# MINOR RESEARCH PROJECT
# on

# "Rights of Prisoners with special reference to Right to Free Legal Aid for under trial prisoners and its implementation in the District of Satara"

## Submitted By


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# CERTIFICATE

This is to certify that a copy of the Final Report of Minor Research Project entitled **"Rights of Prisoners with special reference to Right to Free Legal Aid for under trial prisoners and its implementation in the District of Satara"** by Yogesh Narayan Desai, Assistant Professor, Ismailsaheb Mulla Law College, Satara has been kept in the library of the college and an executive summary of the report has been posted on the website of the College.

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# EXECUTIVE SUMMERY

All Human beings are entitled to some basic human rights by virtue of being as a member of human family. According to the Article of 25 of Universal Declaration of Human Rights "All Human beings are said to be born free and equal in dignity". The provisions under Universal Declaration of Human Rights which states that: "No one shall be subject to torture or cruel, inhuman or degrading treatment of punishment", the United Nations Covenant on Civil and Political Rights also states that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person". The human rights are said to be the natural and basic birth rights of all human being without any discrimination and therefore everyone is equally liable for all these rights. Human rights are also available to persons under detention including convicted or under trial prisoners. Article 21 of the Constitution of India, recognizes that the right to life includes a right to live with human dignity and not mere animal existence, and strengthens this mandate. The provisions of Indian Constitution are applicable to every person whether he may be a citizen of India or not similarly these provisions are also applicable to those persons who are free as well as whose liberty has been sized in execution of law i.e. prisoners. Prisoners being one of the depressed classes of society need the protection under the law. Thus, a prison atmosphere can be accepted as civilized only if it recognizes the basic human rights and the constitutional rights of the prisoners and makes efforts for the effective and meaningful enjoyment of the same by means of prison reforms.

The conditions of the prison are worst day by day. According to Prison Statistics India 2011, in the Indian prisons 2, 41,200 under trial prisoners were kept for committing offences under IPC, Special and local laws and civil offences. Out of these 2, 30,266 (95.5%) are male and 10,934 (4.5%) females. At the end of 2011 the share of under trial prisoners in the different jails can be seen as, in the central jails 77295 (47.5%), district jail 121520 (76.8%), sub jail 36248 (91.2%), women's jail 1652 (54.0%), brostal school 879 (76.8%), Special jails 3546 (67.5%), Others 60 (74.1%). From this we can see that in the sub jail, only below 9% were of other type of prisoners and also in most of other type of prisons majority are under trials.[1]

[1] Dr. Bindu M.Nambiar Volume : 2 | Issue : 9 | Sept 2013 ISSN - 2250-1991

While we are looking at the all India statistics on prison population we can see that the number of under trials is more than double, than that of convict prisoners (128592 convicts, 241200 under trials). The percentage of under trial prisoners to the total prisoners in prison is 64.7% in the country and the share of convicted prisoners is 34.5%. Their number has increased as in 2011(2, 4, 1200) over 2005(2, 3, 7076). It has also increased marginally by 0.5% in 2011 (2, 41,200) over 2010 (2, 40,098). From this we can see that the number of under trial prisoners in the prison is increasing.

The constitution of India confers number of fundamental rights upon citizens which are also available to prisoners. The criminal justice system in India also is basically based on three principles. such as presumption of innocence unless guilt is proved, Burdon of proving guilt is always on prosecution that prosecution must prove guilt beyond reasonable doubt & benefit of doubt is always given to the accused. These three principles are said to be principles of fair trial.

So as to develop the conditions of Jails govt. of India had appointed different commissions to study the condition in jail and to suggest reforms. Government of India had set up in 1980 a Committee on jail reforms under the Chairmanship of Mr. Justice A.N. Mulla, a retired judge of the Allahabad High Court. The report submitted by the said Committee is known as 'Mulla Committee Report'. It contains a lot of very valuable suggestions.

These committees made a number of recommendations to improve the conditions of prisons, prisoners and prison personnel all over the country. In its judgments on various aspects of prison administration, the Supreme Court of India has laid down three broad principles regarding imprisonment and custody. Firstly, a person in prison does not become a non-person; secondly, a person in prison is entitled to all human rights within the limitations of imprisonment; and, lastly there is no justification for aggravating the suffering already inherent in the process of incarceration. The main purpose of establishing the Prisons is to confine offenders committing offences under the existing laws and previous laws enacted from time to time. It is further implied that offenders are to be isolated for a certain period from general community with a view to ensuring security, peace and tranquility and further to plan a programme of treatment of offenders. The components of treatment may be

counseling, guidance, re-education, training. The period of imprisonment, therefore need to be utilized for the treatment.

The provisions under different Acts such as Criminal Procedure Code, Indian Penal Code, Indian Evidence Act etc. which made provisions for protection of rights of prisoners. Prisons Act, of 1894 is the first legislation regarding prison regulation in India. Under Prisons Act 1894 the provisions relating to accommodation and sanitary conditions for prisoners, Provision for the shelter and safe custody of the excess number of prisoners who cannot be safely kept in any prison, Provisions relating mental and physical state of prisoners, Provisions relating to the examination of prisoners by qualified Medical Officer, Provisions relating to separation of prisoners, containing female and male prisoners, civil and criminal prisoners and convicted and under trail prisoners, Provisions relating to treatment of under trials, civil prisoners, parole and temporary release of prisoners.

The Prisoners Act, 1990 also made provisions for reformation of prisons and prison justice, it provides that all reference to prisons or the imprisonment or confinement shall be construed as referring also to reformatory schools to detention therein, it is the duty of Government for the removal of any prisoner detained under any order or sentence of any court, which is of unsound mind to a lunatic asylum and other place where he will be given proper treatment, that any court which is a High Court may in case in which it has recommended to Government the granting of a free pardon to any prisoner, permit him to be at liberty on his own cognizance.

The role of the Supreme Court in the past few years in introducing jail reforms has been commendable. Supreme Court in its various judgments tries to protect the rights and freedoms of citizens of India including rights and freedoms of prisoners. Supreme Court while extending the horizons of constructional rights has given wide interpretation to constitutional provisions.

As per the jail manual the prisoners are provided off with different amenities such as canteen for prisoners, provisions for writing and receiving of letters, a separate library in prison premises, books for reading, supply of daily news papers, display of films in a week, sport and cultural activities, provisions for radio and television, celebration of different programmes such as independence day, republic day, Gandhi jayanti, etc., facilities for interaction with lawyers, family members and friends, relatives, etc., programmes of yoga and vipassana are also be carried out for

the purpose of correctional method. Privisions are also made to provide vocational traing to prisoners such as carpenter, simthy, tailors, leather work, bakery, power looms, agriculture etc. Most of the prisons of Maharashtra have Agricultural land attached to them. It is being used for producing food grains, vegetables, fodder crops and other crops. The main aim of agriculture in prison is to rehabilitate inments (criminals) by giving them works in fields and have a source of income through the labour charges paid to them. This training of doing various agricultural operations in field during crop growth will help the prisoners to implement that experience in his own field after his release.

In Maharashtra, correctional work is being viewed in an integrated manner, commencing from prevention control, care, training and treatment and ending in after care. Through a phased programme, the mass approach in prisons is being replaced by an individual approach through a system of diversified institutions, classification of prisoners on scientific basis and development of work training, educational and cultural programmes.

Satara consistes of a sub jail classified as Class II jail. The administration of prisoners in satara was administrated in sub jails and subsidiary jails. The habitual prisoners convicted and sentenced for a term exceeding three months are sent to Sangli District Prison and to Nasik Road Central Prison. Central prisoners sentenced over two years are sent to Yeravda Central Prison; and short term prisoner of the district with sentences ranging from one week to a month are accommodated in the taluka subsidiary jails which are located at Dahiwadi, Karad, Khandala, Koregaon, Mahabaleshwar, Medha, Patan, Vaduj and Wai. These sub-jails are classified as class III sub-jails and are administered by the Revenue Department. The sub-jails at Phaltan and Satara are class II Head-quarter sub-jails. The Satara sub-jail is in charge of a Jailor-cum-Superintendent. The Phaltan sub-jail is in charge of a revenue officer. The police lock-ups in the district are under the direct control of the Inspector-General of Police.

The Supreme Court of India has been active in responding human rights of prisoners. They have given different category of rights to the prisoners during detention which are specifically recognized under Indian laws as well as under principles of international covenants. There are some assumptions based upon which supreme court has given the basic rights even to the prisoners. In the eyes of Court

“Convicts are not by mere reason of the conviction denuded of all the fundamental rights which they otherwise possess”. It provides that prisoners are also human beings. Hence, all such rights except those that are taken away in the legitimate process of incarceration still remain with the prisoner. These include rights that are related to the protection of basic human dignity as well as those for the development of the prisoner into a better human being. The convicted persons go to prisons as punishment and not for punishment Prison sentence has to be carried out as per the courts orders and no additional punishment can be inflicted by the prison authorities without sanction. Prisoners depend on prison authorities for almost all of their day to day needs, and the state possesses control over their life and liberty, the mechanism of rights springs up to prevent the authorities from abusing their power. Prison authorities have to be, therefore, accountable for the manner in which they exercise their custody over persons in their care, especially as regards their wide discretionary powers. Imprisonment as punishment is now rethought of as rehabilitative punishment. This involves a philosophy that individuals are incarcerated so that they have an opportunity to learn alternative behaviors to curb their deviant lifestyles. Correction, therefore, is a system designed to correct those traits that result in criminal behavior. The rehabilitative model argues that the purpose of incarceration is to reform inmates through educational, training, and counseling programmes. This development and growth requires certain human rights without which no reformation takes place. Overcrowded prisons, prolonged detention of under trial prisoners, unsatisfactory living condition and allegations of indifferent and even inhuman behavior by prison staff has repeatedly attracted the attention of critics over the years. Unfortunately, little has changed. There have been no worthwhile reforms affecting the basic issues of relevance to prison administration in India.

The judiciary has been playing a role of rescuer in situations where the executive and legislature have failed to address the problems of the people. The Supreme Court has come forward to take corrective measures and provide necessary directions to the executive and legislature. From the perusal of the above contribution it is evident that the Indian Judiciary has been very sensitive and alive to the protection of the Human Rights of the people. It has, through judicial activism forged new tools and devised new remedies for the purpose of vindicating the most precious of the precious Human Right of Prisoners.

The concept of Right to legal aid to under trial prisoners is very important, From the analysis of data collected and examined we can concludes that, Right to free legal aid which was enriched by including under article 21 of Indian Constitution as part and parcel of right to fair trial by judiciary as well as legislators given it wide importance. This right is also available to trial awaiting prisoners. Supreme court in various cases recognized that right to representation in judicial tribunal is considering being important part of right to access to justice. Unless, the person allowed to approach to court for enforcement of his rights, the right to remedy is worthless. Right to representation includes right to be represented through legal practitioner of his own choice. Under law the provisions are made to provide this right of representation through proper advocate. However under certain circumstances this right cannot be effectively enforced due to various reasons such as poverty, illiteracy, indecency & other reasons. Person is not in a position to appoint lawyer for his defense or representation. In such a situation right to representation can be exercised through the process of legal aid. Right to legal aid is provided by the constitution of India as well as other legislations. Indian judiciary has also recognized this right as basic right for enforcement of fair, human & efficient criminal judicial system. It is considered to be the foundation of other rights

This right is protected and implemented in practice in Satara but it has to be advance and justified in proper way. Rights of prisoners including constitutional as well as other rights are considered to very much important for protection and rehabilitation of prisoners. Right to legal aid as provided by Art.39A of Indian Constitution necessary for providing right to free access and for equal justice. These rights of under trial prisoners in Satara dist. is protected and implemented in practice but still proper man power, Funds and Awareness need to be consider. Different setup of penal of Advocates and trained people, with awareness about this right needs to establish. The directives issued by judiciary from time to time also need to be implemented in strict scene. The role of Dist. legal services authority is also important in achieving this objective. The problem of overcrowding is still present in prisons in Satara, the system of speedy trial needs to be implemented in effective manner. Right to bail may be granted were arrest is not strictly necessary. Overall from the findings, excluding common problems the rights of prisoners are protected in better manner in prisons in Satara District.

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# CHAPTER I

# INTRODUCTION

All Human beings are entitled to some basic human rights by virtue of being as a member of human family. Prisoners are human being and as such they retain their rights even when in prison. This is so because human rights are universal. This means that every person, including a prisoner, has human rights, no matter who he is, where he or she lives or his or her class, race, sex, age, social status, etc. Also, human rights are said to be inalienable. This means that they cannot be taken away from a person, including a prisoner. Trials awaiting prisoners or people who have been sentenced lose some of their rights, such as freedom of movement, but they keep other rights such as the right to dignity. The right to human dignity, the right life, right to equality and freedom from discrimination, the right not be tortured or treated cruelly or inhumanely, This means that a prisoner retains his human dignity in all circumstances. His right to human dignity is unbreakable in all circumstances irrespective of the type of crime he committed. He may also not be tortured or treated cruelly or inhumanely under any circumstances.

Universal Declaration of Human Rights which states that: “No one shall be subject to torture or cruel, inhuman or degrading treatment of punishment” the United Nations Covenant on Civil and Political Rights which states in part: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”. According to the Article of 25 of Universal Declaration of Human Rights “All Human beings are said to be born free and equal in dignity”. The human rights are said to be the natural and basic birth rights of all human being without any discrimination and therefore everyone is equally liable for all these rights. Human rights are also available to persons under detention including convicted or under trial prisoners. Article 21 of the Constitution of India, recognizes that the right to life includes a right to live with human dignity and not mere animal existence. Thus, a prison atmosphere can be accepted as civilized only if it recognizes the basic human rights and the

constitutional rights of the prisoners and makes efforts for the effective and meaningful enjoyment of the same by means of prison reforms.[2]

The system of imprisonment has originated in the first quarter of the 19th century. In the initial stages the prisons were used as a place for detention of the under trials. It has undergone a radical change and the penology of the present day has become centered on imprisonment as a measure of rehabilitation of the criminals. But unfortunately even now our prisons are crowded with under trial prisoners. Many of them are innocent persons who are caught in the trap of the law eagerly waiting for their trial date and several of them are prepared to confess their crime and accept their sentence.

When we think about prisons the image that comes to our mind is that of hard core criminals who were imprisoned for committing crimes. But in actual fact 64.7% of prisoners in Indian jails are under trials that may or may not be punished. Thousands of them, arrested on suspicion of committing petty crimes, fade away in jails for a much longer period than the maximum punishment under the law for the crime which they have committed. The presence of higher number of under trials in the prison results in their overcrowding, which in turn causes many socio economic problems in the society.[3]

The need for prison reforms has come into focus during the last few decades. The Supreme Court and the High Courts have commented upon the shocking conditions prevailing inside the prisons, resulting in violation of prisoner's rights. The problem of prison administration has been examined by numerous expert bodies set up by the Government of India. The most comprehensive examination was done by the All India Jail Reforms Committee of 1980-83, popularly known as the Mulla Committee. The National and the State Human Rights Commission have also, in their annual reports, drawn attention to the terrible conditions in the prisons and urged governments to introduce reforms.

The presence of large number of under trial prisoners and their continuing stay for longer period definitely indicates the slow rate of trials which will leads to the overcrowding of our prisons. In the views of National Human Rights Commissions, unnecessary and unjustified arrests made by the police and the slow

[2] http://india.indymedia.org/en/2005/04/210469.shtml
[3] Dr. Bindu M.Nambiar Volume : 2 | Issue : 9 | Sept 2013 ISSN - 2250-1991

judicial processes causing congestion of under trial prisoners are the main causes of overcrowding in jails.

**Origin of the research problem:**

Several researches had been done research in this area from the social point of view. However I would like to analyses the subject from the legal and social point of view. The conditions of the prison are worst day by day. According to Prison Statistics India 2011, in the Indian prisons 2, 41,200 under trial prisoners were kept for committing offences under IPC, Special and local laws and civil offences. Out of these 2, 30,266 (95.5%) are male and 10,934 (4.5%) females. At the end of 2011 the share of under trial prisoners in the different jails can be seen as, in the central jails 77295 (47.5%), district jail 121520 (76.8%), sub jail 36248 (91.2%), women's jail 1652 (54.0%), brostal school 879 (76.8%), Special jails 3546 (67.5%), Others 60 (74.1%). From this we can see that in the sub jail, only below 9% were of other type of prisoners and also in most of other type of prisons majority are under trials.[4]

Some States and Union Territories have reported very high percentage of under trials to total prisoners. They were Dadar &Nagar Haveli (100.0%), Arunachal Pradesh (89.1%), Bihar (83.5%), Meghalaya (83.9%), Jammu & Kashmir (79.3%), Delhi (73.5%), Jharkhand (72.8%), Odessa (71.0%) and Manipur (70.2%). Only a very few States like Himachal Pradesh (942 convicts, 665 under trial s), Tripura (569 convicts, 330 under trial s) Pondicherry (130 convicts, 112 under trials), have got less number of under trials than that of convicts. While we are looking at the all India statistics on prison population we can see that the number of under trials is more than double, than that of convict prisoners i.e. 128592 convicts, 241200 under trials. The percentage of under trial prisoners to the total prisoners in prison is 64.7% in the country and the share of convicted prisoners is 34.5%. Their number has increased as in 2011(2,4,1200) over 2005(2,3,7076). It has also increased marginally by 0.5% in 2011 (2,41,200) over 2010 (2,40,098). From this we can see that the number of under trial prisoners in the prison is increasing.

In the jails in India, the total capacity is 332782 and the inmates present at the end of 2011 are 372926. The prisons have 40144 prisoners more than its

[4] Dr. Bindu M.Nambiar Volume : 2 | Issue : 9 | Sept 2013 ISSN - 2250-1991

capacity. The occupancy rate has been calculated to determine the ‘crowding of prisons’. The occupancy rate of all the prisons in India is 112.1%. In some states and Union Territories like Andaman & Nikobar Islands (362.1%), Chhattisgarh (256.3%), Punjab (149.1%) the occupancy rate is very high.

Presently the positions of jails are that they are overcrowded and jail machinery is insufficient to satisfy the basic needs of the prisoners and the infrastructure is also inadequate. Under trial or un convicted prisoners were kept in the jail without any trail for long period, only because they are not getting their basic right of free legal aid. Supreme Court of India in its various judgments recognized this right as part and parcel of right to life and personal liberty. But due to various reasons this right became unenforceable. Under trial prisoners constitutes a significant majority of the prison population. Persons who are within prisons as under trials are presumed to be innocent in the eye of the law. How can a system that calls itself just and fair, justify depriving "innocent" people of their liberty the consequences of pre-trial detention are grave. Defendants presumed innocent are subjected to the psychological and physical deprivations of jail life, usually under more onerous conditions than are imposed on convicted defendants. The jailed defendant loses his job if he has one and is prevented from contributing to the preparation of his defense. Equally important, the burden of his detention frequently falls heavily on the innocent members of his family. An effective criminal justice system inevitably needs to ensure that the accused stand trial for the crimes they are alleged to have committed. Due to poverty or illiteracy prisoners are incapable to execute their right. Therefore it is necessary to provide legal aid to them.

**Interdisciplinary relevance**

Right to free legal aid is the basic and important right of every accused. In M.H. Hoskot v State of Maharashtra, the Supreme Court aid down that right to free legal aid at the cost to the state to an accessed who could not afford legal services for reason of poverty, indigence or incommunicado situation was part of fair, just and reasonable procedures contained in Article 21. Position of prisoners is worst as they are not getting this right, this problem is not only social problem, and it is also legal one. This right to free legal aid is a multidimensional and multidisciplinary area which related with socio- legal issues.

**Review of Research and Development in the Subject:**

**International status:**

International law relating to the prisoners provides that a prisoner i.e. a trial-awaiting prisoners, sentence awaiting prisoners and convicted prisoners have the following rights:

To receive meals from the State and his family; To receive clothing, bedding, soap and medicine; To receive visitors; To receive and write letters subject to censorship; To exercise; To medical treatment; If a prisoner is female, to be kept separate from male prisoner; If a female prisoner is to be admitted into prison custody, in certain instances, with her infant; such an infant must be supplied with clothing and other necessities by the State until she attains the age of two years; If an un convicted juvenile, not to be detained in a prison unless special circumstances so demands; Not to be assaulted by prison guards unless he has attempted to escape, been riotous or violent, or has disobeyed a lawful order; To be given an opportunity to state his case whenever a privilege and or benefit is withdrawn or amended; To make complaints to the Officer in Charge

Be afforded adequate facilities for the preparation and presentation of his defense; his legal representative must be given adequate facilities to privately interview him; where the prisoner is unable to communicate with his legal representative in English, a suitable interpreter must be provided; No to have his documents or letters addressed to the Ombudsman or his lawyer censored. When charged for a prison offence, to be informed in writing of the nature and particulars of the charge against him or her, and be given a fair hearing To be informed of the provisions of the Prisoners Act, the applicable rules, orders and directives relating to the treatment and conduct of prisoners; this information must be made available to every prisoner immediately on admission to a prison; where the prisoner is illiterate the contents of those provisions must be orally explained to him; To be free from unreasonable searches at night.

**National Status**

Prisons in India, and their administration, are a state subject covered by item four under the State List in the Seventh Schedule of the Constitution of India. The management and administration of prisons falls exclusively in the domain of the State governments, and is governed by the Prisons Act, 1894 and the Prison

manuals of the respective state governments. Thus, states have the primary role, responsibility and authority to change the current prison laws, rules and regulations.[5] The Central Government provides assistance to the states to improve security in prisons, for the repair and renovation of old prisons, medical facilities, development of Borstal schools, facilities to women offenders, vocational training, modernization of prison industries, training to prison personnel, and for the creation of high security enclosures.

The Supreme Court of India, in its judgments on various aspects of prison administration, has laid down three broad principles regarding imprisonment and custody. Firstly, a person in prison does not become a non-person. Secondly, a person in prison is entitled to all human rights within the limitations of imprisonment. Lastly, there is no justification for aggravating the suffering already intrinsic in the process of imprisonment.[6]

The terms "prison" and "jail" are used interchangeably in India, perhaps reflecting the fact that no significant effort is made to separate "under trials," as those awaiting trial are known, from convicts. Separation of under trials from convicts is required by a decision of India's Supreme Court, but this decision is widely ignored in practice. A substantial majority of all prisoners are "under trials."

Prisoner's rights have become an important item in the agenda for prison reforms. This is due essentially to the recognition of two important principles. Firstly, the prisoner "is no longer regarded as an object, a ward, or a 'slave of the state', who the law would leave at the prison entrance and who would be condemned to 'civil death'."[7] It is increasingly been recognized that a citizen does not cease to be a citizen just because he has become a prisoner. The Supreme Court has made it very clear in many judgments that except for the fact that the compulsion to live in a prison involve the deprivation of certain rights, like the right to move freely or to practice a profession of one's choice, a prisoner is otherwise entitled to the basic freedoms guaranteed by the Constitution.[8]

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[5] "India - The Penal System". Country-data.com. Retrieved 4 June 2013.

[6] NCRB Prison Statistics India 2011

[7] Dr. Kurt Neudek, The United Nations in Imprisonment Today and Tomorrow- International Perspectives on Prisoners' Rights and Prison Conditions eds., Dirk van Zyl Smit and Frieder Dunkel; Kluwer Law and Taxation Publishers, Deventer, Netherlands, 1991.

[8] Charles Shobraj vs. Superintendent, Tihar Jail, AIR 1978, SC 1514

Secondly, the convicted persons go to prisons as punishment and not for punishment.[9] Prison sentence has to be carried out as per court's orders and no additional punishment can be inflicted by the prison authorities without sanction. Prison authorities have to be, therefore, accountable for the manner in which they exercise their custody over persons in their care, especially as regards their wide discretionary powers.

Article 19(1) (a) provides for freedom of speech and expressions. Freedom of thought and expression is one of the important political freedoms guaranteed by Article 19(1) (a) of the Constitution. In the Pandurang Sanzgiri's case the petitioner had written a book in Marathi titled 'Inside Atom' with the permission of the Government. The Supreme Court observed that the book being purely of scientific interest the manuscript of the same could be sent out of the jail for publication. Every activity, which is supplementary to and is essential for, the free exercise of a fundamental right, is considered to be a part of that fundamental right. Protect persons from ex-post facto laws. Person shall be convicted of any offence only in violation of a law in force at the time of the commission of the act charged as an offence. Embodies the principal of 'double jeopardy', that is, no person shall be prosecuted and punished for the same offence more than once. Provide for important safeguards to the under trials that the jail authorities or police authorities cannot compel the prisoners to give testimony which is likely to expose them for criminal consequences. Article 21 of the Constitution guarantees the right of personal liberty and there by prohibits any inhuman, cruel or degrading treatments to any person whether he is a national or foreigner. It is available even to convicts in jails. Personal liberty, thus, is a sacred and cherished right under the Constitution. The expression life or personal liberty has been held to include the right to live with human dignity and thus it would also include within itself a guarantee against torture and assault by the State or its functionaries. Right to speed trial, right against handcuffing, right against inhuman treatment are some of the rights which come under the purview of the Article 21. Article 21 provides no person shall be deprived of his life or personal liberty except according to procedure established by law. Article 22 guarantees protection against arrest and detention in certain cases and declares that no person

[9] Jon Vagg. Prison System- A Comparative Study of Accountability in England, France, Germany and the Netherlands, Clarenden Press, Oxford 1994

who is arrested shall be detained in custody without being informed of the grounds of such arrest and he shall not be denied the right to consult and defend himself by a legal practitioner of his choice. Article 22 provides for protection against arrest and detention in certain cases. Article 25(1) provides for freedom of conscience and free profession, practice and propagation of religion. This right to religion can be equally enjoyed by the prisoner also. Article 39A is a Directive Principle of State Policy and grants equal justice and free legal aid. It deals with providing free legal aid to disabled categories and women are among them.

**Significance of the study:**

M.H. Wadanrao Hoskot v. State of Maharashtra[10], the Court held that the right to legal aid is one of the ingredients of fair procedure.

" If a prisoner sentenced to imprisonment, is virtually unable to exercise his constitutional and statutory right of appeal, for want of legal assistance, there is implicit in the court under article 142 read with Article 21 and 39-A of the Constitution, power to assign council for such imprisoned individual for doing complete justice. Where the prisoner is disabled from engaging a lawyer, on reasonable grounds such as indigence or any other situation, the court shall, if the circumstances of the case, the gravity of the sentence, and the ends of justice so required, assign competent counsel for the prisoners defense, provided the party doesn't object to that lawyer. "

Khatri & Ors v State of Bihar & Ors[11], the Supreme Court gave directions that the state is under a constitutional mandate to provide free legal aid to an accused that is unable to secure legal services on account of poverty, at the cost of the state. This right is also recognized by various legislations but presently it does not apply any were. Therefore in this context it is desirable to undertake a detailed study and find out the possible measures which will recognize right to legal aid as a basic human right.

