Human Rights refer to those rights without which an individual cannot live a life of dignity. They are essential for individuals to develop their personality, human qualities, intelligence, talent and conscience and also to enable them to satisfy their spiritual and other higher needs. Human rights come from ‘below’, from a universal set of ethical principles, which seek to ensure the equal worth of each individual life, and are applicable to all people at all times and all places, rather than granted from ‘above’ by the state that differ across time and place\(^1\). Edward Lawson\(^2\) in the “Encyclopedia of Human Rights”, defined human rights as “the universally accepted principles and rules that support morality and that make it possible for each member of the human family to realize his or her full potential and to live life in an atmosphere of freedom, justice and peace.” The source of human rights is, thus, man’s moral nature which maintains that beneath this one must not permit oneself to fall\(^3\). Some moral values, especially liberty, equality, justice, fraternity, fearlessness, self-control and compassion, are deemed to be absolute and are relevant to mankind. These moral norms chasten man, soften his cruelty and barbarity, and raise him above animal selfishness. The quest of the universality of values will strengthen the necessary foundational security of society and save it from dehumanisation and spiritual catastrophe\(^4\). Human rights provide the specific mechanism to achieve these values\(^5\). From the point of ethics, man is an ethical being endowed with reason and by reason man can discriminate between right and wrong. This makes a man a rational being. Socrates believed
that reason plays an important role in the formation of knowledge and morality. According to Aristotle, “Man is a rational being by virtue of which man is higher than all animals, plants and other things”⁶. Rabindranath Tagore, one of the contemporary Indian philosophers also stated about the superiority of man over other aspects of creation. Tagore said, “The worm is superior to the clod, the animal is superior to the worm, and man is superior to them all. God has many strings in his Sitar, some are made of iron, others of copper and yet others are made of gold. Man is the golden strings of God’s Sitar. It is on account of his superiority that man resembles his creator in many respects and is able to organise his affairs consciously⁷.

To Socrates, morality is the knowledge of the good (highest standard of life) or virtue through concepts (concepts which controls the will of the seeker), and concepts are formed by reason, and reason is one and the same for all. To Socrates man have knowledge of virtue and goodness, but at times they become dim and dormant in them because of the deception of senses⁸. Consequently, man indulges in evil practices. Plato, however, maintained that God is not the author of the evil and it is man who is responsible for all his evil acts, it is the body in man which is responsible for all evils. When man gives himself to bodily desires and momentary pleasures, the body is directed towards anti-social actions⁹. A crime is committed because he fails to guide his body rationally. Aristotle argued that man is not wholly rational, as man includes all the processes which characterise animals. At times driven by appetite and passion men behave irrationally violating the law of the society¹⁰. The person who violates the law of the society is termed as ‘criminal’
and is punished. Punishment becomes necessary for upholding the ideal of humanity and morality\textsuperscript{11}. In this context Aristotle’s philosophy of justice—Distributive and Corrective, is worth mentioning. To Aristotle, justice does not come under the purview of individual ethics, but under the activity of the state. Accordingly, Distributive justice would reward for right activity; and Corrective Justice would punish man for wrong actions. Aristotle also stated that morality can be attained by controlling the appetites and passion constantly through reason. The habitual control of appetite and passion by reason is known as ‘virtue’\textsuperscript{12}. Socrates believed that virtue is knowledge of how to ‘control the will’ through reason. And as virtue is knowledge it can be taught\textsuperscript{13}. However, to Aristotle virtue does not arise out of mere knowledge alone, it can be acquired through ‘habit’, repeatedly doing right or good actions. To be a ‘just’ person one must break old habits and acquire new habits of living a dignified life in the society. Accordingly, the wrong-doers or criminals sent to the jail as a part of the punishment should be given an opportunity to develop virtue to reform themselves into law abiding members of the society. Conferring rights to the prisoners would serve the objective of punishment as this would convert prisons into a reformatory where each of the prisoners can develop their inner self and potentialities at its best, thereby converting them into a moral and a law-abiding member of the society. Human Rights based on the moral claims for self-development and moral realisation inhere in human being are a must for any person, especially those who because of wrong guidance of reason has fallen prey to momentary pleasure and selfish desires.
Prisoners can be regarded as those men who are guided by the motives of selfish desire and ego leading him to commit crime. The universal nature or say, the permanent nature is suppressed by the motives of self-acquisition and ego-sense. Therefore, it becomes necessary to arouse spirituality inside him to create in him the element of divinity and extract the element of essential goodness lying inherent within the individual. The contemporary Indian philosophers, especially Rabindranath Tagore and Mahatma Gandhi explained the point elaborately. To them, religion is the most reliable path to realise the divinity or the essential goodness inherent in human. Rabindranath Tagore stated about the two essential aspects of human nature— a lower one (finite or individual) and a higher one (infinite or universal or spiritual). To Tagore, the finite nature of man reveals that man shares some of the `qualities and characteristics of the animal world. Like other animals he is conscious of his self and guided by the motives of acquisition or ego-sense, he also quarrels with others for the satisfaction of his needs and desires. For self-satisfaction of his desire and ego, he may tend to be even unreasonable, desperate and vindictive. On the contrary Tagore stated that the infinite nature of man is said to be the ‘universal’ in man consisting ‘the element of Divinity’ lying inside the finite self. Religion is nothing but an attempt to realise this Divinity. The importance of religion lies in the endeavour of man to cultivate and realise the divinity which are inherent in the nature of man. At this juncture, the human
personality would find its worth and essence. Tagore viewed that the modern man has forgotten the essence of religion, and therefore acts miserably\textsuperscript{14}.

Similarly, Gandhiji stated that human nature comprises of permanent and non-permanent. The animal and brutish aspect of man’s nature is not its permanent aspect, in fact, Divinity—the element of essential goodness present in every man, is the permanent nature of man. To Gandhi, religion is the way to attain the permanent nature of man\textsuperscript{15}. To Gandhi, the essence of religion is morality and non-violence (ahimsa); love is the essence of morality, and freedom of mind from anger, hatred and revenge is the essence of non-violence. Gandhiji stated that at times man become ignorant of the moral nature in him for which he is guided by blind impulses, becomes egoistic and in his egoism man becomes isolated from the rest of Reality and engages himself in the pursuit of selfish motives and desires. Gandhi, however, stated that ‘man is not an isolated being, rather a part of the whole reality’\textsuperscript{16}. According to Gandhi a sincere faith in God will make man see that all human beings are ‘fellow-beings’ and essentially one. Thus, the love of God would turn into a love of humanity, which result into the realization of the unity of mankind and enable him to love his fellow-beings\textsuperscript{17}. This belief is based on the idea that there is an ‘element of essential goodness’ in every man because man contains divinity within himself. Evil result because this element is either pushed to the background, or is clouded by passion, hatred and anger. The need of the hour is, therefore, to awaken this aspect in man and the moment this element of goodness is aroused, the individual himself will realize his wrong that he had done. Gandhi stated that “if we start resisting evil with evil, violence with violence, anger with
anger, then we are only adding fuel to fire”\(^{18}\). Gandhi said, “Hate the sin and not the sinner. For we are all tarred with the same brush, and are children of one and the same Creator, and as such the divine power within us are infinite. To slight a single human being is to slight those divine, and thus to harm not only that being but with him the whole world”\(^{19}\).

