of life and personal liberty. Art 22 provides certain safeguards to the persons arrested or detained. The fundamental right to life, article 21 deals with, is the most precious human right and forms the arc of all other rights.\(^{201}\) The protection of Article 21 is available even to convict in Jails. The convicts are not deprived of all the fundamental

200. The right to freedom of the person comprises the following:—
Article 20(1) protection against ex-post facto laws:
Article 20(2) protection against double jeopardy?
Article 20(3) privilege against self incrimination,
Article 21 Protectin of life and personal liberty,
Article: 22(1 to 3)protection in case of arrest
Article: 22(4 to 7) safeguards in case of preventive detention.
The fundamental rights under Article 19 are conferred only on citizens, but the discussed above are available to all persons, whether citizens or not.
rights they otherwise possess.\textsuperscript{202} Article 21 of the Constitution guarantees the right of life and personal liberty and thereby prohibits any inhuman, cruel or degrading treatments to any person, whether he is a national or foreigner. The Supreme Court of India, by interpreting Article 21 of the Constitution, has developed human rights jurisprudence for the preservation and protection of prisoners' right to human dignity. A prisoner, be he a convict or under-trial or a detenue, 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 of their fundamental rights. Even when lodged in jail, they continue to enjoy all their fundamental rights.\textsuperscript{203} Inspite of these provisions the treatment of prisoners inside the prisons was cruel and barbarous. When a person is convicted, it was thought that lost all the rights. The prison community was treated as a closed system and there was no access to outsiders in the affairs of the prisoners. The authorities under the guise of discipline inflicted injuries upon the inmates. The scope of judicial review against the acts of prison authorities was very restricted. The courts were reluctant to interfere in the affairs of the prisoners and it was completely left to the discretion of the executive.

Gradually when the judiciary interfered change came where in prisoners were also treated as human beings.\textsuperscript{204} The origin of the prisoner rights in India, the embryo one can find in the celebrated decision of A.K.Gopalan vs. State of Madras\textsuperscript{205}. One of the main contentions raised by the petitioner was that the phrase procedure established by law as contained in article 21 of the Constitution includes a fair and reasonable procedure and not a mere semblance of procedure prescribed by the State for the deprivation of life or personal liberty of individuals. The majority view in Gopalan’s was that a person is totally deprived of his personal liberty under a procedure established by law, the fundamental rights including the right to freedom of movement are not available. In D.B.M. Patnaik vs. State of Andhra Pradesh\textsuperscript{206}, the Supreme Court said, A convict has no right, more than anyone else, to dictate, where guard to be posted to prevent the escape of prisoners. The installation of live wire mechanism does not offend their right. It is a preventive measure intended to act as a

\textsuperscript{202} Dr. Gurbax Singh, Law Relating to Protection of Human Rights and Human values, Vinod Publications (P).Ltd, Delhi
\textsuperscript{204} A.Sirajudeen, Law and practice of Rights of Prisoners, Associated Book Company, 2008, p. 857
\textsuperscript{205} A.I.R. 1950 S.C. 27.
\textsuperscript{206} A.I.R. 1974 , S.C. 2093
deterrent and cause death only a prisoner causes death by scaling the wall while attempting to escape from lawful custody. The installation of live wire does not by itself cause the death of the prisoner. The Supreme Court held that taking preventive measures like installation of live wire, for the protection of prisoners under Art 21 of the Constitution, deals with life and personal liberty is not violative of their rights. The Court had to consider the relationship of Articles 19 and 21 with the prisoner rights in Karak Singh Vs State of U.P; the petitioner challenged the constitutional validity of regulation 236 of the U.P. Police Regulations. According to Subba Rao, J. who dissented in Karak Singh, it is not to correct to say that the expression personal liberty in Article 21 excludes the attributes of freedom specified in Article 19 of the Constitution. According to Justice N. Raja Gopala Ayyangar held that, (1) Secret picketing of house does not violate Art 21. (2) The meaning life and personal liberty as lay down by the majority of the Supreme Court judges in A.K.Gopalan case and (3). The right to privacy was not guaranteed under article 21 of the constitution. However, they found that domiciliary visits to the houses of suspects violate article 21 in as much as adversely affect the personal liberty of the persons concerned.

The Supreme Court in Charles Shobraj v. Superintendent, Central Jail, Tihar analyzed in detail the extent of judicial interference. The Supreme Court not only reiterated the power of courts to issue writs but also highlighted their duty and authority to see that the judicial warrant was not misused. The prisoners should get the protection of the fundamental rights guaranteed to the citizens under the Indian Constitution against any arbitrary and discriminatory treatment by the prison authorities. In Charles Shobraj case, the Supreme Court held that the prison authorities are justified in classifying between dangerous prisoners and ordinary prisoners. While dismissing the petition the court held that in the present case the petitioner is not under solitary confinement. A distinction between under trial and convict is reasonable and the petitioner is now a convict. The lazy relaxation on security is a profession risk inside the prison. The Supreme Court discussed the

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207 Dr. Gurbax Singh, Law Relating to Protection of Human Rights and Human values, Vinod Publications (P).Ltd, Delhi
209 Karak Singh Vs State of U.P AIR 1963 SC 1295
211 A.I.R. 1978 S.C. 1594. For a critical comment of this case see G.Sadasivan Nair, "Prison Justice and the Court", [1978] CULR 336
relation between Art 19 and 21 of the constitution. The court condemned the inhuman
treatment of prisoners in prisons and the constitutional provisions and municipal laws
should be interpreted for the protection of prisoner rights.

In Francis Coralie Mullin v. The Administrator, Union Territory of Delhi.\textsuperscript{212} The right to Life protected under Article 21 is not confined merely to the right of
physical existence but it also includes within its broad matrix the right to the use of
every faculty or limb through life is enjoyed as also the right to live with basic human
dignity. The supreme court held that the detent’s right to have interview with his
lawyer and family members is part of his personal liberty guaranteed by Art 21 of the
constitution and cannot be interfered with expect in accordance with reasonable, fair
and just procedure established by law.\textsuperscript{213} This case is regarding the validity of
provisions of COFEPOSA to meet prisoner’s lawyer and family members, the
Supreme Court said that, the consulting a lawyer and family members comes under
personal liberty of Art 21 of the constitution. The about prisoner rights was created
among the people by a number of decisions. But no substantial reform has been made
by the Central Government or the State Governments except the appointment of some
Prison Reforms Committees.\textsuperscript{214} In spite of this the Supreme Court had taken initiative
in order to humanize jail administration to some extent. The two Sunil Batra’s cases
are significant decisions in this direction.\textsuperscript{215} The Supreme Court has directed that the
treatment of prisoners must be commensurate with his sentence and satisfy the tests of
Articles 14, 19 and 21 of the Constitution. It expanded the scope of the writ of habeas
corpus by recognizing the right of a prisoner to invoke the writ against prison
excesses inflicted on him or on a co-prisoner. Further, the court gave many directions
to improve the prison administration. The Supreme Court has ruled that lawyers
ominated by the district Magistrates, session’s judges, High Courts and the supreme
courts will be given all facilities for interviews. The jail visits and confidential
communications with prisoners, subject to discipline and other security
considerations.\textsuperscript{216} In the Supreme Court recognized treatment of prisoners and relate
to the provisions of the constitution under Art 14, 19 and 21. The court has given

\begin{itemize}
\item \textsuperscript{212} A.I.R., 1981 SC 746,
\item \textsuperscript{213} Dr. Gurbax Singh, Law Relating to Protection of Human Rights and Human values, Vinod Publications (P).Ltd, Delhi, p. 113
\item \textsuperscript{214} In 1980 the Government of India appointed Mulla Committee en Jail Reforms. Justice A.N.MuLa was the Chairman of the
Committee. Ismail Committee was appointed in Tamil Nadu.
\item \textsuperscript{215} Sunii_Batra (I) Vs Delhi Administration, A.I.R. 1978 S.C. 1617,
\item \textsuperscript{216}Sunil Batra Vs Delhi Administration, A.I.R. 1980 SC 1579
\end{itemize}
directions to the prison authorities to treat the prisoners with human dignity and judiciary was interfered with the prison administration for the protection of prisoner rights.

The important question in M.H.Hosket v. State of Maharashtrasa\textsuperscript{217} was whether the right of appeal is an integral part of the fair procedure as envisaged in Article 21 of the Constitution. In Hoskot a Reader in the Saurashtra University was convicted for offences of attempting to issue counterfeit University degrees. The session’s court sentenced the person till rising of the court. High Court found time sentence too lenient and awarded 3 years rigorous imprisonment. Against this heavy sentence the accused approached the Supreme Court by special leave. The High Court judgment was pronounced in 1973 and the special leave petition was filed only after four years. The petitioner has undergone his full term of imprisonment during this period. A thorough probe by the Supreme Court has revealed that a free copy of the judgment has been sent promptly by the High Court, meant for the applicant, that the Superintendent, Yervada Central Prison, Pune.\textsuperscript{218} The petitioner contented that he did not get the copy. There was nothing on record bears his signature in taken of receipt of the High Court's judgment. The Court did not allow the special leave petition. The Supreme Court indiscriminately criticized the Sessions Court judgment awarding a nominal punishment to the prisoner under the corrective aspect of the punishment.\textsuperscript{219} The Court held that the state having responsibility to provide free legal aid and to issue of judgment to the prisoners as the rights are guaranteed under Art. 39A and Art. 21 of the Constitution. In Hussainara Khatoon Vs Home. Secretary, State of Bihar\textsuperscript{220} the court has observed that even under our constitution, though speedy trail is not specifically enumerated fundamental right, it is implicit in the board sweep and content of Article of 21 as interpreted by the supreme court in Maneka Gandhi’s\textsuperscript{221} case. It is an integral and essential part of the fundamental right to life and personal liberty. Every prisoner is having a right to attend the case in trail. The speedy trail is an integral part of prisoner right to life and personal liberty guaranteed by the

\textsuperscript{217} A.I.R. 1978 S.C. 1548.
\textsuperscript{218} Criminal Procedure Code 1973, Section 363 provides for furnishing a free copy of the judgment to the accused.
\textsuperscript{220} A.I.R. 1979 S.C. 1360
\textsuperscript{221} 1978 I SCC 248
Constitution for them. The decision of Rudal Shah Vs State of Bihar\textsuperscript{222} was important in two respects. Firstly, it held that violation of a constitutional right can give rise to a civil liability enforceable in a civil court and secondly, it formulates the bases for a theory of liability under a violation of the right to personal liberty can give rise to a civil liability. The decision focused on extreme concern to protect and preserve the fundamental right of a citizen. It also calls for compensatory jurisprudence for illegal detention in prison in India which is considered to be the new trend in the present day context.