This was underscored by Dr. W Jonas AM Aboriginal and Torres Strait Islander Social Justice Commissioner, in his keynote presentation at the Prisoners as Citizens Workshop in Sydney, when he pointed out that: the right to human detention which aims for individual rehabilitation and social reintegration is not vague or abstract aspiration but a concrete obligation to be implemented by a set

[10] AIR 1978 SC 1548
[11] AIR 1981 SC 928

of detailed measures. Failure to do so is a violation of the prisoner's rights which should be capable of an effective remedy.[12]

Section 35(2) (e) of the Constitution makes provision for the conditions under which the prisoners are to be detained. It provides: Every prisoner who is detained, including every sentenced prisoner, has a right to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment.

Under Indian law, every person who is arrested and detained in custody must be produced before a magistrate within 24 hours of arrest, excluding the time needed for transportation to court. A special order by a magistrate is required to authorize police detention for a longer period. Remand to police custody may be for no more than 14 days. If it is to be prolonged thereafter, another order from a magistrate is required. Detention in police custody, at least as far as the law is concerned, may not exceed 90 days. In cases in which the potential sentence is under ten years, detention in police custody may not exceed 60 days.

Even after introducing the explanation added to the Section 436-A of Criminal Procedure Code which provides for the release of under trial prisoners under bond if they have served for a period extending up to one half of the maximum period of imprisonment for that offence under law, at the end of 2011, a total of 1,486 (0.6%) under trial prisoners were kept in the Indian prisons for a period more than five years. 7615 (3.2%) between three to five years. 13592 (5.6%) between two to three years. 30261 (12.5%) between one to two years. 41455 (17.2%) between 6 months to one year, 50126 (20.8%) for 3 to 6 months and 96665 (40.1%) up to 3 months.

Overcrowding contributes to a greater risk of disease, higher noise levels, which affect the health of the prisoners, and adversely affect the hygienic conditions, surveillance difficulties, which increase the danger level. This apart, life is more difficult for inmates and work is more onerous for staff when prisoners are in over capacity. In Chapter 9 of the 78th Report of the Law Commission of India on “congestion of under trial prisoners in jails” had made some recommendations. Acceptance of which would relieve congestion in jails. In

[12] "Citizens Inside" Keynote presentation by Dr W Jonas AM Aboriginal and Torres Strait Islander Social Justice Commissioner, at the "Prisoners as Citizens" Workshop, Sydney, 27 November 2000.

order to mitigate the conditions of the under trial prisoners the first and foremost thing that has to do is to bring down their population drastically. This cannot happen unless all the branches of the criminal justice system work hand in hand. The presence of large number of under trial prisoners is really shame to any criminal justice administration. For this we have to take these under trials out of the prison or not to keep them for a long period as well as not to sent more under trials to the prison.

A functioning legal aid system, as part of a functioning criminal justice system, may reduce the length of time suspects are held in police stations and detention centers, in addition to reducing the prison population, prison overcrowding and congestion in the courts, and reducing reoffending and re victimization. It may also protect and safeguard the rights of victims and witnesses in the criminal justice process. Legal aid plays an important role in facilitating diversion and the use of community-based sanctions and measures, including non-custodial measures; promoting greater community involvement in the management of criminal justice; reducing the unnecessary use of detention and imprisonment; rationalizing criminal justice policies; and ensuring efficient use of State resources.

An important aspect of prison administration is the number of prisoners that the authorities have to handle in the prisons. A major problem that is being faced in most of the Indian jails is overcrowding of prisons resulting in inadequate infrastructure facilities, insufficient number of prison staff and lack of essential services for the prison inmates[13]

By the prevailing standards of society, prison conditions are often adequate. Some prison administrators concede that the prevailing conditions of poverty in Indian society contribute to recidivism because a prison sentence guarantees minimal levels of food, clothing, and shelter. Despite this overall view, India's prisons are seriously overcrowded, prisoners are given better or worse treatment according to the nature of their crime and class status, sanitary conditions are poor, and punishments for misbehavior while incarcerated have been known to be particularly onerous.

[13] Dr. Bindu M.Nambiar Volume : 2 | Issue : 9 | Sept 2013 ISSN - 2250-1991

It is the fundamental right of all poor and indigent prisoners to be provided with free legal aid in the prosecution of their case at different levels of their trial. The Magistrate is duty bound to offer the facility to the accused the moment he or she is produced before him or her for the first time even if the accused has not asked for it out of ignorance. The Magistrate is under a duty to supply copies of all documents such as the First Information Report, statements of witnesses, charge sheet, etc. free of cost to the accused to enable him or her to know the details of the case and start preparing the defense. The Magistrate or the Judge is duty bound to furnish the accused with a free transcript of the judgment when he or she is sentenced to enable the prisoner to prefer an appeal if he or she so desires and to ensure that there is no delay which may later result in an appeal being barred by the Limitation Act of 1940. If the prisoner wishes to appeal, he or she may present a petition of appeal and copies accompanying the same to the Superintendent or the officer in charge of the jail who is duty bound to forward the petition of appeal and copies thereof to the proper Appellate Court within the period of limitation.[14] Where the accused is not in a position to defend him, the Magistrate is duty bound to appoint a committed and competent lawyer having sufficient experience in criminal matters for the defense of the accused at the expense of the government. The Magistrate is duty bound to refer such cases to the District Legal Services Authority.

**Right to Legal Aid**

The talk of human rights would become meaningless unless a person is provided with legal aid to enable him to have access to justice in case of violation of his human rights. This a terrifying challenge in the country of India's size and heterogeneity where more than half of the population lives in far-flung villages steeped in poverty, destitution and illiteracy. Legal aid is no longer a matter of charity or kindness but is one of the constitutional rights and the legal machinery itself is expected to deal specifically with it. The basic philosophy of legal aid envisages that the machinery of administration of justice should be easily accessible and should not be out of the reach of those who have to resort to it for the enforcement of their legal rights. In fact legal aid offers a challenging

[14] S. 383, Criminal Procedure Code

opportunity to the society to redress grievances of the poor and thereby law foundation of Rule of Law.

In India, judiciary has played an important role in developing the concept of legal aid and expanding its scope so as to enable the people to have access to courts in case of any violation of their human rights. In the case of M.H. Wadanrao Hoskot v. State of Maharashtra, the Court held that the right to legal aid is one of the ingredients of fair procedure.

If a prisoner sentenced to imprisonment, is virtually unable to exercise his constitutional and statutory right of appeal, for want of legal assistance, there is implicit in the court under Article 142 read with Article 21 and 39-A of the Constitution, power to assign council for such imprisoned individual for doing complete justice. 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 required, assign competent counsel for the prisoners defense, provided the party doesn't object to that lawyer.

**Review of Literature**

Lots of literature is available on rights of prisoners. Books are also available for the protection of rights of under trials. The literature on constitutional laws, human rights, books on Legal Services Authorities Act. The Criminal Procedure code and other laws provide provisions for rights of prisoners including under trial prisoners. The reports published by govt. of different committees established for tackle problems of prisoners are also available. The statistical data given by National Crime records Bureau gives incite of this problem.

**Objectives:**

This research is based on the following important objectives.

1. To study and analyze the legal provision with relation to the rights of prisoners.
2. To study and analyze present position of implementation of these rights.
3. To make an analysis of right to free legal aid of under trail prisoners.
4. To illustrate grounds which imposes restrictions on the implementation of abovementioned rights

5. To review the scope of legislature to enact a law for providing the right to free legal aid to under trial prisoners.

Hence in the light of above objective of the research the title of the research is "Rights of Prisoners with special reference to the Right to Free Legal Aid and its implementation in the Dist. of Satara."

**Hypothesis**

The overall Hypothesis of the present study is as below.

1. Jails are overcrowded
2. Prisoners are not getting the basic rights.
3. Lack of will of authorities to implement the right to free legal aid.
4. Need to make drastic legislation to implement the rights.

**Methodology:**

The researcher would like to adopt the analytical method for the present research. The research will rely upon Doctrinal and non doctrinal method for detailed research about the topic. The doctrinal method includes an analysis of the judicial decisions of Indian Supreme Court and various High Courts situated in India, Several policies framed by the Government from time to time, Constitutional provisions and legislative enactments. This research is predominantly based on the primary data.

The researcher would like to utilize sources of information by- Questioner, Interview, and Observation techniques will be used for collection of data. Few in depth case studies will be conducted to collect detailed information about implementation of legal norms and difficulties if any in their compliance. For above objectives both primary and secondary data will be collected through primary and secondary sources of data collection. Primary data will be collected, by administering an interview schedule directly with the respondents. Secondary sources of data collection will be reports published by state and central government, municipal reports, books, journals and periodicals.

**Universe of study** –

The present study will be confined and extends to the jails, Prisons situated in the district of Satara.

**Method of data collection-**

- Primary source – questionnaire, informal discussion, case study, observation, interview of prisoners, jail authorities, family members and friends of prisoners. etc.
- Secondary source – Books, articles, Government reports, Precedents of case laws, criminal law reports, criminal Laws etc. Reports on prisoners from Satara District.
- Sampling techniques - sampling will be collected from Prisoners from jail, remand home, offenders from magisterial custody, convicted prisoners, under trials prisoners and acquitted persons on randomly, by applying sample random sampling method which will be the sample for present study . I will limit the sample size to 50.

**Analysis of Data-**

To analyze the collected data SPSS Window based version software will used. Where ever necessary and possible intellectual reasoning will be used.

**Scope of the Study-**

Rights of prisoners with special reference to right to legal aid for under trial prisoners in dist. of Satara is mainly concentrated on prison system in Satara dist. as an Empirical Research based on mainly primarily and secondary data available. Researcher is mainly focusing on the problems of Equality & Equity in providing Rights prisoners form Satara jail and for the upliftment of the grass root level people with the mainstream of the society.

**Limitation on Study -**

It covers a vast area so that it is difficult to study all the parts in an empirical study in Satara, so it is necessary to delimit the study. Hence the researcher had decided to carry out Empirical study as Socio-Legal Research in Satara dist mainly in Satara jail to give precise overview of rights of prisoners in Satara.

**Relevance of the Study -**

This Research has been mainly carried out by the researcher to study the concept of rights of prisoners in Satara, State of Maharashtra, India on the right based approach. Researcher had also studied various problems in different perspectives regarding prisoner's rights. It is feasible to the Researcher to go and visit jails in Satara city so researcher had done Empirical legal Research.

**SCHEME OF CHAPTERISATION-**

**CHAPTER I: Introduction**

The first chapter may consist of background and position of prisoners in India, their problems, scope and significance of study Statement of the research problem, deals with the review of literature in general and also with specific reference to Satara District. It discusses the various theoretical strands-Objectives of the study-Hypothesis-Research Design and Methodology-Relevance of the Study-Chapter Scheme and Brief outline of the study.

**CHAPTER II: Prisoner's Rights: National and International Perspectives**

Second chapter may consist of meaning nature and rights of prisoners in general as well as it may deal with national legislations and constitutional perspectives and international conventions treaties and protections provided for the protection of rights of prisoners.

**CHAPTER III: Role of Supreme Court on Rights of Prisoners in India**

Third chapter may consists of rights provided for prisoners as well as other legislative provisions specifically providing rights of prisoners in India and also mainly concentrate on role of judiciary in implementing rights of prisoners by study of different cases.

**CHAPTER IV: Right to free legal aid Legislative and Judicial perspectives**

Fourth chapter may consists of constitutional rights proving for prisoners a right to free legal aid as well as other legislative provisions specifically providing right to free legal aid to under trial prisoners in India and also concentrate on case studies to show the role of judiciary in implementing right to free legal aid for under trial prisoners.

**CHAPTER V: Study of under trials in dist. of Satara**

Sixth chapter states about analytical study through different sources of data collection about under trial prisoners their status, problems and perspectives. This chapter is about the result of the study and its analysis. The last part of this chapter gives observations and findings of the study.

**CHAPTER VI: Conclusion and Suggestions**

The last chapter includes suggestions drawn from the study conducted, on the basis of information gathered and analysis made on the subject matter and deals

with the findings of the case studies, giving a historical background and then describing the process of implementation of rights of under trials with special reference to right to free legal aid in Satara district.

# CHAPTER II

# PRISONER'S RIGHTS: NATIONAL AND INTERNATIONAL PERSPECTIVES

The degree of Civilization in a society can be judged by entering in its prisons. A society cannot be considered as civilized society if it does not consider its prisoners as human being. The society must treat prisons with sympathy & affections. The civilized society cannot be considered as civilized unless it recognizes the basic of important rights of its prisons. A prisoner cannot be denied their fundamental as well as human right only because they were detained in prisons. A prisoner either convicts or a waiting for trail does not be denied their human rights. Certain rights such as freedom of movement or right to liberty can be restricted to certain extend, however basic rights such as right to life, security, human treatment etc. cannot be take away only because they were imprisoned or detained in custody. The right to liberty can be taken away only with procedure established by the law.

A prisoner is a person whose liberty has been for detained for execution of any legal process. Prisoners are basically divided in four categories such as convict, under trials, detainee and others. A prisoner of any of the category doesn't deny as a human being and therefore entitled to basic human rights being a member of human family. Therefore prisoners are entitled to all basic human rights without any discrimination.

**RIGHTS OF PRISONERS: INTERNATIONAL PERSPECTIVES:-**

[15]

[15] http://www.panopticon-consulting.org/international-prison-law-and-standards.html

The recognition of human rights has been traced back to ancient period however more recognition was given after Second World War. The violence committed against human being resulted in acquisition of certain norms for protection of human being. The treatment of prisoners has become issue worldwide concern. The UNO has accepted general principles of human rights under the heading of Universal Declaration of Human Rights in the year 1948.The Second World War also brings attention of intention community for protection of rights of prisoners. The Geneva Convention for war prisoners was signed for protection of rights of war prisoners. As well as war affected persons. Number of international conventions, declaration, and resolution were signed for treatment of prisoners. The U.N. organization gave model instruments for providing minimum standards & protection & prohibition applicable to prisoners & prison conditions.

The prisoners being one of the vulnerable sections of society are out of sight because the treatments of prisoners are being under the four walls of prisons, therefore they are easy target for continuing violation of human rights. Most of instances to worldwide shows that prisoners are facing with gross violation of human rights.

So as to overcome these issues attempts are being made to provide different convention, treaties and documents where aims at protecting rights of prisoners. Some of those documents specifically address about rights of prisoners, were as some of them exclusively applicable to prisoners & some provides about the situation & conditions in jail. These conventions and treaties are as follows.

**1) Universal Declaration of Human Rights 1948(UDHR)**

It is a path finding document provided by United Nations Organization for recognition of Human Rights. The important Articles of Universal Declaration of Human Rights

- Article 1 of Universal Declaration of Human Rights states that “All human being are said to be born free & equal in dignity and Rights.” All human beings are free and equal there should not be discrimination on any of the grounds such as sex, age, place of birth, caste, creed, religion, nationality, social/political origin etc.
- Article 5 states that “No one shall be subject to torture, cruel, inhuman or degrading treatment of punishment.” The provision provides for treatment of

prisoners. It provides that no one can be subjected to torture either physical or mental or cruel or degrading treatment or punishment.

- Article 8 of declaration states about right to effective remedy before national tribunal.
- Article 9 provides for freedom from arbitrary arrest, detention or excite.
- Article 10 provides for right to fair trial and public hearing by independent & impartial tribunal.
- Article 11 provides for doctrine of presumption of innocence until guilt proved in public trial with all guarantees necessary for defence in criminal cases, as well as principle of freedom from ex-post fact laws etc.

Though the provisions of UDHR are not binding on member states but it has great legal effect. The provisions of UDHR are considered to be the basic provisions for interpretation of other provisions of international instruments as well as national instruments. UDHR are considering being one of the important instruments for reorganization of basic rights of human being especially for prisoners.

**2) International Covenant on Civil & Political Rights 1966. –**

Another important instrument for protection of rights of human beings and also in relation to prisoners is known as International Covenant on Civil & Political Rights. This convention was adopted by U.N. general assembly in 1966 so as to give specific effect to provisions of UDHR. This convention provides for provisions for implementation of rights specified in the convention. Some of the important rights as are provided in UDHR are specified & protected by this convention are as follows.

- Article 7 – provides for freedom from in human or degrading treatment of punishment.
- Article 10 – provides for Rights of detainee to be treated with humanity.
- Article 14 – protects right to a fair trial.
- Article 15 – provides for non retroactive application of criminal law.

Under this convention Article 10 specifically provides that –

"All persons deprived of their liberty shall be treated with humanity & with respect for the inherent dignity of the human person. An accused person shall in

exceptional circumstances be segregated from convicted persons & shall be subject to separate treatment appropriate to their status as unconnected persons.

Accused juveniles persons shall be separated from adults & brought as speedily as possible for adjudication. It again provides that the prison system shall comprise treatment of prisoners the essential aim of which shall be their reformation & social rehabilitation. Juvenile offenders shall be segregated from adults & legal status".

The convention provided for suspension of some of rights during emergency, however some basic right relating to prisoners such as freedom from arbitrary arrest & detention, protection from torture cruel inhuman, degrading treatment or punishment. Freedom from non retroactive application of criminal law etc. never suspended during public emergence or even in situation war or threat of war.

The convention again made provisions for implementation of rights provided under this convention. The member statuses are under obligation to implement these provisions in their domestic laws. & take legislative, administrative & other measures for implementation and protection of these rights.

**3) Convention against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment 1995.**

This convention was adopted by General Assembly of U.N. in 1975 provides for protection and prohibition of human being from any type of torture, cruel, treatment or punishment. It impose obligation on state parties to take effective legislative, judicial, administrative and other measures to prevent act torture.[16] No torture can be allowed or even defense of public emergency or political instability cannot be consider as ground for allowing torture in any form. Even order from public authority or superior force cannot be defense or justification for torture.

The convention provides for rigorous provisions for implementation of provisions of this convention. A committee was established known as committee against torture to handle the issue relating to torture.

[16] Article 2 of Convention against torture & other cruel, inhuman or degrading treatment or punishment 1995

The Commission on Human Rights by its resolution 1985 established Special Rapportures on torture as well as optional protocol to convention against torture provides for establishment of subcommittee on Committee against Torture. This special rapportures as well as subcommittees were exclusively authorized to inspect any place where torture is being conducted. The state parties are under obligation to provide necessary support to special rapportures as well as subcommittee for the purpose of investigation & inquiry the situation of torture.

Apart from these international conventions there are many United Nations codified standards for treatment of prisoners. These documents provides for minimum requirements in prisons which are necessary for maintenance of human dignity in prisons & for development of prisoners into a better human being. These codified standards are as follows.

1. **UN Standard Minimum Rules For The Treatment Of Prisoners (OHCHR, 1955) –**

These minimum standard rules were initially adopted by U.N. congress on the prevention of crime & the treatment of offenders in 1955, which was approved by United Nations Economic & Social council in 1957.

These standard minimum rules are not treaty, however it may constitute as a recognized guide to binding treaty standards. Though these standards are not legally binding in nature however it has great importance throughout the world as it was considered as inspiration for national legislation as well as of practice guidance for prison management.

The basic principle provided in these standards is that there shall be no discriminations on ground of race, color, sex, language, religion, political & other opinion, national or social origin, property, birth or other status.

These standard minimum rules are divided in three parts.[17] First Part of these rules contains General application rules. i.e. good practices in treatment of prisoners & management of penal institutions, personal hygiene, clothing & bed cling, food, exercise, medical services, disciple to punishment, use of instruments of restraint, complaints, contact with outside world viability of books, religion,

[17] https://en.wikipedia.org/wiki/Standard_Minimum_Rules_for_the_Treatment_of_Prisoners

retention of prisoners, property notification of death, illness, transfer, removal of prisoners, the quality & training if prison personnel & prison inspections.[18]

Second Part of these of rules provides for different category of prisoners. It provides number for guiding principle for the treatment and rehabilitation of prisoners, classification & individualization, privileges, work, education & recreation, social relations & after cases.[19]

Third Part of these rules provides provision in relation to prisoners awaiting trial i.e. persons under arrest, rules for civil prisoners, rules for persons arrested or detained without charge.

On 17th Dec. 2015 these rules were revised by General Assembly by its resolution passed in its 70th session, the rules were reversed so that they may reflect recent advances in correctional science & best practices. These reversed rules were recognized by the name of president of South Africa Mr. Nelsen Mandela as the Nelsen Mandela Rules.

**2. Basic Principles For The Treatment Of Prisoners (UNPTP 1990)**

- All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.
- There shall be no discrimination on the grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- It is, however, desirable to respect the religious beliefs and cultural precepts of the group to which prisoners belong, whenever local conditions so require.
- The responsibility of prisons for the custody of prisoners and for the protection of society against crime shall be discharged in keeping with a State's other social objectives and its fundamental responsibilities for promoting the well-being and development of all members of society.
- 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 Universal Declaration of Human Rights, and, where the

[18] Rule 12 to 17, 18, 19 to 21, 22, 23, 24 to 35, 36 to 46. 47 to 49, 54 to 57, 58 to 63, 64,65 to 66, 67,68 to 70, 73, 74 to 82, 83 to 85 respectively from UN standard minimum rules for the treatment of prisoners 1955.

[19] Rule – 86 to 90, 91 to 92, 93 to 94, 95, 96 to 103, 104 to 105, 106 to 108 respectively from UN standard minimum rules for the treatment of prisoners 1955.

State concerned 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.

- All prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality.
- Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.
- Conditions shall be created enabling prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the country's labour market and permit them to contribute to their own financial support and to that of their families.
- Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.
- With the participation and help of the community and social institutions, and with due regard to the interests of victims, favorable conditions shall be created for the reintegration of the ex-prisoner into society under the best possible conditions.
- The above Principles shall be applied impartially[20].

**3. United Nations Standard Minimum Rules For The Administration Of Juvenile Justice (The Beijing Rules 1985)**

The UN Standard Minimum Rules for the Administration of Juvenile Justice are not specific to education, but apply to the juvenile justice system. The Minimum Rules state that juvenile justice systems should:

- Emphasize the well-being of young people and ensure that any reactions should always be in proportion to the circumstances of both the offenders and the offence;
- Encourage the use of diversion programs which remove young people from the criminal justice process and implement supportive or community services;
- Ensure the right to privacy and procedural safeguards including presumption of innocence;

[20] http://euromed-justice.eu/document/un-1985-united-nations-standard-minimum-rules-administration-juvenile-justice-beijing-rules

- Ensure that proceedings are conducive to the best interests of the child and that young people have the opportunity to participate and express themselves freely;
- Use inquiry reports on social, family, and educational background to identify and provide appropriate social services;
- Avoid institutionalization as much as possible by using other measures such as counseling, probation or community service;
- Use institutionalization only as a last resort; and
- Focus the goal of institutionalization on assisting young people in becoming productive members of society.[21]

4. **UN Standard Minimum Rules For Noncustodial Measures (the Tokyo Rules 1990)**

The United Nations Standard Minimum Rules for Non-custodial Measures popularly known as The Tokyo Rules are the result of a global discussion. Non-custodial measures do not restrict offenders' liberty as much as imprisonment. They do not require offenders to leave their families or communities, relinquish their responsibilities or give up any employment they might have had. Nevertheless, offenders undergoing non-custodial measures may be subject to various conditions, restrictions and requirements.

Furthermore, non-compliance with the conditions imposed can have serious consequences for offenders, such as imprisonment.[22]

5. **UN Declaration of basic principles of Justice for victims of crime & abuse of power. (UNVCAP 1985)**

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power was adopted by the General in November 1985.

This declaration mainly divided in two parts:

- First part states about Victims of Crime, which is again subdivided into sections concerning Access to justice and fair treatment, Restitution, Compensation, and Assistance; and
- Second part provides the provisions about Victims of abuse of power.[23]

6. **United Nations Human Right Committee-**

[21] http://euromed-justice.eu/document/un-1985-united-nations-standard-minimum-rules-administration-juvenile-justice-beijing-rules
[22] https://www.ncjrs.gov/pdffiles1/Digitization/147416NCJRS.pdf
[23] http://legal.un.org/avl/ha/dbpjvcap/dbpjvcap.html

UN human right committee explained that states are under a positive obligation for the persons who are considered to be a vulnerable section of society who because of their status as person deprived of liberty. It again states that

"Not only persons deprived of their liberty not be subjected to torture or other cruel, inhuman or degrading treatment or punishment, including medical or scientific experimentation, but neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty enjoy all the rights set forth in the [ICCPR], subject to the restrictions that are unavoidable in a closed environment".[24]

**RIGHTS OF PRISONERS: NATIONAL PERSPECTIVES**

Prison and its administration is a State Subject as it is listed in List II in Schedule VII of the Constitution of India. The statistics available with National crime records bureau shows the position of India jails. Prison Establishments in different States or Union Territories comprise several types of jails. The most common and standard jail institutions which are in existence in the States or Union Territories are better known as central jails, district jails and sub jails. The other types of jail establishments are women jails, borstal schools, open jails and special jails.

**Position of Jails and Jail Inmates in India**

| **Type of Jail** | **No. of Jails** | **Type of Jail** | **No. of Jails** |
|---|---|---|---|
| Central jails | 134 | Open jails | 63 |
| District jails | 379 | Borstal schools | 20 |
| Sub jails | 741 | Special jails | 43 |
| Women jails | 18 | Other jails | 3 |

TABLE: A

Table A shows the number of jails in India[25]. Out of 1401 jails total 134 central jails out of these jails Delhi has 8 Central Jails, Kolkata (West Bengal) has 3 Central Jails and Bhagalpur (Bihar) has 2 Jails i.e.1 Special Central Jail and 1

[24] https:/www.hrw.org/legacy/advocacy/prisons/stn-nts.htm.
[25] Prison Statistics India-2015, National Crime Records Bureau

Central Jail, 379 district Jails, 741 sub jails, 18 women jails, 63 open jails, 20 Borstal Schools, 43 Special jails and 3 other jails are established

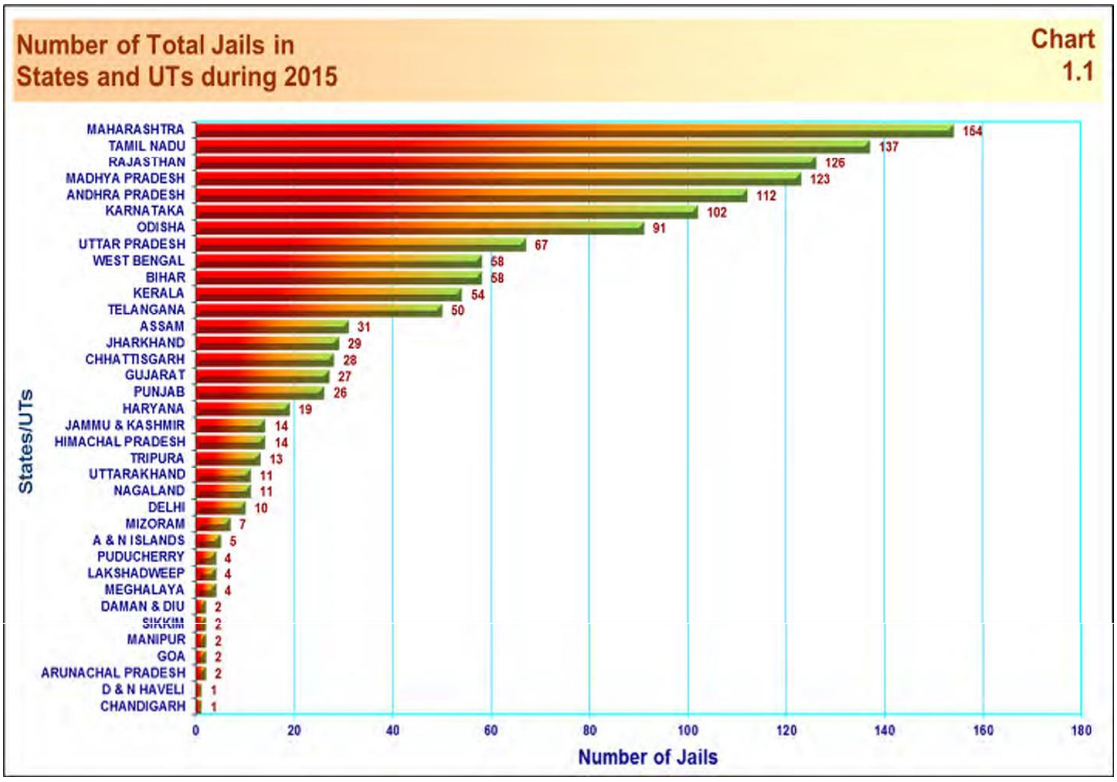


CHART 1

Above chart shows Prison statistics in India of 2015[26]. It shows that out of 1,401 State of Maharashtra has the highest number i.e.154 of jails among the states or union Territories followed by Tamil Nadu 137, Rajasthan 126, Madhya Pradesh 123, Andhra Pradesh 112 and Karnataka 102. Arunachal Pradesh has only two district jails.

