



HUMAN RIGHTS OF THE PRISONERS: AN INDIAN SCENARIO

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Introduction:

Human rights are those that have been derived from natural law which have evolved out of natural rights; rights inherent to people by virtue of their being human and being of a moral and rational nature and having a common capacity to reason. This comprises a core base of basic guarantees, including the right to life, freedom from torture or inhuman or degrading treatment or punishment; freedom from slavery, servitude, and forced labour; the right to free movement (mobility); and, the right to food and shelter.¹

These are very basic rights that are necessary for a human being to survive in the world at large. Today's notion of human rights has descended from that of natural laws which have evolved as a part of natural rights. They are positivistic in the sense that the state has contracted a deal with its citizenry, and they are more natural in origin.²

Here, it is noteworthy that the Protection of Human Rights Act, 1993, which is most exhaustive, defines human rights as under:

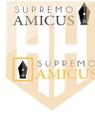
"Human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts of India."

It includes rights like equality before law, prohibition of discrimination on grounds of religion, race, caste, sex or place of birth, equality of opportunity in matters of public employment, freedom of speech and expression, freedom to form associations or unions, to practice any profession, to carry on any occupation, trade or business, protection of life and personal liberty, prohibition of traffic in human beings and forced labour, right to freedom of religion, protection of interests of minorities etc. International documents, namely, Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights and other International Treaties and Declarations as also various Resolutions have widened the scope of human rights and all the rights associated with human beings, directly or indirectly, have come within the ambit of the term. All such rights must be respected, acted upon and implemented by all civilized nations.³

¹ Durga Das Basu, Commentary on the Constitution of India, 9th Edition Vol. 5, Lexis Nexis, Gurgaon, Haryana, 2015, p. 4725.

² Ibid.p.4726

³ Durga Das Basu, Commentary on the Constitution of India, 9th Edition Vol. 5, Lexis Nexis, Gurgaon, Haryana, 2015, p. 4725.



Human Rights in the Indian Constitutional Framework:

The Constitution of India is amongst the most comprehensive Constitutions in the world and is considered a living instrument,⁴ one that can be adapted and changed according to developments in society and the needs and exigencies of the people. The Preamble, Part-III of the Constitution consisting of Fundamental Rights, Part-IV comprising Directive Principles, and Part-IV (A) containing Fundamental Duties constitute the human rights framework in our Constitution.⁵

In International Human Rights Law parlance, civil and political rights are generally referred to as 'first-generation rights' and provide for certain basic guarantees for an individual in relationship to a state; they involve the inviolability of the individual against any invasive action by the state. These are distinct from 'second-generation rights', which generally require action by the state to provide certain basic needs or amenities to an individual. In other words, civil and political rights demand freedom from coercive action by the state against an individual, while economic, social, and cultural rights necessitate

certain actions and provisions by the state in order for it to fulfil its obligations.⁶

Indian Constitution, however, reflects the above classification of human rights. Civil and political rights are contained in Part III (Fundamental Rights) of the Constitution and are justifiable, i.e. they can be enforced through a court of law. Economic, social, and cultural rights are contained in Part IV (Directive Principles of State Policy-DPSPs) and are non-enforceable in a court of law but are 'fundamental to governance.'⁷

Therefore, it can be safely deduced that the Fundamental Rights imbuing the human rights are applicable to every person residing in India whether a freeman or a detainee or a prisoner. It would be worthwhile in this context to study further the state of prison administration in India and to enquire how far the human rights are available to them within the ambit of the Indian Constitution.

Prison Administration:

In the post-Maneka era, in a catena of cases, the Supreme Court has exposed the cruelty of the system of Prison Administration in India, and has sought to humanize it. The Court has taken an active interest in seeking to improve a

⁴ I.R. Coelho Vs. State of Tamil Nadu, AIR 2007 SC 861.

⁵ Oxford Human Rights and Humanitarian Law, Developments in Indian and International Law, South Asia Human Rights Documentation Centre, Oxford University Press, New Delhi, 2008, p.205.

⁶ Oxford Human Rights and Humanitarian Law, Developments in Indian and International Law, South Asia Human Rights Documentation Centre, Oxford University Press, New Delhi, 2008, p.205.

