"When law ends, Tyranny begins; Legislation begins where Evil begins. The function of the Judiciary begins when the function of the Legislature ends, Because the law is, what the Judiciary say it is since the power to interpret the law vests in the Judges".*

6.1. The Evolution of New Judicial Approach:

Due to lack of prisoner’s rights orientation has been one of the notorious features of the pre-reform prison legislations like the Prisons act, 1894 and so on, which conceived prisons are the classical control institutions that conceded very limited obligations towards the prison inmates. Even such limited obligations remanded un-enforced of because of the peculiar, almost mysterious and mythical image of prisons, which remained beyond any kind of public gaze or institutional accountability.

Even the courts saw nothing wrong in pursuing a ‘hands off’ approach when it came to prison matters. As late as early 1977, in Bhanudas vs. State of A.P.\(^3\), the Supreme Court refused to go into the issue of prison conditions. However, it was a happy co-incidence that

---

*Kartar Singh V Union of India
1. AIR 1977 SC 1027.
in the post-emergency period, the judiciary thought it worthwhile to reverse its position to one of positive interventionist approach.

During late 1977, the Supreme Court, in the case of Mahmmod Giasuddin v State of A.P.\textsuperscript{4}, took the stand that, a person goes to the prison mainly because of the courts order, and therefore, the courts have a concern about what happens to him from the first day to till the last day. The interventionist approach has grown and flourished ever since in the Giasuddin case.

6.2. Expanding the Horizons of Prisoner's Rights by the Supreme Court:\textsuperscript{5}

A significant outcome of the emergence of the prisoner's rights touchstone is that it has made it possible to accord expansions to the already existing set of prisoner's rights, and also to think in terms of new additions in the prison's rights agenda. The developments in the following broad areas have been notable.

1. Prisoners' Right Equality
2. Prisoners' Right to Dignity

\textsuperscript{4} AIR 1977 SC 1926.
\textsuperscript{5} Pande, op.cit.

In this Chapter the researcher has made an attempt is made to analyze the decisions of the Supreme Court on various rights of the prisoners.

6.2.1. Right Against Torture:

The right against torture available to a person under the Convention against Torture and various other international instruments has been presented in this chapter. Though the right has such importance at the international level, in the Indian Constitution even there is no such specific right against torture but it was implied in Article 21. A review of the important cases on torture delivered by the Supreme Court show how the right against torture was elevated to that of a fundamental right by the Supreme Court, thus filling the lacuna left in the Constitution. The analyses of important cases delivered by the apex court in this regard are Nandini Satpaty vs P.L.Dhani case was the first case in which the Supreme Court condemned all forms of pressure in custodial interrogation.

In the case of Sunil Batra vs. Delhi Administration the Supreme Court held that even a condemned prisoner should not be tortured. The court held that ‘bar fetters are a barbarity generally and like whipping must vanish, civilized consciousness is hostile to torture within the walled campus’. The court ruled further that, “the treatment of a human being which offends human dignity, imposes avoidable torture and reduces the man to the level of a beast would certainly be arbitrary and can be questioned under Article 14”.

In the case of Sunil Batra II, the Supreme Court held, ‘if the prisoner breaks down because of mental torture, psychic pressure or physical infliction beyond the illicit limits of lawful imprisonment the prison administration shall be liable for the excess’. ‘It is now clear that a prisoner wears the armor of a basic freedom, even behind bars, and that on breach thereof by lawless officials the law will respond to his distress through ‘writ’ aid. No prisoner can be personally subject to deprivations not necessitated by the fact of incarceration and the sentence of the court. All other freedoms belong to him.”

---

In the case of Khatri vs. State of Bihar\(^9\), the Supreme Court condemned the barbaric torture as violative of Article 21 and awarded compensation to the prisoners who were blinded by the police.

In the case of Raghubir Singh vs. State of Haryana \(^{10}\) the Supreme Court condemned torture and punished the police.

In the case of State of UP vs. Ram Sagar Yadav\(^{11}\) the Court condemned the torture and custodial deaths and to prevent the recurrence of such torture the Court suggested that the burden of proving innocence with regard to injuries on a prisoner shall be placed on the station house officer.

Right against torture, was reiterated by the Supreme Court in the case of Francis Coralie Mullin vs. Delhi Administration\(^{12}\) also in this case the Court specifically referred to the right against torture. It was observed by the court.

"Now obviously, any form of torture or cruel, inhuman, or degrading treatment would be offensive to human dignity and constitute an inroad into this right to live and it would, on this view,

---

\(^9\) AIR 1981 SC 928  
\(^{10}\) AIR 1980 SC 1087  
\(^{11}\) AIR 1985 SC 421  
\(^{12}\) AIR 1981 SC 746
be prohibited by Article 21 unless it is in accordance with procedures prescribed by law, but no law which authorizes and no procedure which leads to such torture or cruel, inhuman or degrading treatment, can ever stand the test of reasonableness and non-arbitrariness, it would plainly be unconstitutional and void as being violative of Articles 14 and 21 of the Indian Constitution.