**Total Capacity of Jails in the Country: 3, 66,781**

| | |
|---|---|
| Central jails: 1, 59,158 (43.4%) | Open jails: 5,370 (1.5%) |
| District jails: 1, 37,972 (37.6%) | Borstal schools: 1,830 (0.5%) |
| Sub jails: 46,368 (12.6%) | Special jails: 10,915 (3.0%) |
| Women jails: 4,748 (1.3%) | Other jails: 420 (0.1%) |

TABLE: B

**Total Number of Jail Inmates: 4, 19,623**

[26] Prison Statistics India-2015, National Crime Records Bureau

| Particulars | No. of Jail Inmates | Percentage |
|---|---|---|
| Male | 4,01,789 | 95.7% |
| Female | 17,834 | 4.3% |

TABLE: C

**Occupancy Rate**

| | | | |
|---|---|---|---|
| Convicts | 1,34,168 (32.0% of total inmates) | | |
| | Male | 1,28,428 | 95.7% of total convicts |
| | Female | 5,740 | 4.3% of total convicts |
| Under trials | 2,82,076 (67.2% of total inmates) | | |
| | Male | 2,70,160 | 95.8% of total under trials |
| | Female | 11,916 | 4.2% of total under trials |
| Detenues | 2,562 (0.6% of total inmates) | | |
| | Male | 2,490 | 97.2% of total detenues |
| | Female | 72 | 2.8% of total detenues |
| Others | 817 (0.2% of total inmates) | | |
| | Male | 711 | 87.0% of total others |
| | Female | 106 | 13.0% of total others |

TABLE: D

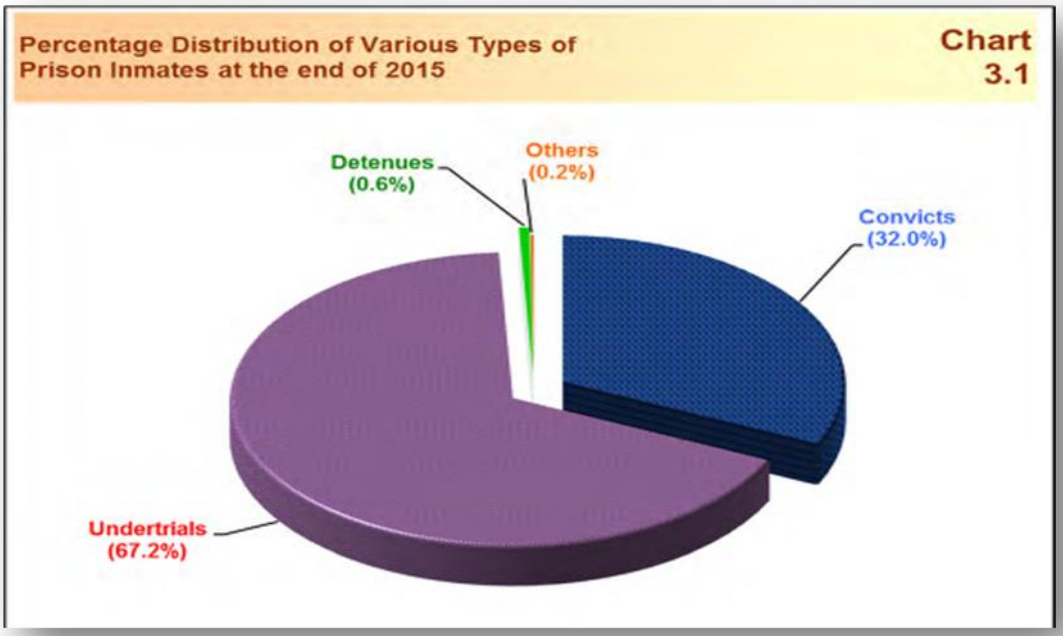


CHART: 2

Table B shows the total capacity of jails in the country i.e. 3, 66,781. Out of this the central jails shall consists of 43.4% of total capacity, District Jail shall Consist of 37.6% of total capacity. Table C shows the total number of jail inmates on 31st December 2015 consisting of 4, 19,623, out of it 4, 01,789 were male and 17,834 were female. Considering the capacity of jails in India and occupancy rate, the number of inmates are more than the capacity of jails. The occupancy rate of jails in India was 118.4% in 2013 which was reduced to 114.4% in 2015; still it is more than the capacity. Table D shows the occupancy rate in 2015, it provides that out of total inmates 32.0% inmates were convicts, 67.2% were under trials, 0.6% are detenues and 0.2% are other jail inmates. Majority of under trial inmates i.e. 50.9% i.e.1,43,495 out of 2,82,076 were lodged in district jails as compared to 33.6% i.e.94,675 out of 2,82,076 in central jails and 13.1% i.e. 37,051 out of 2,82,076 in sub-jails at the end of the year 2015. It shows that the number of under trials were more than other inmates. The highest number of 88,747 inmates were reported from Uttar Pradesh followed by Madhya Pradesh 38,458, Maharashtra 29, , Bihar 28,418 and Punjab 23,645 at the end of the year 2015. Below chart shows the statewide number of under trials in India

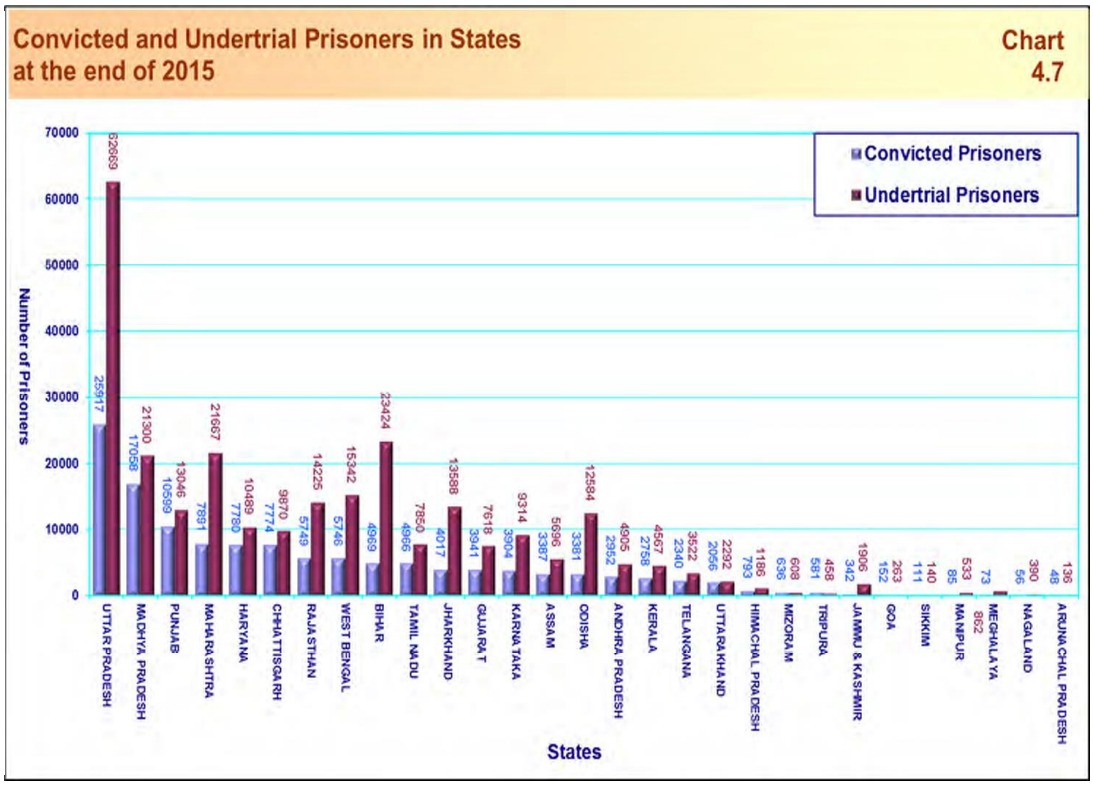


CHART: 3

The maximum number of under trial prisoners lodged in various jails was reported from Uttar Pradesh i.e. 62,669 followed by Bihar 23,424, Maharashtra 21,667, Madhya Pradesh 21,300, West Bengal 15,342, Rajasthan 14,225, Jharkhand 13,588, Punjab 13,046, Odessa 12,584, Delhi 10,879 and Haryana 10,489. Smaller States or Union Territories which have reported least number of under trials in their jails are Goa 263, Daman & Diu 166, Sikkim 140, Arunachal Pradesh 136, Pondicherry 107, Andaman and Nicobar Islands 81, Dadar and Nagar Haveli 31 and Lakshadweep 23.

The position of prisoners in India is not so good compared with other world. The rights of prisoners were suppressed since under colonial rule. The recognition of rights of prisoners is recently emerged in 20th century, when India became party & signatory of Universal declaration of Human Rights.

**Rights of Prisoner under Indian Constitution –**

So as to protect the rights of prisoners difference provisions are incorporated in law. The Constitution of India confers number of fundamental rights upon citizens which are also available to prisoners. Those rights are as follows.

- Article – 14 Equality before law – The State shall not deny to any person equality before law and equal protection of laws.
- Article – 19 Protection of certain rights regarding freedom of speech, etc.–

(1) All citizens shall have the right–

- To freedom of speech and expression;
- To assemble peaceably and without arms;
- To form associations or unions;
- To move freely throughout the territory of India;
- To reside and settle in any part of the territory of India;
- To practice any profession, or to carry on any occupation, trade or business.

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India the security of the State, friendly relations with Foreign States, public order, decency or morality or in relations to contempt of court, defamation or incitement to an offence.

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub clause.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or] public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in sub-clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the rights conferred by the said sub-clause, and, in particular, nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to.

- Article – 20 Protection in respect of conviction form offences.–

  (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

  (2) No person shall be prosecuted and punished for the same offence more than once.

  (3)No person accused of any offence shall be compelled to be a witness against himself.

- Article - 21 Protection of life and personal liberty– No person shall be deprived of his life or personal liberty except according to procedure established by law.
- Article – 22 Protection against arrest and detention in certain cases.–

(1) No person who is arrested shall be detained in custody without being informed, the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2)Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply– (a) to any person who for the time being is an enemy alien; or (b) to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorize the detention of a person for a longer period than three months unless-

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High court has reported before the expiration of the period of three months that there is in its opinions sufficient cause for such detention: Provided that nothing in this sub-clause shall authorize the detention of any Parliament under sub-clause (7); or

(b) Such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers being against the public interest to disclose.

(7) Parliament may by law prescribe–

a)The circumstance under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);

b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and

c) The procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).

- Seventh schedule (Article. 240) List – II Entry 4 Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other States for the use of prisons and other institutions.

**Rights of Prisoners under Criminal Laws in India (Rights of under trial prisoners)-**

The basic object of criminal judicial system in India is to protect the rights of individuals against intentional violation by others i.e. to protect weaker section of society from stronger & protection of law obeying against the lawless, as well as to ensure fair trial to prove innocence before condemned & punished. The criminal justice system is basically based on three principles.

- Presumption of innocence unless guilt is proved.
- Burdon of proving guilt is always on prosecution that prosecution must prove guilt beyond reasonable doubt, and
- Benefit of doubt is always given to the accused.

These three principles are said to be principles of fair trial. Supreme Court also emphasized in most of the cases for ensuring fair trial. In Kishor Singh Ravinder Dev v/s State of Rajasthan it was held that, laws in India i.e. Constitutional, Evidentiary or Procedural have made elaborate provisions for safeguarding rights or accused with a view to protect has high dignity as a human being & giving him benefits of a just fair & impartial trial, in another case of Menaka Gandhi v/s Union of India. Court held that right to fair trial is a basic part and parcel of right to life & the procedure adopted by the state must be just fair & reasonable.

Following are some of the important rights of accused before trial, during trial or even after completion of trial which are considered to be a part and parcel of just fair & reasonable procedure.

1. **Presumption of Innocence** –

India has adopted adversarial form of adjudication system which was known as accusational system in criminal procedure, which is considered to be an accused oriented criminal judicial system. The central nation of this system is the

principle of presumption of innocence until guilt is proved. It is a benefit given to the accused till he found guilty at the end of public trial on legal evidence, by competent tribunal or authority. This principle is safeguard provided to accused for protection against arbitrary arrest & detention by state. This principle impose specific obligation on state i.e. on prosecution to prove guilt of accused beyond reasonable doubt & if any doubt remains, the benefit of doubt is always being given to he accused as he is said to be innocent until guilt is proved.

2. **Rights of Arrested Person** –

The constitution of India under Article – 22 as well as the criminal procedure code in its different provisions provides for basic & important rights of arrested person during arrest. These rights are obligation on police officers during arrest. These provisions are as follows.

- Sec. - 41. When police may arrest without warrant

Any police officer may without an order from a Magistrate and without a warrant, arrest any person-

a) who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned; or
b) who has in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house- breaking; or
c) who has been proclaimed as an offender either under this Code or by order of the State Government; or
d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or
e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or
f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or
g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for

which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

h) who, being a released convict, commits a breach of any rule made under sub-section (5) of section 356; or

i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears there from that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

Any officer in charge of a police station may, in like manner, arrest or cause to be arrested any person, belonging to one or more of the categories of persons specified in section 109 or section 110.

- Sec. 56- Person arrested to be taken before Magistrate of officer in charge of police station A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station.
- Sec.57- Person arrested not to be detained more than twenty- four hours. No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty - four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.
- Sec. 51- Search of arrested person. (1) Whenever a person is arrested by a police officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the Person arrested cannot furnish bail, and whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail, the officer making the arrest or, when the arrest is made by a private person, the police officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing - apparel, found upon him and where any article is seized from the arrested person,

a receipt showing the articles taken In possession by the police officer shall be given to such person.

(2) Whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency

- Sec. 50- A Person arrested to be informed of grounds of arrest and of right to bail.

  (1) Every police officer or other person arresting any person without warrant shall forth with communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

  (2)Where a police officer arrests without warrant any person other than a person accused of a non bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.
- Sec. 59- Discharge of person apprehended. No person who has been arrested by a police officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate.
- Sec.54- Examination of arrested person by medical practitioner at the request of the arrested person. When a person who is arrested, whether on a charge or otherwise alleges, at the time when he is produced before a Magistrate or at any time during the period of his detention in custody that the examination of his body will afford evidence which will disprove the commission by him of any offence or which will establish the commission by any other person of any offence against his body, the Magistrate shall, if requested by the arrested person so to do direct the examination of the body of such person by a registered medical practitioner unless the Magistrate considers that the request is made for the purpose of vexation or delay or for defeating the ends of justice.
- Sec. 53- Examination of accused by medical practitioner at the request of police officer (1) When a person is arrested on a charge of committing an offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting at the request of a police officer not below the rank of sub- inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the person arrested as is reasonably

necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably for that purpose.

(2) Whenever the person of a female is to be examined under this section, the examination shall be made only by, or under the supervision of, a female registered medical practitioner. Explanation.-In this section and in section 54, "registered medical practitioner" means a medical practitioner who possesses any recognized medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956 ( 102 of 1956) and whose name has been entered in a State Medical Register.

- Sec. 164 Recording of confessions and statements.
- (1) Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any time afterwards before the commencement of the inquiry or trial:

  Provided that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force.

  (2)The Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him; and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily.

  (3)If at any time before the confession is recorded, the person appearing before the Magistrate states that he is not willing to make the confession, the Magistrate shall not authorize the detention of such person in police custody.

  (4)Any such confession shall be recorded in the manner provided in section 281 for recording the examination of an accused person and shall be signed by the person making the confession ; and the Magistrate shall make a memorandum at the foot of such record to the following effect:

  "I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken

in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed)

A. B. Magistrate".

5) Any statement (other than a confession) made under sub- section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstances of the case ; and the Magistrate shall have power to administer oath to the person whose statement is so recorded.

(6) The Magistrate recording a confession or statement under this section shall forward it to the Magistrate by whom the case is to be inquired into or tried.

- Sec. 55- Procedure when police officer deputes subordinate to arrest without warrant.

(1) When any officer in charge of a police station or any police officer making an investigation under Chapter XII requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested and the offence or other cause for which the arrest is to be made and the officer so required shall, before making the arrest, notify to the person to be arrested the substance of the order and, if so required by such person, shall show him the order.

(2) Nothing in sub-section (1) shall affect the power of a police officer to arrest a person under section 41.

**Safeguards during Arrest** –

**Guidelines under D.K. Basu case**

The Hon'ble Supreme Court in D.K. Basu v. State of West Bengal laid down the following guideline:

- The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

- That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.
- A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.
- The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organization in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
- The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
- An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.
- The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/ her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer affecting the arrest and a copy provided to the arrestee.
- The arrestee should be subjected to medical examination every 48 hours during his detention in custody by a trained doctor on the panel of approved doctors appointed by the Director of Health Services of the concerned State or Union Territory. The Director of Health Services should prepare such a panel for all Tehsils and Districts, as well.
- Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

- The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
- A police control room should be provided at all District and State Headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board. The accused has the right to be treated decently while he is in custody. He must be provided with food and drink, clothing as necessary as well as sleeping and washing facilities. The accused cannot be "punished" or treated as guilty while he awaits trial. While detained, the accused retains the right to court access and to a legal aid lawyer. That access may be subject to security restrictions typically used in a detention facility.

**Freedom form hand cuffing & fetters**.

The Supreme Court in the case of Citizens for Democracy v. State of Assam, has given the following rules pertaining to handcuffing of the accused:

- As a rule handcuffs or other fetters shall not be forced on prisoners convicted or under-trial –while lodged in a Jail anywhere in the country or while transporting or in transit from one Jail to another or from Jail to Court or back. The Police and the Jail authorities, on their own, shall have no authority to direct the handcuffing of any inmate of the Jail in the country or during transport from one Jail to another or from Jail to Court or back.
- Where the Police or the Jail authorities have well grounded basis for drawing a strong inference that a particular prisoner is likely to jump Jail or break out of the custody then the prisoner be produced before the Magistrate concerned and a prayer for permission to handcuff the prisoner be made before the said Magistrate. In rare cases of concrete proof regarding proneness of the prisoner to violence, his tendency to escape, he being too dangerous / desperate and finding no other practical way of forbidding escape is available, the Magistrate may grant permission to handcuff the prisoner.
- In all the cases where a person arrested by Police, is produced before the Magistrate and remand-judicial or non-judicial- is given by the Magistrate, the person concerned shall not be handcuffed unless special orders in that respect is obtained from the Magistrate at the time of the grant of the remand.

- When the Police arrests a person in execution of a warrant of arrest obtained from a Magistrate, the person arrested shall not be handcuffed unless the police has also obtained orders from the Magistrate for the handcuffing of the person to be so arrested. Where a person is arrested by the Police without warrant, the Police Officer concerned may if he is satisfied, on the basis of the guidelines given by the Supreme Court, that it is necessary to handcuff such person, he may do so till the time he is taken to the Police Station and thereafter his production before the Magistrate.

In most countries handcuffing is permitted as a rule. The above restrictions on the right of the police to handcuff the accused have created lot of practical difficulties. It is not always easy to prevent the accused from escaping. At the same time it is necessary to ensure that this power is not misused. As now-a-days accused are becoming more daring and are even prepared to risk their life to escape, it may be necessary in larger public interest to remove the onerous restrictions now placed on the right of the Police Officer to handcuff the suspect.

**Rights during interrogation** –

1. Rt. to remain silent. (Article. 20(3))
2. Provisions relating to judicial/police custody.

**Right to Bail** –

1. Right to Bail in Bailable Offence.
2. In non bailable Offence.

**Right Relating to confession– safe guards during confession**

The SC gave the principles with regard to confession in the case of Rabindra Kumar Pal Alias Dara Singh v. Republic Of India

- The provisions of Section 164 Criminal Procedure Code must be complied with not only in form, but also in essence.
- Before proceeding to record the confessional statement, a searching enquiry must be made from the accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution.
- A Magistrate should ask the accused as to why he wants to make a statement that surely shall go against his interest in the trial.

- The maker should be granted sufficient time for reflection.
- He should be assured of protection from any sort of apprehended torture or pressure from the police in case he declines to make a confessional statement.
- A judicial confession not given voluntarily is unreliable, more so, when such a confession is retracted, the conviction cannot be based on such retracted judicial confession.
- Non-compliance of Section 164 Criminal Procedure Code goes to the root of the Magistrate's jurisdiction to record the confession and renders the confession unworthy of credence.
- During the time of reflection, the accused should be completely out of police influence. The judicial officer, who is entrusted with the duty of recording confession, must apply his judicial mind to ascertain and satisfy his conscience that the statement of the accused is not on account of any extraneous influence on him.
- At the time of recording the statement of the accused, no police or police official shall be present in the open court.
- Confession of a co-accused is a weak type of evidence.

  Usually the Court requires some corroboration from the confessional statement before convicting the accused person on such a statement.

**Rights During trial –**

a) Right to receive copies U/s – 207, 154, 161, 164, 173, 208, 200, 202.

As per section 207 of Cr.P.C, accused has the right to be furnished with the following in case the proceeding has been initiated on a police report: the police report; the first information report recorded under section 154; the statements recorded under sub-section (3) of section 161; the confessions and statements, if any, recorded under section 164; any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of section 173. And as per section 208 of CrPC, when a case not instituted by a police report but when the offence is triable exclusively by the Court of Sessions. The statements recorded under section 200 or section 202, or all persons examined by the Magistrate; the statements and confessions, if any, recorded under section 161 or section 164; any documents produced before the Magistrate on which the prosecution proposes to rely.

b) Right to discharge when no sufficient grounds Sec. 227. As per section 227 of CrPC, when the judge is convinced that there is no sufficient ground for proceeding against the accused after duly considering the case, it is the right of the accused that he be discharged.

c) Right to present evidence. 243 (1) According to section 243(1) of CrPC, the accused has the right to present his evidence and defend his case. The magistrate is duty bound to record written statements put by the accused.

d) Right to be present when evidence is taken Sec. 273. Section 273 of CrPC makes it obligatory on the part of the Magistrate to ensure that all evidence taken in the course of the other proceeding shall be taken in the presence of the accused or, when his personal attendance is dispensed with, in the presence of his pleader.

e) Right to be defended. Section 303 of CrPC and Article 22(1) of the Constitution of India provides a right to all the accused persons, to be defended by a pleader of his choice.

f) Right to legal aid at expenses of state. This is not a right available to all the accused but to certain category of accused as a privilege. So where, in a trial before the Court of Session, the accused is not represented by a pleader, and the court believes that he does not have sufficient means to engage a pleader, it shall assign a pleader for his defence at the expense of the State, under section 304 of CrPC.

g) Right to cross examine witnesses the accused in order to test the veracity of the testimony of a prosecution witness has the right to cross-examine him. Section 138 of Indian Evidence Act, 1872 gives accused has a right to confront only witnesses. This right ensures that the accused has the opportunity for cross-examination of the adverse witness. Section 33 of Indian Evidence Act tells when witness is unavailable at trial, a testimonial statement of the witness maybe dispensed by issuing commission. The testimony at a formal trial is one example of prior testimonial statements which can be used as documentary evidence in a subsequent trial.

   Section 311 of CrPC gives the accused (and the prosecution) full right to cross examine a witness called by the Court. Under section 243(2) of CrPC, if the accused applies to the Magistrate to issue any process for calling any witness for the purpose of examination or cross-examination, or the production of any

document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing. Section 138 of Evidence Act says that the right of cross-examination available to opposite party is a distinct and independent right. When accused declined to cross-examine witness and thereafter the said witness is not available for cross-examination, the evidence of such witness recorded is admissible in evidence but that will have to be true to that account.

h) No influence to be used to induce disclosure. As per section 316, the accused shall not be subjected to any sort of influence by means of any promise or threat or otherwise, to induce him to disclose or withhold any matter within his knowledge.

i) Right to have reasoned decisions.

j) Right to speedy trial.

**Other rights** – other rights in a form of principles of natural justice.

1 - Independence & impartiality of judiciary.

2 – No man shall be judge in his own case.

3 – Audi altream parteum.

4 – Venue of trial

5 – Right to legal representations.

**Rights of prisoner after trial – (Prisoners Right)**

At the conclusion of trial, it's the responsibility of judge to deliver judgment under criminal judicial system. Judge has empowered to pass judgment. The judgment may be of judgment of acquittal or judgment of convection.

In judgment of acquittal accused was set free at its liberty, all charges were discharged & he may be released from detention. However if guilt of accuse is proved beyond reasonable doubt, he is liable for judgment of conviction, judge has to mention the nature & amount to punishment awarded to such accused. Accordingly for the execution of punishment accused sent to jail or other correctional institutions.

The role of prison personal & prison authorities are very much important in safeguarding right of prisoners, specific legislative measure were provided for safeguarding prisoners rights. These legislative measures are as follows. The

existing statutes which have a bearing on regulation and management of prisons in the country are as follows:

**The Prisons Act, 1894**

Prisons Act, of 1894 is the first legislation regarding prison regulation in India. Following are some of the related provisions with the reformation of prisoners.

- Accommodation and sanitary conditions for prisoners.
- Provision for the shelter and safe custody of the excess number of prisoners who cannot be safely kept in any prison.
- Provisions relating mental and physical state of prisoners.
- Provisions relating to the examination of prisoners by qualified Medical Officer.
- Provisions relating to separation of prisoners, containing female and male prisoners, civil and criminal prisoners and convicted and under trail prisoners.
- Provisions relating to treatment of under trials, civil prisoners, parole and temporary release of prisoners.