4.3 Prison Laws in India

The modern prison in India originated with the Minute by TB Macaulay in 1835. A committee namely Prison Discipline Committee appointed, submitted its report on 1838. The committee recommended increased rigorousness of treatment while rejecting all humanitarian needs and reforms for the prisoners. The recommendations of the Macaulay Committee between 1836-1838, Central Prisons were constructed from 1846. The contemporary Prison administration in India is thus a legacy of British rule. It is based on the notion that the best criminal code can be of little use to a community unless there is good machinery for the infliction of punishments. In 1864, the Second Commission of Inquiry into Jail Management and Discipline made similar recommendations as the 1836 Committee. In addition, this Commission made some specific suggestions regarding accommodation for prisoners, improvement in diet and clothing, bedding and medical care. In 1877, a Conference of Experts met to inquire into prison administration. The conference proposed the enactment of a prison law and a draft bill was prepared. In 1888, the Fourth Jail Commission was appointed. On the basis of its recommendation, a consolidated prison bill was formulated. Provisions regarding the jail offences and punishment were specially examined by a conference of experts on Jail Management. In 1894, the draft bill became law with the assent of the Governor General of India.\textsuperscript{223} Various laws exist for protection of the prisoners in India, some of them are The Prisons Act, 1894, the prisoners Act 1900, The Prisoners (Attendance in Courts) Act, 1955, The

\textsuperscript{222} AIR 1983 SC 1086
Transfer of Prisoners Act, 1950, The Repatriation of Prisoners Act, 2003, The Repatriation of Prisoners Rules, 2004. These statutes are prevailing all over India and some of states enacted their own states laws relating prisons and prisoners. In Andhra Pradesh, The Andhra Pradesh Prisons Rules, 1979 was framed for the administration of prisons as well as prisoners rights protection in a Human Rights perspective. It is the Prisons Act, 1894, on the basis of the present jail management and administration operates in India. This Act has hardly undergone any substantial change. However, the process of review of the prison problems in India continued even after this. In the report of the Indian Jail Committee 1919-20 for the first time in the history of prisons, 'reformation and rehabilitation' of offenders were identified as the objectives of the prison administrator. Several committees and commissions appointed by both central and state governments after Independence have emphasized humanization of the conditions in the prisons. The Prisons Act, 1894 provides certain rights to the prisoners and prison conditions, solitary confinement, inhuman treatment to prisoners in prisons is criticized by the Supreme Court.

Since Independence, prison administration in the country has been a matter of debate an criticism at various public era. In the recent years, the Supreme Court of India has come down heavily on the sub-human conditions obtaining in prisons. In many states, the problems of dilapidated prison structure, overcrowding and congestion, increasing proportion of undertrial prisoners, inadequacy of prison staff, lack of proper care and treatment of prisoners. The present draft of the Model Prison Manual has been prepared on the basis of a national consensus evolved through a cross section of prison administrators and experts drawn from various parts of the country. The Committee prepared the Model Prison Manual, 2003 in Bureau of Police Research Development (BPRD) by the Ministry of Home Affairs. The Model Prison Manual report submitted to the Govt. of India. The central government issued directions to the states and union territory governments to adopt the Model Prison Manual for the prison reforms in their states. In 1980, the Government of India setup a Committee on All India Jail Reforms committee, under the chairmanship of Justice A. N. Mulla. The basic objective of the Committee was to review the laws, rules and regulations keeping in view the overall objective of protecting society and rehabilitating offenders. The conditions in prisons, women prisoners, undertrial
prisoners. Justice A.N. Mulla Committee submitted its report in 1983 in total 658 recommendations are submitted to the government of India. The main Development is Principle of National Policy on Prisons and the prison as the subject to be transferred to concurrent list of seventh schedule, uniform law for the prisons and protection of prisoners for this national policy of prison, revision of Jail Manuals, Suitable amendment of Indian Penal Code.\textsuperscript{224} This committee is most comprehensive and very useful to all the prisoners and prison staff. In 1986, the Central Government of India appointed another important committee under the chairmanship of Justice V.R. Krishna Iyer Committee to undertake a study on the situation of women prisoners in India. It has recommended induction of more women in the police force in view of their special role in tackling women and child offenders. To implement, national policy relating to women prisoners in India; provision of legal aid was given to them, construction of separate Prisons or separate building in same prison for the women prisoners and proper care of the baby born in jail to a women prisoner and provisions of nutritious diet for the mother and the child.

The Andhra Pradesh Government enacted the A.P.Prison Rules in the year 1979 for the day to day administration of prisons and this contains 1111 rules relating to prison administration, the facilities to the prisoners and duties of the jail officers regarding health, diet and security of prisoners. The act contains rules from 730 to 749 are regarding to undertrail prisoners, from 754 to 816 rules are relating to convicted prisoners, The rules from 817 to 831 rules are related to women prisoners in prisons and remissions for the convicted prisoners are mentioned from to 967 to 974 rules. The Subsequent developments have been under taken by the government after the constitutions of these committees are working to be mentioned. The Code of Criminal Procedure some of the sections 303, 304 and 309 relates to the prisoners free legal aid. The state is having responsibility to provide free legal aid to the poor and indigent person. The Human Protection Act, 1993 came into force in India. Under this The National Human Rights Commissions at National Level and State Human Rights Commissions at State level functions for the redressal of human rights violations by the authorities and also individuals. The National Human Rights Commission is Played important role in protecting Human Rights Violations of the Prisoners in India.

\textsuperscript{224} Dr. Gurbax Singh, Law Relating to Protection of Human Rights and Human values, Vinod Publications (P).Ltd, Delhi, p. 113
4.4. Protection Laws for Women & Children in Prisons

The fact that prisoners have higher rates of psychological distress and mental health problems compared to the general population are well established\(^\text{225}\). Needless to say, the rates are much higher in the case of women in custody. Although women still constitute a small minority of the prison population across the world, the number of incarcerated women is increasing\(^\text{226}\). In addition to the common kinds of distress both men and women experience in prison, women are more vulnerable for gender discrimination, neglect, violence, physical and sexual abuse. Studies have documented that relative to their male counterparts, women incarcerated in state prisons are more likely to have mental disorders and a history of physical and sexual abuse\(^\text{227}\). Despite the magnitude of problems, little attention has been given to the unique health concerns of women prisoners. Mental health care and attention to the psychological distress that occurs because of imprisonment of women, is almost non-existent. Although women in detention constitute only around 3 percent of the total prisoners in various jail in the country, their condition is pathetic in terms of the prison’s environment, the treatment meted out to them in the jail and social ostracism they suffer. Women prisoners suffer from greater disabilities than men.

The psychological stress caused by separation from children, the unhelpful attitude of close relations, uncertainly about the future are all factors make their life miserable in jail. The antiquated manuals and insensitive approach of the jail authorities add to their woes\(^\text{228}\). In spite of several legislations and committees, the condition of jails is deplorable. Though the hard fact is known to the administration, nothing is done to address these issues. A prison officer listed the various issues relating to women inmates which includes admission, Classification, Reformation Programme, Vocational Training, Health and Hygiene, Psychological or emotional issues, Visitors and emergency leave, Rehabilitation on release, Resocialisation and acceptance. Women prisoners on admission are in a mentally disturbed condition. He has also highlighted the fact that nearly 60% of inmates suffer from various issues of

\(^\text{228}\) Report of the “ Committee on Empowerment of Women” (2001-2002), 13th Lokasabha dated 17-08-2001
mental health like psychosis, major depression and personality disorder\textsuperscript{229}. In India, the women prisoners have several rights under various legislations and also the recommendations of the different committees appointed by the Central as well as state Governments. Those rights are guaranteed by the Constitution and protected by the Supreme Court. In Sunil Batra Vs Delhi Administration\textsuperscript{230} the Supreme Court stated that a person cannot deprive of his fundamental rights either inmate or outside. The court is having the responsibility to protect the rights of women prisoners, by giving guidelines to the Governments. The women prisoners rights are mentioned in The Prison Act 1894. Since, Prisons is a State subject under Entry 4 of the State Subjects List of the Seventh Schedule to the Constitution of India.\textsuperscript{231} After this, the prison administration came under the state governments’ control.