The Court further observed:

"The right to life enshrined in Article 21, cannot be restricted to mere animal existence. It means something more than just physical survival. The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and co-mingling with fellow human beings."13

The Court held categorically that, "There is implicit in Article 21 the right to protection against torture or cruel, inhuman or degrading treatment which is enunciated in Article 5 of the Universal

13 ibid.
Declaration of Human Rights and guaranteed by Article 7 of the International Covenant on Civil and Political Rights." 14 Thus, this case elevated the right against torture to that of a fundamental right.

In the case of DK. Basu vs. State of West Bengal,15 the Supreme Court addressed the issue of custodial torture and formulated guidelines to eradicate the evil of torture. The Court observed that,

"Torture has not been defined in the Constitution or any other penal laws. Torture of a human being by another human being is essentially an instrument to impose the will of the 'strong' over the 'weak' by suffering. The word ‘torture’ today has become synonymous with the darker side of human civilization.

‘Torture’ is a wound in the soul so painful that some times it can almost touch it, but it is also so intangible that there is no way to heal it. Torture is annulus, squeezing in your chest, cold as ice and heavy as stone, paralyzing as sleep and dark as abyss. Torture is despair and fear and rage a heat. It is a desire to kill and destroy, including you.

14 Ibid.
15 (1997) SCC 416
No violation of anyone of the human rights has been the subject of so many conventions and declarations as ‘torture’, of aiming at total banning of it in all forms, but in spite of the commitments made to eliminate torture, the fact remains that torture is more widespread now than before. ‘Custodial torture’ is a naked violation of human dignity and degradation which destroys, to a very large extent, the individual personality. It is a calculated assault on human dignity and whenever human dignity is wounded, civilisation takes a step backward - the flag of humanity must on each such occasion fly at half-mast.” In this case the Court laid down various guidelines to be followed by the police to avoid custodial torture.

In the case of Raghuvir Singh Vs. State of Haryana 16, the Supreme Court confirmed the sentence awarded by the trial court to police personnel and strongly observed against custodial torture and death.

In the cases Gouri Shankar Sarma Vs. State of U.P17, and Bhagawan Singh and Uttam Singh Vs. State of Punjab,18 the Supreme

---

16 AIR 1980 SC 1087
17 AIR 1990 SC 709
18 AIR 1992 SC 216
Court condemned the torture and awarded serious punishments to the concerned police officers.

Thus, the right against torture though not explicitly provided by the constitution has become one of the fundamental rights. The judgments of the Supreme Court, particularly in Sunil Batra and Francis Coralie Mullin, cases made the right against torture firmly rooted in Article 21 of the Indian Constitution, thus filling up a constitutional gap in tune with the times.

There are number of other decisions delivered by the Supreme Court laying down firm foundations of prisoners rights. Some of which are also has discussed hereunder.

In case of Charles Sobraj Vs. Superintendent, Central Jail Tihar, the Supreme Court observed:

"Prisoners retain all rights enjoyed by free citizens except those lost necessarily as an incident of confinement. Moreover, the rights engaged by prisoners under Articles 14, 19 and 21, though limited, are not static and will rise to static rights when challenging circumstances

rise. In case of D.B.M. Patnaik Vs. State of A.P.\textsuperscript{20} the Supreme Court laid down: Convicts are “not by the mere reason of their detention denuded of all the fundamental rights they possess”. In case of Sanjay Suri Vs. Delhi Admn., \textsuperscript{21} the Court held: “Today the prison house is looked upon as reformatory and the years spent in jail should be with a view to providing rehabilitation to the prisoner after the sentence is over.” In yet another leading case Rakesh Kaushik Vs. B.L. Vig. Superintendent, Central Jail New Delhi, \textsuperscript{22} the Court observed: “The court has a continuing responsibility to ensure that the constitutional purpose of the deprivation is not defeated by the prison administration”

\textbf{6.2.2. Handcuffing Under-trial Prisoners Deprecated:}

Starting from the well noted case of Prem Shankar Sukla v Delhi Administration, \textsuperscript{23} the Supreme Court seriously deprecated the practice of handcuffing the under trial prisoners, and took a serious view of the attitude of the Judicial Magistrates in not taking any action against handcuffing of under-trial prisoners. The Supreme Court held

\begin{footnotesize}
\textsuperscript{20} AIR 1974 SC 2092.
\textsuperscript{21} AIR 1988 SC 414.
\textsuperscript{22} AIR 1981 SC 1767).
\textsuperscript{23} AIR 1980 SC 1535.
\end{footnotesize}
that a successive pronouncements of the Supreme Court against such practice of handcuffing under-trial prisoners by the police is the law of the land.