**The Prisoners Act, 1990**

For the purpose of prison reformation and prison justice under this Act, following provisions are relevant to mention:

- That all reference to prisons or the imprisonment or confinement shall be construed as referring also to reformatory schools to detention therein.
- That it is the duty of Government for the removal of any prisoner detained under any order or sentence of any court, which is of unsound mind to a lunatic asylum and other place where he will be given proper treatment.
- That any court which is a High Court may in case in which it has recommended to Government the granting of a free pardon to any prisoner, permit him to be at liberty on his own cognizance.

**The Transfer of Prisoners Act, 1950**

This act was enacted for the transfer of prisoners from one state to another for rehabilitation or vocational training. This Act is also helpful for transfer of prisoners from over-populated jails to less congested jails within the state.

**The Prisoners (Attendance in Courts) Act, 1955**

This Act contains provisions authorizing the removal of prisoners to a civil or criminal court for giving evidence or for answering to the charge of an offence.

Thus, apart from the substantive prison laws, the Government of India appointed a National Expert Committee on women prisoners in 1968 to 1987 under the chairmanship of Justice Krishna Iyer to examine the conditions of women prisoners. The committee among other things recommended the following suggestions particularly towards reformation and rehabilitation of women prisoners.

- In women's rehabilitation, employment training has a pivotal role. Consequently, work in prison has to be given such potential economic worth and utility that all women in custody are willing to engage in work programmes.
- Training of women prisoners in an area of great relevance to correctional work and to the process of restoration of dignity of the women offender.
- Probation, Parole and other non-institutional modalities of corrective treatment shall be widely used in case of women offenders.

Government of India had set up in 1980 a Committee on jail reforms under the Chairmanship of Mr. Justice A.N. Mulla, a retired judge of the Allahabad High Court. The report submitted by the said Committee is known as 'Mulla Committee Report'. It contains a lot of very valuable suggestions.

These committees made a number of recommendations to improve the conditions of prisons, prisoners and prison personnel all over the country. In its judgments on various aspects of prison administration, the Supreme Court of India has laid down three broad principles regarding imprisonment and custody. Firstly, a person in prison does not become a non-person; secondly, a person in prison is entitled to all human rights within the limitations of imprisonment; and, lastly there is no justification for aggravating the suffering already inherent in the process of incarceration.

**Handbook for Prison visitors[27]:**

The Handbook for Prison visitors contains different rights and provisions for safeguarding rights and privileges of prisoners. These rights and safeguards are as follows;

1. **Right to be lodged appropriately based on Proper Classification**

[27] http://shodhganga.inflibnet.ac.in/bitstream/10603/67699/23/23_appendix%206.pdf)

All female prisoners have the right to be lodged away from the direct contact and vision of all male prisoners, either in separate prisons on in a separate building of the same prison complex.

Both male and female under-trial prisoners have the rights to be lodged separately from male and female convicts respectively.

First time under-trial and convict prisoners involved in minor offences have the right to be lodged separately from habitual criminals and those involved in serious offences.

Adolescent and non-habitual female prisoners have the right to be lodged separately from older and habitual prisoners of bad character. Civil prisoners have the right to be lodge separately from criminal prisoners. Inequality and discrimination on the basis of social and financial status of prisoners is prohibited. It is a special right of young prisoners to be segregated from adult prisoners.

All offenders under the age of 21 have the rights to be lodged separately from all adult prisoners and the jail officials are duty bound to ensure that no adult prisoner is allowed into this ward after sunset on any ground whatsoever Young offenders also have the right not to be transferred into any adult word as punishment. Prisoners under the age of 21 who have not arrived at the age of puberty have the right to be lodged separately from those who have.

2. **Rights of women prisoners**

Issues concerning women prisoners need more time and effort to redress. A women prisoner admitted to jail have been searched for prohibited items and injuries only by a matron appointed for the jail under the orders of the medical officer and only with strict regard to decency and away from the view of all made officers and prisoners. Every woman prisoner has the right to be examined and treated as far as possible only by a lady doctor and lady assistant even when she is taken to a hospital outside the jail.

3. **Right to healthy environment**

Every prisoner has the right to a clean and sanitized environment in the jail free from any kind of disease ridden or disease-causing atmosphere. It is the responsibility of the medical officer of the jail to ensure that the environment of the jail is sanitized.

It is the responsibility of the medical officer and the Superintendent to ensure that prisoners suffering from contagious diseases like Tuberculosis are separated from the healthy population and treated appropriately so that the infection does not spread to other healthy prisoners. Every prisoner has the right to be examined by the medical officer soon after admission to determine whether he or she is suffering from any contagious diseases; or has any wound or injury on his/her body sustained during torture in police custody or during transport to the jail, as well as to determine the class of labour she/he is fit for if she/he has received a sentence of rigorous imprisonment

Every prisoner has the right to be attended to and treated for any disease from which she/he is suffering at the time of admission to the jail or which she/he contracts while in jail. A prisoner has the right not to be forcibly discharged from the jail against his/her will if she/he is suffering from any acute or dangerous disease and until the medical officer certifies that she/he is fit to be discharge.

Every prisoner has the right to be medically examined by the medical officer before being transferred to any other jail. She/he can be transferred only once the medical officer certifies that the prisoner is free from any serious illness which would otherwise have rendered transfer dangerous.

Every prisoner confined to a solitary cell, either as punishment or for an\ other reason, has the right to be visited and examined by a medical officer of medical subordinate at least once in a day

Prisoner, who are undergoing rigorous imprisonment as part of their sentence or are engaged in hard labour on their own, have the right to be medically examined by the medical officer from time to time and have their weight examined and recorded in their history tickets once in every fortnight by the medical officer

If the medical officer after any periodical examination and any such prisoner is of the opinion that the prisoner is not fit for that particular kind of hard labour, then he shall not be employed for such labour but shall be placed on such other kind of labour as the medical officer may consider may consider suited for him

Superintendent has the power to send a prisoner for special treatment to a hospital or asylum outside the Jail if the condition of the prisoner so demands

**4. Right to bail**

The Supreme Court of India has ruled in the case of Moti Ram & others V/S State of Madhya Pradesh that releasing a person on bail should be the rule and keeping a person in jail should be the exception. If it can be ensured that the accused will neither flee nor tamper with the evidence nor threaten the witness; if his health so demands and the offence charged are not serious then he should be released on bail. In addition, there should not be too much insistence on bringing financial surely or solvency for releasing a person on bail. Where the persons is arrested for a bailable offence on if security proceedings are initiated against him/her under chapter 7 of the Code of Criminal Procedure, she/he can as a matter of right ask to be released on bail. (S. 436 [1], Code of Criminal Procedure, 1973 [Cr. PC]

It is the duty of the arresting police officer on the duty Magistrate to inform the person of the offence with which she/he is being charged and also whether ii is a bailable or not (S. 50 [2] Cr. PC.)

If it is bailable, then the Police Officer or the Magistrate is duty bound to release the person then and there if she/he is prepared to give bail. (S. 436 [1 ], Cr. PC).

The arresting Police Officer on the Court before which the person is produced has the power to release him or her on his/ her executing a bond without sureties for his / her appearance in court thereafter (Proviso to S. 436 [1])

Neither the Police Officer nor the Magistrate can fix the bail amount as too high without due regard to the facts and circumstances of the case. (Section 440 [1] Cr. PC).

If the bail amount has no reasonable relation to the nature of offence alleged against a prisoner then she/he can firstly point out the prohibition contained in Section 440 [1] and secondly appeal to the Sessions Court or to the High Court for the reduction of the bail amount. (S. 440 [2], Cr. PC)

The arresting Police Officer would be guilty of the offence of wrongful confinement, (Section 342, IPC, 1860) if she/he does not inform the arrested person about his/her right to bail in boilable offences or fixes too high a sum as the bail amount and thereby refuses to release on bail and detains the person.

Even in case a non-bailable offence, court can direct that any person under the age of sixteen years or any women or any sick or infirm person accused of such an offence be released on bail, (first proviso to S. 437 [1] Cr. PC)

If this section is made fully operational, then there will be no custodial deaths of sick and inform under-trials It the case of an under-trial prisoner accused of a non-bailable offence is pending before Magistrate and more than 60 days have elapsed after the first date for the recording of evidence was fixed then she/he has the right to be released on bail subject to the satisfaction of the Magistrate. The Magistrate has to record reasons for not doing so. (S. 437 [6], Cr. PC)

5. **Right to speedy trial**

It is the fundamental right of every under-trial prisoner and those who have appealed against their conviction to any higher court be it the Sessions Court, High Court and the Supreme Court that their case be heard and disposed of quickly, fairly and justly. The courts are duty bound to ensure this to all prisoners. Under the Jail Manual it is the duty of the Superintendent to inform the concerned court and official visitors at the time of their visit to the jail of all cases of under-trial prisoners pending for more than one month. For those pending for more than three months, notice has to be given to the District Magistrate and the District and Sessions Judge Where cases are pending for more than six months a special notice has to be given to the Inspector General. If the prison officials deliberately do not send the prisoner to the Court on the appointed day and his/her case gets further adjourned, then they are guilty of violating this right. If the escorting police personnel does not actually produce the prisoner before the Magistrate and simply sends the warrant to be signed by the Magistrate for the extension of the prisoners remand, then the escort is equally responsible for the violation of this right. If the Magistrate adjourns the case of the prisoners irresponsibly on signs the remand warrant in the prisoners absence or without due consideration, then the Magistrate is guilty of violating this right. If the prosecution and the investigating police team do not submit the charge-sheet or produce all the witnesses on the appointed days, then they are also responsible in their failure to ensure the right to speedy trial of the prisoner

The Superintendent is duty bound to inform the prisoner concerned about the period of limitation under the Limitation Act of 1940 to appeal or apply for

revision against an order of conviction and provide him/her with the facility to appeal on apply expeditiously. If the officials in the Registrar's Office at the concerned Court do not assign the appropriate case number to the appeal or revision application field by the prisoner and thus his/her cases get delayed then they are also responsible for violating this right

When a copy of the order or sentence is dispatched from the appellate to revisional Court, the same has to be personally delivered to the prisoner and an acknowledgement has to be obtained from him or her. This would ensure that it reached the prisoner on time and does not get misplaced in transit.

6. **Right to free legal services**

It is the fundamental right of all poor and indigent prisoners to be provided with free legal aid in the prosecution of their case at different levels of their trial. The Magistrate is duty bound to offer the facility to the accused the moment she/he is produced before him or her for the first time even if the accused has not asked for it out of ignorance.

The Magistrate or the Judge is duty bound to furnish the accused with a free transcript of the judgment when she/he is sentenced to enable the prisoner to prefer an appeal if she/he so desires and the ensure that there is no delay which may later result in an appeal being barred by the Limitation Act of 1940. If the prisoner wishes to appeal, she/he may present a petition of appeal and copies accompanying the same to the Superintendent or the office in charge of the jail who is duty bound to forward the petition of appeal and copies thereof to the proper Appellate Court within the period of limitation (Section, 383, Cr PC)

Where the accused is not in a position to defend him/her, the Magistrate is duty bound to appoint a committed and competent lawyer having sufficient experience in Criminal matter for the defense of the accused at the expense of the Government. The Magistrate is duty bound to refer such cases to the District Legal Services Authority. The government cannot plead financial on administrative inability in any such situation. The Office of the District Legal services Authority is located in the Sessions Court complex itself. The District and Session Judge is the ex-officio Chairperson of this Authority. If any prisoner is not getting free legal services bring it to the notice of the Sessions Judge. If she/he does not take due interest in the discharge of his or her duties, then one can inform

the Chief Justice of the High Court who is the ex-officio Patron of the State Legal services Authority

7. **Right to have interviews with one's Lawyer**

Every prisoner has the right to have interviews with his/her lawyer at any reasonable hour after taking appointment from the Superintendent. The conversation can be within the sight but outside the earshot of any officer, if the Officer is deputed to be present there. The Supreme Court has ruled that lawyers nominated by the District Magistrate, Sessions Judge, High Court and the Supreme Court will be given all facilities for interviews, visits and confidential communication with prisoners, subject to discipline and other security considerations.

8. **Right against being detained for more than the period of sentence imposed by the court**

All prisoners have the right not to be detained for a day more than what the trial court has mentioned in the sentence. The prison officials are therefore under a duty to maintain proper registers with numbered pages showing when each prisoner is to be released and inform them of their due date of release well in advance. (Section 12(2) Prisons Act)

9. **Right to protection against being forced into sexual activities**

In the isolated and unprotected environment of a prison, instances of prisoners being to forced sexual activities (including rape and sodomy by fellow inmates and prison staff cannot be denied. In addition to causing physical injury and severe psychological trauma to the prisoners, it carries a potential high risk of transferring sexually transmitted diseases including HIV/AIDS. Since prisons are required to provide a safe environment. All prisoners have the right to be protected by the prison officials from being forced into any form of sexual activity by staff a fellow inmates They have the right to approach the Jailer, the prison doctor and the Superintendent against any such aggression who then have to ensure that it is not repeated and that the aggressor is death with appropriately, as necessitated. It the aggression does not stop even then, the prisoner has the right to complain about this to the District Magistrate or the Sessions Judge at the earliest.

10. **Right against arbitrary use of handcuffs and fetters**

The Supreme Court has ruled that no prisoner shall be handcuffed on fettered routinely or merely for the convenience of the escort Even in extreme circumstances, where handcuffs have to the put on prisoners the escorting party shall record the reason for doing so in writing and take the court's permission either beforehand or if that is not possible then soon after. Further, no bar fetters can be imposed on the prisoner for the night or for excessively long periods, unless permitted by the trial court.

11. **Right against torture, cruel and degrading punishment**

The Supreme Court has ruled that the Right to Life and Liberty guaranteed under Article 21 of the Constitution of India includes the right to use every faculty or limb through which life is enjoyed. Hence cruel, inhuman degrading treatment or punishment is not permissible. Therefore, all prisoners have the right not to be harmed physically or psychologically while they are in jail either by the jail staff or by any of their fellow inmates. But at the same time, the prisoners are duty bound to follow the ruler of the jail in order to maintain discipline and order in jail. In case any prisoner is harmed by a fellow inmate a jail staff without any ground whatsoever, then she/he has the right to complain to the immediately superior authority who is then duty bound to undertake an inquiry into the incident.

12. **Right not to be punished with solitary confinement for a prison offence**

Keeping a person in solitary confinement for prolonged periods of time can result in irreparable psychological harm to the prisoner. When such a person is released, the society is at a greater risk of being harmed by him/her. Society is best protected when prisoners leave prisons as better human beings rather than less able to act as responsible citizens. Prisons thus become antithetical to their traditionally professed role of protecting the society.

Beginning with Sunil Batra (I) vs. Delhi Administration, the Supreme Court has time and again ruled that no prisoner can be put away in solitary confinement as a matter of routine.

Solitary confinement is by itself a substantive punishment, which can be imposed only by a court of law. Prison authorities cannot inflict this punishment according to their own whims and caprices without the express order of the court.45

Though S. 30[2] of the Prison Act authorizes the prison authorities to impose solitary confinement on a prisoner under sentence of death, the Supreme Court has ruled that this expression should mean only that prisoner whose sentence of death has become final, conclusive, indefeasible and which cannot be annulled or voided by any judicial or constitutional procedure.

**13. Right against arbitrary prison punishment**

Every prisoner has the right to have information as to the precise provision of the Prison Act and Rules that she/he is alleged to violated. She/he has the right to be heard in defense and also the right to be told of the decision of disciplinary proceedings and to appeal as provided in rules made under the Act. A prisoner can be awarded only such punishment by the Superintendent which will not affect his/her health. Upon being convicted of a prison offence, the prisoner has the right to be examined by the jail doctor to determine the extent to which such punishment will affect his/her health and the doctor has to certify the extent of punishment which the prisoner can undergo without injury to health. No punishment in the form of reduced diet or of change of labour shall be executed until the prisoner has been examined by the medical officer who if she/he considers the prisoner fit to undergo the punishment, shall certify accordingly. (S.50, Prisons Act.)

**14. Right to air grievances and to effective remedy**

Every prisoner has the right to make a complaint regarding his or her treatment in the jail unless the complaint is evidently frivolous. For this right to be effective, the complaint must be dealt with promptly and confidentially. If necessary the complaint may be lodged on behalf of the prisoner by his or her immediate family members, friends or lawyers. The Supreme Court has ruled that grievance deposit boxes shall be maintained by or under the orders of the District Magistrates and the Session Judge which will be opened as frequently as is deemed fit and suitable action taken on complaints made by prisoners. It also ruled that access to such boxes should be afforded to all prisoners. District Magistrates and Sessions Judges, are duty bound to personally visit prisons in their jurisdiction and afford effective opportunities for prisoners to express legal grievances. They should make expeditious in quires and take suitable remedial action. In appropriate cases reports shall be made to the High Court for it to

initiate if found necessary, habeas corpus action. A prisoner can complaint to Members or special Reporters of the state and National Human rights Commission when they came to visit the prisoner or through post. All such complaints should contain the exact and truthful details of the incident, the names of people involved, the list of witnesses who were present during the incident etc.

15. **Right to evoke the writ of habeas corpus against prison authorities for excesses**

When every attempt to seek redress for one's genuine complaint fails , the prisoner can straight way file petition to the High Court under Article 226 of the Constitution of India for the issuance of a writ of Habeaus Corpus. This right would be available to any prisoner against any action of the jail authorities, which is not commensurate with the sentence passed by the court or other actions expected of the prison authorities. If this action fails to bring in the required change the prisoner can petition to the Supreme Court under Article 32 of the Constitution of India for the protection of his fundamental rights. This is a guaranteed Fundamental Right of every citizen under the constitution.

16. **Right to be compensated for violation of human rights**

The Supreme Court has ruled that any person who's Fundamental Right to life and liberty is violated, is entitled to claim monetary compensation for the state. Even the National Human Rights Commission has recommended the award of compensation in case where it has found that human rights of prisoners have been violated.

17. **Right to visits and access by family members of prisoners**

The Supreme Court of India has ruled in Sunil Batra [II] that a sullen, forlorn prisoner is a dangerous criminal in the making and the prison is the factory. Visit to prisoners by family and friends are a solace in isolation, and only a dehumanized system can derive vicarious delight in depriving prison inmates of this humane amenity. The whole facilitative purpose of sentencing is to soften, not to harden, and this will be promoted by more such meetings. Therefore, prison authorities are under a duty to make due provisions for the admission of such persons into prisons, with whom prisoners may desire to communicate. Such allowances shall be subject to considerations of security and discipline of the

prison for which, the visitors shall disclose their true identity and address to the Jailor and they can be searched for any prohibited articles (S.41 [2] Prisons Act.)

18. **Right to write letters to family and friends and to receive letters, magazines, etc.**

The prisoner has the right to meet members of his/her family and write letters to them. She/he is also allowed to get copies of papers and magazines etc at the prisoners own cost.

19. **Right to rehabilitation and reformative programmes**

The treatment of persons sentenced to imprisonment has to aim at establishing in them the will to lead law-abiding and self-supporting lives after their release and to enable them to do so. The treatment of prisoners through reformative programmes has to be such as will encourage their self-respect and develop in them the sense of responsibility. Under this umbrella, prisoners have the Rights to Education, Counseling. Learning of Meaningful Skills, Vocational training, Meditation etc

20. **Right in the context of employment of prisoners and to prison wages**

The Supreme Court has ruled in Sunil Batra [II] VS. Delhi Administration that, Punishment of rigorous imprisonment obliges the inmates to do hard labour not harsh labour. A vindictive officer victimizing a prisoner, by forcing on his/her particular harsh and degrading jobs, violates laws mandate. Civil prisoners have the right to carry on their trade and profession inside the jail after obtaining permission from the Superintendent. (S. 34 [ 1 ], Prisons Act ) Such Civil prisoners have the right to keep their entire earning if they use their own implements. If the implements are supplied from the jail, then the Superintendent can deduct the cost and maintenance charges of suet implements. (S.34[2], Prisons Act). But such deductions cannot be to high and unreasonable. A criminal prisoner who has been sentenced to rigorous imprisonment or who has offered to work voluntarily has the right not to be employed for more than nine hours at a stretch on any working day except in case of an emergency and that too only on the written sanction of the Superintendent (S. 35[1], Prisons Act.)

No prisoner shall be required to perform beggar and other similar forms of forced labour which are prohibited as exploitation under Article 23 of the Constitution of India. No prisoner shall be put to domestic work with any official

in the prison administration. Such work shall not be considered as meaningful on gainful, even if some monetary compensation is offered. Prisoners shall, in no case, be put to any work which is under the management, control, supervision or direction of any private entrepreneur working for profit of his organization. Prisoners sentenced to rigorous imprisonment are entitled to receive remuneration from the proceeds of their work. But it is subject to certain deductions prescribed by the State Government for the maintenance of prisoners and prison buildings and for paying compensation to victims. The Supreme Court has ruled in State of Gujarat VS. High Court of Gujarat[28] that prison wages in any case cannot be less than minimum wages.

**21. Right to information about prison rules**

Copies of jail rules should be exhibited both in English and in the local language in some place to which all persons in the prison have access (S 61, Prisons Act). If necessary, these rules should be explained orally at the time of admission. The Supreme Court has ruled that the state governments should take steps to prepare in Hindi and other regional languages a prisoners handbook of rights and circulate copies to be kept in prisons to bring legal awareness to the inmates. The information to be given should concern the disciplinary requirements of the prison; authorized methods of seeking information and making complaints and such other matters as are necessary to enable prisoners to understand both their rights and obligations and to adept themselves to the life of a prison.

**22. Right to emergency and reasonable health care**

The right to health is fundamental to the physical and mental well-being of all individuals and is a necessary condition for the exercise of other human rights. Prison officials provide a system of ready access to adequate medical care. Prison officials show deliberate indifference to serious medical needs if prisoners are unable to make their medical problems known to the medical staff or if the staff is not competent to examine the prisoners, diagnose illnesses, and then treat or refer the patient. The prison must also provide an adequate system for responding to emergencies. If outside facilities are too remote or too inaccessible to handle emergencies promptly and adequately, then the prison must provide adequate facilities and staff to handle emergencies within the prison.

[28] (1998) 7 SCC 392

# CHAPTER III

# ROLE OF SUPREME COURT ON RIGHTS OF PRISONERS IN INDIA

The role of Supreme Court in the past few years in introducing jail reforms has been admirable. Supreme Court in its various judgments tries to protect the rights and freedoms of citizens of India including rights and freedoms of prisoners. Supreme Court while extending the horizons of constitutional rights has given wide interpretation to constitutional provisions.

The Supreme Court of India has been active in responding human rights of prisoners. They have given different category of rights to the prisoners during detention which are specifically recognized under Indian laws as well as under principles of international covenants. Following are some of the assumptions based upon which Supreme Court has given these basic rights even to the prisoners.

- Convicts are not by mere reason of the conviction denuded of all the fundamental rights which they otherwise possess.
- Like you and me, prisoners are also human beings. Hence, all such rights except those that are taken away in the legitimate process of incarceration still remain with the prisoner. These include rights that are related to the protection of basic human dignity as well as those for the development of the prisoner into a better human being.
- If a person commits any crime, it does not mean that by committing a crime, he or she ceases to be a human being and that he or she can be deprived of those aspects of life which constitutes human dignity.
- It is increasingly being recognized that a citizen does not cease to be a citizen just because he or she has become a prisoner.
- The convicted persons go to prisons as punishment and not for punishment. Prison sentence has to be carried out as per the courts orders and no additional punishment can be inflicted by the prison authorities without sanction.
- Prisoners depend on prison authorities for almost all of their day to day needs, and the state possesses control over their life and liberty. Prison authorities have to be,

therefore, accountable for the manner in which they exercise their custody over persons in their care, especially as regards their wide discretionary powers.

- Imprisonment as punishment is now rethought of as rehabilitative punishment. The rehabilitative model argues that the purpose of incarceration is to reform inmates through educational, training, and counseling programmes. This development and growth requires certain human rights without which no reformation takes place.
- Disturbing conditions of the prison and violation of the basic human rights such as custodial deaths, physical violence or torture, polce excess, degrading treatment, custodial rape, poor quality of food, lack of water supply, poor health system support, not producing the prisoners to the court, unjustified prolonged incarceration, forced labour and other problems observed by the apex court have led to judicial activism.
- Overcrowded prisons, prolonged detention of under trial prisoners, unsatisfactory living condition and allegations of indifferent and even inhuman behavior by prison staff has repeatedly attracted the attention of critics over the years.

Some of the relevant cases interpreting the rights of prisoners are as follows.

1. **Right to Protection of life and liberty** –

Article 21 is the heart and soul of Indian constitution, it provides basic human right that "No person shall be denied right to life and personal liberty, except procedure established by the law". Article 21 provides for right to life and liberty to every person either citizen or non citizen, this right can be taken away only with the procedure established by the law. Supreme Court has developed human rights jurisprudence for the protection and preservation of rights of prisoners through interpretation of Article 21. Supreme Court in its various judgments specified that prisoners being a human being cannot be denied of basic human rights. Right to life and liberty in a limited space is available even to prisoners. It can be taken away only with the procedure established by the law.

In case of Maneka Gandhi v/s Union of India[29] Supreme Court mentioned that denial of Article 21 can be justifying only accordance with the procedure established by the law. The Apex court opened new dimensions to Article 21 and led down that, the procedure cannot be arbitrary, unfair or unreasonable it must be

[29] AIR 1978 SC 597

just fair and reasonable. The trial with all reasonable aspects of fair trial including right to be heard, right to appoint legal practitioner of his own choice, independent and impartial judiciary, right to legal aid, right to speedy trial, etc.

In another case of Fancis Coralie Mullin v/s The Administrator[30] Supreme Court held that the procedure must be just fair and reasonable and not arbitrary whimsical or fanciful.

2. **Right to speedy trial –**

Justice delayed said to be justice denied, a prolonged justice cannot be considered to be a valid justice, so the right to speedy trial is essential for proper justice. It is responsibility of state to ensure speedy justice to the trial awaiting prisoners. Article 21 of India constitution provides for right to life and liberty which can be taken away with procedure established by the law. The procedure provided under Article 21 must be just, fair & reasonable procedure. Right to speedy trial is the basic ingredient of just, fair & reasonable trial.

Section 309 of criminal procedure court provides for speedy trial its states that as soon as the hearing starts the court has to conduct the proceeding day today. The criminal judicial system in India is based on the assumption of presumption of innocence. The court is under mandate to take the cognizance of accusation and conclude the trial expeditiously so as to protect the assumption of innocence without causing undue harassment and prejudice to under trial prisoners. It is absolutely necessary that the offence should be expeditiously trial so that in case of rejection of bail the accused person does not remain in jail more than the necessary period.

In case of A.R. Antulay v/s R.S. Nayak[31] court held that right to speedy trial is a basic part of right to life and liberty provided under Article 21 of constitution and are available to accused in all stages of proceeding including investigation, inquiry, trial, appeal or revision.