The prison authorities are having responsibility to separate women prisoners from the male prisoners and the right of women prisoners. Section 27(1) of the Prison Act 1894 provides that in a prison containing female as well as male prisoners, the females shall be imprisoned in separate buildings or separate parts of the same building, in such a manner as to prevent their seeing or conversing or holding any intercourse with the male prisoners; and also this rights are included under Rule 8(a) of Standard Minimum Rules for the Treatment of Prisoners, 1955. The prisoners maintenance from private sources, section 31 of the Prison Act 1894 provides that a civil prisoner or an unconvicted criminal prisoner shall be permitted to maintain himself, and to purchase, or receive from private sources at proper hours, food, clothing, bedding or other necessaries, but subject to examination and to such rules as may be approved by the Inspector General. For the supply of clothing and bedding to the inmates section 33 (1) of the Prison Act, 1894 provides that every civil and unconvicted criminal prisoner unable to provide himself with sufficient clothing and bedding shall be supplied by the Superintendent with such clothing and bedding as may be necessary. The prisoners are having the basic human rights like 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


\textsuperscript{230} AIR 1980 SC 1579

\textsuperscript{231} http://www.vakilbabu.com/Laws/SubList/SLList.htm
medical grounds. It has proven to be dangerous to other prisoners, and also under Article 14 of Geneva Convention relating to war Prisoners, 1948 provides that the Prisoners of war are entitled in all circumstances to respect for their persons and their honour. Women shall be treated with all the regard due to their sex and shall in all cases benefit by treatment as favourable as that granted to men. Prisoners of war shall retain the full civil capacity they enjoyed at the time of their capture. The Detaining Power may not restrict the exercise, either within or without its own territory, of the rights such capacity confers except in so far as the captivity requires. The pregnant women prisoners are provided with all facilities to them in prison, necessary to take her to the outside Hospitals. The Standard Minimum Rules for the Treatment of Prisoners provide under- Rule 53(1) that 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. It is also mentioned 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. Rule 23 further provides that 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. 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 they are not in the care of their mothers. Rule 24 proclaims that the medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects might hamper rehabilitation, and the determination of the physical capacity of every prisoner for

http://Woman & Child Prisoners/Rights of Prisoners in India.htm
work. Rule 25 that the medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed. The medical officer shall report to the director whenever he considers that a prisoner’s physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.\textsuperscript{233} Rule 26 that the medical officer shall regularly inspect and advise the director upon: The quantity, quality, preparation and service of food; The hygiene and cleanliness of the institution and the prisoners; The sanitation, heating, lighting and ventilation of the institution; The suitability and cleanliness of the prisoners’ clothing and bedding; The observance of the rules concerning physical education and sports, in cases where there is no technical personnel in charge of these activities. The director shall take into consideration the reports and advice that the medical officer submits according to rules 25 and 26 and, in case he concurs with the recommendations made, shall take immediate steps to give effect to those recommendations; they are not within his competence or he does not concur with them, he shall immediately submit his own report and the advice of the medical officer to higher authority.\textsuperscript{234}

The National Commission for Protection of Child Rights (NCPCR) has greatly recommended that the early release of pregnant women prisoners and who have infants on their personal bond. The guidelines prepared by NCPCR state that while the nature of the crime cannot be overlooked, the condition of women prisoners could be considered they have few means and are responsible for young children.\textsuperscript{235} Article 39 A of the Constitution of India empowers the women prisoners to secure free legal aid. It provides that the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. But the question arises whether the legal aid provided is sufficient. Every prisoner has the right to seek legal aid needed. Just because a person has been sentenced to imprisonment doesn’t mean his rights can be violated.

\textsuperscript{233} http://unispal.un.org
\textsuperscript{234} http://unispal.un.org
\textsuperscript{235} http://articles.timesofindia.indiatimes.com/2008-05-23/india/27771005_1_women-prisoners-ncpcr-legal-aid
In Sheela Barse vs State of Maharashtra\textsuperscript{236}, the providing legal assistance is state obligation to the women prisoner and that two prisoners who were foreign nationals complained that a lawyer duped and defrauded them and misappropriated almost half of their belongings and jewelery on the plea that he was retaining them for payment of his fees. Supreme Court in Sunil Batra vs Delhi Administration\textsuperscript{237} held that Lawyers nominated by the District Magistrate, Sessions Judge, High Court or the Supreme Court will be given all facilities for interviews, visits and confidential communication with prisoners subject to discipline and security considerations. To provide Legal assistance to a poor or indigent accused, arrested is a constitution right and not only by Article 39A but also by Articles 14 and 21 of the Constitution. It is a necessary sine qua non of justice and where it is not provided, injustice is likely to result and undeniably every act of injustice corrodes the foundations of democracy and rule of law. Section 303 of the Criminal Procedure Code, 1973 empowers the prisoners to be defended by the pleader of their choice and Section 304 of this code provides that in certain cases legal aid is to be provided at state expense. 309 (1) of the criminal procedure code provides that in every inquiry or trial, the proceedings shall be held as expeditiously as possible. Similarly, mere sentence does not restrict the right to freedom of religion.

Women prisoners have the right to speedy trial. This right is guaranteed given by the Constitution, The Supreme court of India in the case of Hussainara Khatoon vs Home Secretary, State of Bihar\textsuperscript{238} stated that speedy trial is a fundamental right implicit in the guarantee of life and personal liberty enshrined in Article 21 of the Constitution and Section 54 of the Code of Criminal Procedure 1973 provides for examination of body of an arrested person by a registered medical practitioner at the request of the arrested person in case of torture and maltreatment in lock ups. But generally women prisoners are not aware about this right.\textsuperscript{239} 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 for both, the mother and the child. Gynaecological examination of

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\textsuperscript{236} AIR 1983 SC 378.
\textsuperscript{237} AIR 1980 SC 1579
\textsuperscript{238} (1980) 1 SCC 81.
\textsuperscript{239} http://www.vakilno1.com/bareacts/CrPc/s54.htm
\end{flushright}
female prisoners shall be performed in the District Government Hospital. The Articles 72 and 161 of the Indian Constitution add a human touch to the country’s judicial process by conferring powers on the President and the Governors of States, respectively to grant pardon or show mercy to the prisoners. The other directive principles which govern them by protecting them are 39(f), 42, 45 and 47. Article 39(f), State to ensure, children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity, childhood and youth are protected against exploitation and moral and material abandonment. Article 42 - Provisions for just, humane conditions of work and maternity beliefs. Article 45 – Provision for free and compulsory education for children up to the age of 14. Article 47- Duty of the State to raise the level of nutrition and the standard of living and to improve public health.

4.5 Role of Apex Court in Protection of Prisoners Rights

One of our basic tenets of our legal system is the benefit of the presumptions of innocence of the accused till he is found guilty at the end of the fair trial on legal evidence. A man convicted, some of his rights are available to a common man are taken away, but that does not mean as stated earlier that he ceases to be a human being. Even a convict has basic Human Rights. Only those rights need to be restricted, because of incarceration, are affected, but the remaining rights are not curtailed by any process of law and the judiciary time and again has recognized those rights by way of different pronouncements. The three organs of Government, the judiciary has become a vanguard of human rights in India. It performs this function mainly by innovative interpretation and application of the human rights provisions of the Constitution. The Supreme Court of India has in the case Ajay Hasia v. Khalid Mujib declared that it has a special responsibility, "to enlarge the range and meaning of the fundamental rights and to advance the human rights jurisprudence." Article 21 states that, protection of life and personal liberty of the Constitution of India is "No person shall be deprived of his life or personal liberty except according to the procedure established by law." The expansion of Article 21 of the Constitution has

241 http://Woman & Child Prisoners/Prison Law and Regulations Indian Law.htm
242 http://indiacode.nic.in/coi/web/coifiles/p04.htm
taken place in two respects, one is the expression "the procedure established by law" received a new interpretation not intended by the founding fathers of the Constitution. In 1950, the very first year of the Constitution, the Supreme Court in the case A.K. Gopalan v. State of Madras\textsuperscript{244} reflecting on the intentions of the Constitution-makers, held that "procedure established by law" only meant that a procedure had to be set by law enacted by a Legislature. This phrase was deliberately used in Article 21 in preference to the American "Due Process" clause. Three decades later, in Maneka Gandhi v. Union of India case, the Supreme Court noted that "the Supreme Court rejected its earlier interpretation and holds that the procedure contemplated under Article 21 is a right, just and fair procedure, not an arbitrary or oppressive procedure\textsuperscript{245}. The procedure, which is reasonable and fair, must now be in conformity with the test of article 14 - "in effect it has become a Due Process." There is no doubt that the experiences of National Emergency (1975-1977) prompted the court to go all out for vindication of human rights. Since then every case of infringement of rights by the Legislature has undergone judicial scrutiny in terms of the new interpretation laid down in the Maneka Gandhi's case. Further, this approach has led to procedural due process innovations such as the right to claim legal aid for the poor and the right to expeditious trial.

The judiciary interprets 'the right to life and personal liberty" to encompass all basic conditions for a life with dignity and liberty. Such an approach allows it to come down heavily on the system of administration of criminal justice and law enforcement. It also brings into the fold of Article 21 all those directive principles of state policy that are essential for a "life with dignity." Thus, the judiciary has interpreted "Life" to include the right to possession of each organ of one's body and a prohibition of torture or inhuman or degrading treatment by Police. In the Francis Coralie Mullin v. The Administrator, Union territory of Delhi\textsuperscript{246}, the Supreme Court held that "life" couldn't be restricted to mere animal existence, or physical survival. The right to life means the right to live with dignity and all that goes with it - the basic necessities of life such as adequate nutrition, clothing, shelter and facilities for reading and writing to them.\textsuperscript{247} The protection of Article 21 is available even to convicts in

\textsuperscript{244} A.I.R. 1950 S.C 27
\textsuperscript{245} A.I.R. 1978 S.C. 597
\textsuperscript{246} AIR 1981 SC 746
\textsuperscript{247} V.K.Sircar, Protection of Human Rights in India, 2004-05, Asia Law House, Hyd
jails. The convicts are not by mere reason of their conviction deprived of all the fundamental rights they otherwise possess. After conviction, a convict is put into the jail, he may be deprived of fundamental freedoms like the right to move freely throughout the territory of India or the right to practice a profession. But the Constitution guarantees to them other freedom like the right to acquire, hold and dispose of property for the existence of detention can be no impediment. Likewise, even a convict is entitled to the precious right guaranteed by Article 21 and he shall not be deprived of his life or personal liberty except according Rights of accused, under trials and prisoners to procedure established by law\textsuperscript{248}. The so called Human Rights saviour the Supreme Court has protected the prisoners from all types of torture. Judiciary has taken a lead to widen the ambit of Right to Life and personal liberty. The host of decisions of the Supreme Court on Article 21 of the Constitution after Maneka Gandhi case, through Public Interest Litigation have unfolded the true nature and scope of Article 21. In this work, an attempt is made to analyze the new dimensions given by the Supreme Court to Article 21 through Public Interest Litigation to safeguard the fundamental freedom of the individuals who are indigent, illiterate and ignorant. Public Interest Litigation became a focal point to set the judicial process in motion for the protection of the residuary rights of the prisoners\textsuperscript{249}