The Court through a number of decisions held that handcuffing is prima-facie inhuman and therefore, unreasonable, is over-harsh and at the very first flush, arbitrary. Absence of fair procedure and objective monitoring, to inflict 'irons' is to resort to zoological strategies repugnant to Article 21 of the Constitution. The Court reasoned that competing claims of securing the prisoners from fleeing and protecting his personality from barbarity have to be harmonised. The Court concluded that to bind a man hand-and-foot fetter his limbs with hoops of steel, shuffle him along in the streets and make him stand for hours in the Courts is to torture him, defile his dignity, vulgarise society and foul the soul of our constitutional culture.24 It was held that where in the extreme circumstances, handcuffs have to be put on the prisoners, the escorting authority must record contemporaneously the reasons for doing so. Otherwise under Article 21 the procedure will be unfair and bad in law. Nor will mere recording of reason do, as that can be a mechanical process mindlessly

24.Ibid.
made. The escorting officer, whenever he handcuffs a prisoner produced in the Court, must show the reason so recorded to the Presiding Judge and get his approval. Otherwise, there will no control over possible arbitrariness in applying handcuffs and fetters. Once the Court directs that handcuffs shall be off no escorting authority can overrule judicial direction. This is implicit in Article 21 which insists upon fairness, reasonableness and justice in the very procedure which authorises stringent deprivation of life and liberty.25

The Supreme Court deprecated the attitude of the Judicial Magistrates in not taking any action against the handcuffing of under-trial prisoners. In the case of Khedat Mazdoor Chetan Sangh v State of M.P,26 the Judicial Magistrate tendered his apology for lapse on his part when the under-trial prisoners were produced in handcuffs in his court immediate action for the removal of the handcuffs and against the escort party for taking them in Court in handcuffs was not taken.

The Supreme Court in the case of Sunil Batra V. Delhi Administration,27 held that indiscriminate resort to handcuffs when the accused persons are taken to and from Court and expedient of forcing

---

25.Ibid.
26.AIR 1979 SC 2463
irons on prison inmates are illegal and shall be stopped forthwith save in small category of cases where an under-trial has a credible tendency for violence and escape a humanely graduated degree of 'iron' restraint is permissible, if other disciplinary alternatives are unworkable. The burden of proof is on custodian.

The Supreme Court in the case of President, Citizens for Democracy v State of Assam,\(^ {28}\) issued fresh direction that there should not be handcuffing of prisoners except under special circumstances. The Court directed that prior order from the magistrate is required to be obtained to direct handcuffing of any inmates of a jail in the country or during transport from one jail to another or from jail to court and back. The Court warned that any person or Police authority failing to comply with the aforesaid direction of the Supreme Court shall be summarily punished under the Contempt of Courts Act, 1971 apart from other penal consequences under law.

In this case the tribal agitators agitating against the construction of dam were arrested by the police and handcuffed while being taken to the Court from the jail and they were paraded through the street. The

\(^ {28}\) 1995 (3) SCC 743.
Police did not take permission from the Magistrate and no immediate action was taken by the Magistrate for removal of the handcuffs and against the escort party for bringing them to the Court. The Supreme Court took serious exception to the conduct of the judicial officer and directed to place the note of disapproval in the service record of the judicial officer. But the Court refrained from imposing punishment on him considering his age.

The Supreme Court after considering various circumstances in the context of Article 21 of the Constitution gave the detailed guidelines to the Government regarding the circumstances under which an accused arrested under the Criminal Procedure Code can be put on handcuffs. It was alleged in the Writ petition in the case of Altemesh Rein v Union of India. That the decision of the Supreme Court has not been implemented by the Union of India and the Supreme Court directed the Union of India to frame Rules in conformity with the decision of Perm Shankar case within three months.

6.2.3. Right to have Copy of the Judgment and Legal Service by the Convict in jail custody:

The Supreme Court in M.H. Hoskot,\textsuperscript{30} case while considering the scope of personal liberty in relation to the right of appeal of a convict prisoner provided the guidelines to be followed. The Court observed that subject to just exceptions, at least a single right of appeal on facts, where criminal conviction is fraught with long loss of liberty, is basic to civilized jurisprudence. The First appeal from the Sessions Court to the High Court, as provided in the Code of Criminal Procedure manifests this value upheld in Article 21. The Court shall forthwith furnish a free copy of judgment when a person is sentenced to prison terms. If the person is in jail custody, it is the imperative duty of the jail authority to deliver a copy of the judgment to the prisoner with quick dispatch and obtain written acknowledgment thereof from him. Where the prisoner seeks to file an appeal or revision, every facility for exercise of that right shall be provided by the jail authority. Where the prisoner is disabled from engaging a lawyer, on reasonable grounds such as indigence or incommunicado situation, the Court shall, if the circumstances of the case, the gravity of the sentence, and the ends of justice so require, assign competent counsel for the prisoner's defense and the payment for the service of lawyer to be

\textsuperscript{30}M.H. Hoskot Vs. State of Maharastra.AIR 1978 SC 1548.
made by the State. The Court concluded that the above guidelines are relevant from the lowest to the highest Court where deprivation of life and personal liberty are involved.