⁷ M.P. Jain, Indian Constitutional Law, 7th Edition, Lexis Nexis, Gurgaon Haryana, 2015, p.1144.



system which is cruel and insensitive to human pain and suffering. In the process, the scope of the Fundamental Right of personal liberty guaranteed by Article 21 has been broadened.⁸

Time and again, the Supreme Court has emphasized that Article 14, 19 and 21 " are available to prisoners as well as freemen. Prison walls do not keep out Fundamental Rights."⁹

In *State of Andhra Pradesh Vs. Challa Ramkrishna Reddy*,¹⁰ the Supreme Court has observed in this connection "A prisoner, be he a convict or under-trial or a detenu, does not cease to be a human being. Even when lodged in a jail, he continues to enjoy all his Fundamental Rights including the right to life guaranteed to him under the constitution. On being convicted of crime and deprived of their liberty in accordance with the procedure established by law, prisoners still retain the residue of constitutional rights." The overriding principle is that detainees and prisoners, despite their allegedly deviant behaviour, are nevertheless human beings worthy of respect and ultimately must have their dignity upheld. In *Charles Sobraj Vs. Superintendent, Central Jail, Tihar*¹¹, the Supreme Court pronounced, "Prisoners retain all rights enjoyed by free citizens except those lost necessarily as an incident of confinement." Therefore,

prisoners are not stripped of all of their fundamental rights merely by virtue of their status as detainees.¹²

The Court has thus adversely commented several times upon certain aspects of prison administration. The Court has identified the unfettered power of Jail administration to mask human rights abuses under the guise of protecting society from potential escapees as a major impediment to prisoners' rights. The Court has sought to humanise prison administration to some extent through its various pronouncements.

Fundamental Rights of a Prisoner:

As stated earlier, it is now established that even where a person is convicted and imprisoned under sentence of court, he does not lose all the fundamental rights belonging to all persons under the constitution, excepting those which cannot possibly be enjoyed owing to the fact of incarceration, such as the right to move freely [Art. 19 (1) (d)] or the right to practice a profession [Art. 19 (1) (g)]. Hence, a prisoner can claim to exercise the following fundamental rights:

- (a) The right to acquire hold and dispose of property. [Art. 19 (1) (f) having been repealed, this right the prisoner shall

⁸ M.P. Jain, Indian Constitutional Law, 7th Edition, Lexis Nexis, Gurgaon Haryana, 2015, p. 1144.

⁹ T.V. Vitheeswaran Vs. State of Tamil Nadu, AIR 1983 SC 361 (2), cited in M.P. Jain, Indian Constitutional Law, p. 1144.

¹⁰ AIR 2000 SC 2083, at 2088, Cited in M.P. Jain, Indian Constitutional Law, p.1144.

¹¹ AIR 1978 SC 1514.

¹² Ibid

¹³ Durga Das Basu, Commentary on the Constitution of India, 9th Edition, Vol. 5, 2015, p. 4876.



have to claim under the ordinary law].¹⁴ A convict is entitled to the right of any other workman and hence entitled to wages for his work.¹⁵

- (b) The freedom of expression,¹⁶, reading and writing,¹⁷ except in so far as it is circumscribed by the fact of imprisonment.¹⁸
- (c) The right under Art. 21, not to be deprived of his life or personal liberty except 'according to procedure established by law.'¹⁹ A prisoner, whether a convict, under trial or detenu continues to enjoy all the fundamental rights including the right to life guaranteed to him under the Constitution.²⁰

Several International Conventions, guidelines and rules exist to ensure humane treatment to the prisoners. In its General Comment on Art.10 of ICCPR, the Human Rights Committee held that it supplements Art.s7 on torture. For all persons deprived of their liberty, the prohibition of treatment contrary to Art.7 (on prohibition of torture etc.) is supplemented by the positive requirement of art. 10 (1) of the Covenant that they shall be treated with humanity and with respect for the inherent dignity of the human person in prisons is a part of administration of justice. The subject of human rights and

administration of justice, therefore, deals with the protection of persons in prisons. Standard Minimum Rules For the Treatment of Prisoners; Code of conduct for Law Enforcement officials; Standard Minimum Rules for Administration of Juvenile Justice; Convention Against Torture, etc. of the United Nations are all international instruments dealing with protection of persons in prisons as a part of the human rights in the administration of justice. Standard Minimum Rules for the treatment of Prisoners, as the title indicates, are the minimum conditions which are expected as suitable by the United Nations. These rules require that different categories of prisoners shall be kept separate; their accommodation shall meet all requirements of health, etc. Every prisoner is to be provided separate and sufficient clean bedding and food of adequate nutritional value, special care of women prisoners would be taken, prisoners shall be allowed contact with outside world and the prison administration would comprise of suitable professionals sensitive to the needs of prisoners. These are the stated minimum conditions which must invariably be satisfied. The right of

¹⁴ Bhuvan Mohan Patnaik Vs. State of A.P. , AIR 1974 SC 2092.