Theories based upon religious assumptions, thus, believed that since human beings were created in the image of God, a human being is a value in itself and each human being deserves inherent dignity. For instance, the teachings of world’s greatest religions such as Hinduism (to respect the sacredness of life), Buddhism (to practice love and kindness and compassion towards all human beings), Christianity (to love fellow beings and alleviate human suffering), and Islam (to practice justice, mercy, and charity, particularly towards the most vulnerable in society, despite of their many differences, emphasized on the worth and dignity of human life\(^{20}\). Common to each of these religious beliefs is the recognition of certain universally valid principles and standards of behaviour. And these standards of behaviour undoubtedly inspire human rights thinking, and may be considered as precursor to, or different expressions of, the idea of human rights\(^{21}\). All true religions advocate the incorporation of universal moral principles in the political system with the cannons of reason, equity and justice to provide higher legitimacy to the governing mechanism\(^{22}\).
3.2 HUMAN DIGNITY AND HUMAN WORTH: IMMANUEL KANT

The concept of human dignity now plays a significant role in several areas of political life. One context in which the concept of dignity have become increasingly prominent is the theory and practice of human rights. Human dignity is often considered as the ‘contemporary’ conception of the old concept of ‘dignity’ generally associated with ‘honour’. Human dignity and dignity are said to be different in the following ways—

i) Human dignity applies specifically to human beings rather than to other entities such as offices, institutions, or states.

ii) Human dignity applies equally to all human beings in opposition to the “restrictive” conception of according dignity to the particular individuals standing at the top of the social hierarchy.

iii) Human dignity is an inherent feature of the human personality and is not subject to conditions.

Immanuel Kant greatly influenced the development of the modern concept of dignity, and is often identified as a progenitor of the form of human dignity that grounds human rights. Giovanni Bognetti, who labels Kant the “father of the modern concept of human dignity”, explained Kant’s view of dignity as follows: “man is a morally autonomous being, who as such deserves respect and must never be treated, in general and especially by the law, as only a means to contingent ends but always (also) as an end in himself”\(^23\). Jack Donnelly in a discussion of the genesis of human rights stated that, “Only with Immanuel Kant (1724-1804) we
finally find a fully-formed account of human dignity that is very similar to that of the Universal Declaration and is placed at the center of moral and political theory.” Thus, Kant’s conception of dignity can be understood as ‘the inherent worth of the human person, which grounds a duty to treat people not as mere means but also as ends in them’. He offered two reasons as to why person should be treated as ends and not as a mere means to an end—

iv) Persons have intrinsic value as opposed to animals or things, and
v) Persons have intrinsic worth and dignity because they are rational beings, free and capable of making their own decisions and goals.

Kant advocated for “Categorical Imperative” or an unconditional moral command that comes from within, which cannot be disobeyed for its universal nature, to prevent human beings to act irrationally. According to this principle, to be moral the following maxims have to be followed:

i) Each of us has act in such a way that we expect others to act under the same general conditions.

ii) A person should never be treated as a means to an end, but rather as an end in themselves.

iii) We should act in such a way as to consider ourselves as well as other persons as of equal intrinsic value.

On these accounts, Kant’s contribution to the development of human dignity consists in attributing to each human being an equal and unconditional worth grounded in moral autonomy. Kant’s use of the term dignity was based on the idea
that “all humans are equally worthy of respect”. As a whole, it can be said that Kant have contributed to a modern shift from ‘honour’ to ‘human dignity’ by rooting respect for persons in their autonomy instead of their social status—thereby enacting a transformation that was highly significant to the development of the human rights regime. Donnelly stated that Kant’s main thrust was that, “humanity itself is a dignity. The old notion of dignity as a special status of the nobility (and clergy) is here universalised to all humans. Humanity, which is present in even the lowliest of people, gives each individual a dignity and status that must be respected by all other individuals, society, and the state. And the details of that respect, especially in its political elements, are specified through human rights”.

3.3 NATURAL RIGHTS AND NATURAL LAW: BASIS FOR THE EMERGENCE OF HUMAN RIGHTS

Human dignity paved the way for human rights which has its roots in the concept of “natural rights”—rights that exist in nature independently of any human laws or customs. Andrew Heywood viewed that in twentieth century these rights were ‘reborn in the form of human rights’. Darren O’ Byrne in his book “Human Rights: An Introduction”, stated that in the medieval and early modern Western philosophy, emphasis was given on the concept of the divine right of kings and the subjects were subservient to the monarch. The only power they had over their own lives was that which was granted them by the monarch. However, during Enlightenment religious authorities were questioned and the concept of natural law was given more rationalist foundation. At this time, rights came to be associated with the idea of social contract, whereby individuals existing in the state of nature
(a condition of human life in which there is neither government nor positive laws) agree to form a society or a state to protect and promote their natural rights in a civil society, under a sovereign to which they pledged their obedience for as long as the sovereign power does not infringe their natural rights. Thomas Hobbes and John Locke while discussing the theory of Social Contract stated about the protection of natural rights from their own point of view. According to Hobbes, man in the state of nature constantly competes for honour and dignity that resulted into envy, hatred and finally war. In his book “Leviathan”, he argued that man being rational, would want to come out of the situation for sure by creating an absolute sovereign where individuals would surrender all of the natural rights, except the right to life or self preservation.

Locke forwarded a classic explanation to the natural rights theory. Locke was the first to suggest that individuals possess a kind of rights known as ‘natural rights’— rights which belongs to individual for the fact of being human. He clearly stated that “every human being has certain rights derived from nature...the source of these rights is not the government or its laws, rather it is the ‘state of nature’ characterised by an absence of government”. In the state of nature from the natural law, man derives the natural rights of ‘life, liberty and property’. Man entered into a double contract of creating a ‘civil society’ and ‘limited constitutional government’. In the contract men will not surrender all the rights, except the power of punishing others, being interpreter of natural law, its executor as well as adjudicator. Individuals will retain the natural rights—life, liberty and property’ and it is the duty of the government to protect these rights. Violation or failure to protect the natural rights can be sufficient reason for the people to revolt.
against the government, which is a trust to protect these rights. There are often similarities in ideas between the modern concept of human rights and the natural rights of Locke in following ways—

i. Both believe in equal rights of all human beings.

ii. Both of these rights are bestowed on human beings and the government has been entrusted with the duty to protect these rights.

iii. Protection of rights acts as the yardstick of the legitimacy of the government.

Rousseau tried to create such a state where individual would come together and show obedience not to a particular ruler or person, but to the law alone that ensures justice and liberty. This law constitutes the voice of the general will—the will of all the citizens which always tries to attain general good and not private interests. The government acts as an agent to the sovereign people. He thus, gave primacy to civil liberty represented by the General Will over natural rights. Rousseau believed that man’s nature could be developed only when there will be General Will and man can attain his personality only in the great community of the state.

The traces of natural rights as the progenitor of human rights can be found in the ideas and texts of the Declarations at the end of the 18th century. The American Declaration of Independence (1776) stated, “We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness”. Again, the French Declaration of the Rights of Man and of the Citizen (1789)
proclaimed that, “Men are born and remain free and equal in rights and that the aim of every political association is the preservation of the natural inalienable rights of man; these rights are liberty, property, security and resistance to oppression”.