### 4.5.1 Rights against Hand Cuffing

In India, it has become a common practice for the police to handcuff under trails and arrestees, irrespective of the nature of the offence committed by them and the responsibility of any escape.\textsuperscript{250} In Prem Shanker vs. Delhi Administration\textsuperscript{251} the Supreme Court added another projectile in its armoury to be used against the war for prison reform and prisoners rights. In the instant case the question raised was whether hand–cuffing is constitutionally valid or not? The Supreme Court discussed in depth the hand cuffing jurisprudence. It is the case placed before the court by way of Public Interest Litigation urging the court to pronounce upon the Constitution validity of the “hand cuffing culture” in the light of Article 21 of the Constitution. In the instant case, the court banned the routine hand cuffing of a prisoners as a Constitutional


\textsuperscript{249} Dr. N. Maheshwara Swamy, Criminology and Criminal Justice System, Asia Law House, Hyd, 2014

\textsuperscript{250} Dr. Ashutosh, Rights of Accused, 2nd Edition, Universal Law Publishing (P) Ltd, New Delhi.p.216

\textsuperscript{251} AIR 1980 SC 1535
mandate and declared the distinction between classes of prisoner as obsolete. The court also opined that “hand cuffing is prima facie inhuman and, therefore, unreasonable, is over harsh and at the first flush, arbitrary. Absent fair procedure and objective monitoring to inflict “irons” is to resort to Zoological strategies repugnant to Article 21 of the Constitution”.

In Citizens for Democracy Vs State of Assam\textsuperscript{252}, the Supreme Court received a letter from Kuldip Nayar, an eminent journalist and president of Citizens for Democracy, stating that he found to his horror in the Government Hospital, Guwahati, seven TADA detunes put in one room, handcuffed to their bed. Outside a posse of policemen stood with guns on their shoulders. He was told by the detunes that they had to pay for their medicine from their own packets. He approached the court to intervene in the matter. The court treated the letter as writ petition on behalf of the detunes and called upon the state of Assam to reply. The state pleaded that the detunes were hardcore ULFA activist and earlier as many as fifty one detunes had escaped from the custody including eleven terrorists form different hospitals and seven of them had escaped from Guwahathi Medical Hospital. Relying on the law declared in Prem Shankar’s and Sunil Batra’s case the Court held that the detunes cannot be in a worse condition while in jail, they were not handcuffed.\textsuperscript{253} While deciding the Constitutional validity of hand cuffing, the Supreme Court specifically referred to Article 5 of the Universal Declaration of Human Rights, 1948\textsuperscript{254} and Article 10 of the International Covenant on Civil and Political Rights\textsuperscript{255} and held that hand cuffing is impermissible torture and is violate of Article 21. The Supreme Court stated that the handcuffing is the violation of prisoner’s rights, necessary handcuffing can be done with prior permission of the magistrate concerned who grants permission after satisfying all ingredients. This right protected all the prisoners from hand cuffing by the prison authorities. The Supreme Court directed the Union of India to frame rules and guidelines regarding the circumstances in hand cuffing of the accused should be resorted to, in conformity with the judgment of the court in Prem Shankar case;

\textsuperscript{252} AIR 1996 SC 2193
\textsuperscript{253} Citizen for Democracy Vs State of Assam, AIR 1996 SC 2193
\textsuperscript{254} Article 5 of the Universal Declaration of Human Rights, 1948 provides that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment
\textsuperscript{255} Article 10 of the International Covenant on Civil and Political Rights stipulates that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person"
4.5.2 Rights against Inhuman Treatment of Prisoners

Human Rights are part and parcel of Human Dignity. The precious right guaranteed by Art. 21 of Constitution of India cannot be denied to convicts, undertrials, detenus and other prisoners in custody, except according to the procedure established by law by placing reasonable restrictions as are permitted by laws. Any form of torture of cruel, inhuman or degrading treatment would fall within the inhibition of Art. 21 of the Constitution whether it occurs during investigation, interrogation or otherwise. Crime suspect must be interrogated indeed subjected in sustained and scientific interrogation determined in accordance with the provisions of law. He cannot, however, be tortured or subjected to third degree methods or eliminated with a view to elicit information, extract confession or drive knowledge about his accomplices, weapons etc. Constitutional right cannot be abridged except in the maximum permitted by law, though in the very nature of things there would be qualitative difference in the method of interrogation of such a person as compared to an ordinary criminal. That the terrorist has violated human rights of innocent citizens may render him liable for punishment but it can justify the violation of his human rights except in the manner permitted by law.256

The Supreme Court of India in various cases has taken a serious note of the inhuman treatment on prisoners and has issued appropriate directions to prison and police authorities for safeguarding the rights of the prisoners and persons in police lockup257. In the Raghubir Singh v. State of Bihar258, the Supreme Court expressed its anguish over police torture by upholding the life sentence awarded to a police officer responsible for the death of a suspect due to torture in a police lock-up. In Kishore Singh VS. State of Rajasthan259 the Supreme Court held that the use of third degree method by police is violative of Article 21. The court also directed the Government to take necessary steps to educate the police so as to inculcate a respect for the human person. In the instant case the Supreme Court brought home the deep concern for Human Rights by observing against police cruelty in the words: “Nothing is more cowardly and unconscionable than a person in police custody being beaten up and

257 Ramana Murthy V. State of Karnataka AIR 1997 SC 1739
258 (1986) 4 SCC 481
259 AIR 1981 SC 625
nothing inflicts a deeper wound on our Constitutional culture that a state official running berserk regardless of Human Rights.” 260 It is pertinent to mention that the custodial death is perhaps one of the worst crimes in civilized society governed by the rule of law. The court promptly ruled that the inhuman treatment meted to the accused in police custody is the gross and blatant violation of Human Rights. In the absence of any legislative or executive guidelines the court has undertaken an activist role and ruled in plethora of cases and one such case is D.K.Basu vs. State of West Bengal 261. In the instant case, the Apex Court made it clear that, custodial violence, including torture and death in the police lock–up, strikes a blow at the rule of law, demands that the powers of the executive should not only be deprived from the law but also that the same should be limited by the law. The court also made it clear that failure to comply with guidelines should, apart from rendering the official concerned liable for departmental action and also render him liable to contempt of court262.

The Supreme Court of India issued guidelines for the custodial, inhuman treatment of prisoners to police authorities in D.K.Basu case, the police officer violated the guidelines and uses custodial violence third degree methods, he will personally liable under criminal law. The matter was brought before the Court by Dr. D.K. Basu, Executive Chairman of the Legal Aid Services, a non-political organization, West Bengal through a public interest litigation. He addressed a letter to the Chief Justice drawing his attention to certain news items published in the Telegraph, the Statesman and. This letter was treated as a writ petition by the Court. The Court observed "Custodial death is perhaps one of the worst crimes in a civilized society governed by the rule of law". Dr. Justice Anand who delivered the said judgment on behalf of the Court held that any form of torture or cruel, inhuman or degrading treatment, would fall within the inhibition of Art. 21 of the Constitution whether it occurs during investigation, interrogation or otherwise. The Court further held that the precious right guaranteed under Art. 21 of the Constitution could not be denied to convicts, under-trails, detenues and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law. Guidelines have been laid down by the Court to be followed

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260 Kishore Singh VS. State of Rajasthan, AIR 1981 SC 625
261 AIR 1997 SC 610
262 proceedings under the contempt of courts Act, 1971 can be started in any high court
in all cases of arrest or detention till legislative measures are taken: The police personnel carrying out the arrest and handling to interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designation. The particulars of all police personnel handle or interrogation of the arrestee must be recorded in a register. The police officer carrying out arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo must be attested by at least, one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall be counter signed by the arrestee and shall contain the time and date of arrest.

A person has been arrested or detained and is being held in custody in a police station or interrogation centre or lock up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare informed, as early as practicable, that he has been arrested and is being detained at a particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee. The time, place of arrest and venue of custody of an arrest must be notified by the police where the next friend or relative of the arrest lives outside the district or town through the Legal Aid Organization in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest. The person arrested must be aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained. An entry must be made in the diary at the place of detention regarding the arrest of the person shall also disclose the name of next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is the arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, present on his or her body, must be recorded at that time. The inspection memo must be signed both by the arrestee and the police officer affecting the arrest and its copy provided to the arrestee\(^{263}\). The arrestee should be subjected to medical examination by a trained doctor within 48 hours during his detention or by a doctor on panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. The Director, Health Services, should prepare such a penal for all Tehsils and Districts as well.

\(^{263}\) Code of Criminal Procedure, 1973
Copies of all the documents including the memo of arrest, should be sent to the Magistrate for his record. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation., A police control room should be provided at all Districts and State headquarters, where information regarding the arrest and place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and it should be displayed conspicuous on the notice-board. The Court made it clear that failure to comply with these requirements should, apart from rendering the official concerned liable for departmental action, also render him liable to contempt of the Court and the proceedings for contempt may be instituted in any High Court of the country, having territorial jurisdiction over the matter. These requirements flow from Arts. 21 and 22(1) of the Constitution The provisions apply with equal force to the other Governmental agencies like Directorate of Intelligence, Directorate of Enforcement, Coastal Guard, CRPF, BSF, CISF, the State Armed Police Intelligence agencies like the Intelligence Bureau, RAW, CBI, CID, Traffic Police, Mounted Police and ITBP. These requirements are in addition to the Constitutional and statutory safeguards and do not detract from various other directions given by court from time to time in connection with safeguarding of the right and dignity of the arrestee. The Court directed that these directions shall be widely circulated amongst the concerned authorities and personnel, and would be broadcasted on the All India Radio and Doordarshan.