6.2.4. Prisoners and Right to vote:

A person who is in prison as a result of his own conduct and is, therefore, deprived of his liberty during the period of his imprisonment cannot claim equal freedom of movement, speech and expression with the others who are not in the prison. The classification of persons in or out of prison separately is reasonable. Restrictions on voting of a person in prison result automatically from his confinement as a logical consequence of imprisonment. The object is to keep the persons with criminal background away from the election scene; a provision imposing restriction on a prisoner to vote cannot be called unreasonable. Preventive detention differs from imprisonment on conviction or during the investigation of the crime of the accused which permits separate classification of the detenue under preventive detention. Section 62(5) of the Representation of People Act, 1951 debar a person to vote in an election if he is confined in an imprisonment. Proviso to sub-sec. (5) carved out an exception for a
person subject to preventive detention under the law for the time being in force. Held, the classification made is not violative of Article 14 and it is also not violative of Article 21 on the ground that the restriction on the prisoner's right to vote denies dignity of life. Further classification made for persons in preventive detention is reasonable.

6.2.5. Right to Speedy trial:

It is the crying shame upon the adjudicatory system of our country which keeps a man in jail for years together without trial. The Supreme Court in the case of Hussainara Khatoon v State of Bihar\textsuperscript{31}, pointed out that speedy trial is a fundamental right of an accused implicit in Article 21 of the Constitution. An accused who denied this right of speedy trial is entitled to approach the Supreme Court for the purpose of enforcing such right.\textsuperscript{32} A procedure prescribed by law should be reasonable, fair and just and if a person is deprived of his life and personal liberty under the procedure which is not just, fair and reasonable, then such deprivation would be violative of Article 21 of the Constitution. A procedure which does not provide for speedy trial for determination of the guilt of the accused cannot be termed as just.

\textsuperscript{31}AIR 1979 SC 1377
\textsuperscript{32}Kadra Pahadiya v State of Bihar, AIR 1987 SC 2143.
fair and reasonable. Thus fair trial implies speedy trial and it is implicit in the broad sweep and content of Article 21 of the Constitution. It was held in the case of Surya Narayan Singh v State\textsuperscript{33} from the stage of police investigation of a case the rule applicable. Thus, the rule of speedy trial is applicable from the stage of police investigation and an inordinate delay in police investigation itself may equally attract the rule of speedy trial.

It was further held that callous and inordinately prolonged delay of five years or more (which does not arise from the default of the accused) in investigation and original trials of pending cases for capital offences punishable with death would plainly violate the constitutional guarantee of speedy trial under Article 21 of the Constitution.

6.2.6. Right to Legal Aid:

Article 21 of the Constitution provides that no person shall be deprived of his life and liberty except according to the procedure established by law. Article 39A provides for equal justice and free legal aid. The State shall secure that the operation of the legal system

\textsuperscript{33} J. AIR 1979 SC 1092.
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 the opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The content of Article 21 read with Article 39A did not arise for consideration before the Supreme Court in any previous occasion. Article 21 is a fundamental right conferred under Part III of the Constitution, whereas Article 39A is one of the directive principles of the State policy under Part IV of the Constitution. The Supreme Court in the case of Chandra Bhawan v State of Mysore, observed that while rights conferred under Part III are fundamental, the directives given under Part IV are fundamental in the governance of the country and there is no conflict on the whole between the provisions contained in the Part III and Part IV of the Constitution. They are complementary and supplementary to each other.

Free legal aid has to be implemented seriously and it did not mean that some junior lawyer should be appointed. The legal assistance ought to be of the prisoners choosing. The prisoner ought to be fully informed of his rights. Reasonable remuneration had to be paid to the

34.AIR 1981 SC 1294
lawyer by the State. In some cases legal assistance was to be offered even when the prisoner rejected the same. Free transcripts of the relevant judgment have to be given to the prisoners and facilities extended to him to file an appeal.

Some other important cases decided by the Supreme Court on free legal aid to the poor and needy prisoners are Ranchod Mathur's\textsuperscript{35} case Harishankar Rastogi's\textsuperscript{36} case Zarzoliana's\textsuperscript{37} case and Moolchand Vs. State\textsuperscript{38}

6.2.7. Right to Speedy trial and the Right of Prisoners to be released on bail and discharge in pending Cases:

In the popularly known "Common Cause case" \textsuperscript{39} the Supreme Court issued the directions to the Courts in India and the Registrars of the High Courts were directed to communicate copies of the order to all the Criminal Courts under the control and superintendence of the respective High Courts with the direction to send compliance report to the High Courts within three months from the date of receipt of communication. The Court formulated a number of guidelines which

\begin{itemize}
  \item \textsuperscript{35} AIR 1974 SC 1143.
  \item \textsuperscript{36} AIR 1978 SC 1019.
  \item \textsuperscript{37} 1981 Cri. LJ 1736.
  \item \textsuperscript{38} 1990 Cri. LJ 682.
  \item \textsuperscript{39} AIR 1999 SC 2979.
\end{itemize}

173
are intended to release under trial prisoners in a big way in all pending cases and thereby reduce the overcrowding in the jails. Following the principle in the case of A.R. Antulay v R.S. Nayak,

\[\text{40}\\]

it was held in Santosh De v Archana Guha\[\text{41}\\] the delay in conducting the case for 8 years as due to the prosecution and for the last 14 years no progress has been made in the trial of the case and not a single witness has been examined. The Supreme Court observed that the delay was entirely due to the prosecution which defeats the right of the accused to speedy trial. The Supreme Court declined to interfere with the order quashing the proceedings as the delay defeats the accused right to speedy trial.