¹⁵ State of Gujarat Vs. Hon'ble High Court of Gujarat, AIR 1998 SC 3164.

¹⁶ State of Maharashtra Vs. Prabhakar, AIR 1966 SC 424.

¹⁷ Sunil Batra (II) Vs. Delhi Administration, AIR 1980 SC 1579.

¹⁸ State of Maharashtra Vs. Prabhakar, AIR 1966 SC 424.

¹⁹ Bhuvan Mohan Patnaik Vs. State of A.P., AIR 1974 SC 2092.

²⁰ State of A.P. Vs. Challa Ramkrishna Reddy, (2000) 5SCC 712.



prisoners emanate from these duties of the detaining authority.²¹

A. Human Rights of Prisoners: The Judicial Approach

- (i) **Right against Inhuman treatment: *Sunil Batra (II) Vs. Delhi Administration***²² : In this case the petitioner did not seek his release from the jail because he was undergoing a sentence of life imprisonment but he did seek protection from inhuman and barbarous treatment inflicted upon him in jail. The petitioner was subjected to physical torture by a Warden of the Tihar Jail as means to extract money from the petitioner. Batra, a convict, came to know this act and brought the incident to the knowledge of the Court through a letter. The Court converted this letter into a habeas corpus petition and approved and reiterated the specific guidelines laid down by Supreme Court in Sunil Batra's case (No1) before punishing a prisoner. The Court gave following directions to the Central and State Governments and the Jail authorities:-

- (1) That the petitioner's torture was illegal and he shall not be subjected to any such torture until fair procedure is complied with,
- (2) No corporal punishment or personal violence on the petitioner shall be inflicted,
- (3) Lawyers nominated by the D.M., Sessions Judge, High Court and the Supreme Court will be given all

facilities to interview, right to confidential communications with prisoners, subject to discipline and security considerations. Lawyers shall make periodical visit and report the concerned Court the result of their visits;

- (4) Grievance deposit boxes shall be maintained in jails which shall be opened by D.M. and Sessions Judges frequently. Prisoners shall have access to such boxes.
- (5) D.M. and Sessions Judges shall inspect jails once every week, shall make enquiries into grievances remedial, and take suitable actions,
- (6) No solitary or punitive cell, no hard labour or dilatory charge, denial or privileges and amenities, no transfer to other prison as punishment shall be imposed without judicial approval of the Session Judge.

In the seminal case of *Sunil Batra (II) Vs. Delhi Administration*, the Court considered a wide array of inhuman treatment of prisoners. The Court considered a wide array of inhuman treatment of prisoners. The Court held that Article 21 clearly prohibits excessive mental, physical, and psychological pressure. This case was seminal in that it widened the scope of the writ of habeas corpus beyond redress from illegal detention to include challenges to conditions of lawful confinement.

²¹ Durga Das Basu, Commentary on the Constitution of India, 9th Edition, Vol.5, 2015, p. 4877-78.

²² AIR 1980 SC 1579.



2. Right against solitary confinement:

Sunil Batra (I) Vs. Delhi Administration:²³ In this case the important question raised before the Supreme Court was whether 'solitary confinement' imposed upon prisoners who were under sentence of death was violative of Article 14, 19, 20 and 21 of the Constitution. Sunil Batra was sentenced to death by the District and Sessions Judge and his sentence was subject to the confirmation by the High Court and to a possible appeal to the Supreme Court. Batra complained that since by date of his conviction by Session Judge that was on 6th July, 1976 he was kept in solitary confinement till the Supreme Court intervened on 24th February, 1978. The Supreme Court held that Section 30 of the Prison Act did not empower the prison authorities to impose solitary confinement upon a prisoner under sentence of death. Under section 73 and Section 74 IPC, solitary confinement is itself a substantive punishment which can be imposed by a Court of law. It cannot be left within the caprice of prison authorities. The Court further held that *if by imposing solitary confinement there is total deprivation of camaraderie (friendship amongst co-prisoners comingling and talking and being talked to, it would offend Article 21 of the Constitution. The liberty to move, mix, mingle, talk, share company with co-prisoners if substantially curtailed would be violative of Article 21 unless curtailment has the backing of law.*