4.5.3 Rights against Solitary Confinement and Bar Fetters

The Supreme Court in Sunil Batra (1) case considered the validity of solitary confinement. The Constitutional validity of solitary confinement prescribed under section 30(2) of the Prisons Act, 1894 was considered. Section 30(2) of the Act provides the solitary confinement prisoner is under sentence of death, while section 56 of the said Act permits the use of bar fetters for the safe custody of the prisoners. Sunil Batra’s was sentenced to death having been found guilty of a gruesome murder compounded with robbery. He challenged his solitary confinement invoking articles 14, 19 and 21 of the Constitution. The Supreme Court upheld the contention of the petitioner and declared part III of the Constitution does not part company with the

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264 Sunil Batra (I) vs. Delhi administration AIR 1978 SC 1675
prisoner at the gates, and judicial oversight protects the prisoner’s shrunken fundamental rights, flouted, frowned upon or frozen by the prison authority. Is a person under death sentence or undertrial unilaterally dubbed dangerous liable to suffer extra torment too deep for tears? Emphatically no. the convict is not sentenced to imprisonment. He is not sentenced to solitary confinement. He is a guest in custody, in the safe keeping of the host jailor until the terminal hour of terrestrial farewell whisks him away to the halter. The trusteeship in the hands of the superintendent not imprisonment in the true sense. In Kishore Singh Vs State of Rajasthan in it was stated by Justice V.R.Krishna Iyer that solitary confinement has to be resorted to only in the rarest of rare cases for security reasons to make it in consonance with article 21 of the constitution. The Supreme Court stated that the solitary confinement is violation of life and personal liberty of prisoners under Art 21 of the constitution, the sections containing prisons act, 1894 of sec.30(2) and 56 of Prisons Act 1894 is violation of prisoners rights guaranteed by the constitution.

4.5.4 Right to have Interview with Friends, Relatives and Lawyers

In Prabha Dutt Vs Union of India, the Supreme Court held that it would be a part of fundamental freedom of the press to interview prisoners sentenced to death. In Francis Coralie Mullin vs. Administrator, Union Territory of Delhi, the Supreme Court considered the prisoners right to have interviews from the perspective of the Right to Life and Personal Liberty under Article 21. The court held that the provisions of COFEPOSA permitted only one interview in a month to detune with her family members were violative of Art 14 and 21 and unconstitutional and void. The Supreme Court held that, right to consult legal advisor is basic right to the prisoners for and under Art 14 and 21 of the Constitution also guaranteed this right. The provisions of COFEPOSA are not valid those provisions are unconstitutional and violative of Art 14 and 21 of the constitution.

265 AIR 1978 SC 1675
266 AIR 1981 SC 625
267 AIR 1982 SC 6
268 (1981) 1 SCC 608
269 Dr.Gurbax Singh, Law relating to Protection of Human Rights and Human Values, Vinod Publicatioons (p). Ltd.,2008, p.113
4.5.5 Right to Free Legal Aid

The Constitution of India mentioned does not expressly provide the Right to Legal Aid, but the judiciary had shown its favour towards poor prisoners because of their poverty and is not in a position to engage the lawyer of their own choice. The 42nd Amendment Act, 1976 has included Free Legal Aid as one of the Directive Principles of State Policy under Article 39A in the Constitution. This is the most important and direct Article of the Constitution speaks of Free Legal Aid. Though, this Article finds place in part-IV of the Constitution as one of the Directive Principle of State Policy and though this Article is not enforceable by courts, the principle laid down there in are fundamental in the governance of the country. Article 37 of the Constitution casts a duty on the state to apply these principles in making laws. The court pointed out the obligation of the state to provide free legal aid, those who cannot afford to engage council and bear the expensive litigations. In Khatri (I) vs. State of Bihar a division bench of the Supreme Court held that the state is under Constitutional mandate to provide Free Legal Aid to an accused person who is unable to secure legal services on account of indigence and whatever is necessary for this purpose has to be done by the state.

In M.H. Hoskot v. State of Maharashtra, the Supreme Court applied the ruling of Maneka Gandhi's case. In that case petitioner, who was a Reader holding M.Sc. and Ph.D. degrees was convicted for the offence of attempting to issue counterfeit University degree. The Scheme was, however, foiled. He was tried by the Sessions Court found him guilty of grave offences but took a very lenient view and sentenced him to simple imprisonment till the rising of the court. The High Court allowed the State appeal and enhanced punishment to three years. The High Court Judgment was pronounced in November, 1973, but the special leave petition was filed in the Supreme Court by the petitioner after 4 years. The petitioner had undergone his full

270 Article 39-A provides that “the state shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity and shall in particular, provides Free Legal Aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

271 Article 37 of the Constitution of India reads as “the provisions contained in part IV shall not be enforceable by any court but the principles there in laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws.

272 Sukadas Vs Union Teritory of Arunachalpradesh, 1986 (2) SCC 401

273 AIR 1981 SC 928

274 AIR 1978 SC 1548.
term of punishment. The explanation given by him for the condonation of delay was that he was given the copy of the judgment of 1973 only in 1978. It was disclosed that although a free copy of the order had been sent promptly by the High Court meant for the applicant, to the Superintendent of the Jail but he claimed that he never received it. The Superintendent claimed that the copy had been delivered to him but later it was taken back for the purpose of enclosing it with a mercy petition to the Government for remission of sentence. The Supreme Court, although dismissed the special leave application because of the settled practice that the Court could not interfere with the concurrent findings of the two lower courts but it thought it proper to make the legal position clear. The Court held that 'a single right of appeal' on facts, where the conviction is fraught with long loss of liberty, is basic to civilized jurisprudence, "One component of fair procedure is natural justice". Every step that makes the right of appeal fruitful is obligatory and every action or inaction stultifies it is unfair and therefore offends Article 21. There are two ingredients of a right of appeal: (1) service of a copy of a judgment to the prisoner in time to enable him to file an appeal, and (2) provision of free legal service to a prisoner who is indigent or otherwise disabled from securing legal assistance. These are State responsibilities under Article 21. Any Jailor who by indifference or vendetta, withholds the copy thwarts the court process and violates Article 21 and may make the further imprisonment illegal. The Court suggested that the Jail Manuals should be updated and should include this mandate and the State must make available a copy of the judgment to the prisoner. Regarding the right to free legal aid, Krishna Iyer, J., declared, "This is the State's duty and not Government's charity." A prisoner is unable to exercise his constitutional and statutory right of appeal including special leave to appeal for want of legal assistance, there is implicit in the court under Article 142, read with Articles 21 and 39-A of the Constitution, the power to assign counsel to the prisoner provided he does not object to the lawyer named by the court. Equally, is the implication that the State sets the law in motion must pay the lawyer an amount fixed by the Court.

The Supreme Court is guaranteed the Article 39-A and Article 21 of the Constitution. The Right to Free Legal Aid to comes under fundamental rights protected by Art.21 of the constitution. Art.39A is comes under Directive Principles of State Policy, Part IV, but cannot enforceable rights even though the Supreme Court
included the right to free legal aid under Art 21 right to life and personal liberty. In number of cases, the Supreme Court stated that providing free legal aid, those who are in needy and poorer, the state responsibility not charity.

4.5.6 Right to Speedy Trial

The concept of speedy trial is read into article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted.275

In Abdul Rehman Antulay Vs R.S. Nayak276, The court held that the right to a speedy trial was a part of fair, just and reasonable procedure implicit in Article 21 of the constitution. The Supreme Court was observed that each case has to be decided on its own facts. The court further observed that it was not advisable and feasible to fix an outer time limit for conclusion of the criminal proceedings.277 The Supreme Court gave propositions meant to serve as guidelines. The Court held that these propositions are not exhaustive. It is difficult to foresee all situations. Nor is it possible to lay down any hard and fast rules. The Supreme Court further observed as under:

Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any the less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances. Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial. That is how, this Court has understood this right and there is no reason to take a restricted view. The concerns underlying the right to speedy trial from the point of view of the accused are:

275 Dr.Gurbax Singh, Law relating to Protection of Human Rights and Human Values, Vinod Publicatioons (p). Ltd.,2008, p.117
276 1992 1 SCC 225
277 Dr.Gurbax Singh, Law relating to Protection of Human Rights and Human Values, Vinod Publicatioons (p). Ltd.,2008, p.115
The period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction: The worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and Undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise." The Supreme Court also observed that while determining whether undue delay has in fact occurred, one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on what is called, the systematic delays. The sum and substance is that it is neither advisable nor practicable to fix any time limit for trial of offence. Each case has to be decided on its own facts and circumstances.

The Supreme Court in Hussainara Khatoon (I) Vs. Home secretary case held that “Obviously procedure prescribed by law for depriving a person of his liberty cannot be reasonable, fair, or just unless that procedure ensures a speedy trial for determination of the guilty of such person. No procedure does not ensure a reasonably quick trial can be regarded as reasonable, fair or just and it would fall foul of Article 21. There can be no doubt that speedy trial and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the Fundamental Right to Life and Liberty enshrined in Article 21. Thus, the right to speedy trial is implicit in broad sweep and content of Article 21 of the Constitution. Hence any accused who is denied this right of speedy trial is entitled to approach the Supreme Court for the purpose of enforcing such right. The right to speedy trial is contained under section 309 of Cr.P.C. The Court interpreted the right to speedy trial to the prisoners under Art 21 of the constitution. Every prisoner is having right to get speedy trial of his cases. Particularly in case of convicted prisoners under sec.302, their appeal takes years to years. These types of cases are happening in the same half of the punishment has been completed undertrail prisoners, having takes place and he will be released as

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278 (1980) I SCC 81
279 Section 309 (1) of Cr.PC contemplates “In every inquiry or trial the proceedings shall be held as expeditiously as possible, and in particular, the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the court finds that the adjournment of the same beyond the day to be necessary for reasons to be recorded.
innocent. The state governments were having constitutional obligation on prisoners for their speedy trail of cases. The right to free legal aid and speedy trial are guaranteed fundamental rights under Art. 21. Art 39-A provides equal justice and free legal aid. It means justice according to law. In a democratic policy, governed by rule of law, it should be the main concern of the State to have a proper legal system. The crucial words are to provide free legal aid by suitable legislation or by schemes or in any other way so that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. These words are in Art. 39-A are of very wide import. In order to enable the State to afford free legal aid and guarantee speedy trial, vast number of persons are trained in law are needed. Legal aid is regarded in many forms and at various stages, for obtaining guidance, for resolving disputes in courts, tribunals or other authorities. It has manifold facets. The need for a continuing and well organized legal education is absolutely necessary in view of the new trends in the world order, to meet the overgrowing challenges.