3.4 POSITIVISATION: A LEGAL FRAMEWORK OF HUMAN RIGHTS (NATIONAL AND INTERNATIONAL)

The concept of natural rights and natural law was vehemently criticised by Jeremy Bentham. The very idea of natural law and rights was criticised by the Utilitarian philosopher Jeremy Bentham, as “nonsense upon stilts”. For Bentham, real rights were legal rights, and it was the role of law makers, and not natural rights advocates, to generate rights and determine their limits. In Bentham’s terms, “hunger is not bread”. Bentham accepted only positive law as the source of rights. Ideas of what the law ought to be have no place in law and at the same time it is abstract with no foundation. However, it has to be stated that while rejecting natural rights, Bentham emphasized on a particular right, ‘the right to security of property’ as the major condition of achieving happiness. He also justified opposition to the state if that opposition will produce less pain than continued obedience. This indicates Bentham’s support to the natural rights, although not in entirety. Another philosopher, Edmund Burke criticised natural rights as “useless metaphysical abstraction”. Even Burke did not completely reject the concept of natural rights, but he stated that “real rights of men were social, not natural”. He also criticised the universal nature of the natural rights theory for its failure to take account of national and cultural diversity. Thomas Paine reacted against Burke
for failing to feel the pain who had suffered in Bastille prison and for being unaffected by the ‘reality of distress’. Paine description of people’s suffering, a feeling of sympathy for the distress of others, coupled with a sense of injustice when governments resort to measures invading the perceived natural rights of the individual is said to have sowed the real seeds of human rights movement⁴⁷.

Legal rights are provided through charter or bill of rights in the constitutions of the countries⁴⁸. The Magna Carta (1215) was the earliest legal development in regard to the concept of human rights which guaranteed rights for a freeman not to be “arrested or detained in prison, or deprived of his freehold, outlawed, or banished, or in any way molested.....unless by lawful judgement of his peers and the law of the land”. This guarantee was simply a right to trial by jury granted exclusively to property-owning class. Similarly, the English Bill of Rights of 1689 which stated that “no excessive fine be imposed; nor cruel and unusual punishment [be] inflicted....the subjects which are Protestants, may have arms for their defence suitable to their conditions, and as allowed by law,” was actually a political settlement between a Parliament and the King (who had abused the rights of the Protestants), in order to vindicate ‘ancient rights and liberties”⁴⁹. The American Bill of Rights was in reality meant for WASP (White, Anglo-Saxon and Protestant)⁵⁰. Likewise the French Constitution denied the rights of women and exclusively dealt with the rights of man. Thus, both the Declarations attempted to instil human rights as guiding principles in the new constitutions of the new states, but it was narrow in its scope as it benefitted only a specific group⁵¹.
In the contemporary period “human rights” concept directly refers to the human rights recognised in international and national law rather than rights in a moral and philosophical sense. HerschLauterpacht’s influential book “An International Bill of the Rights of Man” (1945) dealt with a range of natural rights thinking and constitutionally protected rights to argue for a written Bill of Rights to be protected through the United Nations. Even the Modern Theory of Human Rights in the second half of the twentieth century contend that the validity of human rights is established by specific legislation, which receive an extended treatment by two branches of law, that is, Constitutional and International Law. Accordingly it facilitated human rights domestically with constitutional bill of rights and internationally with the work of the United Nations. The United Nations provides a general framework for human rights acts that the member countries adopted. For example, in India, human rights are enumerated as fundamental rights in the Part III of the Constitution in the light of international human rights law.

3.5 UNIVERSALISM VERSUS RELATIVISM: A DEBATE

The United Nations Charter adopted on 26th June, 1945, in San Francisco, ushered in a new international law of human rights. For the first time in the history of mankind human rights were universalized and internationalized-rights which every individual whatever one’s origin could claim as a member of human society. Thus, the Charter of the United Nations emerged as the first international instrument which proclaimed “universal respect for, and observance of, human rights and fundamental freedom for all without distinction as to race, sex, language or religion”. The Charter obligated the member states to take joint and separate action
in co-operation with the United Nations for the achievement of this purpose\textsuperscript{55}. In the process, the 1948 “Universal Declaration of Human Rights” (UDHR) under the auspices of the United Nations represented the first international document with a big list of human rights, mainly based upon European experiences. Justice P.N. Bhagwati stated that the Universal Declaration is like “the vast gateway of a temple”. Its Preamble has been aptly described by Rene Cassin as “the forecourt containing the general principles of liberty, equality, non-discrimination and fraternity”\textsuperscript{56}.

The exponents of Relativist Approach to Human Rights argue that moral values are historically and culturally specific rather than universal\textsuperscript{57}. They also viewed that far from being universal, the concept of human rights has come from the West different from other cultures and values, the ‘universality’ of human rights has been used as a weapon to establish western cultural hegemony in other parts of the world through the United Nations. In this regard, the supporters of the Universalist Theory of Human Rights viewed that, “in truth, the origins of our way of thinking about rights may lie in Western philosophy, but the idea of universal rights is, necessarily, universal and global. For most commentators, the origin of the universality lie not in the abstract Lockean world of natural law but in a modified Kantianism which encourages respect for all people based on the fundamental dignity which is inherent in human beings without distinction or exception. Such a view of universality does not appear to challenge or undermine cultural diversity”. Jack Donnelly while defending a Universalist perspective stated that human rights have emerged alongside modernity as the latest mechanism devised to safeguard human dignity from state oppression. Donnelly listed various cultures—non-
Western—which have similar religious or ethical guidelines aimed at upholding human dignity, if not rights per se. Universalist such as Donnelly is more sensitive to cultural difference than many relativists. Indeed in suggesting that human rights are a modern reflection of a universal respect for human dignity—a respect which is found in most world cultures at most points in history and in no ways betrays a Western bias—Donnelly has gone some way to upholding a commitment to universalism beyond natural law.58. Jack Donnelly even argued that, in the 1970s and 1980s, the dominant tendency was to see universality and relativity as opposites but over the past two decades, most discussions have tried to move beyond a dichotomous presentation. Most defenders of both Universality and Relativity in the contemporary times recognise the dangers of an extreme commitment and acknowledge that both relativity and universality are essential to international human rights. Accordingly Donnelly stated for the formulation of the concept “Relatively Universal” which is thus considered as appropriate. Donnelly then explained the novel concept that “Relativity modifies—operates within the boundaries set by—the universality of the body of inter-dependent and indivisible internationally recognised human rights. But that universality is largely a universality of possession—universalism above all draws attention to the claim that we all have the same internationally recognised human rights—rather than a universality of enjoyment. And universal human rights not only may but should be implemented in different ways at different times and different places, reflecting the free choices of free peoples to incorporate an essential particularity into universal human rights”. Donnelly further said that, “Most cultures—and all the ‘great civilisations’—have in the past denied human rights, both in theory and in practice.
That, however, stops none of them today from not merely endorsing human rights but finding human rights to be a profound expression of their deepest cultural values.”

In other words, despite the cultural, political, regional and economic diversity of the contemporary world, there is nearly universal agreement on not only the existence but also the substance of internationally recognised human rights. For instance, Article 5 of the Universal Declaration stated, “No one shall be subjected to torture or to cruel, inhuman and degrading treatment or punishment”. Here, the problem lies in the question—what counts as torture or whether particular practices are cruel and inhuman—for it differ from society to society. In this regard, the Universal Theory of Human Rights strictly maintains that, “Whatever our other religious, moral, legal, and political resources, we all need equal and inalienable universal human rights to protect us from threats to human dignity.”

Also human rights law does allow for different approaches to implementation across cultures and nations. The important point is that there is some core content to each right, and that failure to respect that content can be universally condemned. In the domain of contemporary international law and politics, as the Vienna Declaration of the 1993 World Conference on Human Rights put it in its first operative paragraph, “the universal nature of these rights and freedoms is beyond question”. Human rights are universal, also in the sense that these rights have been accepted by almost all the sovereign member states—the designated ‘universe’—as establishing obligations that are binding in international law.