In landmark judgment of Maneka Gandhi's case Supreme Court expressed right to speedy trial as a fundamental right further enforcement of right to life and personal liberty expressed under Article 21 of Indian Constitution. However in another case Hussainara Khatoon v/s State of Bihar[32] Supreme Court considered

[30] AIR 1981 SC 746
[31] AIR 1988 SC 1531.
[32] (1980) 1 SCC 91.

the problem of speedy trial court observed that there can be little doubt after the dynamic interpretations placed by this court on Article 21 in Maneka Gandhi vs. Union of India that a procedure which keeps such large number, of people behind bars without trial so long cannot possibly be regarded as reasonable, just or fair so as to be in conflict with the requirement of the Article." In this case a news expressed in Indian express stating about the position of under trial prisoners in Bihar jail expressed that some of the under trials had spent more time in jails exceeding their maximum punishment for that offence, a large number of men and women including children behind the prison bars for years awaiting for trial in court of law. Most of them are arrested and detained for petty or trivial matters which even though proved would not attract punishment more than one or two years. Some of them had also not produce before the court for consideration. In this case Supreme Court while issuing writ of Habeas Corpus for under-trials stated that;

"The information contained in these newspaper cuttings is most distressing and it is sufficient to stir the conscience and disturb the equanimity of any socially motivated lawyer or judge. Some of the under trial prisoners whose names are given in the newspaper cuttings have been in jail for as many as 5, 7, or 9 years and a few of them for even more than 10 years without their trial being begun. What faith can these lost souls have in the judicial system which denies them a bare trial for so many years and keeps them behind the bars not because they are guilty; but because they are too poor to afford bail and the courts have no time to try them. One reason why our legal and judicial system continually denies justice to the poor by keeping them for long years in pretrial detention is our highly unsatisfactory bail system. This system of bail operates very harshly against the poor and it is only the non-poor who are able to take advantage of it by getting them released on bail. The poor find it difficult to furnish bail even without sureties because very often the amount of bail fixed by the courts is so unrealistically excessive that in a majority of cases the poor are unable to satisfy the police or the magistrate about their solvency for the amount of the bail and where the bail is with sureties as is usually the case, it becomes an almost impossible task for the poor to find persons sufficiently solvent to stand as sureties”.

In this case court held that "State cannot avoid its constitutional obligation to provide speedy trial to the accused by pleading financial or administrative inability. The State is under the Constitutional mandate to ensure speedy trial and whatever is necessary for this purpose has to be done by the State. It is also the Constitutional obligation of this Court as the guardian of the fundamental rights of the people, as a sentinel on the qui vie, to enforce the fundamental right of the accused to speedy trial by issuing necessary directions to the State which may include taking positive action, such as augmenting and strengthening the investigative machinery, setting up new courts, building new court houses, providing more staff and equipment to the courts, appointment of additional judges and other measures calculated to ensure speedy trial.

In case of Mathew Areeparmtil and others v/s State of Bihar[33] court has issued directions to release the persons who are detailed in jail without trial. Court orders that the cases in which tribal accused involve having punishment more than seven years should be a released on execution of a personal bond. Where trials have been started accused should be released on execution of personal bond. Where the cases in which proceedings has not yet been started more than passing out three years since lodging of FIR the accused should be released fourth with.

In case of Raj Deo Sharma v/s State of Bihar[34] while considering the question of delay in conduct of trial Supreme Court has issued following directions.

1. In cases where the trial is for an offence punishable with imprisonment for a period not exceeding seven years, whether the accused is in jail or not, the court shall close the prosecution evidence on completion of a period of two years from the date of recording the plea of the accused on the charges framed whether the prosecution has examined all the witnesses or not, within the said period and the court can proceed to the next step provided by law for the trial of the case.
2. In such cases as mentioned above, if the accused has been in jail for a period of not less than one half of the maximum period of punishment prescribed for the offence, the trial court shall release the accused on bail forthwith on such conditions as it deems fit.
3. If the offence under trial is punishable with imprisonment for a period exceeding 7 years, whether the accused is in jail or not, the court shall close the prosecution

[33] 1985 SCC (2) 102
[34] (1998) 7 SCC 507

evidence on completion of three years from the date of recording the plea of the accused on the charge framed, whether the prosecution has examined all the witnesses or not within the said period and the court can proceed to the next step provided by law for the trial of the case.

In case of Shaheen Welfare Association v/s Union of India and others[35] court observe that if it is not practicable to release under trial prisoner on bail in serious matters, right to speedy trial will meet the requirement of Article 21 of Indian Constitution.

**3. Right to life liberty & freedoms –**

Right to proper classification of prisoners on the basis of their age, sex, nature of case is essential for preservation of their human rights. In case of Sunil Batra v/s Delhi administration[36] court held that, "the test of reasonableness provided under article 19 and Article 21 of India constitution can be practiced by keeping covets & under trial in separate jails.

Solitary confinement is also said to be violation of Article 21 as it denies the liberty to move, mix, mingle, talk, Share Company with co-prisoners, unless it is backing of law[37]. Solitary confinement in a general sense means segregation of prisoners from other prisoners means the isolation of prisoners. Under Indian penal code provisions has been incorporated for solitary confinement. It provides that only the cases in which rigorous imprisonment can be awarded the prisoner can be punished with solitary confinement. As per rule if the offence is punishable more than six months maximum one month solitary confinement can be awarded. If offence is punishable with more than six months but less than one year maximum two months solitary confinement can be awarded and if offence is punishable more than one year maximum term of solitary confinement will be three months. Solitary confinement exceeding three months can violation of rules under Indian penal code. As per rule maximum fourteen days imprisonment can be given at a time. There should be gap of same days between two solitary confinements. If the offence is punishable with more than three months the maximum days for awarding solitary confinement at a time should not exceed more than seven days.

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[35] (1994)6 SCC 731
[36] 1980 AIR 1579
[37] Charles Sobhraj v/s State, 1996 Cri.L.J 3354

However some of the instance shows that grave violation of these provisions. Supreme Court have showed its strong view against solitary confinement and held that solitary confinement is highly degrading and dehumanizing effect on prisoners. Court has taken view that it could be imposed only in exceptional cases such as where the convict was of very dangerous character and must be segregated from other prisoners.

In case of Sunil Batra (I) v/s Delhi administration[38] while considering the validity of solitary confinement Supreme Court has strongly reacted against putting the bars and fetters to the prisoners. Supreme Court says that continuously keeping prisoners in fetters day and night denies the prisoners their human dignity and can be treated as animal treatment. Such treatment was so cruel and unusual and against the spirit of Indian constitution.

Right to movement or liberty can also be denied if bar-fetters would applied to the prisoners unless it has authority of law[39]

4. **Rights of arrested person –**

Article 22 of Indian constitution to guarantees rights to arrested person along with these rights Supreme Court also provided guidelines while arresting a person. Those guidelines are as follows.

- Arrest are not be made in a routine manner. The officer making the arrest must be able to justify its necessity on the basis of some preliminary investigation.
- An arrested person should be allowed to inform a friend or relative about the arrest and where s/he is being held. The arresting officer must inform the arrested person when s/he is brought to the police station and is required to make an entry in the diary as to whom the information was given.
- It is the duty of the magistrate before whom the arrested person is produced to satisfy her or him that the above requirements have been complied with.[40]

Article 22 of Indian Constitution guarantees rights of arrested persons. These are the mandates to be followed by police and prison authorities during arrest and detention. Supreme Court in a land mark judgment of D.K. Basu v/s State of West

[38] 1980 AIR 1579
[39] Charles Sobhraj v/s State, 1996 CriLJ 3354
[40] Joginder Kumar v/s State of UP and others AIR 1994 SC 1349

Bengal[41] has given different guidelines for protecting human rights of accused. Those guidelines were as follows.

- The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.
- That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made, it shall also he countersigned by the arrestee and shall contain the time and dale of arrest.
- A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.
- The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organization in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
- The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
- An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed; of the arrest and the names and particulars of the police officials in whose custody the arrestee is.
- The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor-injuries, if any, present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer executing the arrest and its copy provided to the arrestee.

[41] AIR 1997 SC 610

- The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory, Director, Health Services should prepare such a panel for all Tahsils and Districts as well.
- Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record.
- The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
- A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and al the police control room it should be displayed on a conspicuous police, board.

**5. Protection from handcuffs and fetters –**

Article 21 of Indian constitution provides for right to life and personal liberty. Supreme Court in its judgment provided that right to life not only includes only right to give but guarantees right to life if human dignity and denies mere animal existence. Article 19 of Indian constitution provides for freedom of movement the prisoners which is in detention also have a limited right of movement. Application of handcuffs and fetters shall deny their right to life and freedom of movement specified under Article 19 and Article 21 of Indian Constitutions. Application of handcuffs and fetters also denies human dignity and considered as mere animal existence.

Supreme Court in its judgment provide that an arrested person and under trial prisoner should not be subjected to handcuffing excepting justifying circumstances. An accused that is not having tendency to escape and tried for or convicted in bailable offence was not needed to be handcuffed while taking from prison to court or court to prison.

In case of Prem Shankar Shukla v/s Delhi Administration[42] Supreme Court observed that using handcuffs and bar fetters on prisoners violates the guarantees of basic human dignity, this practice can be against the principles set out under

[42] AIR 1980 SC 1535: 1980 SCC 526

Indian Constitution i.e. Article 21 right to life, Article 19 fundamental freedoms and Article 14 right to equality. In this case Supreme Court held that handcuffs must be the last refuge as there are other ways for ensuring security. There must be material sufficiently available to satisfy a reasonable mind that there is clear and present danger of escape of the prisoner who is being transported by breaking out of police control. In the said case, the following directives were given in respect of Handcuffing:

- Handcuffs are to be used only if a person is :
  - involved in serious non-bailable offences, has been previously convicted of a crime: and /or
  - is of desperate character violent, disorderly or obstructive: and /or
  - is likely to commit suicide: and /or
  - is likely to attempt escape.
- The reasons why handcuffs have been used must be clearly mentioned in the Daily Diary Report. They must also be shown to the court.
- Once an arrested person is produced before the court, the escorting officer must take the court's permission before handcuffing her/him to and from the court to the place of custody.
- The magistrate before whom an arrested person is produced must inquire whether handcuffs or fetters have been used. If the answer is yes, the officer concerned must give an explanation.

The Supreme Court in the case of Citizens for Democracy v. State of Assam[43] has given the following rules pertaining to handcuffing of the accused:

- As a rule handcuffs or other fetters shall not be forced on prisoners convicted or under-trial –while lodged in a Jail anywhere in the country or while transporting or in transit from one Jail to another or from Jail to Court or back. The Police and the Jail authorities, on their own, shall have no authority to direct the handcuffing of any inmate of the Jail in the country or during transport from one Jail to another or from Jail to Court or back.
- Where the Police or the Jail authorities have well grounded basis for drawing a strong inference that a particular prisoner is likely to jump Jail or break out of the custody then said prisoner be produced before the Magistrate concerned and a

[43] 1995 (3) SCR 943

prayer for permission to handcuff the prisoner be made before the said Magistrate. In rare cases of concrete proof regarding proneness of the prisoner to violence, his tendency to escape, he being too dangerous / desperate and finding no other practical way of forbidding escape is available, the Magistrate may grant permission to handcuff the prisoner.

- In all the cases where a person arrested by Police, is produced before the Magistrate and remand-judicial or non-judicial- is given by the Magistrate, the person concerned shall not be handcuffed unless special orders in that respect is obtained from the Magistrate at the time of the grant of the remand.
- When the Police arrests a person in execution of a warrant of arrest obtained from a Magistrate, the person arrested shall not be handcuffed unless the police has also obtained orders from the Magistrate for the handcuffing of the person to be so arrested. Where a person is arrested by the Police without warrant, the Police Officer concerned may if he is satisfied, on the basis of the guidelines given by the Supreme Court, that it is necessary to handcuff such person, he may do so till the time he is taken to the Police Station and thereafter his production before the Magistrate.

The above restrictions on the right of the police to handcuff the accused have created lot of practical difficulties. It is not always easy to prevent the accused from escaping. At the same time it is necessary to ensure that this power is not misused. Now a day's accused are becoming more daring and are even prepared to risk their life to escape, it may be necessary in larger public interest to remove the onerous restrictions now placed on the right of the Police Officer to handcuff the suspect.

6. **Rights of detainee during emergency** –

Under the constitution of India provisions are made in case of emergency. In case of threat to national security or external aggression national emergency can be proclaimed by the president of India. In case of financial instability or financial hardship at national level financial emergency can be proclaimed. In case of threat of state security or state disorder state emergency can be proclaimed by the governor of the state. The emergency can be continuing for the period of six months at a time it can be extended for next six months.

In case of emergency the rights provided under part three of Indian constitution relating to fundamental rights can be suspended during the period of emergency. However some of the rights such as right to life and liberty, right to security, right to equality, freedom from conviction in certain cases, etc. cannot be suspended even during emergency. In case of ADM Jabalpur v/s Shiv Kant Shukla[44] Supreme Court contended that Article 21 is the sole repository of life and liberty and during the emergency when liberty suspended but right to life cannot be suspended.

7. **Right to have interview with family members, friends and lawyers –**

Under criminal procedure code as well as under constitution of India the important right to inform his family members, friends or even right to have a legal advisor of his own choice has been assigned to the accused. It is also the basic human right of accused to represent him and defend himself through competent lawyer of his own choice. In case of Francies Corale Mullin v/s the Administrator Union Territory of Delhi & others,[45] Supreme Court while holding this right important held that right to life and liberty including in his right to live with human dignity and therefore the detainee is entitled to have interviews with family members, friends and lawyers without severe restrictions. In another case of Sunil Batra(II) v/s Delhi Administration,[46] Supreme Court recognize right to be visited by friends and family members of prisoner as a basic human right however it must be exercised subject to search and discipline and other security criteria's. Court held that this right however cannot be exercised freely only by going outside the jail.

In case of Joginder Kumar v/s State of UP and others[47], court observe that whenever a public servant is arrested the matter should immediately be communicated before his arrest to his superior officer, if not possible before the arrest it should be communicate immediately after the arrest. In case of arrest of members of Army, Navy or Air force intimation should immediately be send to the officer commanding the unit to which the accused is member. If any member of Lok sabha or Rajya sabha or a member of legislative council or assembly be arrested on a criminal charge under the orders of executive magistrate it is the

[44] AIR 1976 SC 1207
[45] AIR 1981 SC 746
[46] 1980 AIR 1579
[47] AIR 1994 SC 1349

responsibility of executive magistrate to inform to the speaker of concerned parliamentary unit without undue delay.

Section 56(1) of police and criminal evidence act, 1984 provides that where a person has been arrested and is being held in custody in a police station or other premises, he shall be entitled, if he so requests, to have one friend or relative or other person who is known to him or who is likely to take an interest in his welfare told, as soon as is practicable except to the extent that delay is permitted by this section, that he has been arrested and is being detained there.

Supreme Court issued following directions so as to give effective enforcement of this right provided under Article 21 and Article 22 of Indian Constitutions.

- An arrested person being held in custody is entitled, if he so requests to have one friend relative or other person who is known to him or likely to take an interest in his welfare told as far as is practicable that he has been arrested and where is being detained.
- The Police Officer shall inform the arrested person when he is brought to the police station of this right.
- An entry shall be required to be made in the Diary as to who was informed of the arrest.

These protections from power must be held to flow from Articles 21 and 22(1) and enforced strictly.

Right to have interview friends, relatives and lawyers is not only important so as to protect the physical comfort of prisoner but also necessary to save him from mental torture. Right to life and liberty provided under Article 21 not only include as human dignity but also deny mere animal existence. Right to interview with family members is clearly a part of personal liberty provided under Article 21 of constitution.

Article 22(1) of Indian constitution as well as Sec. 41 of criminal procedure code directs that no person who is arrested shall be denied the right to consult and to be defended by a legal practitioner of his choice. In number of cases Supreme Court provided that the right of accused to consult with advocate of his choice as a basic right under Article 21 of Indian constitution. In case of Dharambir v/s State of U.P.[48], the court directed the state government to allow family members to visit

[48] (1979) 3 SCC 645

the prisoners at least once a year or for the prisoner at least once a year to visit their families under guarded conditions. In Sheela Barse v/s State of Maharashtra[49] the court held that interviews of the prisoners become necessary as otherwise the correct information may not be collected but such access has got to be controlled and regulated. In case of Hussainara Khatoon v/s Home secretary Bihar[50], Supreme Court held that it is constitutional right of every accused person who is unable to engage a lawyer of his choice because of poverty, indigence or incommunicable situation he is entitled to free legal service provided by state in the interest of justice, equity and good conscience.

8. **Right to expression** –

Article 19 as well as Article 21 of Indian constitution provides for freedom of speech and expression. Right to expression is said to be one of the essential part of right to liberty. The prisoners also have to some extend right to liberty they have right to express themselves even if in jails. In case of State of Maharashtra v/s Prabhakar Pandurang[51], the court held that right to write a book and get it published cannot be consider as violation of Article 21. In another case of Rajagopal Alias R.R. Gopal and others v/s State of Tamil Nadu[52], the question before the court arises about right to privacy and right to press while answering the same question Supreme Court held that petitioners have right to publish of their life story or autobiography in so far as it appears from the public records even without his consent or authorization. But if they go beyond that and somebody publish his life story they may invade his right of privacy similarly state or its officials cannot prevent or restrain the said publication.

9. **Freedom from self incrimination –**

Article 20 (3) of Indian constitution provides rule against self incrimination. To provides that no one can be compelled to be a witness against himself. It is the responsibility of the judge or magistrate that to inform the accused about this right that he is not under obligation to state something against himself. Even the police personnel are also prohibited from applying corrective means during investigation for obtaining information from accused. The confession recorded

[49] AIR 1983 SC 378/ 1983 SCC 96, 1987 SCC 596
[50] AIR 1976 SC 1360
[51] AIR 1966 SC 424
[52] AIR 1995 SC 264

before the police officer is also not acceptable during evidence unless it is not corroborated by other evidence.

The SC gave the principles with regard to confession in the case of Rabindra Kumar Pal Alias Dara Singh v. Republic Of India, those principles with regard to Confession:

- The provisions of Section 164 Cr.P.C. must be complied with not only in form, but also in essence.
- Before proceeding to record the confessional statement, a searching enquiry must be made from the accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution.
- A Magistrate should ask the accused as to why he wants to make a statement that surely shall go against his interest in the trial.
- He should be assured of protection from any sort of apprehended torture or pressure from the police in case he declines to make a confessional statement.
- A judicial confession not given voluntarily is unreliable, more so, when such a confession is retracted, the conviction cannot be based on such retracted judicial confession.
- Non-compliance of Section 164 Cr.P.C. goes to the root of the Magistrate's jurisdiction to record the confession and renders the confession unworthy of
- During the time of reflection, the accused should be completely out of police influence. The judicial officer, who is entrusted with the duty of recording confession, must apply his judicial mind to ascertain and satisfy his conscience that the statement of the accused is not on account of any extraneous influence on him.
- At the time of recording the statement of the accused, no police or police official shall be present in the open court.
- Confession of a co-accused is a weak type of evidence.
- Usually the Court requires some corroboration from the confessional statement before convicting the accused person on such a statement.

With the advancement of society and technology new techniques has been developed so as to fetch information from prisoners such as Narco Analysis

test, brain mapping test or polygraph test, etc. These tests were adopted in many cases such as the case of Abdul Telagi, Arushi Talwar, and Abu Salem and so on, so as to obtain information about crime from these prisoners. However Supreme Court in case of Selvi v/s State of Karnataka[53] in 2010 declared that Narco Analysis polygraph test and brain mapping test is unconstitutional and violation of human rights. Further in this case courts says that a person can be subjected to such test when accused ascents or consents for them. The result of the test will not be considered as evidence but can be used for the purpose of investigation. Supreme Court accepted that these tests were violation of Article 20 (3) of Indian constitution which lays down that person cannot be forced to give evidence against him. Court also directed the investigation agencies that directives by National Human Right Commission should be strictly followed while conducting such tests.

**10. Right to legal aid –**

The 42nd Amendment in 1976 has inserted Article 39A under Indian constitution as a part of Directive Principles of State Policies. Article 39 A provides for right to free legal aid to needy and poor people. Right to be defended by a legal practitioner is the basic right of prisoner guarantee under Article 21 of Indian constitution therefore if the prisoners or under trial prisoner is not in a capacity to appoint a legal practitioner for his defense because of illiteracy, poverty and by other reasons, it is right of accused to get lawyer at the expenses of state.

Article 39A consists of part of directive principles which is not enforceable in courts of law. Supreme Court in its various judgments included this right under Article 21 of Indian constitution as basic ingredient for right to life and liberty. The criminal procedure code also provides responsibility on Sessions Court that in the event if accused is not represented by competent lawyer court must provide him with lawyer otherwise the proceeding or trial will be considered as null and void. The parliament also enacted Legal Services Authorities Act 1987 so as to guarantee right to free legal aid to the accused. As per provisions of legal services authorities act institutions at National, State, District and Taluka level has been established for enforcement of this right.

[53] (2010) 7 SCC 263

In case of M.H. Hosket v/s State of Maharashtra a three judges bench of Supreme Court while reading Article 21 and 39A along with Article 142 and section 304 Cr.PC declared that government as under duty to provide legal services to the accused person.

**11. Right to reasonable wages in prison –**

Under directive principles of state policy the constitution of India provides right to work has one of the economical rights of human being. It also recognizes right to have minimum wages for every work also one of the important right under directive principles. The international convention on prevention of forced and compulsory labour also provides that no one shall be subjected to forced and compulsory labour. Article 23 of Indian constitutional also prohibits forced and compulsory labour. It provides that the payment or remuneration is essential for every type of work. The person who works for remuneration cannot be considered as forced labour however the practice of begging is strictly prohibited by Indian constitution. The right to wages is essential right of every worker to provide his labour or services. This right is available to free person in society as well as to the prisoners.

The prisoners are also equally liable for wages as per nature of service or labour provided by them. Whenever during imprisonment the prisoners are made to work in the prison they must be paid wages at the reasonable rate. The wages should not be below minimum wages.

In case of Peoples Union For Democratic Rights V/S Union Of India[54], court observe that where a person provides labour or service to another or remuneration which is less than minimum wage the labour or service provided by them clearly falls within the scope and ambit of the words forced labour Article 23.

In case of Mohammad Giasuddin v/s State of A.P.[55], the court directed that the state to take into account the wages should be paid at a reasonable rate; it should not be less than minimum wages.

In case of Gurdev Singh v/s State of Himachal Pradesh[56], court held that Article 23 of the constitution prohibits forced labour and mandated that any

[54] AIR 1982 SC 1473
[55] (1977) 3 SCC 287
[56] AIR 1992 HP 70, 1992 CriLJ 2542

contravention of such prohibition shall be prohibited and be an offence punishable under the law. In this case court has given following observations.

- It is lawful to employ the prisoners sentenced to rigorous imprisonment to do hard labour whether he consents to do it or not.
- It is open to the jail officials to permit other prisoners also to do any work which they choose to do provide such prisoners make a request for that purpose.
- It is imperative that the prisoner 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 recommendations. We direct each State to do so as early as possible.
- Until the State Government takes any decision on such recommendations every prisoner must be paid wages for the work done by him at such rates or revised rates as the Government concerned fixes in the light of the observations made above. For this purpose we direct all the State Governments to fix the rate of such interim wages within six weeks from today and report to this Court of compliance of this direction.
- State concerned should make law for setting apart a portion of the wages earned by the prisoners to be paid as compensation to deserving victims of the offence the commission of which entailed the sentence of imprisonment to the prisoner, either directly or through a common fund to be created for this purpose or in any other feasible mode.

**12. Right to compensation –**

The remedy of compensation is generally available in civil proceeding. Indian criminal judicial system is based upon be accusatorial form of judicial system which is actually accused oriented. This system does not provide any remedy in form of compensation to the victim of crime. In this system the convict is only liable for imprisonment or fine for violation of law. The fine is also a remedy available to the state, the amount of fine can be credited in the state treasury as part of punishment.

However Supreme Court while is expanding the horizons of Article 21 provided that right to compensation is also a part of right to life. In a landmark judgment of Rudal Shah v/s State of Bihar[57] provides for right to compensation in

[57] AIR 1983 SC 1086

case of illegal deprivation of personal liberty. Court granted monetary compensation of Rs. 35000/- against the Bihar government for keeping person in illegal detention for 14 years even after his acquittal. The decision of Rudal Shah was important in two respects.

- It held that violation of a constitutional right can give rise to a civil liability enforceable in a civil court and;
- It formulates the bases for a theory of liability under which a violation of the right to personal liberty can give rise to a civil liability.

The decision focused on extreme concern to protect and preserve the fundamental right of a citizen. It also calls for compensatory jurisprudence for illegal detention in prison.

**13. Responsibility on State-**

In furtherance of Prison reforms, the Judges set out guidelines to be prescribed and followed which were as follows:

- The State shall take early steps to prepare in Hindi; a Prisoner's Handbook and circulates copies to bring legal awareness home to the inmates. Periodical jail bulletins stating how improvements and rehabilitative programmes are brought into the prison may create a fellowship which will ease tensions. A prisoner's wall paper, which will freely ventilate grievances, will also reduce stress.
- The State shall 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. In this latter aspect, the observations we have made of holistic development of personality shall be kept in view.
- The Prisons 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.
- The prisoners' 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 shall be promoted by professional organizations recognized by the court such as Free Legal Aid (Supreme Court) Society. The District Bar shall, we recommend, keep a cell for prisoner relief.

# CHAPTER IV

# RIGHT TO FREE LEGAL AID

The Latin maxim "ubi jus ibi remedium" signifies that every right has a remedy, for violation of every right everyone has right to access the court. Right without remedy can be considered as meaningless. Right to access to justice has been considered as basic human right conferred by the common law. Right to remedy is also provided by article 32 of Indian constitution. Under constitution of India for the enforcement of fundamental rights remedy in the form of writ jurisdiction has been provided under Article 32 of constitution to Supreme Court as well as under Article 226 the powers are vested with High Court.

Right to representation in judicial tribunal is considering being important part of right to access to justice. Unless, the person allowed to approach to court for enforcement of his rights, the right to remedy is worthless. Right to representation includes right to be represented through legal practitioner of his own choice. Under law the provisions are made to provide this right of representation through proper advocate.

However under certain circumstances this right cannot be effectively enforced due to various reasons such as poverty, illiteracy, indecency & other reasons. Person is not in a position to appoint lawyer for his defense or representation. In such a situation right to representation can be exercised through the process of legal aid.

Right to legal aid is provided by the constitution of India as well as other legislations. Indian judiciary has also recognized this right as basic right for enforcement of fair, human & efficient criminal judicial system. It is considered to be the foundation of other rights.

The term legal aid means a legal advice, assistance or support conduct of legal proceedings in court of law. The facility of legal aid is also available even without any charge or fees. This facility is available to poor, indigent, illiterate or even down trodden people of the society those who has no means to appoint a lawyer of their choice. The prisoners and even under trials are also included within the categories to which this facility can be availed. Term legal aid not only restricted to legal assistance but also includes legal education, access of information necessary for adjudication of matter.

Legal aid to poor & weak is necessary for the preservation of rule of law which is necessary for existence of orderly society. Unless and until poor or illiterate not legally assisted he is denied equality and opportunity to seek justice. Legal aid means giving free legal services to poor and needy people who are not in a condition to hire services of lawyer for conduct of legal proceedings in court, tribunal or before judicial & quasi judicial authorities. Legal aid is the method adapted to that no one should be deprived of professional advice & help because of lack of funds.