The Legal education should be able to meet the overgrowing demands of the society. This demand is of such a great dimension that sizable number of dedicated persons should be properly trained in different breaches of law every year. This is not possible unless adequate number of well equipped law colleges are established. Since a sole Government law college cannot cater to the needs of legal education in a city like Bombay it should permit private colleges with necessary facilities to be established. For this, it should afford grants in aid to them so that they should function effectively and in a meaningful manner. For this huge funds are needed, They should not be left free to hike the fees to any extent to meet their expenses, in absence of this the standard of legal education and the free legal scheme would become a farce. Thus should not be allowed to happen. The Court therefore directed the State to afford to them in order to ensure that they should function effectively and turn out sufficient number of law graduates in all branches every year will in turn enable the State to provide free legal aid and ensure that opportunities for securing justice are not denied to any citizen on account of any disability. Article 21 read with Art. 39A casts a duty on the State to afford grants in aid to recognized private law colleges in the State of Maharashtra, similar to the faculties, viz. Art, Science, Commerce, etc. The words used in Art. 39A are of very wide importance. The need for a continuing and well
organized legal education is absolutely essential for the purpose. The State of Maharashtra had denied grants-in-aid of the private recognized Law Colleges on the ground of paucity of lands. The Court held that this could not the reasonable ground for denial of grant-in-aid to such colleges.

4.5.7 Children of Women Prisoners:

For the care, welfare and development of the children, special and specific provisions have been made both in Part III and IV of the Constitution of India, besides other provisions in these parts are also significant. The best interest of the child has been regarded as a primary consideration in our Constitution. Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth. Article 15(3) provides that this shall not prevent the State from making any special provision for women and children. Article 21A inserted by 86th Constitutional Amendment provides for free and compulsory education to all children of the age of six to fourteen years. Article 24 prohibits employment of children below the age of fourteen years in any factory or mine or engagement in other hazardous employment. The other provisions of Part III that may be noted are Articles 14. Art 21, 23 and Article 14 provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Article 21 provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. Article 23 prohibits trafficking in human beings and forced labour. Under Part IV of the Constitution some provisions are also relevant. Article 39(e) directs the State to ensure that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Article 39(f) directs the State to ensure that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. Article 42 provides that the State shall make provision for securing just and humane conditions of work and maternity relief. Article 45 stipulates that the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years. Article 46 provides that the State shall promote with special care the educational and economic interests of the weaker
sections of the people, and, in particular, of the Scheduled castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. Article 47 provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs are injurious to health. Apart from the aforesaid constitutional provisions, there are wide range of existing laws on the issues concerning children, such as, the Guardians and Wards Act, 1890, Child Marriage Restraint Act, 1929, the Factories Act, 1948, Hindu Adoptions and Maintenance Act, 1956, Probation of Offenders Act, 1958, Orphanages and Other Charitable Homes (Supervision and Control) Act, 1960, the Child Labour (Prohibition and Regulation) Act, 1986, Juvenile Justice (Care and Protection of Children) Act, 2000, the Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992, Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, Immoral Traffic (Prevention) Act, 1986. The Juvenile Justice Act, 2000 replaced the Juvenile Justice Act, 1986 to comply with the provisions of the Convention on the Rights of the Child has been acceded to by India in 1992.

In addition to above, the national policy for children was adopted on 22nd August, 1974. This policy, inter alia, lays down that State shall provide adequate services for children both before and after birth, and during the growing stages for their full physical, mental and social development. The measures suggested include amongst others a comprehensive health programme, supplementary nutrition for mothers and children, promotion of physical education and recreational activities, special consideration for children of weaker sections and prevention of exploitation of children. India acceded to the UN Convention on the Rights of the Child in December 1992 to reiterate its commitment to the cause of the children. The objective of the Convention is to give every child the right to survival and development in a healthy and congenial environment. The UN General Assembly Special Session on children held in New York in May 2002 was attended by an Indian delegation led by Minister of Human Resource Development and consisted of Parliamentarians, NGOs and
officials. It was a follow up to the World Summit held in 1990. The Summit adopted the declaration on the survival, protection and development of children and endorsed a plan of action for its implementation. The Government of India is implementing various schemes and programmes for the benefit of the children. Further, a National Charter for Children, 2003 has been adopted to reiterate the commitment of the Government to the cause of the children in order to see that no child remains hungry, illiterate or sick. By the said Charter, the Government has affirmed that the best interests of children must be protected through combined action of the State, civil society and families and their obligation in fulfilling children's basic needs. National Charter has been announced with a view to securing for every child inherent right to enjoy happy childhood, to address the root causes that negate the health, growth and development of children and to awake the conscience of the community in the wider societal context to protect children from all forms of abuse, by strengthening the society and the nation. The National Charter provides for survival, life and liberty of all children, promoting high standards of health and nutrition, assailing basic needs and security, play and leisure, early childhood care for survival, growth and development, protection from economic exploitation and all forms of abuse, protection of children in distress for the welfare and providing opportunity for all round development of their personality including expression of creativity etc.

On 29th August, 2002, a field action project prepared by Tata Institute of Social Science on situation of Children of prisoners was placed before the Supreme Court. The report puts five grounds that from the basis for the suggestion to provide facilities for minors accompanying their mothers in the prison. The prison environment is not conductive to the normal growth and development of children’. Many children are born in prison and have never experienced a normal family life, sometimes till the age permitted to stay inside (four or five years). Socialization pattern get severely affected due to their stay in prison. Their only image of male authority figures is that of police and prison officials. They are unaware of the concept of home, as we know it. Boys may sometimes talk in the female gender, having grownup only among women confined in the female ward. Unusual sights, like animals on the road are frightening. children transferred with their mothers from one prison to another frequently, thus unsettling them; and such children sometimes
display violent and aggressive, or alternatively, withdrawn behavior in prison. The famous case is related the child’s of imprisoned mothers. In R.D.Upadhy vs. State of A.P, the children are residing with their mothers, even though they are not prisoners. They are forced to live in jails by circumstances. For this, The Supreme Court issued certain guidelines to the prison authorities for the safeguards to the children’s. The Central Government and State Governments are having responsibility for the protection of children in prison who are residing with their mothers. The Supreme Court issued guidelines to the central and state governments. The governments are also taking serious steps to provide certain rights regarding diet, shelter, medical aid, clothing, schooling facility to them and recreational facility are considered to be the basic human rights of childrens.

4.6 Compensatory jurisprudence in India

Our procedure for securing our personal freedom is efficient; our procedure for preventing the abuse of power is not. Just as the pick and shovel is no longer suitable for the inning of coal, so also the procedure of Mandamus, Certiorari, and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up to date machinery, by declarations, injunctions and actions for negligence. This is not the task for Parliament. The courts must do this. Of all the great tasks that lie ahead this is the greatest. Law is in the process of development and the process necessitates developing separate public law procedures as also public law principles. The court is not helpless to grant relief in a case of violation of the right to life and personal liberty, and it should be prepared to forge new tools and devise new remedies' for' the purpose of vindicating these precious fundamental rights, he procedure suitable in the facts of the case must be adopted or conducting the inquiry, needed to ascertain the necessary acts, for granting the relief, as the available mode of redress, or enforcement of the guaranteed fundamental rights. The wide powers is given to the Supreme Court by Art. 32, itself is a fundamental right, imposes a constitutional obligation on it to forge such new tools,

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281 AIR 2006 SC 1946
283 Smt.Nilabati Bahera@Lalita Bahera Vs State of Orissa and others, 1993 AIR 1960
may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, enables the award of monetary compensation in appropriate cases, where that is the only mode of redress available. The judicial activism started with post Maneka Gandhi case. The Supreme Court and the High Court’s under Articles 32 and 226 of the Constitution exercised compensatory jurisprudence. The Compensation is a mode of redress of violation of Human Rights of prisoner’s. The Supreme Court has well established that doctrine of sovereign immunity is not applicable against the Constitutional remedy under Articles 32 and 226 of the Constitution. The development of the remedy of monetary compensation as to Constitutional and civil law remedies for violation of Human Rights is analyzed through the judicial pronouncements expanding their respective nature, extent and limitations.

A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim - civil action for damages is a long drawn and cumbersome judicial process. Monetary compensation for redressal by the Court finding the infringement of the indefeasible right to life of the citizen is, therefore, a useful and at times perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the bread winner of the family. The citizen complaining of the infringement of the indefeasible right under Article 21 of the Constitution cannot be told that for the established violation of the fundamental right to life, he cannot get any relief under the public law by the courts exercising writ jurisdiction. The primary source of the public law proceedings stems from the prerogative writs and the courts have, therefore, to evolve new tools to give relief in public law by moulding it according, in the situation with a view to preserve and protect the Rule of Law. An order for payment of compensation a right protected has been contravened is clearly a form of redress a person is entitled to claim and may well be the only practicable form of redress. The very wide powers to make orders, issue writs and give directions are ancillary to this." A claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of is guaranteed in the Constitution, is an acknowledged remedy for enforcement and

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285 Smt.Nilabati Bahera@Lalita Bahera Vs State of Orissa and others, 1993 AIR 1960
286 AIR 1978 SC 597
protection of such rights, and such a claim based on strict liability made by resorting
to a constitutional remedy provided for the enforcement of a fundamental right is
distinct from, and in addition to the remedy private law for damages for the tort
resulting from the contravention of the fundamental right. The purpose of public
law is not only to civilize public power but also to assure the citizen that they live
under a legal system aims to protect their interests and preserve their rights. The court
moulds the relief by granting compensation in proceedings under Article 32 or 226 of
the Constitution seeking enforcement or protection of fundamental rights, it does so
under the public law by way of penalizing the wrongdoer and fixing the liability for
the public wrong on the State has failed in its public duty to protect the fundamental
rights of the citizen. The public law proceedings serve a different purpose than the
private law proceedings. The relief of monetary compensation, as exemplary
damages, in proceedings under Article 32 by the Supreme Court or under Article 226
by the High Courts for established infringement of the indefeasible right guaranteed
under Article 21 of the Constitution is a remedy available in public law and is based
on the strict liability for contravention of the guaranteed basic and indefeasible rights
of the citizen. The claim is not a claim in private law for damages for the tort of
false imprisonment, under the damages recoverable are at large and would include
damages for loss of reputation. It is a claim in public law for compensation for
deprivation of liberty alone.