Another issue of discussion is the universality of human rights in regard to a special category of human beings, especially prisoners. It is also clarified by stating
that, “the inclusive universality of non-discrimination on specified grounds does not mean, however, that human rights allow for no differences between the basic entitlements of different categories of people. Many human rights are conditional, in the sense that they apply only to those human beings who are in a particular situation, such as the persons being accused of committing a criminal offence, or in precise the prisoners. So the universality of rights means only that all human beings in certain situation have, or ought to have, certain rights.63

3.6 THE NATIONAL STATE AND INTERNATIONAL LAW: THE DOMAIN OF HUMAN RIGHTS

Even if there is apparent universal acceptance of the human rights message, there is still a discord over how rights should be implemented.64 For a long time human rights were understood as being a state’s responsibility. This understanding began to be eroded with the emergence of internationalization of human rights issues, thereby modifying the traditional principle of exclusive jurisdiction by states over their subjects. In the face of this tendency, a controversy has emerged about whether human rights are essentially within the domestic jurisdiction of states, as cited in Article 2 (7) of the UN Charter, which stipulates that the United Nations should not intervene ‘in matters, which are essentially within the domestic jurisdiction of any state’, or whether they are the domain of international law. At present the respect for human rights is the domain of both the international and domestic legal systems. The borderline between them undergoes gradual shifts due to further penetration by human rights issues into international law. But in terms of proportion, domestic systems remain the main battlefield for human rights, while
A more advanced typology of the obligations of states in the field of human rights was developed by A. Eide, in which he said that the state has the obligations to ‘respect’ (right-holders, their freedoms, autonomy, resources and liberty of their actions), to ‘protect’ (right holders against other subjected by legislation and provision of effective remedies), and to ‘assist and fulfill’ (the rights of everyone by using available resources to establish a better infrastructure and direct provision of basic needs). The UDHR, the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR) along with its two Optional Protocols constitutes the International Bill of Human Rights. The United Nations has also

international law serves as a subsidiary dimension. Internationalization of human rights, thus, follows not by restricting the sovereignty of states but rather by the mutually agreed restriction of the exercise of sovereignty. Also it has to be admitted that the state is the central institution available for effective implementation of internationally recognised human rights. Therefore, beyond preventing state-based wrongs, human rights require the state to provide certain (civil, political, economic, social and cultural) goods, services, opportunities and protections. This more positive human rights vision of the state also goes back to the 17th and 18th century social contract theories. Locke, for example, emphasizes that natural rights cannot be effectively enjoyed in a state of nature. In fact, society and government are not only essential to the enjoyment of natural or human rights, the legitimacy of a state, within the contractarian tradition, can largely be measured by the extent to which it implements and protects natural rights. Thus, the state is the chief violator as well as the hope for the protection and implementation of human rights.
passed two Optional Protocols to the Civil and Political Covenants in regards--- i) individuals under certain circumstances may file complaints of human rights violations by ratifying states ;and, ii) states must take all necessary measures to abolish the death penalty. The international law influences greatly in enhancing the philosophy of human rights, its provisions provided the basis for the framing of bill of rights at national level. The Tehran International Conference of 1968, the first World Conference on Human Rights, ‘solemnly’ proclaimed that “The Universal Declaration of Human Rights states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community”.

The basic question then is asked as to how laws enacted by the State remain unutilised. This question can be answered from the point of view of those for whom these laws are made. The authority which makes the laws and the authority which is required to implement them may not enforce the laws either intentionally or because of ignorance. If lack of enforcement is intentional the citizens will be at mercy of an organisation which promises something but does not mean to fulfil the promise. In a democracy that may be worst form of tyranny and a hostile attack on the civil liberties of the citizens. Ignorance of law, however, is no excuse, but in a society largely steeped in ignorance and illiteracy, possible even among the law enforcing authority such ignorance in fact exists in large measure. In this regard the State has the duty to consciously educate all the persons involved in enforcing the provisions of law to give each of the citizens what is their due.
3.7 HUMAN RIGHTS IN THE CONTEXT OF PRISONERS: EFFORT OF THE UNITED NATIONS

There exist a reciprocal relationship between UDHR and the Guiding Principles of Criminal Justice Administration. This relationship underlines the fact that effective employment of human rights is a decisive factor in the removal of conditions promoting criminal behaviour and in reforming the offenders—the central pursuit of criminal justice administration. Having held this view, the United Nations prescribed detailed standards for the protection of the rights of the accused and convicted persons. To avoid accusation of being soft towards the accused, the United Nations, however, called for a proper balance between the rights of the accused/convicted with a view to protecting the community and each of its members against lawlessness. Thus the UDHR as well as their instruments lay stress on the duties of the individual towards the community and the legitimacy of restricting the exercise of human rights in order to secure respect for the rights and freedom of others. This substantive relationship between the protection of human rights on the one hand and the prevention of crime and treatment of offenders on the other has been increasingly recognized important in the organizational and procedural arrangement within the United Nations. The important provisions related to the Criminal Justice Administration in the UDHR are cited below:
i) No one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 1)

ii) Everyone has the right to life, liberty and security of person (Article 3)

iii) No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 5)

iv) No one shall be subjected to arbitrary arrest, detention or exile (Article 9)

v) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence (Article 11)

The ICESCR seeks to promote and protect the following provisions in regard to the prisoners—

i) The right to work in just and favourable condition (Article 6-7)

ii) The right to social protection, to an adequate standard of living and to the highest attainable standards of physical and mental well-being (Article 9-12)

iii) The right to education and the enjoyment of benefits of cultural freedom and scientific progress (Article 13-15)

The ICCPR, however, remains the core international treaty on the protection of the rights of the prisoners. Following provisions of the Covenant are relevant—

i) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life (Article 6)
ii) No one shall be subject to cruel, inhuman or degrading treatment or punishment (Article 7)

iii) Everyone has the right to liberty and security of person. No one shall be subject to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law (Article 9)

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

v) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons [Article 10 (a)]

vi) The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation [Article 10 (3)]

vii) Everyone shall be entitled to fair and public hearing by a competent, independent and impartial tribunal established by law [Article 14 (1)]

viii) Everyone charged with criminal offence shall have the right to be presumed innocent until proved guilty according to law [Article 14 (2)]

ix) Everyone shall have the right to freedom of thought, conscience and religion [Article 18 (1)]

Considering the principles of the UN Charter and respecting the inherent dignity of the human person and having regard to Article 5 of the UDHR and Article 7 of the ICCPR, the UN adopted the Declaration on the Protection of All Persons from being subjected to Torture and other Cruel, Inhuman or Degrading Treatment or
Punishment. On 9\textsuperscript{th} December, 1975 the United Nations General Assembly by consensus adopted a Declaration on Protection from Torture. Various important provisions are.

- Any act of torture or other cruel inhuman or degrading treatment or punishment is an offence to human dignity and shall be condemned as a denial of the purposes of the charter of the United Nations of human rights (Article 2)

- No state may permit or tolerate torture or other cruel, inhuman, degrading treatment or punishment. Exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment (Article 3)

Besides these, there are two bodies of international law exclusively governing the treatment of prisoners. These are ---The Standard Minimum Rules for the Treatment of Prisoners; and the Basic Principles for the Treatment of Prisoners.