6.2.8. Prisoners Right to Reasonable Wages:

In the case of Prison Reforms Enhancement of wages\[\text{42}\\] the Gujarat High Court was faced with a situation where under-trials were paid between 50 paise to Rs. 1.60 per day for a full days hard labour. The Court lamented the fact that the Prison Reforms Commission was not functioning. Dealing with the objections of the State in respect of increase in wages, the judges said:

\[\text{40}.\ \text{AIR} \ 1984 \ SC \ 718.\\\]
\[\text{41}.\ \text{AIR} \ 1995 \ SC \ 293.\\\]
\[\text{42}.\ \text{AIR} \ 1983 \ Guj \ 261.\\\]
"We do not think that better treatment in jail would be an incentive to commit crimes and it is unreasonable to assume that merely because a person is moderately well feed and looked after under humane conditions that he feels happy in jail".

The constitutional questions to be answered were:

(1) Can a prisoner under sentence claim wages for his work?
(2) Must these wages be reasonable and not merely illusory?
(3) Can a Court grant reliefs?

All three questions were answered in the affirmative. The Indian Penal Code speaks only of hard labour not free labour. Reliance was placed on Article 4 of the Universal Declaration of Human Rights which reads, "no one shall be held in slavery" and also Article 23(1) which guaranteed the "right to work, free choice of employment, just and favourable conditions of work and protection against employment". Also Article 23(3) which guaranteed "the right to remuneration ensuring for a dignified existence for self and family". Reliance was also placed on Article 10(1) of the International Covenant of Civil and Political Rights declaring, "all persons deprived of their liberty shall be treated with humanity and respect".
Accordingly the Court held that prisoners ought to be paid wages at or above the minimum wage.

In the case of State of Gujarat and Another V. Hon’ble High Court of Gujarath, and it was held that putting a prisoner to hard labour while he is undergoing sentence of rigorous imprisonment awarded to him by the Court of competent jurisdiction cannot be equated with 'begar' or 'other similar form of forced labour' and there is no violation of clause (1) of Article 23 of the Constitution. It is imperative that the prisoners should be paid equitable wages for the work done by them. In order to determine the quantum of equitable wages payable to prisoners the State concerned shall constitute a wage fixation body for making recommendation. The Court also directed the States to fix the rate of interim wages and report compliance of the direction to the Supreme Court. A portion of the wages earned by the prisoner to be paid as compensation to the deserving victims of the offence.

Several High Courts expressed different opinion in this matter. The Kerala High Court in the matter of Prison reforms enhancement of wages of prisoners case seems to have taken the lead and

---

43. AIR 1998 SC 3164.
44. AIR 1983 Ker 26 L

176
suggested that the wages given to the prisoners must be at par with the wages fixed under the Minimum Wages Act and the request to deduct the cost for providing food and clothes to the prisoner from such wages was turned down. The Gujarat High Court also adopted the same stand as that of the Kerala High Court. Single Bench of the Rajasthan High Court suggested that the State Government shall appoint a body to go into the entire wage structure of the convict prisoners and lay down rate of wages payable to them. The Division Bench confirmed the same judgment. In the case of Gurdev Singh’s, the Himachal Pradesh High Court held that the payment of wages below "minimum wages" prescribed by law to prisoners amounted to "forced labour" under Article 23 of the Constitution. The Court held that there has to be no distinction between the work inside the prison and outside the prison. The Court also directed the State Government to undertake comprehensive prison reforms by appointing a high power committee to look into matters including opening of more Open Air Prisons, provision for education, vocational training and adequate work.

45. AIR 1992 Him. Pr. 76
All these judgments were considered by the Supreme Court. All the State Governments were directed to fix the rate of interim wages within six weeks. The Court also directed the State concerned to make law for setting apart a portion of the wages earned by the prisoners to be paid as compensation to the deserving victims of the offence, the commission of which entitled the sentence of imprisonment to the prisoner, either directly or through the common fund to be created for the purpose or any other feasible mode.

6.2.9. Right to Read and Write Books:

In the case of State of Maharashtra V Prabhakar Pandurang Sangiri and Another 46, the convict had written a book “Inside the Atom” dealing with physics. He was prevented from publishing the same under the Defence of India Rules 1962, and the Bombay Conditions of Detention Order 1951. The Court held that no prejudice to the defence of India or to public safety, or to the maintenance of public order was possible and permitted the publication of books written by the prisoner.