A person comes to the Court with the complaint that he has been arrested and
imprisoned with mischievous or malicious interest and that his constitutional and
legal rights were invaded, the mischief or malice and the invasion may not be washed
away or wished away by his being set free. In appropriate cases the Court has the
jurisdiction compensate the victim by awarding suitable monetary compensation. In
a established case of infringement or violation of the Fundamental Right of the citizen
by any State action, the damage caused and injury inflicted to the person aggrieved
can be compensated in the public law field and the superior Courts in exercise of their
jurisdiction under Articles 32 and 226 of the Constitution of India can award

290 Maharaj v. Attorney General of Trinidad and Tobago (1978) 2 All ER 670.
compensation and damages and for civil suit may or may not be necessary to be filed. Award of Compensation to the victims is proceeding under Art. 32 by the Supreme Court or by the High Court under Art. 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort. Article 21, guarantees a right to life and liberty, will be denuded of its significant content the power of the Court were limited to passing orders of release from illegal detention. The violation of the right can reasonably be prevented and due compliance with the mandate of Art. 21 secured, is to mulct its violator in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities act in the name of public interest and present for their protection the powers of the State as a shield. civilization is not to perish in this country, as it has perished in some others too well known to suffer mention it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore the state must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers.

Award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21 by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. The writ Court on establishment of violation of fundamental rights, apart from calling upon the State Government to take punitive action and disciplinary proceedings against the officers/officials guilty of flagrant violation of fundamental rights, is also under an obligation to give compensation and relief under public law jurisdiction for the wrong done occasioned by breach of public duty by the State Government in failing to protect the fundamental rights of citizen. In a case, the Supreme Court considered the case of two women who were severely

292 P. Viswanathan v. Dr. A. K. Burman and another, 2003-Cr.L.J -949 -Cal.
beaten up by the landlord of the house in which they were living, in collusion with the Station House Officer. The Supreme Court said that a State is liable for tortuous acts of its employees and that for police atrocities; the State should pay compensation to the victims.297

Immunity of State for its sovereign acts is claimed on the basis of the old English Maxim that the King can do no wrong. But even in England, the law relating to immunity has undergone a change with the enactment of Crown Proceedings Act, 1947. The Crown in England does not now enjoy absolute immunity and may be held vicariously liable for the tortious acts of its officers and servants.298 The defence of sovereign immunity being inapplicable and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy.299 Traditional sovereign functions are the making of laws, the administration of justice, the maintenance of order, the repression of crime, carrying on of war, making of treaties and peace and other consequential functions.300 The demarcating line between sovereign and non-sovereign powers for no rational basis survive has largely disappeared. Therefore, barring functions such as administration of justice, maintenance of law and order and repression of crime etc. are among the primary and inalienable functions of a constitutional Government, the State cannot claim any immunity.301 The Maxim that King can do no wrong or that the Crown is not answerable in tort has no place in Indian jurisprudence where the power vests, not in the Crown, but in the people who elect their representatives to run the Government, has to act in accordance with the provisions of the Constitution and would be answerable to the people for any violation thereof.302

No civilized system can permit an executive to play with the people of its country and claim that it is entitled to act in any manner as it is sovereign. The concept of public interest has changed with structural change in the society. No legal or political system today can place the State above law as it is unjust and unfair for a citizen to be deprived of his property illegally by negligent act of officers of the State without any remedy. From sincerity, efficiency and dignity of State as a juristic

297 Saheli, A Women's Resources Centre v. Commr. of Police, Delhi, AIR 1990 SC 513.
300 Corporation of the City of Nagpur v. Its Employees, AIR 1960 SC 67.
301 State of A.P. v. Challa Ramakrishna Reddy and others, AIR(SC)-3083.
person, propounded in Nineteenth Century as sound sociological basis for State immunity the circle has gone round and the emphasis now is more on liberty, equality and the rule of law. The modern social thinking of progressive societies and the judicial approach is to do away with archaic State protection and place the State or the Government at par with any other juristic legal entity. Any watertight compartmentalisation of the functions of the State as sovereign and non-sovereign or governmental or nongovernmental is not sound. It is contrary to modern jurisprudential thinking. The need of the State to have extraordinary powers cannot be doubted. But with the conceptual change of statutory power being statutory duty for sake of society and the people the claim of a common man or ordinary citizen cannot be thrown but merely because it was done by an officer of the State even though it was against law and negligently. Needs of the State, duty of its officials and right of the citizens are required to be reconciled so that the rule of law in a welfare State is not shaken. Even in America where this doctrine of sovereignty found its place either because of the 'financial instability of the infant American States rather than to the stability of the doctrine theoretical foundation', or because of 'logical and practical ground', or that there could be no legal right as against the State made the law gradually gave way to the movement from, 'State irresponsibility to State responsibility.' In welfare State, functions of the State are not only defence of the country or administration of justice or maintaining law and order but it extends to regulating and controlling the activities of people in almost every sphere, educational, commercial, social, economic, political and even marital. The demarcating line between sovereign and non-sovereign powers for no rational basis survives, has largely disappeared. Therefore, the barring functions such as administration of justice, maintenance of law and order and repression of crime etc., and the primary and inalienable functions of a constitutional Government, the State cannot claim any immunity.303

The State's plea of sovereign immunity on tortious acts of its servants is confined to the sphere of liability in tort, is distinct from the State's liability for contravention of fundamental rights to the doctrine of sovereign immunity has no application in the constitutional scheme. So, it cannot be a defence to the

constitutional remedy under Arts. 32 and 226 of the Constitution. Where on account of tortious act of the sovereign State a person's fundamental right to life and liberty was violated the Court will grant compensation for damages suffered by that person. The liability is based on the provisions of the Constitution and is a new liability, is not hedged in by any limitation including the doctrine of sovereign immunity.

Protection of rights to life and property is the prime responsibility of the State Government and its officers/officials, cannot be frittered away and brushed aside on one or the other pretext. The fundamental rights of the citizen guaranteed under Art. 21 of the Constitution have to be jealously guarded by the State and any infringement thereof by a public servant is vicarious liability of the State. As a welfare State the State is duty bound to see that their officials do not transgress laws but as custodians of law as they are expected to act and not as those who use law as a weapon to deprive a citizen of his/her liberty. In the matter of liability of the State for the torts committed by its employees, it is now the settled law that the State is liable for tortious acts committed by its employees in the course of their employment. The State should be as much liable for tort in respect of a tortious act committed by servant within the scope of his employment and function as such as any other employer. The immunity of the Crown in the United Kingdom was based on the old feudalists notions of Justice, namely, that the King was incapable of doing a wrong, and, therefore, of authorizing or instigating one, and that he could not be sued in his own courts. In India, ever since the time of the East India Company, the sovereign has been held liable to be sued in tort or in contract and Uncommon Law immunity never operated in India. The State had failed to provide the required care, protection and facilities to the detainees while undertaking the exercise of preventive detention under Sec. 151 Cr.P.C. and the ill treatment of the detainee contributed to the death of the deceased, the State was vicariously liable to pay compensation on the basis.
4.7 Recent Trends:

The Supreme Court bench comprising Justices Kurian Joseph, R.F. Nariman and Chief Justice R.M. Lodha relied on Section 436A of the Criminal Procedure Code, 1973 (Cr.PC) to direct all States to release undertrials in prison for more than half the sentence they would serve if convicted within a period of two months. The Bench went further to direct the Central government to provide a road map for fast tracking, the entire criminal justice system, not just certain classes of cases. Not surprisingly, this order has attracted widespread media coverage; some civil society organizations have described it as inspiring and welcome. The Section 436A is unlikely to be the solution to the undertrial problem in India. Further, to arrive at any solution, that must be conceptually clarify and empirically understand what the undertrial problem is the proportion of undertrials was to convicts in the Indian prison system, or the undue length of detention without proof of guilt or the socio, economic profile of the undertrial. The precision in answering this is the key to devise an effective law-and-policy solution. The primary constitutional and moral concern with undertrial detention is that it violates the normative principle that there should be no punishment before a finding of guilt by due process. So, undertrial detention of those suspected, investigated or accused of an offence effectively detains the "innocent." However, all criminal justice systems across the world authorise limited pretrial incarceration to facilitate investigation and ensure the presence of accused persons during trial. The critical challenge in this area is to identify the normatively optimal and necessary level of pretrial incarceration and then design a criminal justice system to achieve this.311

The Supreme Court protected several rights of Directive Principles of State Policy to come under Art 21 of the Constitution, thus making the Directive principles to be enforceable for safeguarding the prisoner rights. The Andhra Pradesh Governments taking various steps for the benefit of prisoners and reduce their isolation in prisons. The Andhra Pradesh Prison Department is providing telephone facility to the prisoners, to talk with their family members and advocate by nominal pay. It is very useful them and also to know their family welfare by talking through phone. The A.P. Prison Department is very concern on prison reforms, for this, to

311 The Hindu, daily on
speedy trail of the cases provided Video Linkage from the jail to Court, the accused cannot go court for every adjournment, from the jail premises he can trail his case. The protection of prisoner’s rights aspect developed after independence and the framers of the constitution gave certain fundamental rights to the accused, but the Supreme Court of India interpreted various fundamental rights relating to prisoners to come under Article 21 of the constitution. The central government has taken serious steps on prison reforms. For this a number of committees were constituted on prison reforms and issued guidelines to the state governments and union territories for framing rules and regulations for the protection of prisoner’s rights and smooth administration of prisons.