The Standard Minimum Rules for Treatment was adopted by the United Nations in 1957. However, these rules were revised in 2010 when it was recognised that while the rules were a key standard for the treatment of prisoners globally and were widely used, there had been major developments in human rights and criminal justice since 1957. The revised Standard Minimum Rules were adopted unanimously by the UN General Assembly on 17 December 2015. The revised
rules are known as the “Nelson Mandela Rules” to honour the legacy of the late President of South Africa, who spent 27 years in prison in the course of his struggle for global human rights, equality, democracy and the promotion of a culture of peace. Eight substantive areas were revised:

1. Respect for prisoners’ inherent dignity:

   The principle of treatment with respect for the dignity and value as human beings and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment have been incorporated throughout the Rules.

2. Medical and Health Services:

   The Rule clarify that healthcare of prisoners is a State responsibility, and should be of an equal standard to that available in the community and organised in close relationship to the general public health organisation.

3. Disciplinary Measures and Sanctions:

   It has provided guidance on the use of instruments of restraint, procedural safeguards in disciplinary procedures and clarification of prohibited disciplinary sanctions (example-restriction of drinking water). As an overarching principle, prison staff is encouraged to use conflict prevention mechanisms to prevent disciplinary offences and resolve conflicts. Limitations on the use of solitary confinement are also included for the first time in an international standard.
4. Investigations of Deaths and Torture in Custody:

The updated provisions have introduced the obligations of the prison authority in cases of any death, disappearance or serious injury. These include obligations on reporting, investigations and notifying family or friends.

5. Protection of Vulnerable Groups:

The revised Rules have clarified that prisons need to identify the individual needs of prisoners and that measures taking account of such needs must not be regarded as discriminatory. Some provisions were on children imprisoned with their parent and outdated terminology regarding prisoners with disabilities was changed.

6. Access to Legal Representation:

Provisions were updated and expanded to cover not only pre-trial detention and criminal proceedings, but requirements of legal counsel more comprehensively based on the 2012 UN Legal Aid Principles and Guidelines. The Rules also clarify that prisoners are allowed to keep in their possession documents relating to their legal proceedings.

7. Complaints and Independent Inspections:

Provisions in regard to the information for prisoners and access to complaints mechanisms has been updated, as well as protection against retaliation, intimidation or other negative consequences as a result of a complaint. The impact of external monitoring was acknowledged by introducing the requirement of a two-
fold system of regular inspections, internal as well as external by an independent body. The Revised Rules specify the powers of inspectors and require written inspection reports and encourage their publication.

8. Training of Staff:

Provisions on training were updated to clarify the necessity of training for staff prior to entry into service as well as ongoing in-service training, both of which should reflect contemporary evidence-based best practice. A list of training requirements include security and safety, the concept of dynamic security and the use of force and instruments of restraint, as well as management of violent offenders, with due consideration to preventive and defusing techniques.

The Basic Principles for the Treatment of Prisoners was adopted and proclaimed by the United Nations General Assembly on December 14, 1990. Principles in this resolution in regard to prisoners are cited below:

1. All prisoners value as human beings. Oners shall be treated with the respect due to their inherent dignity and value as human beings.

2. Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the UDHR, and where the state is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights, and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations Covenants.
3. All the prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality.

4. Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.

5. Conditions shall be created enabling prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the country’s market and permit them to contribute to their own financial support and to that of their families.

6. Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.

3.8 RIGHTS OF PRISONERS: ROLE OF INDIAN JUDICIARY

Being a signatory state to the United Nations, India after independence brought radical changes in the administration of criminal justice, keeping in conformity with the Universal Declaration of Human Rights. The Indian Constitution, however, has not enumerated any provision of fundamental rights to the prisoners specifically, but certain rights which have been enumerated in Part III of the Constitution are available to the prisoners too because of the fact that a prisoner remains a ‘person’ even in the prison. In this regard, one of the important provisions in the Constitution is Article 14 in which principle of equality is embodied. It provided that the State shall not deny to any person equality before the law or the equal protection of laws within the territory of India. Again, Article
19, although guarantees six freedoms to the citizens of India, prisoners for the fact of being incarceration, could enjoy only freedoms like ‘freedom of speech and expression’ and ‘freedom to become a member of an association’ within the limitation of the prison. Article 20 protects the prisoner from being subjected to any punishment or punishment conditions (including that of imprisonment) which were not prescribed by the law at the time when he committed the crime for which the imprisonment in question was imposed. The most valuable human right of the prisoners can be found in Article 21 of the Indian Constitution. Article 21 provides that no person shall be deprived of his life and personal liberty except according to the procedure established by law. But in spite of these Constitutional safeguards and the new concept of Criminal Jurisprudence which emerged after independence did not improve much. It was only in the late seventies that the judiciary through the process of judicial activism have expanded the scope of the various freedoms enshrined in the Part III of the Indian Constitution and also extended their applicability to the prisoners. This has resulted into the evolution of certain minimum rights and safeguards for the prisoners. The “hands off” policy towards prisoners’ right followed by the Courts so long was given goodbye and from then onwards the law in regard to prison jurisprudence has undergone a radical change by a series of decisions of the Supreme Court. The Supreme Court ruling after ruling, expounded the rights of the accused in conformity with the International Covenants. Gopalan’s case sowed the seeds of the rights of the prisoners. In this case one of the main contentions raised by the petitioner, was that the phrase “procedure established by law” as contained in Article 21 of the Indian Constitution includes a ‘fair and reasonable’ procedure and not a mere semblance
of procedures prescribed by the state for the deprivation of life or personal liberty of the individuals. The Supreme Court, perhaps more influenced by peculiar circumstances existing at that time, rejected the argument of the appellant and held the ‘hands-off’ doctrine. The concept of ‘fair and reasonable’ procedure as argued in the Gopalan Case was again raised after 28 years in the Maneka Gandhi Case. This time, the Court laid down that the phrase ‘procedure established by law’ speaks of fair, just and reasonable procedure’. It is further laid down by the court that the principles of ‘natural justice’ are included in the ‘fair and just’ procedure which is implied in the broad sweep and content of Article 21 of the Indian Constitution. The wide interpretation given by the Supreme Court to the concept of personal liberty and the procedure established by law ultimately provided a sound basis to plead in the courts against the arbitrary and fanciful actions of the states.85

Thus, since the Maneka Gandhi’s case (AIR 1978 SC 579) a humanistic approach towards the prisoners. In this case the Supreme Court interpreted Art.21 and held that the this article which provides that no person shall be deprived of his life, and personal liberty except according to the procedure established by law and that the procedure must be reasonable and fair and not arbitrary or capricious. Maneka Gandhi’s case was followed by a number of decisions and the new interpretation of Art.21 given in the said case was extended to include the rights to speedy trial, free legal services, appointment of Counsel for prisoner, bail, etc. to the prisoners. Some of the landmark case in regard to the protection of human rights Supreme Court are— Charles Sobhraj v. Superintendent, Central Jail, Tihar (1978) 4 SCC 104, 107, Dilbag Singh v. State of Punjab, (1979) 2 SCC 103, 105); Sunil Batra (I) v. Delhi Administration (1978) 4 SCC 494, Sunil Batra (II) v. Delhi Administration
(1980) 3 SCC 488, Hussainara Khatoon v. State of Bihar (1980) 1 SCC 81, M. H. Hoskot v. State of Maharashtra (1978) 3 SCC 544, and many more. The Supreme Court, through these landmark cases, held that the state cannot deprive any person of the right to live with basic human dignity and hence torture or cruel, inhuman or degrading treatment or punishment which trenches upon human dignity would be impermissible under the Constitution. The Sunil Batra’s case is considered to be a landmark as the hand off policy towards the prisoners’ right followed by the courts for so long was given a good bye in Sunil Batra(I) case. Again in Sunil Batra (II) case, the Supreme Court has widened the scope of writ of “Habeas Corpus” i.e., the protection of individuals against erosion of the right to be free from wrongful restraint on their liberty. In this landmark case only, the Supreme Court gave the guidelines in respect of the Constitutional and Administrative aspects of prison justice. A summary of the guidelines are given below—

1. It is imperative, as implicit in Article 21, that life or liberty shall not be kept in suspended animation or congealed into animal existence without the freshening flow of fair procedure.