46. AIR 1966 SC 424.
In the case of Kunnikal Narayanan V. State of Kerala\textsuperscript{47}, Kunnikal was prevented from receiving "Mao's literature" by the prison authorities and challenged the same through a petition in the Kerala High Court. As no passage from these books could be shown if read, to endanger security of the State or prejudice public order, the books were allowed.

The Court held that there were no grounds to prevent Kunnikkal from obtaining these books. Article 19(1) (a) includes the freedom to acquire knowledge, to peruse books and read any type of literature subject only to certain restrictions. The security of State and maintenance of public order would not be affected.

In the case of M.A. Khan V. State and Another,\textsuperscript{48} the prison officials had refused Khan certain journals and periodicals even though the prisoner had offered to pay for them. These were refused on the ground that they were not included in the official list. The refusal was done under Clause 16 of the Bombay Conditions of Detention Order, 1951 which were framed under Section 4 of the Preventive Detention Act, 1950.

\textsuperscript{47} AIR 1973 Ker. 97.
\textsuperscript{48} AIR 1967 SC 254.
Perusing these Sections and Clauses the judge held that prisoners can be refused reading material only if the newspapers are found “unsuitable” by the authorities. In the present instance the prison authorities had supposedly found the journals “unsuitable” because they “preached violence” and criticized policies of the Government in respect of Kashmir.

The Court also perused Rule 30(4) of the defense of India Rules according to which the State may determine the conditions with respect to “maintenance” and “discipline” of prisoners. Preventing prisoners from reading papers does not in any way relate to maintenance or discipline the Court said. Further the use of the word “unsuitable” in Clause 16 gave the State arbitrary and unregulated discretion as there were no guidelines for the exercise of power.

In the case of George Fernandes V. State of Bombay 49, once again the issue was books being denied by the jail authorities. The Superintendent of the Nagpur Central Prison had arbitrarily fixed the number of books to be allowed to each prisoner at 12. The Court held that under the Bombay Conditions of Detention Order, 1951 there was

49.1964 Bom. LR 185.
no restriction on the number of books and the only ground on which a book may be disallowed is that it was, in the opinion of the Superintendent, “unsuitable”. The Superintendent could not fall back on any implied power to disallow the books.

Of all the restraints on liberty, that on knowledge, learning and pursuit of happiness is the most irksome and least justifiable, Improvement of mind cannot be thwarted but for exceptional and just circumstances. It is well known that be thwarted but for exceptional and just circumstances. It is well known that books of erudition and universal praise have been written in prison cells.

**Prisoners Right to Compensation:**

In the case of Rudul Shah V. State of Bihar, the petitioner was released from Tihar jail 14 years after he was acquitted. Again the excuse was insanity. The court noted that no data of any kind was produced to show that the prison authorities had a basis for either declaring the prisoner insane or for detaining him on that account. No measures were taken to cure him. Insanity was clearly alleged as an after thought.

---

51. AIR 1984 SC 1026.
The Court observed that if a prisoner was at all insane, it must have been caused by the jail conditions itself. It was shocking that such a case should emerge after the Bhagalpur blinding case. The said case was widely reported all over the world and brought the entire prison system of Bihar into disrepute. It appears that such publicity had absolutely no effect on the criminals who run our prison systems.

The Supreme Court directed the High court to call for statistical data from the Home Department in respect of the number of convicts who have been in jail for periods in excess of 10, 12, and 14 years respectively.

The interesting part of the judgment relates to compensation. The Court granted compensation of Rs. 35,000/- as a palliative to the petitioner and specifically indicated that a suit for compensation over and above this amount would lie in an appropriate Court. Article 21 will be denuded of its significant content if the powers of the court were limited to passing orders merely of release. One way in which due compliance with the mandate of Article 21 is secured is to mulct, its violators in the payment of monetary compensation. It cannot be corrected by any other method.
Interestingly for 14 years of illegal custody the poor prisoner was given compensation of only Rs. 30,000/- why not 30 lakhs? Would not the latter amount be more appropriate for such a violation of the Fundamental Rights of a citizen of India?

In the case of Sebastian M. Hongray V. Union of India,52 a habeas corpus petition was filed. Sebastian was a Naga priest who was a Head Master of a School. His School was visited by the army. There are army engaged in certain atrocities and took away certain persons including the petitioner. He was last seen alive in an army camp. A petition for habeas corpus was filed, but the State refused to obey. The Court asked “What is the appropriate mode of enforcing obedience to a writ of habeas corpus?” Here there was willful disobedience of the writ by misleading the Court and by presenting a distorted version of facts. It was a case of civil contempt. In a landmark judgment the Court ordered that the State pay Rs. 1 lack each to the wives of the missing persons.