The Supreme Court in its endeavour to ensure distributive justice in prisons has upheld the fundamental rights of detenus and prisoners in prison settings. The judicial mandates dealing with some of these aspects. The prison administrators have no power to add additional punishment to the punishment imposed by the Court; even though it could have been solidly imposed by that court itself, but has in fact, not been so imposed. A prisoner sentenced to capital punishment might be kept in separate cell only after the sentence becomes executable”. But even in the separate cell, unless there are special circumstances, he must be kept within the sight and sound of other prisoners and be able to take food in their company.312 Prisoners 'under sentence of death' shall not be denied amenities of games, newspapers, moving around and meeting prisoners and visitors subject to reasonable regulation of prison management. Solitary confinement cannot be inflicted except in extreme cases of necessity specifically made out by the jail authorities. A prisoner under the sentence of death can be inflicted and imposed solitary confinement only in view of the safety of the prisoner and the security of the prison. If a prisoner desires loneliness for reflection and remorse, for prayers and making peace with his maker, or opportunities for meeting family or friends such facilities should be liberally granted. Undertrials should be accorded more relaxed conditions than convicts. They are not under sentence of imprisonment, but only under custody. An undertrial prisoner, when transported from the prison to the court should not be handcuffed. In extreme cases, where the hand-cuffs have to be put on the prisoner the escorting authority

must record reasons for doing so.\textsuperscript{313} The hard labour has to receive a humane meaning. The punishment of rigorous imprisonment obliges the inmates to do hard labour, but not harsh labour. The prisoner cannot demand soft jobs, but may reasonably be assigned congenial jobs.\textsuperscript{314} The right to the society of fellow men, parents and other family members cannot be denied in the light of Article 19. However, it is subject to search, discipline and other security reasons. A detenue is entitled to have interview with his legal adviser after taking appointment from the superintendent of the jail. In case of COFEPOSA detenues a custom or jail official may watch the interview, but he should not be within the hearing distance of the detenue and the legal adviser.\textsuperscript{315}

An accused has the right to sit down in the court during the trial especially in long and arduous cases, unless it is necessary for the accused to stand up for identification. This facility is not against the established practice that everyone in the court should stand when the presiding officer enters. Undertrials are not to be kept in leg-irons,\textsuperscript{316} nor can be asked to work outside the jail walls. This would be in flagrant violations of prison regulations and contrary to I.L.O. conventions against forced labour. To reduce mental tensions among the prisoners, the prison authorities should provide for vital links between the prisoner and his family by periodically granting parole. However, the granting of parole for reasonable spells is subject to sufficient safeguards ensuring their proper behaviour outside and prompt return inside.\textsuperscript{317} No prisoner can be personally subjected to deprivations not necessitated by the fact of incarceration and the sentence of the court. All other freedoms belong to him, such as to read and write, to exercise and recreation, to meditation and chant, to comforts like protection from extreme cold and heat, to freedom from indignities, like compulsory nudity, forced sodomy and other unbearable vulgarity, to movement within the prison campus subject to requirements of discipline and security, to the minimal joys of self-expression, to acquire skill and techniques and all other fundamental rights tailored to the limitations of imprisonment.\textsuperscript{318}

\begin{footnotesize}
\begin{enumerate}
\item[313] Prem Shanker v. Delhi Administration, AIR 1980 SC 1535.
\item[314] Sunil Batra-II, 1980 Cri. LJ 1099 at 1114.
\item[315] Francis Coralie Mullin, 1981 Cri. LJ 306 at 313-14 (SC).
\item[317] Hiralal Mallick, 1977 Cri. LJ 1921 at 1927 (SC).
\item[318] Sunil Batra-II, 1980 Cri. LJ 1099 at 1113 (SC).
\end{enumerate}
\end{footnotesize}
exist. Prior to the execution of any death sentence, the Jail Superintendent should personally ascertain whether the sentence of death imposed upon any of the co-accused who was due to be hanged, has been commuted. If so, the Superintendent should apprise the superior authorities of the matter who in turn, should take prompt steps for bringing the matter to the notice of the court concerned. The commutation of the sentence of death into life imprisonment cannot be demanded by the condemned prison as a matter of right. A prisoner whether undertrial or convict has a right to legal assistance and that must be made available in jails.

Besides protecting the fundamental rights of prisoners and detenues, the Supreme Court has expressed its consciousness to eradicate the unhealthy atmosphere in prison settings full of mal-administration and torture. To restore distributive justice, the Court stipulated certain mandates for the general administration of the prisons. Lawyers nominated by the District Magistrate, Sessions Judge, High Court and the Supreme Court should be given all facilities for interviews, visits and confidential communication with prisoners subject to discipline and security considerations. This has roots in the vistatorial and supervisory judicial role. The lawyers so designated shall be bound to make periodical visits and record and report to the concerned court results which have relevance to the legal grievance. District Magistrates and Sessions Judges should personally or through surrogates, visit prisons in their jurisdiction and afford effective opportunities to the prisoners for ventilating their grievances; and should make expeditious enquiries therein and take suitable remedial action. In appropriate cases report should be made to the High Court to initiate, if found necessary, habeas corpus action. Grievance Deposit Boxes should be maintained under the orders of the District Magistrate and the Sessions Judge and such boxes should be opened as frequently as is deemed fit and suitable action should be taken on complaints. Access to such boxes should be afforded to all the prisoners. Necessary steps should be taken to prepare in Hindi and other regional languages a prisoners Handbook and circulate copies of it to bring legal awareness among the prison inmates. Periodical jail-bulletins should also be introduced stating how improvements and rehabilitative programmes are being carried out into prison. This

may create a fellowship amongst prisoners easing their tensions. A prisoners wall paper, ventilating their grievances should also be introduced.\textsuperscript{323} The prisoner's rights should be protected by the court by its writ jurisdiction plus contempt power. To make this jurisdiction viable, free legal services to the prisoners should be promoted by professional organisations recognised by the courts, such as, Free Legal Aid (Supreme Court) Society. The District Bar should keep a cell for prisoner's relief. The government of India and the State governments were also recommended by the Supreme Court to introduce comprehensive legal service programme. Large notice boards displaying the rights and responsibilities of prisoners should be hung up in prominent places within the prison in the language of the people.

No solitary or punitive cell, no hard labour or dietary change as painful additive, no other punishment or denial or privileges or amenities, no transfer to other prisons with penal consequences, should be imposed without judicial appraisal of the Sessions Judge and where such intimation on account of emergency is difficult, such information should be given within two days of the action. The status based classification of prisoners in jail should be done away with, instead a scientific classification based on the nature of the crime committed, behaviour, character, propensities, age, sex, education and response to jail treatment should be introduced.\textsuperscript{324} The under-trials, minors, recidivists and first offenders should be kept separate in prisons. The political offenders who are not guilty of violence are also to be kept separate and should not be housed in the same premises in which other criminals are kept. It is inhuman and unreasonable to throw young boys to sex staged prisoners or to run menial jobs for the affluent or tough prisoners. The young inmates should be separated and freed from the adults.\textsuperscript{325} The State should take steps to keep up the Standard Minimum Rules for the treatment of prisoners recommended by the United Nations, especially those relating to work and wages, treatment with dignity, community contact and correctional strategy. The Prisons' Act needs rehabilitation and the Prison Manual total overhaul, even the Model Jail Manual being out of focus with healing goals. A correctional-cum-orientation course is necessary for the prison staff inculcating the constitutional values, therapeutic approaches and tension-free

\textsuperscript{323} Section 61 of the Prisons Act.
\textsuperscript{324} Sunil Batra-I, 1978 Cri. LJ at 1778 (1791).
\textsuperscript{325} Vijay Kumar v. Public Prosecutor, AIR 1978 SC 1485.
management. The prison officials should send directly to the court petitions made to them by the prisoners from within the prison, instead of routing them through the higher authorities. If a prison administration takes any legal step which further affects the personal liberty of a prisoner, it should observe the principles of natural justice which are a part of fair procedure established by law. If special restriction of punitive or harsh character like solitary confinement or putting of fetters have to be imposed for convicting security reasons, it becomes necessary to comply with the rules of natural justice. Moreover, there should be an appeal from prison authority to judicial organ when such treatment is meted out. 326 All the State Governments in the country were directed by the Supreme Court to convert these rulings bearing on Prison Administration into rules and instructions forthwith so that the violation of prisoner's freedom can be avoided.

Life is guaranteed to every person by Article 21 of the Constitution and not even the State has the authority to violate that Right. A prisoner, be a convict or under-trial or a detenu, does not cease to be a human being. Those are 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, the prisoner is enjoy all his Fundamental Rights continuously. 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. The importance of affirmed rights of every human being needs no emphasis and, therefore, to deter breaches thereof becomes a sacred duty of the Court, as the custodian and protector of the fundamental and the basic human rights of the citizens. The Supreme Court has gone a long way fighting for their rights. Freedom behind bars is part of our constitutional tryst and index of our collective consciousness. Transformation of consciousness is the surest security measure against the atrocities that are committed on the prisoners. The Prison Manual is no Bible and the prisoner is not a non-person and so also the jailor is not an absolute monarch327. A prisoner is not a temporary slave of the State and is entitled to the fair process of law. Prison power must bow before judge power if fundamental freedoms are in jeopardy.

326 Kishor Singh, 1981 Cri. LJ 17 (22).