2. No prisoner can be personally subjected to deprivations not necessitated by the fact of incarceration and the sentence of court. All other freedoms belong to him – to read and write, to exercise and recreation, to mediation and chant, to creative comforts like protection from extreme cold and heat, to freedom from indignities, 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 skills and techniques and all other fundamental rights tailored to the limitations of imprisonment.

3. Inflictions may take many protean forms, apart from physical assaults. Pushing the prisoners into a solitary cell, denial of a necessary amenity, and more dreadful sometimes, transfer to a distant prison where visits or society of friends or relations may be snapped, allotment of degrading labour, assigning him to a desperate or tough gang and the like may be punitive in effect. Every such affliction or abridgement is an infraction of liberty or life in its wider sense and cannot be sustained unless Article 21 is satisfied. There must be a corrective legal procedure, fair and reasonable and effective.

4. The prison authority has duty to give effect to the court sentence (Sections 15 and 16 of the Prisoners Act, 1900). To give effect to the sentence means that it is illegal to exceed it and so it follows that a prison official who goes beyond mere imprisonment or deprivation of locomotion and assaults or otherwise compels the doing of things not covered by the sentence acts in violation of Art19. Punishments of rigorous imprisonment oblige the inmates to do hard labour, not harsh labour. “Hard Labour” in Section 53, Prison Act has to receive a humane meaning. The prisoners cannot demand soft jobs but may reasonably be assigned congenial jobs.

5. Violation of provisions of Section 27 (2) and (3) of Prisons Act regarding separation of prisoners must be visited with judicial correction and punishment of the jail staff. Sex exercises and exploitative labour are the vices adolescents are subjected to by the adults. The young inmates must
be separated and freed from exploitation by adults. Violation of these imperatives will attack Art19.

6. Any harsh isolation from society by long, lonely, cellular detention is penal and so must be inflicted only consistently with fair procedure.

7. Subject, of course, to search and discipline and other security criteria, the right to society of fellow-men, parents and other family members, to visit cannot be denied in the light of Article 19.

8. Lawyers nominated by the District Magistrate, Session 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 visitatorial and supervisory judiciary role.

9. Further, District Magistrate should personally or through surrogates, visit prisons in their jurisdiction and afford effective opportunities for ventilating legal grievances; should make expeditions enquires therein to and take suitable remedial action. In appropriate cases reports should be made to the High Court for the latter to initiate, if found necessary ‘habeas’ action.

10. Grievance Deposit Boxes should be maintained by or under the orders of the District Magistrates and the Session Judge which should be opened as frequently as is deemed fit and suitable action taken on complaints made. Access to such boxes should be accorded to all prisoners.

11. The state should take early steps to prepare in Hindi, and regional language, a prisoner’s handbook and circulate copies to bring legal
awareness home to inmates. Periodical jail bulletins stating how improvements and habilitative programmes are brought into the prison may create a fellowship which will ease tensions. A prisoner’s wallpaper, which will freely ventilate grievances, will also reduce stress. All these are implementary of Section 61 of the Prisons Act.

12. The state should take steps to keep up to the Standard Minimum Rules for Treatment of Prisoners recommended by the United Nations, especially, those relating to work and wages, treatment with dignity, community contact and correctional strategies.

13. The Prison Act needs rehabilitation and the Prison Manual total overhaul, even the Model Manual being out of focus with healing goals. A correctional – cum – orientation course is necessitous for the prison staff inculcating the constitutional values, therapeutic approaches and tension – free management.

14. The prisoner’s rights shall be protected by the court by its writ jurisdiction plus contempt power. To make this jurisdiction viable, free legal services to the prisoner programmes should be promoted by professional organizations recognized by the court. The District Bar shall keep a cell for prisoner relief.

15. The final panacea for prison injustice is, therefore, more dynamic, far more positive, strategies by going back to man, the inner man. For this, the introduction of transcendental meditation courses is recommended.

Besides the Constitution, there are certain other statutes like the Prison Act, 1894, Prisoners Act, 1900, and Prisoners (Attendance in Courts) Act, 1955, where certain
rights are conferred upon the prisoners. The Jail Manuals, which have certain rules and safeguards for the prisoners also cast an obligation on the prison authorities to follow these rules. Equally, the Criminal Procedure Code, 1973 which is the only Criminal Law of India also makes a modest attempt to confer rights to the accused persons.

Judicial intervention has led to the emergence of the rights of the prisoners in concrete form. The important pronouncements made in various cases have provided a gamut of prisoners’ rights. The important rights of the prisoners are cited below—

1. **RIGHT OF COMMUNICATION**

Communication means contact of prisoners with the outside world. Every prisoner either convicted or under-trial is entitled to communicate with his or her family members, relatives and friends on regular basis within the frames of rules and guidelines. Rule 37 and 39 of the Standard Minimum Rules for the Treatment of Prisoners suggest that “prisoners should be allowed to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits”. The Supreme Court in the light of the Rules held that “a necessary component of the right to life, the prisoner or detainee will be entitled to have the interview with members of his family and friends”. In Sunil Batra (II) vs Delhi Administration (1980) 3 SCC 488, the Supreme Court dealt with the right of a prisoner to be visited by family and friends gave constitutional status to the said right. It was held that, “We see no reason why the right to be visited under
reasonable restrictions should not claim current constitutional status. We hold, subject to considerations of security and discipline, that liberal visits by family members, close friends and legitimate callers, are part of the prisoners’ kit of rights and shall be respected”. The Assam Jail Manual in Chapter XXV has mentioned about numerous rules and regulations regarding interviews and communications with the prisoners. Rule 460 states —

Superintendent’s permission for interviews required—(1) No convicted prisoners shall be allowed to have an interview or to receive or write a letter except with the permission of the Superintendent which shall be recorded in writing.

An entry should be made of every interview and letter with date on convict’s history ticket.

(2) Applications for interviews with prisoners may be oral or in writing at the discretion of Superintendent. If a prisoner is not entitled to an interview, the applicant shall be informed at once.