Kishore Singh Vs. State of Rajasthan:²⁴

In this case also, the Supreme Court exposed the injustice being perpetrated on the prisoners and how the guidelines laid down by the court in the Sunil Batra case was being ignored and flouted by the prison administration. The Court accordingly directed the State Government to convert the court rulings on prison administration into rules and instructions forthwith so that violation of the prisoners' freedoms could be avoided. The Court emphasized that no solitary confinement and imposition of bar fetters should take place, "save in the rarest of rare cases and with strict adherence to procedural safeguards. Articles 14, 19 and 21 operate within the prisons." Human dignity is not to be ignored even in prisons.

3. Right to socialise with family-members and friends and to have interview with the lawyer:

Francis Coralie Vs. Union Territory of Delhi²⁵:

In this case, the validity of the provisions of the COFEPOSA which provided that a detenu can have interview with his lawyer only after obtaining prior permission of the District Magistrate, and that too, in the presence of the custom officer, and permitted interview of the family members only once in a month, were challenged on the ground that they were arbitrary and unreasonable and violative of Arts. 14 and 21. The Supreme Court held that the

²³ AIR 1978 SC 1578

²⁴ AIR 1981 SC 625

²⁵ AIR 1981 SC 746.



detenue's right to have interview with his lawyer and family member is part of his 'personal liberty' guaranteed by Art.21 of the Constitution. The Court further held that the provisions of the COFEPOSA which permitted only one interview in a month to detenue with members of his family were violative of Arts.14 and 21 and unconstitutional and void.

4. **Right to read and write:**

*State of Maharashtra Vs. Prabhakar*²⁶ - In this case, the Supreme Court held that a prisoner is entitled to read and write a book while in jail.

5. **Right to Release:**

*Rudal Shah Vs. State of Bihar*²⁷ - If the trial against the prisoner ends in acquittal, the prisoner must be released from jail forthwith. In this case, Rudal Shah who had to remain in jail for 14 years because of the irresponsible behaviour of the State Government Officers even after his acquittal. The Supreme Court also directed the Bihar Government to pay "compensation" of Rs. 30,000 to Rudal Shah.

*Veena Sethi Vs. State of Bihar*²⁸ -When mentally sick persons were languishing in jails for nearly two or three decades, although acquitted, the court directed their release. In this case, the Free legal Aid Committee, Hazanibagh brought to the notice of the Court through a letter about the illegal detention of certain prisoners in the Hazaribagh Jail for two

or three decades without any justification. At the time of their detention prisoners were declared insane but afterwards they became sane but due to the inaction of authorities to take steps to release them they remained in jails for 20 to 37 years. It was held by the apex court that the prisoners remained in jail for no fault of theirs but because of callous and lethargic attitude of the authorities and therefore entitled to be released forthwith.

6. **Right of fair treatment and basic dignity:**

*Citizens for Democracy Vs. State of Assam*²⁹- The Supreme Court held that all prisoners have a right of fair treatment and basic dignity. This would include all measures of security, remand, parole, premature release condition of prisonisation as well as prison transfer and prison visiting system.

*Suo motu Vs. State of Rajasthan*³⁰- While coming down heavily upon the jail authorities the court observed that the food provided to the prisoners is of the worst quality that can be given to any human being, the quality of the water is harshly compromised and 150 inmates are distended in a barrack suitable for 50. The Rajasthan High Court took suo motu cognizance of the State's incapacitating prison system lately. The Court slammed the State Government for neglecting basic human rights and infrastructural requirements of prisons

²⁶ AIR 1966 SC 424.

²⁷ AIR 1983 SC 1086.

²⁸ AIR 1983 SC 339.