**International Perspectives of Right to Legal Aid**

Right to legal aid is essential element in just and fair trial provided by principles of natural justice. Universal Declaration of Human Rights provides that right to legal aid is essential for the enforcement of right to fair trial as well as so as to safeguard fundamental fairness and public trust in criminal judicial process[58]. International Convention on Civil and Political Rights, states that everyone should be entitled to be tried in his presence and to defend himself in person or through legal assistance of his choice. It again provides that if any one does not have legal assistance in such a case he has right to have such a legal assistance in the interest of justice so required and even such right of legal assistance can be availed without payment, in any such case if he does not have sufficient means to pay for it.[59]

United Nations organization has drafted a draft on principles and guidelines on access to legal aid in criminal justice system[60]. This draft contains basic principles on access to legal aid as well as guidelines on how to access to legal aid. First principle of the draft recognizes that legal aid is an essential element of functioning criminal justice system that is based on rule of law. Principle second of draft impose responsibility on the state that the state should in act specific legislation and ensure that comprehensive legal aid system is place that is accessible effective, sustainable and creditable. State should allocate necessary human and financial resources to the legal aid system. State should ensure that even a person who is arrested or detained or prosecuted for crime punishable by a term of imprisonment or that penalty receives legal aid free of charge. The person

[58] Article 11 of Universal Declaration on Human Rights 1948
[59] Article 14 of International Covenant on Civil and Political Rights 1966
[60] https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidlines_on_access_to_legal_aid.pdf

can afford this facility at all stages of criminal judicial process including post trial proceeding. State should not discriminate while insuring provisions of legal aid to all persons. Principle seven of the draft ensures that at the time of deprivation of liberty and prior to any questioning, persons are informed of their right to legal aid and other procedural safeguards. State should ensure that information on rights during the criminal justice process and legal aid services is made freely available and accessible to the public.

Under the guidelines first guideline provides that persons whose means exceed the limits of the means test but who cannot afford or do not have access to a lawyer in situations where legal aid would have otherwise been granted. As per guidelines no. 3 state should introduce measures

- To inform every person arrested or charged with a crime of his or her right to remain silent, his or her right to consult with a legal aid provider before being interviewed by the authorities and his or her right to be accompanied by an independent legal aid provider while being interviewed;
- To prohibit any interviewing of a person by the police in the absence of a lawyer, unless the person gives his or her informed and voluntary consent to waive the lawyer's presence; and to establish mechanisms for verifying the voluntary nature of the person's consent;
- To inform all foreign prisoners of their right to request contact with their Consular authorities without delay;
- To ensure that persons have the opportunity to meet with a legal aid provider promptly after their arrest;
- To enable every person who has been detained for any reason to imminently notify a member of his or her family, or any other appropriate person of his or her choosing, of his or her detention and location and of any imminent change of location; the competent authority may, however, delay a notification if absolutely necessary, if provided for by law and if the transmission of the information would hinder a criminal investigation;
- To provide the services of an interpreter who has no conflict of interest whenever necessary;
- To assign a guardian, whenever necessary;

- To make available in police stations and places of detention the means to contact legal aid providers;
- To ensure that suspects understand their rights;
- To ensure that a mechanism for complaining against torture or ill treatment is available.

As per guideline no. 11 to ensure legal aid system nationwide state should undertake measures. To ensure effective implementation of their nationwide legal aid schemes state may consider establishing a legal aid body or authority to provide administrator, coordinate and monitor legal aid services.

**National Perspective of Right to Legal Aid**

Under the Preamble of Indian constitution provides common goal for its citizens as to secure justice; social economic and political, liberty, equality and fraternity. The constitution of India also guarantees right to constitutional remedies as a fundamental right. This right of constitutional remedy can best be achieved by enforcement of right to free legal aid.

Right to free legal aid has been inserted under Article 39 A of the constitution by 42$^{nd}$ amendment act 1976. Article 39 A provides for right to free legal aid however this right was inserted under part IV of Indian constitution that is Directive Principles of State Policies, which is not enforceable in courts of law.

Section 304 of Criminal Procedure Code lay down that if the accused does not have sufficient means to engage a lawyer, the court must provide one for the defense of the accused at the expense of the state. When accused facing a trial if not properly represented through a competent lawyer, it is responsibility of court to provide him a lawyer at the cost of state, failure to which the trial becomes vitiated. Court is bound to give lawyer form the bar that should be well versed with the law and to be gets paid by the state government.

Order 33, rule 17 of Civil Procedure Code also made provisions for suit by or against indigent person. If a person is indigent he can be exempted from court fees under civil procedure code. Under Advocates Act 1961 specific responsibility also imposed upon advocates by Bar Council Of India that advocate should provide free legal aid and free legal assistance to poor and needy people.

The government of India passed a specific legislation in 1987 for the enforcement of right to legal aid i.e. Legal Services Authorities Act 1987. This act

provides exhaustive provisions for legal aid. Different authorities at national, state, district and taluka level where established for ensuring right to legal aid to needy and poor peoples. The Indian judiciary also provides important role in ensuring right to free legal aid as basic human right as well as part of right to fair trial through different cases.

The question of legal aid to poor or needy people was addressed in conferences of law ministers since year 1952. In 1960 some guidelines were drawn by the government for legal aid scheme. In October 1972 the government of India constituted a committee under the chairmanship of Justice V.R. Krishna Iyer the then member of law commission to formulate a practical and workable scheme for legal aid. In 1973 justice Krishna Iyer submitted his report titled as "Processual Justice to the People" and provide for establishment of legal aid system in India. In 1976 government of India appointed another committee consisting of Justice P.N. Bhagwati as chairman and Justice V.R. Krishna Iyer as member. This committee submitted its report in 1977 titled as report on National Juridicare: Equal Justice Social Justice. The major recommendations of this committee are as follows.

- Setting up state legal aid boards and legal aid committees at district, taluk/tahsil/block levels as well as at Supreme Court and High Court levels.
- Legal aid programmes should be based on the socio-economic conditions prevailing in the country.
- Prepare and encourage social workers for Para Legal Services.
- Nyaya Panchayats may be constituted and encouraged.

In year 1976 Article 39 A was inserted under Constitution of India by 42nd amendment for providing right to legal aid as one of the directives of state policy. It states that "It is the duty of the State to see that the legal system promotes justice on the basis of equal opportunity for all its citizens. It must therefore arrange to provide free legal aid to those who cannot access justice due to economic and other disabilities."

To give effect to recommendations of Justice Bhagwati Committee in 1980 government of India constituted the Committee for Implementing Legal Aid Schemes (CILAS). The object of CILAS as follows.

- to formulate specific legal aid schemes

- to monitor implementation
- to take steps for implementation

In 1987 Legal Services Authorities Act was enacted to give a statutory base to legal aid programs throughout the country on a uniform pattern. This act was enacted so as to give effect to the mandates of Constitutions under Article 14 and 39A of Indian Constitutions. The object of this act to provide access to justice to all equally it should not be denied merely on the ground of economic disability. Important provisions of Legal Services Authorities Act are as follows.

Section 2(c) of this act provides definitions of legal services means legal service includes the rendering of any service in the conduct of any case or other legal proceeding before any court or authority or tribunal and giving of advice on any legal matter. Legal services ensures that people get information, advice and legal help by providing advocate at the expenses of state or paying court fee on behalf of the eligible person or bearing expenses require for preparation of documents.

**Eligibility for legal aid**

Section 12 of Legal Services Authorities' Act 1987 describes criteria for giving legal aid to eligible person. It provides that –

"Every person who has to file or defend a case shall be entitled to legal services under this Act if that person is –

- a member of a Scheduled Caste or Scheduled Tribe;
- a victim of trafficking in human beings or beggar as referred to in Article 23 of the Constitution;
- a woman or a child;
- a mentally ill or otherwise disabled person;
- a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or
- an industrial workman; or
- in custody, including custody in a protective home within the meaning of clause (g) of section 2 of the Immoral Traffic (Prevention) Act, 1956 (104 of 1956); or in a juvenile home within the meaning of clause of section 2 of the Juvenile Justice Act, 1986 (53 of 1986) or in a psychiatric hospital or psychiatric nursing home

within the meaning of clause (g) of section 2 of the Mental Health Act, 1987 (14 of 1987); or

- in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Govt., if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Govt., if the case is before the Supreme Court."[61]

**Nature of Free Legal Services**

Free legal services entail the provision of free legal aid in civil and criminal matters for those poor and marginalized people who cannot afford the services of a lawyer for the conduct of a case or a legal proceeding in any court, tribunal or before an authority.

Provision of free legal aid may include:

- Representation by an Advocate in legal proceedings.
- Preparation of pleadings, memo of appeal, paper book including printing and translation of documents in legal proceedings;
- Drafting of legal documents, special leave petition etc.
- Rendering of any service in the conduct of any case or other legal proceeding before any court or other Authority or tribunal and;
- Giving of advice on any legal matter.

Free Legal Services also include provision of aid and advice to the beneficiaries to access the benefits under the welfare statutes and schemes framed by the Central Government or the State Government and to ensure access to justice in any other manner.[62]

**Services offered by the legal service authority –**

- payment of court and other process fee
- charges for preparing, drafting and filing of any legal proceeding
- charges of legal practitioner or legal advisor
- Cost of obtaining decrees, judgments, orders and any other document in legal proceedings.
- Cost of paper work including printing, translation etc.

**Grounds for rejection of Legal Aid**

[61] Section 12 of Legal Services Authorities' Act 1987
[62] http://nalsa.gov.in/content/nature-free-legal-services

- If the applicant has adequate means to access justice or
- If he does not fulfill the eligibility criteria or
- Has no merit in his application requiring legal action.

**Grounds for Withdrawn of Legal Services**

A legal services committee can withdraw the services if

- The legal aid is obtained through misrepresentation or fraud
- Any material change occurs in the circumstances of aided person
- There is misconduct, misbehavior or negligence of the part of aided person
- The aided person does not cooperate with allotted advocate
- The aided person appoints another legal practitioner
- The aided person dies except in civil cases
- The proceeding amount to misusing the process of law or of legal service.

**Cases in which legal aid is not available –**

- Cases in respect of defamation, malicious prosecution, contempt of court, perjury, etc.
- proceeding relating to election
- cases where fine imposed is not more than 50
- Economic offences and offences against social laws.
- Cases where the person seeking legal aid is not directly concern with the proceeding and whose interest will not be affected if not represented properly.

This act was finally enforced on 19 November 1995 after certain amendments were introduced there in by amendment act 1994. there are three main object of this legal service act such as creating legal awareness, provide free legal aid to needy and poor people and to establish permanent lok adalat for speedy disposal of judicial matters. This act has made to great efforts in implementation of these aims through different schemes and programmers.

This act also provides for nationwide network which has created under the Act for providing legal aid and assistance it also provides for establishment and powers and functions of different authorities at different levels for effective implementation of provisions of this Act, these authorities are as follows;

1. **National Legal Services Authority: (NALSA)**[63]

The Central Authority shall consist of –

[63] Section 3 of Legal Services Authorities Act 1987

- The Chief Justice of India who shall be the Patron-in-Chief
- A serving or retired Judge of the Supreme Court to be nominated by the President, in consultation with the Chief Justice of India, who shall be the Executive Chairman; and
- Such number of other members, possessing such experience and qualifications, as may be prescribed by the Central Government, to be nominated by that government in consultation with the Chief Justice of India.

The Central Government shall in consultation with the Chief Justice of India, appoint a person to be the Member-Secretary of the Central Authority, possessing such experience and qualifications as may be prescribed by that Government, to exercise such powers and perform duties under the Executive Chairman of the Central Authority as may be prescribed by that Government or as may be assigned to him by the Executive Chairman of that Authority.

National Legal Services Authority is the apex body constituted to lay down policies and principles for making legal services available under the provisions of the Act and to frame most effective and economical schemes for legal services. It also disburses funds and grants to State Legal Services Authorities and NGOs for implementing legal aid schemes and programmes.

After the establishment of NALSA in 1998 different schemes and programmes were introduced for effective implementation of the objectives of this Act. The schemes and measures implemented by the Central Authority:

- Established Permanent and Continuous Lok Adalats in all the Districts in the country for disposal of pending matters as well as disputes at pre-litigation stage;
- Established separate Permanent & Continuous Lok Adalats for Govt. Departments, Statutory Authorities and Public Sector Undertakings for disposal of pending cases as well as disputes at pre-litigation stage;
- Accreditation of NGOs were done for spreading Legal Literacy and Legal Awareness campaign;
- Appointed "Legal Aid Counsel" in all the Courts of Magistrates in the country;
- Publicity to Legal Aid Schemes and programmes to make people aware about legal aid facilities;
- Emphasis on competent and quality legal services to the aided persons;
- Legal aid facilities in jails;

- Setting up of Counseling and Conciliation Centers in all the Districts in the country;
- Sensitization of Judicial Officers in regard to Legal Services Schemes and programmes;
- Publication of "Nyaya Deep", the official newsletter of NALSA
- Enhancement of Income Ceiling to Rs.50,000/- p.a. for legal aid before Supreme Court of India and to Rs.25,000/- p.a. for legal aid upto High Courts; and
- Steps for framing rules for refund of court fees and execution of Awards passed by Lok Adalats.

NALSA is laying great deal of emphasis on legal literacy and legal awareness campaign. Almost all the State Legal Services Authorities are identifying suitable and trustworthy NGOs through whom legal literacy campaign may be taken to tribal, backward and far-flung areas in the country. The effort is to publicize legal aid schemes so that the target group, for whom Legal Services Authorities Act has provided for free legal aid, may come to know about the same and approach the concerned legal services functionaries.

NALSA has also called upon State Legal Services Authorities to set up legal aid cells in jails so that the prisoners lodged therein are provided prompt and efficient legal aid to which they are entitled by virtue of section 12 of Legal Services Authorities Act, 1987.

2. **Supreme Court Legal Services Committee[64]:**

The Central Authority shall constitute a Committee to be called the Supreme Court Legal Services Committee for the purpose of exercising such powers and performing such functions as may be determined by regulations made by the Central Authority.

The Committee shall consist of –

- A sitting judge of the Supreme Court who shall be the Chairman; and
- Such number of other members possessing such experience and qualifications as may be prescribed by the Central Government to be nominated by the Chief Justice of India.

[64] Section 3A of Legal Services Authorities Act 1987

The Chief Justice of India shall appoint a person to be the Secretary to the Committee, possessing such experience and qualifications as may be prescribed by the Central Government.

3. **State Legal Services Authority[65]:**

A State Authority shall consist of

- The Chief Justice of the High Court who shall be the Patron-in-Chief;
- A serving or retired Judge of the High Court, to be nominated by the Governor, in consultation with the Chief Justice of the High Court, who shall be the Executive Chairman; and
- Such number of other Members, possessing such experience and qualifications, as may be prescribed by the State Government, to be nominated by that Government in consultation with the Chief Justice of the High Court.

The State Government shall, in consultation with the Chief Justice of the High Court, appoint a person belonging to the State Higher Judicial Service not lower in rank than that of a District Judge, as the Member-Secretary of the State Authority, to exercise such powers and perform such duties under the Executive Chairman of the State Authority as may be prescribed by that Government or as may be assigned to him by the Executive Chairman of that Authority.

In every State a State Legal Services Authority is constituted to give effect to the policies and directions of the Central Authority (NALSA) and to give legal services to the people and conduct Lok Adalats in the State. State Legal Services Authority is headed by the Chief Justice of the State High Court who is its Patron-in-Chief. A serving or retired Judge of the High Court is nominated as its Executive Chairman.

It shall be the duty of the State Authority to given effect to the policy and directions of the Central Authority.

The State Authority shall perform all or any of the following functions, namely:-

- Give legal service to persons who satisfy the criteria laid down under this Act.
- Conduct Lok Adalats, including Lok Adalats for High Court cases;
- Undertake preventive and strategic legal aid programmes; and

[65] Section 6 of Legal Services Authorities Act 1987

- Perform such other functions as the State Authority may, in consultation with the Central Authority, fix by regulations.

4. **High Court Legal Services Committee[66]:**

The State Authority shall constitute a Committee to be called the High Court Legal Services Committee for every High Court, for the purpose of exercising such powers and performing such functions as may be determined by regulations made by the State Authority.

The Committee shall consist of –

- A sitting Judge of the High Court who shall be the Chairman; and
- Such number of other Members possessing such experience and qualifications as may be determined by regulations made by the State Authority, to be nominated by the Chief Justice of the High Court.

5. **District Legal Services Authority[67]:**

A District Authority shall consist of

- The District Judge who shall be its Chairman; and
- Such number of other Members, possessing such experience and qualifications as may be prescribed by the State Government, to be nominated by that Government in consultation with the Chief Justice of the High Court.

The District Authority may perform all or any of the following functions, namely

- co-ordinate the activities of the Taluk Legal Services Committee and other legal services in the District;
- organise Lok Adalats within the Districts; and
- Perform such other functions as the State Authority may fix by regulations.

District Legal Services Authority is constituted in every District to implement Legal Aid Programmes and Schemes in the District. The District Judge of the District is its ex-officio Chairman.

6. **Taluk Legal Services Committee[68]:**

The Committee shall consist of

[66] Section 8A of Legal Services Authorities Act 1987

[67] Section 9 of Legal Services Authorities Act 1987

[68] Section 11A of Legal Services Authorities Act 1987

- The senior Civil Judge operating within the jurisdiction of the Committee who shall be the ex-officio Chairman; and
- Such number of other Members, possessing such experience and qualifications, as may be prescribed by the State Government, to be nominated by that Government in consultation with the Chief Justice of the High Court.

Taluka Legal Services Committees are also constituted for each of the Taluk or Mandal or for group of Taluka or Mandals to coordinate the activities of legal services in the Taluka and to organize Lok Adalats. Every Taluka Legal Services Committee is headed by a senior Civil Judge operating within the jurisdiction of the Committee who is its ex-officio Chairman.

The Taluk Legal Services Committee may perform all or any of the following functions, namely

- Co-ordinate the activities of legal services in the taluka;
- Organize Lok Adalats within the taluk; and
- Perform such other functions as the District Authority may assign to it.

The First Annual Meet of the State Legal Services Authorities was held on 12th of September, 1998 at Vigyan Bhawan, New Delhi which was presided over by His Lordship Hon. Dr. Justice A.S. Anand, the then Executive Chairman, NALSA. The Second Annual Meet of the State Legal Services Authorities was held at Jubilee Hall, Hyderabad on 9th of October, 1999. This Meet was inaugurated by His Lordship Hon. Dr. Justice A.S. Anand, the Chief Justice of India and Patron-in-Chief, NALSA. In this meet NALSA called upon State Legal Services Authorities to set up legal aid cells in jails so that the prisoners lodged therein are provided prompt and efficient legal aid to which they are entitled by virtue of section 12 of Legal Services Authorities Act, 1987. Hon. Chief Justice of India His Lordship Hon. Dr. Justice A.S. Anand, had pointed out that a very large number of under trial prisoners lodged in jails are involved in petty criminal offences. His Lordship expressed his deep anguish and stated that these poor and under privileged prisoners are languishing in jails for fairly long period in spite of the fact that they are willing to plead guilty and the ultimate sentences which are likely to be passed against them will be far less than the period they are incarcerated as under trial prisoners. His Lordship suggested that the CJMs/CMMs of the areas in which the District Jails are situated should hold their

courts in jails once or twice in a month for disposing of the cases of such under trial prisoners. In many States, the suggestion has already been implemented and the prisoners involved in petty and minor offences are getting substantial relief.

Presently following innovative steps have been introduced in the functioning of NALSA:-

- A National Plan of Action to be executed by all State Legal Services Authorities and Calendar for activities was put in place.
- NALSA Regulations on Lok Adalat were published in the Gazette.
- NALSA Regulations on Free and Competent Legal Services were published in the Gazette of India.
- Legal Services to Trans-Gender people was taken up as a new project of NALSA
- Training of Para-Legal Volunteers and engaging them in the front offices of Legal Services Institutions and in the village level legal aid clinics were started.
- Legal Literacy Programmes in schools and colleges started in an organized manner with the assistance of the Department of Education in all States.
- School Legal Literacy Clubs set up in all High Schools under the State Legal Services Authorities in order to create legal awareness, obedience to law and spread the philosophy of rule of law amongst the younger generation.
- Legal Aid Clinics in all villages to be manned by Para-legal Volunteers and panel lawyers.
- Retainer lawyers are engaged at Taluk, District, High Court and Supreme Court level for handling legal aided cases.

As per the statistics provided in I issue of "Nyaya Deep" published in January 2016 to March 2016, total 26184 legal awareness camps were arranged during period of 1st January 2016 to 31st march 2016 in which total 3771284 number of persons were benefited. Out of this statistics in case of Maharashtra 1840 legal literacy and legal awareness camps were organized and total 169990 persons were benefited.

**Efforts of NALSA for legal aid to under trial prisoners**

Total number of prisoners to whom legal aid provided in India during 2013 was 67386. The top 10 states/UTs on the basis of number of prisoners to whom legal aid provided were:

| Sr. No | State/ Union Territory | No. of Prisoners provided with legal aid | Percentage out of total number of prisoners of India to whom legal aid provided |
|---|---|---|---|
| 1 | Delhi | 34384 | 51.03% |
| 2 | Tamil Nadu | 4819 | 7.15% |
| 3 | Madhya Pradesh | 3562 | 5.29% |
| 4 | West Bengal | 2964 | 4.40% |
| 5 | Punjab | 2865 | 4.25% |
| 6 | Haryana | 2732 | 4.05% |
| 7 | Andhra Pradesh | 2548 | 3.78% |
| 8 | Uttar Pradesh | 2461 | 3.65% |
| 9 | Gujarat | 2073 | 3.08% |
| 10 | Chhattisgarh | 1943 | 2.88% |

Delhi having 34384 prisoners which was 51.03% of the total number of prisoners of India to whom legal aid provided; Tamil Nadu having 4819 prisoners which was 7.15% of the total number of prisoners of India to whom legal aid provided; Madhya Pradesh having 3562 prisoners which was 5.29% of the total number of prisoners of India to whom legal aid provided; West Bengal having 2964 prisoners which was 4.40% of the total number of prisoners of India to whom legal aid provided); Punjab having 2865 prisoners which was 4.25% of the total number of prisoners of India to whom legal aid provided; Haryana having 2732 prisoners which was 4.05% of the total number of prisoners of India to whom legal aid provided; Andhra Pradesh having 2548 prisoners which was 3.78% of the total number of prisoners of India to whom legal aid provided; Uttar Pradesh having 2461 prisoners which was 3.65% of the total number of prisoners of India to whom legal aid provided; Gujarat having 2073 prisoners which was 3.08% of the total number of prisoners of India to whom legal aid provided and Chhattisgarh having 1943 prisoners which was 2.88% of the total number of prisoners of India to whom legal aid provided.[69]

[69] Prison Statistics India 2013, National Crime Records Bureau (NCRB)

NALSA has also called upon State Legal Services Authorities to set up legal aid cells in jails so that the prisoners lodged therein are provided prompt and efficient legal aid to which they are entitled by virtue of section 12 of Legal Services Authorities Act, 1987. Hon. Chief Justice of India His Lordship Hon. Dr. Justice A.S. Anand, while delivering the inaugural address at the Second Annual meet of the State Legal Services Authorities at Hyderabad, had pointed out that a very large number of under trial prisoners lodged in jails are involved in petty criminal offences. His Lordship expressed his deep distress and stated that these poor and under privileged prisoners are laying in jails for fairly long period in spite of the fact that they are willing to plead guilty and the ultimate sentences which are likely to be passed against them will be far less than the period they are confined as under trial prisoners. His Lordship suggested that the Chief Judicial Magistrates or Chief Metropolitan Magistrates of the areas in which the District Jails are situated should hold their courts in jails once or twice in a month for disposing of the cases of such under trial prisoners. In many States, the suggestion has already been implemented and the prisoners involved in petty and minor offences are getting substantial relief.

Creating awareness among the Judicial Officers in respect to legal aid schemes and programmes is also one of the agenda of NALSA. His Lordship Hon. Mr. Justice S.P. Bharucha, Executive Chairman, NALSA while writing from the Desk of the Executive Chairman in Jan.,99 Issue of 'Nyaya Deep' had observed that not all judicial officers in the country are duly sensitized to Legal Services Schemes and programmes and as such are unable to guide poor litigants in this regard. His Lordship observed that Legal Services Authorities must ensure that judicial officers are duly sensitized about the work NALSA is doing and its importance for the poor and illiterate.

In a Conference held by NALSA at New Delhi, a resolution was passed to say that in the service records of the judicial officers, their interest in legal aid programmes should be reflected and all the High Courts should take steps for sensitizing the judicial officers in regard to legal aid programmes and schemes. Once all the judicial officers in the country get properly sensitized in regard to the relevance and importance of legal aid schemes they shall themselves start caring

for the poor, backward and weaker sections of the society who are not in a position to engage their own counsel and look after their legal causes.

**Role of Court in Implementation of Right to Free Legal Aid**

Right to equal access to justice as is provided by constitutional mandate under Article 14 and Article 39A has properly achieved by judicial interpretations done by Indian judiciary. This right to free legal aid first time recognize by Supreme Court in case of Hussainara Khatoon v/s State of Bihar[70] in this case Supreme Court held that right to free legal service is an essential ingredient of reasonable fair and just procedure for a person accused of an offence and it must be held to be involve guarantees of Article 21. Supreme Court held that;

This unfortunate situation cries aloud for introduction of an adequate and comprehensive legal service programmes, but so far, these cries do not seem to have evoked any response. We do not think it is possible to reach the benefits of the legal process to the poor to protect them against injustice and to secure to them their constitutional and statutory rights unless there is a nation-wide legal service programme to provide free legal services to them.[71]

"We would strongly recommend to the Government of India and the State Government that it is high time that a comprehensive legal service programme is introduced in the country. That is not only a mandate of equal justice implicit in Article 14 and to right to life and liberty conferred by Article 21, but also the compulsion of the constitutional directive embodied in Article 39A."[72]

In another case of Khatri v/s State of Bihar[73] Supreme Court while referring the judgment of Hussainara Khatoon case has made the following comments.

"It is unfortunate that though this Court declared the right to legal aid as a fundamental right of an accused person by a process of judicial construction of Article 21, most of the States in the country have not taken note of this decision and provided free legal services to a person accused of an offence. The State is under a constitutional mandate to provide free legal aid to an accused person who is unable to secure legal services on account of indigence, and whatever is necessary for this purpose has to be done by the State. The State may have its financial constraints and its priorities in expenditure but the law does not permit

[70] AIR 1979 SC 1371
[71] Hussainara Khatoon v/s State of Bihar AIR 1979 S.C. page 1371 observations in para 6
[72] Hussainara Khatoon v/s State of Bihar AIR 1979 S.C. page 1371 observations in para 9
[73] AIR 1981 S.C. 926

any Government to deprive its priorities in expenditure but the law does not permit any Government to deprive its citizens of constitutional rights on the plea of poverty."