Reiterating the principle laid down in the earlier decisions, the Supreme Court awarded compensation of Rs. 50,000/- in the case of

---

52 AIR 1984 SC 1026.
Bhim Sigh V. State of J&K 53, for imprisonment with "mischievous or malicious intent", where an M.L.A., was kept in police custody and remand orders were obtained without his production before the magistrate.

In the case of Saheli, a Women's Resources Centre vs. Commissioner of Police, Delhi54, and the Supreme Court directed that compensation be paid to the mother of a nine year old child who died because of beating and assault by police officer.

The law regarding strict liability of the State for violation of fundamental rights to which the defence of sovereign immunity is not applicable was laid down by the Supreme Court in the case of Nilabati Behera V. State of Orissa 55. In this case where compensation was awarded to the mother of a victim of custodial death, the Supreme Court expressed the need of the Court "to evolve 'new tools' to give relief in public law by molding it accordingly to the situation with a view to preserve & protect the rule of law".

53. AIR 1986 SC 494.
54. AIR 1990 SC 5,13'.
55. 1993 (2) SCC 746.
Extending this principle, the Delhi High court awarded compensation to the victims of police firing on the illegal assembles during the Mandal agitation in P.V. Kapoor V. Union of India \textsuperscript{56} case.

The Gauhati High Court awarded compensation to the father of deceased against whom no case had been registered in Nagantangkhui's\textsuperscript{57} case.

The Andhra Pradesh High Court also awarded compensation in case of illegal detention and quashed the prosecution pending against the detune filed subsequently as being an abuse of the process of Court in S. Seshaih V. State of Andhra Pradesh\textsuperscript{58}.

The Supreme Court in the case of Arvinder Singh Bagga V. Union of India \textsuperscript{59} directed that State pay compensation to persons illegally detained and directed prosecution of the concerned police officers for the "Blatant abuse of law". In the case of Smt. Kewal Pati's \textsuperscript{60}, the Supreme Court held that the legal heirs of deceased are entitled to compensation from State if a prisoner is killed in jail by co-accused.

\textsuperscript{56} 1992 Cri. LJ 140 Del.
\textsuperscript{57} 1995 Cri LJ 347.
\textsuperscript{58} 1994 Cri. LJ 1469.
\textsuperscript{59} JT 1994 (6) Sc 478.
\textsuperscript{60} 1995 (2) Crimes 305.
Women prisoners:

In the case of Sheela Barse's 61, a journalist interviewed women prisoners in the Bombay Central Jail and had reported that the police assaulted and tortured the women inmates. To verify the allegations the Director of the College of Social Work was directed by the Court to visit the jail and make a report. Her report showed that there was no legal assistance for women that the conditions of women in jail were abysmal and that lawyers had duped inmates of their belongings. Suggestions regarding provisions of legal aid to women in jails were made:

I. Details relating to undertake must be sent to the Legal Aid Committees with separate details in respect of men and women.

II. Details were to be furnished about prisoners arrested 'on suspicion' under Section 41 of the Criminal Procedure Code and also in respect of those who were in jail for more than 15 days.

III. Facilities were to be provided for visits and interviews by lawyers in private.

---

61. 1983 2 SCC 96.
IV. In the Bombay area the police were to set aside five lockups in good localities for women only. Women were not to be kept in male lockups. Interrogations were to be done only in the presence of female constables.

V. Arrest without warrant ought not to be done as far as possible. The accused immediately on arrest must be informed of the grounds her arrest and she must be immediately informed of her right for bail.

VI. Every arrest should be intimated to the Legal Aid Committees.

VII. A woman judge ought to be appointed for surprise visits to lockups specially to look after the interest of female prisoners.

VIII. On arrest the police must immediately inform relatives and friends of the accused about the arrest.

IX. When produced in Court, the Magistrate must enquire from the accused about torture and must inform him of his rights in respect of medical examination and free legal aid.

In the case of State of Maharashtra Vs. C.K. Jain\(^2\), is concerned with rape in police custody. Regarding evidence, the Supreme Court emphasized that in such cases unless the testimony of the prosecutions

\(^2\) AIR 1990 SC 658.
was unreliable, collaboration normally should not be insisted upon. Secondly, the presumption is to be made that ordinarily no woman would make a false allegation of rape. Thirdly, delay in the making of a complaint is not fatal and quite understandable reasons exist for delay on the part of the victim woman in making a complaint against the police. As far as sentence was concerned there was no room for leniency, the punishment must be exemplary.

In the case of Rekha M. Kholkar, the Bombay High Court held that the provisions of section 160(1) of the code of Criminal Procedure prohibiting examination of women by police in any place other than their place of residence is mandatory and directed its strict compliance. The Court also awarded compensation to the victim for physical and mental torture.

In Christian Community Welfare Council of India vs. Government of Maharashtra, case the Bombay High Court directed that woman should not be arrested after sunset and before sunrise and only in the presence of lady constables. The court directed the State Government to set up a Committee to formulate a comprehensive scheme for

---

64. (1996) Bom CR 70.
police accountability to human rights abuse and make special provisions for female detainees.