²⁹ AIR 1996 SC 2193

³⁰ 2016 SCC Online Raj 173, decided on 27.1.2016, cited in The Practical Lawyer, May 2016.



and filing "false affidavits". The Court made sharp, factual observation about prison sanitation, food, healthcare and infrastructure, among other things. It was also noted that "the ratio of toilets per inmate is humongous." The Division Bench comprising J.K. Ranka and Mohammad Rafiq, JJ., outlined 45 clear cut directives and ordered the government to file a compliance/progress report before it every month starting April this year. It asked the government to ensure minimum one toilet, filled with flush type latrine and a cubicle for bathing, for every batch of 10 prisoners. These directives also included setting up adequate kitchens, introducing a new breakfast menu, ensuring inmates get one sweet item per week, making enough newspapers and novels available, organising fortnightly movie screenings, construction of adequate toilets and doing away with the system of segregating VIP prisoners, "most of whom are ex-ministers and senior bureaucrats."

7. Right to have a conjugal life and procreation within jail premises:

Jaswir Singh Vs.

*State of Punjab*³¹- It is a path breaking decision the Punjab & Haryana High Court while answering a vital question that whether jail inmates have a right to have a conjugal life and procreation within the jail premises and whether such right comes under Art. 21 of the Constitution, positively observed that Art. 21 effectively covers this right for

jail inmates who are however to be regulated by the procedure established by law. In furtherance of the observation the Court issued direction to the state of Punjab to constitute a Jail Reforms Committee to be headed by a former High Court Judge in order to undertake prison reforms with respect to provision of conjugal visits for the jail inmates. In the present case, the petitioners who had been convicted under various provisions IPC for murdering a 16 year old for ransom, had moved a petition demanding enforcement of their right to have a conjugal life and procreate within the jail premises. The Court observed that conjugal visits and procreation are a component of right to live with dignity therefore under the ambit of Art. 21. The Court while observing that imprisonment takes away some of the fundamental rights, thus a legal hindrance in effectuating the right of procreation issued directions to the State for the constitution of Jail Reforms Committee to formulate schemes for creation of conducive environment for conjugal visits; evaluate the option of expanding the reach of open prisons; classify the convicts who are to be or not to be allowed conjugal visits, etc. The Court however did not find the petitioners eligible for the relief sought by them.

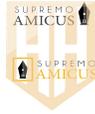
8. Right to speedy- Trial:

Supreme Court

*Legal Aid Committee Vs. U.O.I.*³²- Speedy trial is a fundamental right and in

³¹ 2014 SCC Online P & H 22479, decided on 29.5.2014 cited in The Practical Lawyer, March 2015, Issue No. 182.

³² (1994) 6 SCC 731, cited in Durga Das Basu, Commentary On the Constitution of India, 9th Edition, Vol.5, 2015, p. 4776.



a manner, an ingredient of Art. 21. It is the obligation of the State, otherwise there will be failure of justice. Supreme Court directed for the release of under-trial prisoners under the NDPS Act except those charged under SS. 31 and 31-A of the Act who were languishing in jails in the State of Maharashtra for a period exceeding half of the punishment provided under the Act and also laid down terms and conditions thereon.

Mahendra Lal Das Vs. State of Bihar³³:

Case, the Supreme Court held that the right of a prisoner to have a speedy trial shall encompass all the stages of trial and would be applicable even at the stage of investigation, enquiry, trial, appeal, revision and retrial.

Hussainara Khatoon (No.1) Vs. Home Secretary, State of Bihar³⁴ -

In this case, a petition for a writ of habeas corpus was filed by number of under trials who were in jails in the State of Bihar for years awaiting their trial. The Supreme Court held that "right to a speedy trial" a fundamental right is implicit in the guarantee of life and personal liberty enshrined in Article 21 of the Constitution. The Court ordered the Bihar Government to release forthwith the under trial prisoners on their personal bonds. In Husainara Khatoon (No.2)³⁵ and Husainara Khatoon (No.3)³⁶ cases the Court reiterated the same view.

9. Right to Free Legal Aid³⁷:

Gobardhan Singh Vs.