2. RIGHT TO FREE LEGAL SERVICE

The Superintendent shall inform every convict on first admission to jail of the period within which an appeal from the order under which he has been committed to jail may be filed. If the convict desires to appeal and is entitled to do so, every facility shall be granted to him for the purpose. In the M. H. Hoskot v. State of Maharashtra (1978) 3 SCC 544, the Supreme Court observed, “Every step that makes the right of appeal fruitful is obligatory and every action or inaction which
stultifies it is unfair and, ergo, unconstitutional. There are two requirements: (i) Service of a copy of the judgement to the prisoner in time to file an appeal and (ii) provision of free legal services to a prisoner who is indigent or otherwise disabled from securing legal assistance where the ends of justice call for such service. Both these are State responsibilities under Article 21”. Thus, free legal service is an essential ingredient of criminal justice. If a prisoner sentenced to imprisoned is virtually unable to exercise to his constitutional and statutory right of appeal inclusive of special leave to appeal for want of legal assistance, there is implicit in the Supreme Court under Article 142 read with Articles 21 and 39A of the Constitution of India, power to assign counsel for such imprisoned individuals ‘for doing complete justice’. The Apex Court stated clearly that “It is a State’s duty and not Government’s Charity” and in its judgement instructed the States to update the Jail Manuals to include the Mandate and refusal would be punishable. Article 39A of the Constitution of India provides for free legal aid to the poor and weaker sections of the society and ensures justice for all. Article 14 and 22(1) of the Constitution also make it obligatory for the state to ensure equality before law and a legal system which promotes justice on the basis of equal opportunity to all. In 1987, the Legal Services Authorities Act was enacted by the Parliament which came into force on 9th November, 1995 with an object to establish a nationwide uniform network for providing free and competent legal services to the weaker sections of the society on the basis of equal opportunity. The National Legal Services Authority (NALSA) has been constituted under the Legal Services Authorities Act, 1987 to monitor and evaluate implementation of legal services available under Act.
3. RIGHT TO INVOKE WRIT AGAINST TORTURE

Article 5 of the UDHR stated that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. To rescue prisoners from prison arbitrariness, Justice Krishna Iyer stated that, “Protection of the prisoner within his rights is part of the office of the Article 32 and Article 226. Prisoners are also persons and where the rights of a prisoner either under the Constitution or under law are violated the writ power of the court can and should run to his rescue”. In Sunil Batra (II) Delhi Administration (1980) 3 SCC 488, the Supreme Court discussed the expanding the nature and scope of the writ habeas corpus and held that “writ of habeas corpus would be available to any prisoner against any action of the jail authorities which is not commensurate with the sentence and does not satisfy the test of Articles 14, 19 and 21 of the Constitution”. It further held that, “the Court has power and responsibility to intervene and protect the prisoner against mayhem, crude or subtle, and may use habeas corpus for enforcing in-prison humanism and forbiddance of harsher restraints and heavier severities than the sentence carries. We hold these propositions to be self-evident in our constitutional order and are supported by authority, if need be”. Thus, a prisoners, if experiences torture, can move the court directly through a writ petition for protection of his/her fundamental rights, especially right to life and liberty granted by Article 21 of the Constitution of India. In this regard the Inspector General of Prisons of Assam already issued a Circular on 20/6/1977, addressed to all Superintendents of Jails/Lock-ups with the subject “Reformation in Jails”. It wrote that “as a part of our Reformatory Steps in Jails, it is necessary to discontinue all crude forms of penal provisions for breach of jail discipline by the
prisoners, because they are no longer congenial to human sentiments and the present day idea of reformation in jails”. Accordingly, the following category of punishments for breach of jail discipline have been discontinued—

a) Penal diets

b) Solitary confinements. However, cellular confinements may continue as a penal provision for serious breach of jail discipline

c) use of Gunny clothing

4. RIGHT TO EDUCATION

Education is considered as a potent means to reform prisoners. Confucious, the famous Chinese philosopher, believed that, “Without learning, the wise become foolish, by learning the foolish becomes wise”. Emphasizing on the need of education for the prisoners, the Standard Minimum Rules stated that the education of the prisoners should be made compulsory and special attention should be paid to it by the administration. Also the education of prisoners should be integrated with the educational system of the country so that after their release they may continue their education without difficulty. The Basic Principles for the Treatment of Prisoners included that all prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality. Rule 293 in the Assam Jail Manual states that every jail shall be provided, according to its size and importance, with a library of approved English and vernacular books and periodicals. Besides religious books, other suitable books of
educative value may also be included. Books may also be provided by a friend, provided that they have been approved by the Superintendent and that the sanctions the indulgence. All the prisoners who can read shall be allowed the privilege of reading books on Sundays and jail holidays and, if permitted by the Superintendent, during their spare time on working days. The privilege is, in all cases, liable to forfeiture for misconduct. Any book introduced otherwise than in accordance with this rule may be destroyed. Reading of newspapers shall not be permitted, except in special cases by order of the [State Government] who, in such cases, will approve of the newspaper to be allowed. An Assistant Jailor shall have charge of the jail library and shall allow the use of the books and journals to literate prisoners subject to such rules as the Superintendent may prescribe.99

5. RIGHT TO SPEEDY TRIAL

The concept of fair procedure also includes a reasonably speedy trial. The reasons behind the delay of cases are—(i) the incompetent judicial staff, (ii) inefficient police system and (iii) the technical procedure followed in the courts. In the Hussainara Khattoon Case, a number of undertrials filed a petition for the writ of habeas corpus in the Supreme Court, who were in the jails of Bihar for many years waiting for their trial. The Supreme Court held that the UTPs who remained in jail without trial for periods longer than the maximum term for which they could have been sentenced, if convicted, their continued detention would be illegal and is a violation of their fundamental right contained in Article 21 of the Indian Constitution. In this regard, the Court not only stated about the right to free legal service, but also the right to reasonably speedy trial as a necessary ingredient of the
right contained in the Article 21 of the Indian Constitution. In fact, speedy trial is considered as the essence of the criminal justice system. Justice Bhagwati in this context stated that, “although, unlike the American Constitution, speedy trial is not specifically enumerated as a fundamental right, however, it is implicit in the broad sweep and content of Article 21 as interpreted in the Maneka Gandhi Case”¹⁰⁰. The Gauhati High Court in the KhagendraNathNarzaryOrs. Vs. State of Assam (1984) Case stated that “the Right to Speedy Trial is an integral part of Article 21 of the Constitution and prolonged detention is anti-thesis of the mandate contained therein”¹⁰¹.

6. RIGHT TO RELIGION

Every prisoner has a right to practice his own religion. The existing rules in the Assam Jail Manual provides for the freedom of religion, subject to the rule of prison discipline. Rule no 291 of the Assam Jail Manual clearly provides that interference with religion or caste prejudices are prohibited and any interference will be dealt by the Superintendent. Accordingly, the Superintendent shall grant facilities to prisoners of all religions for such daily devotions as are required by their religion and the prisoners themselves are desirous of performing. Prisoners shall, while keeping the fast, be given two rations at night and arrangements shall be made to keep a sufficient supply of water in the wards or cells in which Muhammadan prisoners are kept. They cannot be unlocked at night but they can say their prayers in the wards. The hours of labour shall, as far as possible, in the case of prisoners who fast, be reduced by one hour in the afternoon and they shall be allowed to finish their evening bathing and latrine parades before sunset.
Arrangements shall also be made to give such prisoners, in lieu of their early morning meal, for the purpose of breaking their fast just at sunset, a little sharbat made of sugar, water and fresh lime juice, and soaked gram with ginger and salt or a piece of bread. The ration for the meal between 2 and 3 A.M. should be lighter than the ordinary meal, but an attempt should be made to give some nourishing food. However, the total cost of dietary for the prisoners who fast should not exceed that of the three meals given to other prisoners.102