(i) We would direct that four or five police lockups should be selected in reasonably good localities where only female suspects should be kept and they should be guarded by female constables. Female's suspects should not be kept in a police lockup in which male suspects are detained. The State of Maharashtra has intimated to us that there are already three cells where female suspects are kept and are guarded by female constables and has assured the Court that two more cells with similar arrangements will be provide exclusively for female suspects.

(ii) We would further direct that interrogation of females should be carried out only in the presence of female police officers / constables.

(iii) Whenever a person is arrested by the police without warrant, he must be immediately informed of the grounds of his arrest and in case of every arrest it must immediately be made known to the arrested person that he is entitled to apply for bail. The Maharashtra State Board of Legal Aid and Advice will forthwith get a pamphlet prepared setting out the legal rights of an arrested person and the State
of Maharashtra will bring out sufficient number of printed copies of the pamphlet in Marathi which is the language of the people in the State of Maharashtra as also in Hindi and English and printed copies of the pamphlet in all the three languages shall be affixed in each cell in every police lockup and shall be read out to the arrested person in any of the three languages which he understands as soon as he is brought to the police station.

(iv) We would also direct that whenever a person is arrested by the police and taken to the police lockup, the police will immediately give intimation of the fact of such arrest to the nearest Legal Aid Committee and such Legal Aid Committee will take immediate steps for the purpose of providing legal assistance to the arrested person at State cost provided he is willing to accept such legal assistance. The State Government will provide necessary funds to the concerned Legal Aid Committee for carrying out this direction.

(v) We would direct that in the city of Bombay, a City Sessions Judge, to be nominated by the principal Judge of the City Civil Court, preferably a lady Judge, if there is one, shall make surprise visits to police lockups in the city periodically with a view to providing the
arrested persons an opportunity to air their grievances and ascertaining what are the conditions in the police lockups and whether the requisite facilities are being provided and the provisions of law are being observed and the directions given by us are being carried out. If it is found as a result of inspection that there are any lapses on the part of the police authorities, the City Sessions Judge shall bring them to the notice of the Commissioner of Police and if necessary to the notice of the Home Department and if even this approach fails, the City Sessions Judge may draw the attention of the Chief Justice of the High Court of Maharashtra to such lapses. This direction in regard to police lockups at the district headquarters shall be carried out by the sessions judge of the district concerned.

(vi) We would direct that as soon as a person is arrested, the police must immediately obtain from him the name of any relative or friend whom he would like to be informed about his arrest and the police should get in touch with such relative or friend and inform him about the arrest; and lastly.

(vii) We would direct that the magistrate before whom an arrested person is produced shall enquire from the arrested person whether he
has any complaint of torture or maltreatment in police custody and inform him that he has right under section 54 of the Code of Criminal Procedure, 1973 to be medically examined. We are aware that Section 54 of the Code of Criminal Procedure, 1973 undoubtedly provides for examination of an arrested person by a medical practitioner at the request of the arrested person and it is a right conferred on the arrested person. But very often the arrested person is not aware of this right and on account of his ignorance, he is unable to exercise his right even though he may have been tortured or maltreated by the police in police lookup. It is for this reason that we are giving a specific direction requiring the magistrate to inform the arrested person about this right of medical examination in case he has any complaint of torture or maltreatment in police custody.

**Prison Facilities:**

In Madhukar Jambhale’s case, the petitioner complained of bad food in the Dhule district jail. The food contained worms etc., He also challenged Section 59 of the Prisons Act classifying prisoners into Class I and II based on higher status, education and standard of living.

---

65.1987 Mah. LJ 68.
When the petition came up for hearing the divisions into different classes was already abolished. The petitioner also challenged various rules of the Maharashtra Prison (Facilities to Prisoners) Rules 1962, which restricted the right to correspond and provided for strict censorship. For example, prisoners were not allowed to correspond with prisoners in other prisons. Political materials were not to be communicated and nothing could be written complaining against the jail administration. The Bombay High Court held that there was no justification for the above restrictions.

The case Ranchod Vs. State of M.P\(^6\), brought into sharp focus the pitiable state of jails in the State of M.P. The callous behavior of doctors, maltreatment by jail staff and tampering of jail records came up for judicial scrutiny. All this went on for years with the visitors Committee apparently oblivious of it all. This is an important case on the role of doctors in jails.

In Nacio Manuel Miranda Vs. State\(^6\), reasserted the rights of prisoners regarding prison facilities such as shaving blades, letters, and ventilation in the room and so on. Most shocking however was

\(^6\) 1986 16 Reports M.P. 147.
\(^6\) 1989 Mah. LJ 77.
the attitude of the High Court in the face of sustained disobedience of previous orders of Court. Despite several judgments, the Prison Manual and Rules were not printed and available to them and remained at a pitiable low level. Despite repeated order the Visitors Board orders of the Court, the Division Bench of the Bombay High Court was content with merely repeating the same directions all over again.

*****