State of U.P. - Italicising the need to protect the human rights of the prisoners, the Allahabad High Court, taking note of the condition of poverty and illiteracy in India, held that a mandate is placed on the courts to proactively inform the prisoner about his entitlement for free legal aid. The Court held that the right to free legal service is to be made available to prisoners at all stages, including the pre-trial stage, and thereafter for contesting the trial and the appeal and also for moving applications for bail. Stating that state's financial constraints cannot be accepted as ground for denying legal aid, the Court held that even where the counsel for an accused does not appear during trial or during pendency of an appeal, the prisoner can be offered legal aid to press his bail or conduct his trial or appeal. Hence, the Court, issuing various directions, directed the Inspector General of Police to prepare a list providing details of the prisoners and their need for legal aid which, after being cross-checked by the District Judges, shall be placed before the Court.

10. Prison Reform Guidelines:

Dilip K. Basu Vs. State of

West Bengal:³⁸:-

³³ (2002) 1 SCC 149. Cited in Durga Das Basu, Commentary On the Constitution of India, 9th Edition, Vol.5, p. 4776.

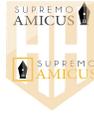
³⁴ AIR 1979 SC 1360.

³⁵ AIR 1979 SC 1369.

³⁶ AIR 1979 SC 1377

³⁷ Criminal Appeal No. 2773 fo 2005, decided on 25.9.2013, cited in the Practical Lawyer, December 2013

³⁸ 2015 SCC Online SC 651, decided on 24.7.2015, cited in The Practical Lawyer, September 2015.



While deliberating upon the recommendations made by the noted counsel Abhishek Manu Singhvi who acted as the Amicus curiae in the present case, the Supreme Court's Division Bench of T.S. Thakur and R. Bhanumathi, J.J. laid down certain guidelines so as to prevent gross violations of human rights in prisons and usher in prison reforms. The guidelines/directions are as follows:-

- (a) Directions issued to the State of Delhi, Arunachal Pradesh, Mizoram, Meghalaya, Tripura and Nagaland to set up State Human Rights Commission (SHRC) in their territories, in consonance with S. 21 of Protection of Human Rights Act, 1993 and the Constitution.
- (b) With regard to installation of CCTV in police stations and prisons, the Court directed the State to identify police stations located in sensitive areas and install CCTV cameras in a phased manner preferably with 1 year from the date of this judgment.
- (c) Directions given for filing up the vacancies for the post of Chairpersons and members of various SHRCs. The Court further directed that the concerned States should work towards filling up the SHRC vacancies within 3 months from the date when the vacancy arises.
- (d) Directions given to the State Governments to contemplate upon setting up of Human Right Courts, in consonance with S.30 of the 1993 Act.

- (e) States to take appropriate steps to appoint non-official visitors to prisons and police stations for making surprise inspections to check violation of human rights and to consider appointment of women constables in police stations wherever it is found that over a period of past 2 years women were detained in connection with any criminal case or investigation.

In Re- Inhuman Conditions in 1382 Prisons³⁹

In this case, the Division Bench of the Supreme Court Madan B. Lokur and R.K. Agrawal, J.J., held that prisoners, like all human beings, deserve to be treated with dignity. To give effect to this, some positive directions need to be issued to by this Court and these are as follows:

1. The Under Trial Review Committee in every district should meet every quarter and the first such meeting should take place on or before 31st March, 2016. The Secretary of the District Legal Services Committee should attend each meeting of the Under Trial Review Committee and follow up the discussions with appropriate steps for the release of under-trial prisoners and convicts who have undergone their sentence or are entitled to release because of remission granted to them.
2. The Under Trial Review Committee should specifically look into aspects pertaining to effective implementation of Section 436 of the Cr. P.C. and Section 436 A of the Cr. p.c. so that

³⁹ Write Petition (Civil) No. 406/2013, Order dt. February 5, 2016.



under-trial prisoners are released at the earliest and those who cannot furnish bail bonds due to their poverty are not subjected to incarceration only for that reason. The Under Trial Review Committee will also look into issue of implementation of the Probation of Offenders Act, 1958 particularly with regard to first time offenders so that they have a chance of being restored and rehabilitated in society.

3. The Member Secretary of the State Legal Services Authority of every State will ensure, in coordination with the Secretary of the District Legal Services Committee in every district, that an adequate number of competent lawyers are empanelled to assist under-trial prisoners and convicts, particularly the poor and indigent, and that legal aid for the poor does not become poor legal aid.
4. The Secretary of the District Legal Services Committee will also look into the issue of the release of under-trial prisoners in compoundable offences, the effort being to effectively explore the possibility of compounding offences rather than requiring a trial to take place.
5. The Director General of Police/ Inspector General of Police in-charge of prisons should ensure that there is proper and effective utilization of available funds so that the living conditions of the prisoners is commensurate with human dignity. This also includes the issue of their

health, hygiene, food, clothing, rehabilitation etc.