7. RIGHT TO HEALTH AND MEDICAL TREATMENT

The Supreme Court in a number of cases held “right to health care” as an essential ingredient under Article 21 of the Constitution. Article 21 casts an obligation on the State to preserve life. Every prisoner has a right to free medical facility, which will be provided to him during imprisonment.103 Health service is one of the important services, which is performed in all penal institutions. The main objective of it is to restore and maintain physical and mental health of prisoners, and to keep up the general and hygiene of the institution to a satisfactory standard. Chapter XXXVI of Assam Jail Manual contains detail provisions regarding medical treatment of sick prisoners. For instance, Rule 650 provides that every prisoner complaining of illness or appearing to be ill shall be sent for immediate examination by the Medical Officer or in his absence, by the Medical Subordinate. Lady doctors employed in Assam who are paid wholly or partly from public funds may be called in to attend female prisoners when necessary. Such lady doctors are not entitled to fees but those who are not paid wholly by Government may be paid their travelling expenses when necessary.104
8. RIGHT TO BAIL

Granting or withholding the permission to grant bail is purely discretionary. However, this discretion is supposed to be exercised on certain justified principles. Being influenced by the concept of human rights, it is believed that the bail should be granted to the persons when there is no reasonable apprehension regarding the accused that he will run away and will avoid the appearance before the Court. The ultimate aim of the penal statutes is to save the society from the assaults of the accused as well as to make him a good citizen, capable of living in the law-abiding society. At this juncture, bail can be a very useful tool for socialising an inmate.105

9. RIGHT TO FURLOUGH

One of the appropriate methods for prisoners to be able to enter community is through Parole and Furlough. Furlough is a matter of right but parole is not. Furlough is to be granted to the prisoner periodically irrespective of any particular reason merely to enable him to retain family and social ties and avoid ill-effects of continuous prison life. The period of furlough is treated as remission of sentence. Parole, on the other hand, is not a matter of right and may be denied to a prisoner even when he makes out sufficient case for release on parole if the competent authority is satisfied on valid grounds that release of a prisoner on parole would be against the interest of society or the prison administration.106
10. RIGHT TO LIVE WITH HUMAN DIGNITY

Individual dignity is one of the cherished values of our Constitution. The Supreme Court upheld the right to live with human dignity in Francis Coralie Mullin v Union Territory of Delhi (AIR 1981 SC 746). In this case the court held that the word ‘life’ includes that it goes along with, namely the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing expressing oneself in diverse forms, freely moving about and mixing and mingling with fellow human beings. The Supreme Court in the Kharak Singh Case observed that the ‘right to life’ does not mean the mere animal existence but also right to live with full possession of his organs—his arms, legs, etc. unlike the traditional theory that believed in the deprivation of liberty in totality, the concept has changed a lot in modern and civilised societies. As the UDHR stated, “All human beings are.....equal in dignity. Everyone has the right to recognition everywhere as a person before the law”. A man does not cease to be a human being even behind the prison bars, and is therefore, entitled to those minimum rights which are inseparable from human dignity. The International Charters have laid down emphasis on the proposition that there is a basic level on which all human beings must be treated by the law as equal, irrespective of other conditions and must, therefore, on no account be degraded below the standard of human dignity107.
11. SPECIAL RIGHTS TO WOMEN PRISONERS

The Supreme Court directed that before sending a pregnant woman to a jail, the concerned authorities must ensure that the jail in question has the basic minimum facilities for delivery of child as well as for providing pre-natal and post-natal care for both, the mother and the child. As far as possible and provided the women prisoner has a suitable option, arrangements for temporary release/parole (or suspended sentence in case of minor and casual offender) should be made to enable an expectant prisoner to have her delivery outside the prison. Only exceptional cases causality constituting high security risk or cases of equivalent grave descriptions can be denied this facility (R.D. Upadhyay v. State of AP, AIR 2006 SC, 1946). In this case, the Court also held that female prisoners shall be allowed to keep their children with them in jail till they attain the age of six years, the child shall be handed over to a suitable surrogate as per the wishes of the female prisoner or shall be sent to a suitable institution run by the Social Welfare Department. As far as possible, the child shall not be transferred to an institution outside the town or city where the prison is located in order to minimise undue hardships on both mother and child due to the physical distance. Children kept under the protective custody in the home of the Department of Social Welfare shall be allowed to meet the mother at least once in a week\textsuperscript{108}.

3.9 DUTIES OF THE PRISONERS

Rights and duties are two sides of the same coin. Apart from claiming rights, side by side the prisoners have certain obligations also. Accordingly the All India
Committee on Jail Reforms, 1980-1983 has recommended certain duties of prisoners, such as--

- To obey lawful orders and instructions.
- To abide by prison rules and regulations.
- To maintain prescribed standards of cleanliness, hygiene and prison discipline.
- To respect human dignity to fellow prisoners, prison staff and others.
- To refrain from making false or exaggerated allegations.
- To abstain from hurting religious feelings, beliefs and faith of others.
- To use government property with care and not to damage or destroy negligently or wilfully.
- To assist prison authorities in the performance of their duties.
- To preserve and promote correctional environment and to be responsive to it.

The success of mechanisms adopted for the protection of the rights of the prisoners depends solely on its proper implementation. Often a curiosity arises as to whether the citizens behind bars are eligible to cast their vote in the elections. Hiranya Kumar Bhattacharya, a political prisoner in the Assam Movement, and a Police Officer himself, raised the issue that prisoners are citizens and still they are denied the right to vote during elections which unjustified democracy in India. He suggested that if all the 1219 jails were divided into certain number of constituency and give an opportunity to take part in the selection of the representatives, then there would be improvement in the jail conditions and also a sense of responsibility
and citizenship would arise debarring the leaders in involving in unlawful activities. He said when political interest would accompany the jails, then automatically the leader would actively indulge in improving the jail conditions\textsuperscript{110}.

Naresh Kumar in his book “Constitutional Rights of Prisoners: A Study of Judicial Trends” stated that in a democratic country like India, freedom to vote is one of the basic freedoms. Even the UDHR has stated for the right to vote. The Indian Constitution fully satisfied the need of this requirement of the Declaration by adopting the concept of ‘One Person and One Vote’ and Adult Suffrage. The ‘Right to Vote’ as well as the ‘Right to Fight Elections’ are enjoyed by the citizens and the citizenship continues inside the premises of jail also. The prisoners too have these rights but they can be disqualified under Representation of the People Act, if they have been convicted for certain offences mentioned under the Act. However, the Detenues and UTPs enjoy both these rights unrestricted if they otherwise fulfill the conditions of being a voter and being a candidate for election.

Under the Representation of People Act, only those persons have been disqualified from being elected or from being voter, who have been convicted of certain offence involving moral turpitude\textsuperscript{111}.

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8 Masih, Y., op. cit., pg41-43.

9 Ibid, pg79-80.


13 Ibid., pg 46.

14 Lal, B. K., op. cit., pg 64-74.

15 Ibid, pg 126-127.
16 Sanyal, J., op. cit., pg165-167.

17 Lal, B. K., op. cit., pg112-113.

18 Ibid, pg 115-125.


22 Varma, V. P., op. cit., pg12


24 Donnelly, Jack, op. cit., pg26


26 Cited in Sanyal, Jagadiswar, op. cit., pg85-89.

27 Ibid.


32 Byrne, Darren O’, op. cit., pg29.

33 Kinnon (ed.), op. cit., pg 196.


35 Abbas, H., op. cit., pg165-166.


37 Priyam, Manisha, op. cit., pg9

38 Yasin, op. cit., pg8-9.

39 Priyam, M., op. cit., pg9

40 Yasin & Upadhyay, op. cit., pg11.

41 Hovyard & Kumar, op. cit., pg 165-166.

42 Yasin, op. cit., pg11.

43 Clapham, A., op. cit., pg10

44 Ibid, pg11

45 Hovyard, op. cit., pg170.

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