In case of Sukhdas v/s Union Territory of Arunachal Pradesh[74] Supreme Court observe that illiterate people does not aware about their legal rights. It is this absence of legal awareness which is responsible for the deception, exploitation and deprivation of rights and benefits from which the poor suffer in this land. Because of ignorance and illiteracy they cannot become self reliant. They cannot even help themselves. The law ceases to be their protector because they do not know they are entitled to the protection of the law and they can avail of the legal services programmers for putting to rend to their exploitation and winning their rights.

In a leading case of M.H. Hoskot v/s State of Maharashtra[75] if provides that the defendant shall have legal assistance assigned to him in any case where the interests of justice shall require at no cost if the defendant cannot pay. In case of Indira Gandhi v/s Raj Narian[76] the court says that rule of law is the basic structure of Indian constitution. Everyone has right to be heard that is equality of justice. In case of violation of fundamental rights remedies available in court of law but in absence of legal aid the trial should be vitiated.

In State of Haryana v/s Dharshana Devi[77] in this case court observe that the poor should not be prices out of the justice market by insistence on court fee and refusal to apply the exceptive provisions of civil procedure code. In case of Centre for legal research v/s State of Kerala[78] Supreme Court a laid down guidelines for state to follow in giving support and cooperation to voluntary organizations and social action groups operating legal aid programs and legal aid camps

Supreme Court while interpreting Article 21 of the Constitution of India in the light of Article 39-A the Court has tried to harmonize both provisions and thereby to confer justice to needy person. In different cases the Court has attempted to widen the scope of this right in many ways.

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[74] AIR 1986 SC 991
[75] AIR 1978, 3 SC 544.
[76] AIR 1975 SC 2299
[77] 1979 SCR (3) 184
[78] AIR 1983 SC1322

# CHAPTER V

# STUDY OF UNDER TRIALS IN DIST. OF SATARA

Prisoners are considered as one of the downtrodden or vulnerable section of the society. Protections of rights of the prisoners are one of the highest responsibilities of the state. Legal aid considered being the mode for the enforcement of rights of under trial prisoner. Article 21 of Indian Constitution recognized this right of legal aid as part and parcel of right to life and personal liberty.

Rights of prisoners and their problems are very much a crucial issue throughout the country. As per VII schedule of Indian Constitution prison and prison administration is the subject of state list, it is responsibility of every state govt. to recognize the problem of prisoners and give considerable solution to those problems.

**History of Prisons in India**

The Prison System established in India in the British period was a result of the British Judicial System. In the year 1860, a simple code of rules was framed for the first time for the regulation of jails, which was followed by the ‘‘Goal Rules of 1866’’. The jail conference of 1892 made some recommendations for improving the Jail Administration in the country. The Prisons Act of 1894 was passed. This Act introduced some radical changes in Jail Administration in relation to the methods of dealing with the criminals in those days in the Jails in India The Prisoners Act was passed in the year 1900 to supplement the provisions of the prisons Act. These Acts are even now at the core of the Prison Administration in the country.

The ‘prison system’ in India was as an outcome of the British Judicial system and its main function was initially custodial. Gradually imprisonment itself was being regarded as a punishment; with the result the function of the ‘prison System’ was conceived to be ‘punitive’ and not merely ‘custodial’. However the system has undergone several changes as a result of various committees and commissions appointed by the Government of India from time to time to suggest ways and means to improve the conditions in jails and the Jail Administration in the country in order to keep pace with the advance made in other countries in regard to dealing with Crime and Criminals.

The reports of these committees and the action taken thereon can be summarized in brief as under:

- The committee appointment in 1836-38 of which Lord Macaulay was a member, considered the general sanitary conditions of the Prisons, food, clothing etc.
- The second committee was appointed in 1864 due partly to the continued high death rate in the prisons and partly to other allied considerations.
- The third conference of officials mainly engaged in jail work, was held in Calcutta in January 1877 and it discussed almost all questions bearing on prison Administrations,
- The committee of 1888-89 examined the whole field of internal Administration.

  Consequent on the appointment of the last three committees, buildings were gradually provided for proper accommodation of prisoners; dietaries were laid down, systems of jail labour were elaborate, the remission system was developed, insanitary conditions were corrected and death rates reduced in the jails, but the science of prison Administration had made great advance in Western Countries, and to keep pace with them the India jails committee of 1919-20 was appointed by the Government of India.

  The publication of its reports gave boost to panel reforms and resulted in the enactment of Brutal Acts, Children Acts and Probation of Offenders Acts in Various States and also Acts providing for provisional release of prisoners.
- Soon after the popular Ministry assumed power in the erstwhile State of Bombay for the first in 1936-37, it took up the question of the jail reforms; but this work had to be abandoned as a result of their resignation in 1939. Some reforms like appointment of members of State Legislatures on the Visitors Boards; supply of newspapers to prisoners at Government cost; installation of radios at Central Prisons; installation of power driven flour mills in prison and abolition of manual work of grinding etc. were introduced mainly on account of the efforts of the popular Ministry.
- The Bombay Jail Reforms Committee was established in the year 1946. The Bombay Jail Reforms Committee published its report in the year 1948 and made several recommendations to further improve the conditions in the prison and also of the prisoners confined therein. Most of the recommendations were accepted by

the Government. The Jail reforms recommended by the Bombay Jail Reforms Committee of 1946 thus mainly aim at doing everything that will help to keep alive optimism in the minds of prisoners so that they should be good citizens after release from the prison.

- The Eighth All India Conference of Inspector General of Prison, which was held in Bombay in the year 1952, recommended that a committee consisting of the Inspector General of Prisons, Bombay State and two Superintendents should draft a skeleton jail manual for being circulated to the Inspector General's of Prisons of all the States for their opinion and suggestion. Accordingly, the views and suggestion of the State Government were obtained by the Government of India. In 1957, the All India jail Manual committee was appointed by the Government of India. This committee prepared a Model prison Manual and also published its report in the year 1959. This committee recommended changes in Indian Penal Code, including abolition of distinction between simple and rigorous punishment.

  It also recommended that the Prisons Act, Prisoners and other Acts relating to prisons and prisoners should be revised and incorporated into the one comprehensive Act. It also recommended separate institutions for under trials and much greater attention to aftercare work. Stress was laid on preventive measures on juvenile delinquency and adolescent crime, organization of attendance centre and Borstal school, etc it was suggested that a model bill in respect of adolescent offenders should be prepared by the Government of India. Use of probation on a more extensive basis was also recommended and the undesirability of keeping adolescent offenders and juvenile delinquent children in prisons was stressed.

  All these Jail reforms were based on the idea that as Mahatma Gandhi;

  "Crime is but a sign of a diseased mind and that imprisonment, should aim primarily at treating a prisoner's diseased mind and making him fit to go into society after release to lead an honest life''.

  Based on all these recommendations and after establishment of All India Jail Manual radical and drastic changes were introduced in Prison Administration. Some of the important improvements were as follows:

- **Appointment of Inspector General of Prisons:** The Inspector General of prisons is appointed under section 5 (1) of prisons Act, IX of 1894.He exercises,

subject to the orders of the State Government, General control and superintendence over all prisons and sub-jails in the State.

- **Work**: Useful and meaningful work has been treated as the central point, around which all institutional activities and training programme are developed. The old concept of making work in prisons, as punitive, has been discarded. Work in prisons has now become a useful and meaningful activity.
- **On The Job Training:** with a view to improving skills of prisoners, on the job training programmes have been organized various industries such as textile, carpentry, leather work, tailoring, agriculture act. A focus of inmate instructors has been set up. The technical staffs for each industry impart training to the inmate instructors as to how to give on the job training to prisoners working in the various production units.
- **Vocational Training**: vocational training classes have been organised in various prisons in carpentry, textile, sheet metal and other trades.
- **Education**: it was recognized that through properly organised and diversified educational programmes, prisoners can be re-educated for a better and useful way of social living.
- **Health Education**: in the compact community life of a prison, health education assumes a special significance. At various stages, prisoners are educated regarding the necessity of observance of personal cleanliness, institutional cleanliness, environmental sanitation, clean habits of living, personal health etc.
- **Social Education:** social education is recognized as an important channel of the correctional process. Social education programmes are organised through lectures, exhibition of films on social problems and distribution of literature on social education topics.
- **Social Adjustment Through Recreational and Cultural Activities**: In the boring and unexciting routine of an institution like the prison, recreational and cultural activities such as films, drama, folk dances, bhajans powadas, radio programmes of various types, reading of books, news papers and magazines act, have a significant role to play and as such they are organised in prisons. Likewise, the republic day, Independence Day, Mahatma Gandhi jayanti are some of the festivals which are celebrated in prisons. Second October is observed as prisoners' welfare day in all the prisons every year.

- **Guidance and Counselling**: In a correctional institution, proper attention has to be paid to the individual problems of the inmates. These problems can be multifarious such as, welfare of family members, contacts with family and community, economic problems, land litigation, legal help, institutional adjustment etc.
- **Prison Panchayat**: with a view to training prisoners to live like in a co-operative, democratic and disciplined manner to inculcate a sense of responsibility and self reliance amongst them, panchayats of convicted prisoners have been set-up central prisons and district prisons,
- **Prisoners Welfare Fund**: This fund has been organized at all central and district prisons with a view to extending necessary help to the needy prisoners. Prisoners are allowed to contribute to this fund on voluntary basis. It has been decided that from 1974-75, the amount representing net profits of the prison canteens should be contributed to the prisoners Welfare Fund through Government account.
- **Canteen**: In addition to the canteens, which were established in the year 1949 at central prisons and class I district prisons, departmental canteens have also been introduced in the year 1969 in district prisons, class II and class III.
- **Prison Industries**: The industries as shown in annexure have been organised which are in fact production-cum-training units as prisoners' gain practical knowledge of the working of the industries in which they work. The working knowledge of different trades so gained by prisoners helps them to earn their livelihood on release from prison. Articles manufactured in the prison industries are supplied to other Government department, semi-Government bodies and are also sold to public.
- **Prison Agriculture**: Greater attention is being paid to the reorganization and development of prison farms so as to achieve self sufficiency in regard to the requirements of vegetables and food grains.
- **Advisory Boards and Special Advisory Board:** Advisory Boards and Special Advisory Board constituted at Central and other prisons periodically review cases of certain categories of prisoners so as to take into consideration of their criminal behaviour, conduct and response to treatment and training in prisons and make recommendations to Government in suitable cases for premature release of the prisoners. Government decided to appoint a social scientist and a social worker on

each of these boards so that the cases of the prisoners can be reviewed systematically.

- **Aftercare of Prisoners**: Aftercare of prisoners is viewed in an integrated manner, commencing from the prisoners admission to the prison and extending during his stay in the institution and finally after his release.

**Administration of Prison and Prisoners in State of Maharashtra**[79]

**Introduction to Maharashtra**

Maharashtra is one of the most industrialized states of India, it occupies the western and central parts of the country and extends over the Sahyadri mountains; a vast stretch of 720 kilometers of the Arabian sea coast providing it a beautiful backdrop. The present state of Maharashtra was formed on May 1, 1960.

**Geography of Maharashtra**

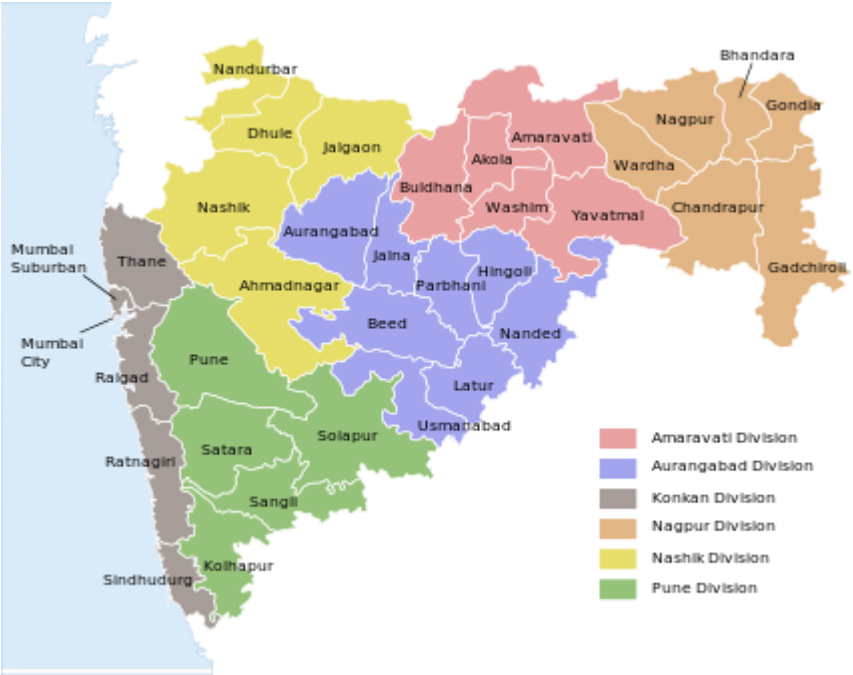
Maharashtra is located in the northern center of peninsular India, surrounded by the Arabian sea in the west, Gujarat and Madhya Pradesh on the north, Madhya Pradesh in the east and Karnataka and Andhra Pradesh on the south. The state extends between the latitudes 15.6 North and 22.1 North and longitudes 72.6 East and 80.9 East.

**Divisions of Maharashtra**

Maharashtra state is made up of 35 districts, 109 sub-divisions and 357 talukas which are grouped into six divisions.

- Amravati Division: Akola, Amravati, Buldhana, Washim and Yavatmal
- Aurangabad Division (Marathwada): Aurangabad, Beed, Hingoli, Jalna, Latur, Nanded, Osmanabad and Parbhani,
- Konkan Division: Mumbai City, Mumbai Suburban, Raigad, Ratnagiri, Sindhudurg and Thane
- Nashik Division: Ahmednagar, Dhule, Jalgaon, Nandurbar and Nashik
- Nagpur Division: Bhandara, Chandrapur, Gadchiroli, Gondiya, Nagpur and Wardha,
- Pune Division: Kolhapur, Pune, Sangli, Satara and Solapur

[79] http://mahaprisons.gov.in/1052/About-Prison-Department




The Prison Act IX of 1894 and the Prisoners Act III of 1900 are the Government of India Acts. But, the power of making rules under these Acts was delegated to the State Government after the subject was delegated from the "Union List" to the "State List" by the Government of India Act of 1935. The erstwhile States of Bombay and Madhay Pradesh had amended certain provision of these Acts under the said rule making powers in the application of these Acts to the respective States of Bombay and Madhya Pradesh. The State of Hyderabad framed its own Acts.

The provisions of the Model Prison Manual and the various recommendations of the All India Jail Manual Committee were taken into account by the Government of Maharashtra at the time of drafting the unified Prison Rules. Most of the recommendations of the All India Jail Manual Committee have been accepted and also implemented in the Maharashtra Prisons. Maharashtra State is one of the States, where the provisions of the Model Prison Manual and the recommendations of the All India Jail Manual Committee have been mostly implemented. Through the implementation of the recommendations of this committee, a new humanism was developed in all the prisons in the State. While the process of humanization of prisons was going rapidly, steps were also taken alongside to develop various phases of discipline, care, welfare, education, training and treatment of the offenders. The present 'Correctional Policy' in general and the 'Prison System' in particular has evolved as a result of the

implementation of various recommendations of the Bombay Jail Reforms Committee of 1946 and of the All India Jail Manual Committee of 1957.

Prison Department in Maharashtra

The prisons in Maharashtra State are constituted under the Prisons Act 1894. The main purpose of establishing the Prisons is to confine offenders committing offences under the existing laws and previous laws enacted from time to time. It is further implied that offenders are to be isolated for a certain period from general community with a view to ensuring security, peace and tranquility and further to plan a programme of treatment of offenders. The components of treatment may be counseling, guidance, re-education, and training. The period of imprisonment, therefore need to be utilized for the treatment. The functions, therefore, of the Prison Department can broadly be summarized as below:-

- To maintain the prisoners and to administer following Acts:-
  - The Prisons Act, 1894
  - The Prisoners Act 1900
  - The Transfer of Prisoners Act, 1950
  - Borstal Schools Act, 1929
  - Probation of Offenders Act of 1959 and Habitual Offenders Act, 1959
  - The Prisoners attendants in court at 1955.
  - The civil Jails Act 1874.
- To study the prisoners in relation to his criminal career and the factors contributing to the development of his criminal career. This study includes the study of socio-economic back ground of the prisoner, family conditions, modus-operandi, his contacts with neighbors, anti social elements his relationship with his family members, community school, neighbor-hood and this also includes as to how he developed these characteristics and later on developed into a criminal career.
- To prescribe programmes for him with a view to change his behavioral pattern and help programme and cooperate in the training and treatment etc. suggested.
- To provide opportunities for training in useful crafts and trades.
- To plan for his post-release rehabilitation.

- To produce prisoners in the court for adjudication In short, custody welfare, discipline training reformation, rehabilitation of prisoner are the important functions of the Prison Department.
- Prison Department is an independent Department that functions under the Home Department of Government of Maharashtra. Prison Department of Maharashtra State is headed by the Inspector General of Police (Prison) and it is divided into four Regions as under:
- **Western Region:** Principal, Yerawada Pune.,Kolhapur Central Prison,Yerwada Central Prison, Ahmednagar District Prison, Kolhapur District Prison, Sangli District Prison, Satara District Prison, Solapur District Prison, Visapur Open Prison, Atpadi Open Colony, Yerwada Open District Prison, Kolhapur District Open Prison
- **Central Region:** Aurangabad District Open Prison, D I G of Prisons, Central Region, Aurangabad, Aurangabad Central Prison, Nasik Road Central Prison, Beed District Prison, Dhule District Prison, Jalgaon District Prison, Latur District Prison, Nanded District Prison, Osmanabad District Prison, Parbhani District Prison, Principal, Borstal School, Nasik, Nashik Road District Open Prison, Paithan, Open District Prison,
- **Southern Region:** mumbai female pison, D I G of Prisons, South Region, Byculla, Mumbai, Mumbai Central Prison, Taloja Central Prison, Thane Central Prison, Alibag District Prison, Byculla District Prison, Kalyan District Prison, Ratnagiri Spl. District Prison, Sawantwadi District Prison
- **Eastern Region:** Gadchiroli Open Prison, D I G of Prisons, Eastern Region, Nagpur Amaravati Central Prison, Nagpur Central Prison, Akola District Prison, Bhandara District Prison, Buldhana District Prison, Chandrapur District Prison, Wardha District Prisonm, Yavatmal District Prison, Morshi Open District Prison, Amravati District Open Prison, Nagpur District Open Prison

Each region is headed by a Dy. Inspector General of Police (Prison). All four DIGs, Prisons are from IPS cadre. Prisons in Maharashtra are classified under following kinds:

| Sr. No. | Type of Prisons |
|---|---|
| 1 | CENTRAL PRISONS |
| 2 | DISTRICT PRISONS CLASS- I |

| | |
|---|---|
| 3 | DISTRICT PRISONS CLASS- II |
| 4 | DISTRICT PRISONS CLASS- III |
| 5 | OPEN PRISONS |
| 6 | OPEN COLONY (PRISON) |
| 7 | BORSTAL SCHOOL (PRISON) |

In Maharashtra Prison Department comprises of 9 Central Jails, 31 District Jails, 13 Open Jails, 1 Open colony and 172 Sub-Jails.

There are two separate Prisons for women at Pune and Mumbai. There is two Open prisons for women at Pune & Akola. Maharashtra Prison Department has its Head Quarter at Pune and State Training Center at Yerawada, Pune. There is a prison colony at Atpadi in sangli District, where huts have been constructed in a farm without any enclosure or fencing. Prisoners, who have shown good progress in the open prison and who can be trusted, in condition of more freedom, are conditionally released on parole and sent to this colony which is called 'Swatantrapur colony for temporarily released prisoners.

The first 'Open Institution' was started as an annex of Yeravda Central Prison in the year 1956; and the second one at Paithan in Aurangabad District in the year 1968. The starting of the Open Central Prison at Paithan is an important landmark in the history of prison administration of Maharashtra, as this institution, foundation for the development of a new correctional approach has been laid. The object is to save lifers and long term prisoners from the ill-effects of prisonisation and continuous exposure to criminal culture of closed prisons, having traditional walls. To this end, an atmosphere of opportunities is created for education, vocational training and self-discipline in open prisons. Prisoners are selected for the open prison on a highly selective basis. Only such prisoners who can adequately respond to a programme based on trust and responsibility are selected for being admitted in the open prison.

As recommended by the Bombay Jail Reforms Committee of 1946 Jail Officers' Training School was established at Yeravda in 1955 to impart theoretical as well as practical training on a scientific basis in all fields of correctional work to prison officers and guarding staff. The Principal of the School is appointed and is assisted by Jailor - cum-Instructors, other instructors and ministerial staff. Lectures from Poona University and Tata Institute of Social Sciences, Bombay are

invited to deliver lectures on subjects like law, public administration, sociology, social group work, social case work and group work techniques etc. at each central and district prison class I, Classification Committees have been set-up. Training and treatment programmes, designed by the Institutional Classification Committee, are implemented through various recreational, cultural and vocational training programmes in the institution.

The statistical information provided by National Crime Records department total number of in India are 4,19,623 out of which4,01,789 are male and 17,834 were females. Out of these jail inmates 1, 34, 168, inmates are convicts and considering the strength of under trials are 2, 82,076 i.e. near about 67.2% of total jail inmates. If we see the state wise occupancy rate of prison highest number of inmates were recorded from state of Uttar Pradesh followed by Madhya Pradesh, Maharashtra, Bihar and Punjab.

State of Maharashtra reported 29,657 jail inmates out of which 28,321 are male and 1,336 are females. Maharashtra recorded 113% of Occupancy rate of jail inmates out of which 7,891 are convicts and 21,667 are under trials. All these inmates were accommodate in different types of jails in Maharashtra consisting of Central Jails, District Jails and Sub Jails, etc.

In Maharashtra, correctional work is being viewed in an integrated manner, commencing from prevention control, care, training and treatment and ending in after care. Through a phased programme, the mass approach in prisons is being replaced by an individual approach through a system of diversified institutions, classification of prisoners on scientific basis and development of work training, educational and cultural programmes.

As per the jail manual the prisoners are provided off with different amenities such as canteen for prisoners, provisions for writing and receiving of letters, a separate library in prison premises, books for reading, supply of daily news papers, display of films in a week, sport and cultural activities, provisions for radio and television, celebration of different programmes such as independence day, republic day, Gandhi jayanti, etc., facilities for interaction with lawyers, family members and friends, relatives, etc., programmes of yoga and vipassana are also be carried out for the purpose of correctional method. Provisions are also made to provide vocational training to prisoners such as carpenter, simthy, tailors,

leather work, bakery, power looms, agriculture etc. Most of the prisons of Maharashtra have Agricultural land attached to them. It is being used for producing food grains, vegetables, fodder crops and other crops. The main aim of agriculture in prison is to rehabilitate inmates (criminals) by giving them works in fields and have a source of income through the labour charges paid to them. This training of doing various agricultural operations in field during crop growth will help the prisoners to implement that experience in his own field after his release. In the 27 Prisons of Maharashtra there are 341.44 ha. Land is used for agricultural cultivation. Out of this land 160.00 ha. Land is under irrigation and 181.44 ha. Land is rain fed.

**Information about Satara District**

District of satara is a semi urban area, consistiting of eleven talukas i.e Karad, Satara, Phaltan, Patan, Khatav, Koregaon, Man, Wai, Khandala, Jawali and Mahabaleshwar.

Satara has historical background. Most of the prevailing kingdoms in north are having their traces in Satara district. In the year 1848, Satara was referred as Satara Province. At that time Satara provience had 11 sub divisions. Viz Vijapuir, Jawali, Karad, Khanapur, Khatav, Koregaon, Pandharpur, Satara, Tasgaon, Walva, and Wai. In 1884, Malkam Peth was constituted, which is referred

afterwards as Mahabaleshwar. Two districts namely north Satara and South Satara were formed. Now North Satara is referred as Satara and south Satara is referred as Sangli. Satara district has eleven talukas. Variation in terrain is seen in the district.

**Location & Geographical Area:**

The district lies between 17.5 degree and 18.11 degree North latitude and between 73.33 degree and 74.54 degree East longitude. The district is completely landlocked being surrounded by Ratnagiri district on the West ,Sangli district on the south, Solapur on the west, Pune on the north and Raigad on the north west. It covers 10,480 sq kms. Most of the central satara district's area falls in the river Krishna basin and limited area falls in the river Bhima basin.

**Demography:**

As per 2001 census the total population of the district is 27.97 lacs with density of 267 persons per sq. km.. The male & female population is 14.02 lacs & 13.95 lacs respectively. The rural population & urban population is 23.99 lacs ( 86%) & 3.98 lacs (14%) respectively. The literacy rate in the district is 78.52% as against the state average of 76.2%.. Male literacy is 88.45% and the female literacy is 68.71%.

**Administrative set up:**

Satara district has three different terrains namely western hilly terrain, central Krishna river basin and eastern dry terrain. Satara City is the district head quarter & hence the Collector office, Zilla Parishad & all the district level offices are situated

**Prison Administration in Satara District[80]**

Satara consistes of a sub jail classified as Class II jail. The administration of prisoners in satara was administrated in sub jails and subsidiary jails. The habitual prisoners convicted and sentenced for a term exceeding three months are sent to Sangli District Prison and to Nasik Road Central Prison. Central prisoners sentenced over two years are sent to Yeravda Central Prison; and short term prisoner of the district with sentences ranging from one week to a month are accommodated in the taluka subsidiary jails which are located at Dahiwadi, Karad, Khandala, Koregaon, Mahabaleshwar, Medha, Patan, Vaduj and Wai.

These sub-jails are classified as class III sub-jails and are administered by the Revenue Department. The sub-jails at Phaltan and Satara are class II Head-quarter sub-jails. The Satara sub-jail is in charge of a Jailor-cum-Superintendent. The Phaltan sub-jail is in charge of a revenue officer. The police lock-ups in the district are under the direct control of the Inspector-General of Police.

**Prison Conditions in Satara**

- **Living Conditions, Sanitation & Hygiene**

The building of satara jail was constructed even before the period of independence. The history of satara jail shows that some of freedom fighters were imprisoned in satara prison during freedom movement. A pillar constructed in the

[80] https://cultural.maharashtra.gov.in/english/gazetteer/SATARA/law_prison.html

remembrance of these freedom fighters near the main gate of jail. The total premise for the jail was spread over near about 2 hector and 13 are i.e. 21348 sq. mtrs. The inside area of jail consists of 17563 sq. mtrs. Out of which near about 25 are land was reserved for agricultural purpose. Prisoners have planted various crops such as cabbage, bringer radish corianders etc. in this land for daily meal purpose. The authorized accommodation and the daily average population of the headquarter sub-jail at Satara for the year 2013 was as under:—

| Name of Jail. | Sanctioned accommodation | | | average number for the year | | |
|---|---|---|---|---|---|---|
| | Males | Females | Total | Males | Females | Total |
| Satara sub-jail | 159 | 9 | 168 | 263 | 16 | 276 |

The no of prisoners accommodate in jail is more than its total capacity. This is common situation throughout India. This may cause insufficiency of sanitary facilities. Therefore the habitual prisoners convicted and sentenced for a term exceeding three months are sent to Sangli District Prison and to Nasik Road Central Prison. Central prisoners sentenced over two years are sent to Yeravda Central Prison; and short term prisoner of the district with sentences ranging from one week to a month are accommodated in the taluka subsidiary jails which are located at Dahiwadi, Karad, Khandala, Koregaon, Mahabaleshwar, Medha, Patan, Vaduj and Wai. The prisoner shall be allowed to use his own clothing. A pure drinking water facility is available in jail, wholesome water is provided to prisoners for consumption, and the supply of water is freely available to every prisoner for drinking purposes. A separate well has been created for the purpose of agriculture.