6. The Ministry of Home Affairs will ensure that the Management Information System is in place at the earliest in all the Central and District Jails as well as jails for women so that there is better and effective management of the prison and prisoners.
7. The Ministry of Home Affairs will conduct an annual review of the implementation of the Model Prison Manual 2016 for which considerable efforts have been made not only by senior officers of the Ministry of Home Affairs but also persons from civil society. The model Prison Manual 2016 should not be reduced to yet another document that might be reviewed only decades later, if at all. The annual review will also take into consideration the need, if any, of making changes therein.
8. The Under Trial Review Committee will also look into the issues raised in the Model Prison Manual 2016 including regular jail visits as suggested in the said Manual.

In Re- Inhuman Conditions in 1382 Prisons, 2017⁴⁰:

Showing deep anguish over the increasing number of custodial or unnatural deaths in the prisons across India, the Bench of Madan B. Lokur and Deepak Gupta, JJ, issued a list of directions and said: "*The right sounding*

⁴⁰ 2017 SCC Online SC 1109, decided on 15.09.2017, cited in The Practical Lawyer, November 2017



noises critical of custodial violence (in any form) cannot achieve any useful purpose unless persons in authority hear the voices of the victim or the silence of the dead and act on them by taking remedial steps." The Court issued detailed directions with reference to compensation for educating & training prison officials, visitation rights & open jails, medical assistance, counsellors in prison and custodial death of children. The Court also directed the Chief Justice of every High Court, in the capacity of Patron-in-Chief of the State Legal Service Authority, to take up the initiative of conducting a study in respect of the overall conditions in prisons in the State and the facilities available and, if necessary, set up a committee headed preferably by the Executive Chairperson of the State Legal Services Authority to implement the direction given above.

Protection of human rights of Women Prisoners:

"In regard to human rights in prisons," the learned former Chief Justice of India, J.S. Verma has stated thus: "Special care of women as prison inmates is essential for the protection of their human rights. There is need for custodial safety and gender justice. Women are approximately 3 per cent of the prison population in India. The need is for separate jails for women which is also emphasized by the Standard Minimum Rules for Treatment of Prisoners. The

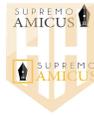
Mulla Committee Report (1980-83) observed that the small number of women in prisons is, quite likely, responsible for their needs being neglected. Special care is needed of the women's health and preservation of their dignity. Article 51 A (e) of the Constitution of India prescribes for every citizen the fundamental duty to denounce practices derogatory to the dignity of women. In the case of a woman, she is not to be viewed merely as an individual person but as the pivot of a family whose protection is a matter of social concern. The provisions of convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) must also be borne in mind."⁴¹ The Report of National Expert Committee on Women Prisoners (1906-87) chaired by Justice Krishna Iyer states as such:⁴²

"Now, our Report contemplates one fundamental postulate; viz., that women have a special claim to compassion, defence of dignity and human rights and protection of her sensitive needs and personal integrity. The State must secure for her this dimension of social justice while she is in peril or under the process of being custodialised in a manner detrimental to her womanliness....."

The thrust of the case made out in the Report is that a radical experiment in the processes and personnel must be organized, not from the top of the pyramid only but from the base as well,

⁴¹ J.S. Verma, Ex C.J.I., *The New Universe of Human Rights*", Cited in Durga Das Basu, *Commentary On the Constitution of India*, 9th Edition, Vol.5, p.4880

⁴² Cited in Durga Das Basu, *Commentary on the Constitution of India*, 9th Edition, Vol.5, p. 4880.



involving a wide variety of social, professional and official pillars to support the national directorate and substructures.⁴³

B. Human Rights of Prisoners' : State Response

Whereas the Higher Judiciary has responded to the issue of sustaining human rights of the prisoners through their various Judgments and Orders in a commendable way, the response of the State has been lukewarm. The recent initiatives on behalf of the state may be summed up as such:

1. National Policy on Prison Reforms and Correctional Administration⁴⁴:

In pursuance to the recommendations submitted by the All India Committee on Jail Reforms in 1983, the University of Home Affairs Constituted a Committee under the Chairmanship of Director General, BPR&D for preparing a draft policy paper on the strategy relating to prison reforms and correctional administration in December, 2005. The Committee proposed a draft National Policy on Prisons, the salient points of which are given below:

- (i) The State shall endeavour to evolve a proper mechanism to ensure that no under-trial prisoner is unnecessarily detained.
- (ii) The Government shall endeavour to provide in law new alternatives to imprisonment such as community service, forfeiture of property, payment

of compensation to victims, public censure etc. in addition to the ones already existing.