Prison Statistics of Satara District Prison (Total Records 518)

| Date | Convict Total | Under trial Total | Prisoner Total |
|---|---|---|---|
| 10/06/2015 | 2 | 289 | 291 |
| 09/06/2015 | 2 | 295 | 297 |
| 08/06/2015 | 2 | 295 | 297 |
| 07/06/2015 | 2 | 298 | 300 |
| 06/06/2015 | 2 | 296 | 298 |
| 04/06/2015 | 2 | 301 | 303 |
| 03/06/2015 | 3 | 298 | 301 |

| | | | |
|---|---|---|---|
| 02/06/2015 | 2 | 292 | 294 |
| 01/06/2015 | 2 | 294 | 296 |

- **Medical Officer.**

No medical staff is sanctioned for sub-jails but the Maharashtra Medical Service Officer in charge of the local Government dispensary or the medical officer attached to the local Board or Municipal dispensary stationed at or nearest to the place where the sub-jail is situated is deemed to be the medical officer of the jail. In case of satara sub jail a separate medical officer is not appointed for this purpose however the medical officers of Karntisinh Nana Patil Civil Hospital Satara had assigned this responsibility to to take care of health of prisoners. He receives no extra pay for the jail duty but is entitled to an allowance of Rs. 15 or Rs. 20 per month if the daily average number of prisoners in the jail exceeds 40 or 80 respectively. He has to visit the sub-jail regularly at least twice a week and also at such other time as he may be sent for to attend cases of serious illness or to examine newly admitted prisoners. A small stock of medicines is always kept in sub-jail office to treat minor cases and serious cases are transferred to the local Government dispensary for treatment.

- **Right to meet relatives and friends**

Right to meet and consult legal advisor has been granted to prisoners, daily 10.00 to 11.00 in morning the relatives are allowed to meet and have interaction with prisoners, however previous permission is required for this purpose. The prisoners also have right to consult legal advisor of their choice.

- **Classification of Prisoners**

Prisoners are classified as Class I or Class II by the Court after taking into consideration their status in society and also the nature of the offence. They are further classified as casuals, habitual, under trials, and security or detenues. There is no separate class of “political prisoners "but certain rules which do not allow the grant of facilities and privileges on the scope of length of sentence are relaxed in their favor under the specific orders of Government. Prisoners are also grouped as short termers, medium termers and long termers. Prisoners with a sentence up to three months are classed as short termers, those sentenced to three months and above but up to two years are classified as medium termers and those sentenced to two years and above as long termers. The short termers are given deterrent

treatment while in the case of medium and long termers paramount importance is given to the reformation of the prisoner. Head-quarter sub-jails are meant for the confinement of short term prisoners and under trial prisoners only. Separate barricades are provided to female prisoners.

- **Right to free legal Aid**

  At Satara jails right to legal aid is provided to prisoners, a separate panel of advocates has been created by the District Legal Services Authority, Satara for the purpose of providing legal aid to under trials. At every Saturday visits of members of legal aid committee along with a judicial office has been arranged in jail for providing legal assistance to prisoners. even students of Ismailsaheb Mulla law College also visit to jail along with teaching staff for providing legal awareness to under trial prisoners.

- **Training**

  The Superintendents of Prisons and Jails receive theoretical as well as practical training in Jail Officer's Training School, at Yeravda, on a scientific basis in all fields of correctional work. A comprehensive training programme in correctional administration has been prescribed and a vocational course of training has been chalked out which is designed to meet with the actual requirements of jail guards in discharging their daily duties satisfactorily.

- **Remission of Sentence**

  Only short-termers are confined to the Jails of Satara they does not given chance of remission of sentence. But the rules for the grant of remission of sentences apply to long termers.

- **Work**

  Work is arranged according to the prisoner's health. On admission the prisoner is examined by the medical officer who classifies him as fit for light, medium or hard labour. A work allotment committee is constituted for central and district jails, the members of which have to take into account health conditions of the prisoners, their aptitude, past experience, etc., and assign suitable work for newly admitted prisoners with a sentence of six months and above. Any changes in the work so allotted to prisoners by the committee have to be effected only with the concurrence of the members of the committee. No such committee is to be appointed for short term prisoners.

- **Payment of Wages**

  Long and medium term prisoners, so also security and under trial prisoners who volunteer to work are paid 1/5th of the wages, which are paid normally for similar work outside provided they complete their daily quota of task to the satisfaction of the authorities concerned.

- **Release on parole and furlough.**

  A prisoner may be released on parole in cases of serious illness or death of any member of his family or his nearest relative or for any other sufficient cause. The period spent on parole will not count as part of the sentence. The prisoner who desires to be released on parole has to submit his application to the Jail Superintendent who has to endorse his remarks thereon and submit one copy thereof direct to Government and one copy to the Inspector-General of Prisons along with the nominal roll of the prisoner concerned. Prisoners who apply for parole on false grounds or who abuse the concession or commit breaches of any of the conditions of parole are liable to be punished. . Enquiries as regards genuineness or otherwise of the grounds advanced in the application are made through the local revenue and police officers.

  Prisoners with a sentence of one year and above are entitled to being released on furlough for a period of two weeks which will be counted as part of sentence.

- **Board of Visitors**

  A Board of Visitors composing official and non-official visitors is appointed for every headquarter sub-jail and taluka sub-jails. There are ordinarily four non-official visitors for headquarter sub-jails out of which two are the members of the Maharashtra Legislature and two are nominated by Government of whom one is a lady visitor. The appointment of non-official visitors other than members of the Maharashtra Legislature is made for a period not exceeding three years. Persons who in the opinion of Government are interested in the prison administration and are likely to take interest in the welfare of prisoners both while they are in prison and after their release are nominated by Government on the Board of Visitors on the recommendation of the District Magistrate concerned and Inspector-General of Prisons. The Chairman of the Board of Visitors who is usually the District Magistrate arranges for a weekly visit to the prison by one of the members of the Board. Quarterly meetings of the whole board are convened. Non-Official visitors

are also allowed to visit prison on any day at any time during the day in addition to the weekly visit arranged by the Chairman. The board records in the Visitor's Book its observations on the result of the detailed inspection of the jails. Any remark at the quarterly meeting or at the weekly visits deserving special and prompt disposal is immediately forwarded by the Superintendent to the Inspector-General for necessary orders. Other remarks made by the visitors and the quarterly committee of visitors are forwarded immediately after the end of the month by the Superintendent to the Inspector-General with such remarks as he may desire to offer.

- **Vocational Training and Recreation**

Utmost precautions are taken in treating the prisoners suffering from various diseases and jail hospitals are equipped with all possible requirements. Special types of diseases are attended to with due care and all possible measures are taken against the spread of epidemics and contagious diseases.

- **Other Facilities:**

The daily routine extends from 5-15 a.m. to 9-30 p.m. The actual working hours are from 8-15 a.m. to 10-45 a.m. and 11-45 a.m. to 4-15 p.m. (i.e. 7 hours in all) and other parts of routine include time for meditation, congregational prayers, physical training, games, social engagements, talks, singing of devotional songs, education classes and reading of newspapers and books. Central and District Prisons in the State have extensive factories comprising various sections such as textile, carpentry, smithy, mochi, etc. Prisoners in headquarter sub-jails are employed in gardens attached to the jail prison and in other services like sweeping of barracks, kitchen, conservancy, etc. and on works like manufacture of narrow tape, cot tape, etc.

Prisoners are provided with a separate library for the purpose of reading books, a separate recreational hall is available for the purpose of recreation as well as for display of movies, at every Wednesday a picture file was played for the prisoners, some of the prisoners are allowed to conduct farming in the premises. A separate video conferencing room was also available in the jail premises. Below are some of the Photographs about different programmes and functions for prisoners.

Legal Awareness Programme

Legal Awareness Programme

Legal Awareness Programme

Inauguration of Legal Aid Cell

Bandii Sudharan Kendr, Satara karagruh

Bandii Sudharan Kendr, Satara karagruh

# CHAPTER VI

# CONCLUSION

Human rights are being basic rights, it cannot be denied to any one irrespective of nationality, place of birth, caste, creed, religion, age, sex etc. All Human beings are entitled to some basic human rights by virtue of being as a member of human family. Under international as well as national laws provisions has been incorporated for the protection of human rights. Prisoners or trial awaiting persons are also by virtue of being human beings are vested with some basic human rights even under confinement. Universal Declaration of Human Rights which states that: "No one shall be subject to torture or cruel, inhuman or degrading treatment of punishment" the United Nations Covenant on Civil and Political Rights which states in part: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person". According to the Article of 25 of Universal Declaration of Human Rights "All Human beings are said to be born free and equal in dignity". The human rights are said to be the natural and basic birth rights of all human being without any discrimination and therefore everyone is equally liable for all these rights. Article 21 of the Constitution of India, recognizes that the right to life includes a right to live with human dignity and not mere animal existence. Thus, a prison atmosphere can be accepted as civilized only if it recognizes the basic human rights and the constitutional rights of the prisoners and makes efforts for the effective and meaningful enjoyment of the same by means of prison reforms.

The constitution of India confers number of fundamental rights upon citizens which are also available to prisoners. The criminal justice system in India also is basically based on three principles. These three principles are said to be principles of fair trial. such as presumption of innocence unless guilt is proved, burden of proving guilt is always on prosecution that prosecution must prove guilt beyond reasonable doubt & benefit of doubt is always given to the accused.

The Prisoners Act of 1894 and 1990**,** has made different provisions for the protection and welfare of prisoners such as provisions for accommodation and sanitary conditions for prisoners, provision for the shelter and safe custody of the excess number of prisoners who cannot be safely kept in any prison, provisions relating mental and physical state of prisoners, provisions relating to the

examination of prisoners by qualified Medical Officer, provisions relating to separation of prisoners, containing female and male prisoners, civil and criminal prisoners and convicted and under trail prisoners, provisions relating to treatment of under trials, civil prisoners, parole and temporary release of prisoners. These laws also impose duty on the govt. for maintenance of infrastructure of jails in proper conditions. The prisons are not only be considered as place of detention, but also a considered as reformatory schools. It is the duty of Government for the removal of any prisoner detained under any order or sentence of any court, which is of unsound mind to a lunatic asylum and other place where he will be given proper treatment.

Government of India had set up in 1980 a Committee on jail reforms under the Chairmanship of Mr. Justice A.N. Mulla, a retired judge of the Allahabad High Court. The report submitted by the said Committee is known as 'Mulla Committee Report'. It contains a lot of very valuable suggestions. These committees made a number of recommendations to improve the conditions of prisons, prisoners and prison personnel all over the country.

The role of the Supreme Court in the past few years in introducing jail reforms has been commendable. Supreme Court in its various judgments tries to protect the rights and freedoms of citizens of India including rights and freedoms of prisoners. Supreme Court while extending the horizons of constructional rights has given wide interpretation to constitutional provisions. Supreme Court of India has been active in responding human rights of prisoners. They have given different category of rights to the prisoners during detention which are specifically recognized under Indian laws as well as under principles of international covenants. Following are some of the assumptions based upon which supreme court has given these basic rights even to the prisoners.

- "Convicts are not by mere reason of the conviction denuded of all the fundamental rights which they otherwise possess"
- "Like you and me, prisoners are also human beings. Hence, all such rights except those that are taken away in the legitimate process of incarceration still remain with the prisoner. These include rights that are related to the protection of basic human dignity as well as those for the development of the prisoner into a better human being"

- If a person commits any crime, it does not mean that by committing a crime, he/she ceases to be a human being and that he/she can be deprived of those aspects of life which constitutes human dignity.
- It is increasingly being recognized that a citizen does not cease to be a citizen just because he/she has become a prisoner.
- The convicted persons go to prisons as punishment and not for punishment Prison sentence has to be carried out as per the courts orders and no additional punishment can be inflicted by the prison authorities without sanction.
- Prisoners depend on prison authorities for almost all of their day to day needs, and the state possesses control over their life and liberty, the mechanism of rights springs up to prevent the authorities from abusing their power. Prison authorities have to be, therefore, accountable for the manner in which they exercise their custody over persons in their care, especially as regards their wide discretionary powers.
- Imprisonment as punishment is now rethought of as „rehabilitative punishment. This involves a philosophy that individuals are incarcerated so that they have an opportunity to learn alternative behaviors to curb their deviant lifestyles. Correction, therefore, is a system designed to correct those traits that result in criminal behavior. The rehabilitative model argues that the purpose of incarceration is to reform inmates through educational, training, and counseling programmes. This development and growth requires certain human rights without which no reformation takes place.
- Disturbing conditions of the prison and violation of the basic human rights such as custodial deaths, physical violence/torture, police excess, degrading treatment, custodial rape, poor quality of food, lack of water supply, poor health system support, not producing the prisoners to the court, unjustified prolonged incarceration, forced labour and other problems observed by the apex court have led to judicial activism.
- Overcrowded prisons, prolonged detention of under trial prisoners, unsatisfactory living condition and allegations of indifferent and even inhuman behavior by prison staff has repeatedly attracted the attention of critics over the years. Unfortunately, little has changed. There have been no worthwhile reforms affecting the basic issues of relevance to prison administration in India.

- Right to representation in judicial tribunal is considering being important part of right to access to justice. Unless, the person allowed to approach to court for enforcement of his rights, the right to remedy is worthless. Right to representation includes right to be represented through legal practitioner of his own choice. Under law the provisions are made to provide this right of representation through proper advocate.

As per the jail manual the prisoners are provided with different amenities such as canteen for prisoners, provisions for writing and receiving of letters, a separate library in prison premises, books for reading, supply of daily news papers, display of films in a week, sport and cultural activities, provisions for radio and television, celebration of different programmes such as independence day, republic day, Gandhi jayanti, etc., facilities for interaction with lawyers, family members and friends, relatives, etc., programmes of yoga and vipassana are also be carried out for the purpose of correctional method. Provisions are also made to provide vocational training to prisoners such as carpenter, smithy, tailors, leather work, bakery, power looms, agriculture etc. Most of the prisons of Maharashtra have Agricultural land attached to them. It is being used for producing food grains, vegetables, fodder crops and other crops. The main aim of agriculture in prison is to rehabilitate inmates by giving works in fields and have a source of income through the labour charges paid to them. This training of doing various agricultural operations in field during crop growth will help the prisoners to implement that experience in his own field after his release.

In state of Maharashtra conditions in jail are not far from satisfaction.as per privailing provisions in Maharashtra Jail Manual some provisions are made to prepare prisons as model prisons, but its far from reach. Satara one of the district from Maharashtra consistes of a sub jail classified as Class II jail. The administration of prisoners in satara was administrated in sub jails and subsidiary jails. The habitual prisoners convicted and sentenced for a term exceeding three months are sent to Sangli District Prison and to Nasik Road Central Prison. Central prisoners sentenced over two years are sent to Yeravda Central Prison; and short term prisoner of the district with sentences ranging from one week to a month are accommodated in the taluka subsidiary jails which are located at

Dahiwadi, Karad, Khandala, Koregaon, Mahabaleshwar, Medha, Patan, Vaduj and Wai.

These sub-jails are classified as class III sub-jails and are administered by the Revenue Department. The sub-jails at Phaltan and Satara are class II Head-quarter sub-jails. The Satara sub-jail is in charge of a Jailor-cum-Superintendent. The Phaltan sub-jail is in charge of a revenue officer. The police lock-ups in the district are under the direct control of the Inspector-General of Police.

This right is protected and implemented in practice in Satara but it has to be advance and justified in proper way. Rights of prisoners including constitutional as well as other rights are considered to very much important for protection and rehabilitation of prisoners. Right to legal aid as provided by Article39A of Indian Constitution necessary for providing right to free access and for equal justice. These rights of under trial prisoners in Satara dist. is protected and implemented in practice but still proper man power, Funds and Awareness need to be consider. Different setup of penal of Advocates and trained people, with awareness about this right needs to establish. The directives issued by judiciary from time to time also need to be implemented in strict scene. The role of Dist. legal services authority is also important in achieving this objective. The problem of overcrowding is still present in prisons in Satara, the system of speedy trial needs to be implemented in effective manner. Right to bail may be granted were arrest is not strictly necessary. Overall from the findings, excluding common problems the rights of prisoners are protected in better manner in prisons in Satara District.

**Recommendations**

In order to conclude we can say that the positions of prisoners are far from satisfaction. To overcome these issues and to provide a model prison we have to follow certain norms as provided by the judiciary in different cases. Some of the recommendation I would like to suggest for the protection of rights of prisoners as well as under trials.

- Drastic methods should be adopted so as to ensure speedy trials of under trial prisoners.
- Number of Fast Track Courts need to be established for speedy disposal of matters.

- Special Courts in Jails for conduct of fast trials of under trials.
- Urgent steps should be initiated to reduce the delays in bringing prisoners to trial.
- The procedure provided under Cr. P.C. should be altered so as to ensure speedy justice to under trials.
- To reduce the period of trial the police investigation must be completed within specified time i.e. sixty or ninety days as the case may be, and investigation report should be submitted within stipulated tine.
- Under trial prisoners should be timely being produced before the presiding magistrates on the dates of hearing.
- The possibility of producing prisoners at various stages of investigation and trial, in shifts should be explored.
- Video conferencing between jails and courts should be enhanced and tried even in district and Sub jails.
- Number of non bailable offences should be reduced and converted to bailable offences, Cr.P.C. may be amended accordingly.
- Discretion in awarding bail should be used judicially and not arbitrarily.
- Nature of punishment should be altered; Alternatives to Imprisonment in the form of community services, release on parole, Restitution to the victim or a compensation order and other reformative methods should be maximally be exhausted.
- So as to afford greater access and interaction with the family the grounds for awarding parole should be relaxed.
- Nature of legal aid and legal assistance should be altered such as setting up of Legal Aid Clinics in Jails, setting-up of Legal Literacy Clubs, and training of Legal Aid to lawyers and Para Legal Volunteers, legal Literacy Classes for Children etc.
- Legal aid should be made available an accused at the first point of contact with the police.
- Measures should be adopted to ensure freedom of communication between the prisoner and members of his or her family who should be permitted periodic visits under conditions which while-safeguarding security do not impair privacy of communication.

- The right of a prisoner to see a lawyer of his or her choice should be ensured. Meetings with the lawyer may be subject to reasonable regulation as to time and place but not held within the hearing of prison officials.
- A separate agency may be appointed to monitor and to ensure that guidelines and judicial decisions relating to prisoners are being properly and meticulously be implemented.
- Living condition in every prison and allied institutions shall be compatible with human dignity in all aspects such as accommodation, hygiene, sanitation, food, clothing, medical facilities etc. All factors responsible for vitiating the atmosphere of these institutions shall be identified and dealt with effectively.
- While prisoners should be given such type of education in jails which may create their inner development so that when they are released they can be more easily integrated into society.
- Human rights education should be compulsory for the police and other law enforcement officers.
- It is need to change in the attitude and culture of the police while treating prisoners
- There may be Human Rights Cell in every jail to monitor against custodial violence in case of prisoners.
- Rigorous actions should be imposed for the practice of torture and custodial violence and such offences should be tried by a panel of judicial officers.
- Provisions should be made for the award of compensation to prisoners who have been victims of unnecessary victimisation, for human rights violations by police and jail officials, for delay in trials.
- Provisions should be enacted for co-ordination between NGOs, human rights organisations, jail officials and legal aid committees.
- Rules for the Treatment of Prisoners should be incorporated in Model Prison Manual should drastically be implemented in the criminal justice system.
- The steps must be taken to maintain 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 strategy.

Even though there are lots of provisions for the protection of prisoners as well as under trials, however these provisions are not properly implemented.

Overcrowding is one of the big issues in the development of prison administration. Total number of jail inmates on 31st December 2015 consisting of 4, 19,623, out of it 4, 01,789 were male and 17,834 were female. Considering the capacity of jails in India and occupancy rate, the number of inmates are more than the capacity of jails. the data provided by National Crime Records department, it provides that out of total inmates 32.0% inmates were convicts, 67.2% were under trials, 0.6% are detenues and 0.2% are other jail inmates. Percentage of under trials is more than the convicts; the only reason is the pendency of litigations. There are lots of reasons for the pendency of litigations such as poverty, illiteracy, indecency & other reasons. Person is not in a position to appoint lawyer for his defence or representation. In such a situation right to representation can be exercised through the process of legal aid. Right to legal aid is provided by the constitution of India as well as other legislations.

Indian judiciary has also recognized this right as basic right for enforcement of fair, human & efficient criminal judicial system. It is considered to be the foundation of other rights. The concept of Right to legal aid to under trial prisoners is very important, From the analysis of data collected and examined we can concludes that, Right to free legal aid which was enriched by including under article 21 of Indian Constitution as part and parcel of right to fair trial by judiciary as well as legislators given it wide importance. This right is also available to trial awaiting prisoners.

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# APPENDIX A

**UGC MINOR RESEARCH PROJECT**

**Rights of Prisoners with special reference to Right to Free Legal Aid for under trial prisoners and its implementation in the District of Satara**

## Questioner for Interview of prison Authorities

(This information will be kept confidential and will be used only for the academic and research purposes.)

Name of Authority: _____

Designation: _____

Name of prison:_____

Place: _____

1. How many years you are working in this prison?
2. What is the prison capacity of this jail?
3. What is the category of this jail?
4. How many staff is working in this jail?
5. Whether the staff has been provided training to tackle issues relating to prisoners?
6. Which Act is applicable to this prison?
7. Whether provisions of Model prison Manual have been adopted in this prison?
8. What type of jail inmates were accommodated in this prison?
9. How many prisoners were accommodated in this jail?
10. What facilities are being provided to jail inmates in this jail?
11. Whether recreational facilities are available to prison inmates in the jail?
12. Whether the healthy environment reformation of prisoners has been providing for prisoners?
13. Provisions for clean water and other hygienic were strictly followed in the prison?
14. Whether appropriate classification of prisoners on the basis of their sex, nature of crime etc. has been implemented?
15. Whether separate medical officer has been appointed in the prison?
16. Whether provisions of Cr.P.C. relating bail and bonds, timely release of prisoners, parole etc. has been strictly adherers too?
17. Whether under trial prisoners were timely send to court?

18. Whether the video conferencing facility is available in the jail?
19. Is there any committee to provide free legal aid to under trials?
20. What is the schedule of meetings of Legal aid Cell?
21. Whether programmes on legal awareness, on social importance were organized in the jail premises?
22. Whether prisoners were allowed to meet and have interaction with their family members and friends?
23. What is the time and schedule provided for such interaction?
24. Whether prisoners were allowed to meet and interact with their legal advisors?
25. Is there any committee to monitor the functioning of the prison?
26. What type of work the prisoners are performing in prison?
27. Whether they are paid for their work in jail?
28. Whether human right norms were being followed in the jail?
29. Whether the guidelines provided by the judiciary have been properly implemented in the jail?
30. Is there any mechanism for redressal of grievances of jail inmates in the jail?

# APPENDIX B

**UGC MINOR RESEARCH PROJECT**

**Rights of Prisoners with special reference to Right to Free Legal Aid for under trial prisoners and its implementation in the District of Satara**

## Questioner for Interview of Prison inmates

Name of jail inmate: _____

Sex: _____

Age: _____

Address: _____

1. Whether you are aware about the provisions of jail manual?

**YES / NO**

2. Whether you are aware about the rights of prison inmates?

**YES / NO**

3. Whether prisoners accommodated in this jail are more than its capacity?

**YES / NO**

4. Whether you are under trial prisoner?

**YES / NO**

5. Whether you have appointed legal practitioner on your choice?

**YES / NO**

6. Whether you are aware about the provisions of free legal aid?

**YES / NO**

7. Whether court or prison authorities have given you information about legal aid?

**YES / NO**

8. Whether Legal Aid Cell is working in this prison?

**YES / NO**

9. Whether meetings of legal aid cell were conducted timely in this jail?

**YES / NO**

10. Whether prisoners are classified as per their nature of crime or as per sex?

**YES / NO**

11. Whether facilities provided in jail are good and well maintained?

**YES / NO**

12. Whether timely medical checkups and proper medical attentions were given in the jail?

**YES / NO**

13. Whether you are allowed to visit your family members, friends?

**YES / NO**

14. Whether your legal advisor visits you in jail and provides proper guidance?

**YES / NO**

15. Whether you are sent to court on date provided by court?

**YES / NO**

16. Whether the environment in the jail is healthy and freely?

**YES / NO**

17. Whether you are provide healthy food and pure drinking water?

**YES / NO**

18. Whether sanitary facilities in the jail are sufficient considering the capacity of jail?

**YES / NO**

19. Whether recreational facilities are been provided in the jail?

**YES / NO**

20. Whether social awareness programmes were conducted in the jail?

**YES / NO**

21. Is there proper provisions were incorporated for safety and security of the prisoners?

**YES / NO**

22. Whether living condition in the jail is good for reformation and rehabilitation of prisoners?

**YES / NO**

23. Whether any torture or inhuman treatment is being follow in the jail?

**YES / NO**

24. Is there any committee to tackle your grievances in the jail?

**YES / NO**

25. Any other information :

_____

_____

# APPENDIX C

**UGC MINOR RESEARCH PROJECT**

**Rights of Prisoners with special reference to Right to Free Legal Aid for under trial prisoners and its implementation in the District of Satara**

## Questioner for Interview of Legal Practitioner

(This information will be kept confidential and will be used only for the academic and research purposes.)

1. Whether you are aware about the provisions of jail manual?

   **YES / NO**

2. Whether you are aware about the rights of prisoners?

   **YES / NO**

3. Whether prisoners are classified as per their nature of crime or as per sex?

   **YES / NO**

4. Whether facilities provided in jail are good and well maintained?

   **YES / NO**

5. Whether living condition in the jail is good for reformation and rehabilitation of prisoners?

   **YES / NO**

6. Whether any torture or inhuman treatment is being reported from the jail?

   **YES / NO**

7. Whether you are aware about the provisions of free legal aid?

   **YES / NO**

8. Whether you are aware about the working of Legal Aid Cell in this prison?

   **YES / NO**

9. Whether meetings of legal aid cell were conducted timely in this jail?

   **YES / NO**

10. Whether free legal aid is being provided to poor and needy prison inmates?

    **YES / NO**

11. Whether legal services authority is working and functional in your area?

**YES / NO**

12. Whether you are allowed to visit jail for interaction with your client?

**YES / NO**

13. Whether provisions are available for confidential communication and interaction in the jail?

**YES / NO**

14. Whether your client has been produced in court on time by jail authorities?

**YES / NO**

15. Is there proper provisions were incorporated for safety and security of the prisoners?

**YES / NO**

16. Is there any committee to tackle your grievances in the jail?

**YES / NO**

17. Any other information :

_____

_____

_____

_____