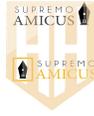
- (iii) Living conditions in every prison shall be compatible with human dignity in all aspects.
- (iv) The State shall help facilitate classification of prisoners on a scientific basis.
- (v) Appropriate *security arrangements* shall be made in accordance with the need for graded custody in different types of institutions.
- (vi) The State shall provide free legal aid to all needy prisoners.
- (vii) Women offenders shall be kept in separate annexes or be confined in separate institutions as far as possible.
- (viii) Mentally ill prisoners shall not be confined in prisons.

2. Model Prison Manual:

In pursuance to the directions given by the Hon'ble Supreme Court in a case of *Ramamurthy Vs. State of Karnataka*, 1996, the Govt. of India has constituted All India Model Prison Manual Committee in November, 2000 under the Chairmanship of Director General of BPR&D to prepare a Model prison Manual for the Superintendence and Management of Prisons in India in order to maintain uniformity in the working of prisons throughout the country. The Division Bench of the Supreme Court comprising Madan B. Lokur & R.K. Agrawal, JJ, has held in

⁴³ Ibid.

⁴⁴ Prepared by Bureau of Police Research & Development, Ministry of Home Affairs, Govt. of India, New Delhi, 2007.



Re-Inhuman Conditions in 1382 Prisons Case⁴⁵ as such:

"57. A word about the Model Prison Manual is necessary. It is a detailed document consisting of as many as 32 chapters that deal with a variety of issues including custodial management, medical care, education of prisoners, vocational training and skill development programmes, legal aid, welfare of prisoners, after care and rehabilitation, Board of visitors, prison computerization and so on and so forth. It is a composite document that needs to be implemented with due seriousness and dispatch."

2. Provision of video conferencing in Jails:

Bihar government has decided to install video conferencing facility in all jails in Bihar.⁴⁶ In Uttar Pradesh, about a dozen district Jails are availing this facility. This facility would do away with the need of taking undertrials to the court for hearing of their cases.

Conclusion:

Article 21 of the Constitution requires a life of dignity for all persons. Our prisons seem to be little islands where little appears to have changed on the ground as far as prisoners are concerned. Our jails are suffering from mismanagement. Overcrowding of prisons reflect on the one hand, the failure of judicial process to dispose cases in a time-bound manner. At the same time, it has direct impact on the security of prisons, and health and hygiene of

inmates. Occurrence of violence and custodial deaths in jails often reminds us of Torture Chambers. Basic human rights are not generally available to prisoners. Recently, the Supreme Court has pushed for more open air jails and more humane treatment of prisoners, mostly undertrials languishing for long due to delay in justice dispensation. Our Judiciary has played a stellar role in pursuing the cause of human rights to prisoners. The response of the State is not as encouraging so far. This is high time the government should act upon the recommendations of the National Policy on Prison Reforms. Model Prison Manual, 2016 should also be enforced in right earnest. The Status report of prisons in India as regards to enforcement of basic human rights is far from encouraging. There is lot more to be done shortly. We should keep in mind what Vivien Stern has said so rightly which is

as follows:
"Detained people are included because human rights extend to all human beings. It is a basic tenet of International human rights law that nothing can put a human being beyond the reach of certain human rights protections. Some people may be less deserving than others. Some may lose many of their rights through having been imprisoned through proper and legal procedures. But the basic rights to life, health, fairness and justice, humane treatment, dignity and protection from ill treatment or torture remain. There is a minimum standard for the way a state

⁴⁵ W.P. (Civil) No. 406/2013, Order February 5, 2016.

⁴⁶ The Hindu, 16.11.2017.



treats people, whoever they are. No one should fall below it:"

["A Sin Against the Future : Imprisonment in the World (1998)]

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