

**Specialised Course of Prison Warders
(Warder to Chief Head Warder)
on
Rights of Prisoners -- International Covenants and
Supreme Court Judgments
(One Week)
2022**



**Bureau of Police Research and Development
Ministry of Home Affairs
NH-48, Mahipalpur
New Delhi- 110037**

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Published by Bureau of Police Research & Development, Ministry of Home Affairs, Mahipalpur, New Delhi, India

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Message

Capacity Building of the prison staff is one of the key components of Prison Reforms. This equips the Prison Officers and Staff with the essential knowledge, skills and attitude to diligently discharge their duties in varied and complex areas related to Prisons and Correctional Administration. The MHA has mandated the BPR&D to prepare Training Manuals which can be circulated to all States and UTs for training purposes.

Services of 11 Individual Consultants with subject matter expertise were hired in 2021 to prepare the 50 Prison Training Manuals for various categories of Staff in Prisons. Numerous rounds of stakeholder consultations were held to finalize the drafts. The Manuals have adopted the contemporary principles of training and learning for indoor and outdoor classes, field visits and practical sessions and these have been prepared in compliance with the national and international best practices, the laws of the land, and the technological advancements in Prisons & Correctional Administration. The drafts were also uploaded on the BPR&D website for inviting suggestions/feedback from the stakeholders and citizens.

I extend my special appreciation to the 11 Individual Consultants, the Special Consultant (Master Trainer, DoPT) and the members of the Monitoring Committee who were instrumental in the preparation of these 50 Prison Training Manuals.

I am sanguine that these Manuals will bring about standardization of the training procedures and contents to a large extent and also facilitate capacity building of the Officers and Staff of the Prisons and Correctional Administration in the country.

(Balaji Srivastava)

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PART – B

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Day – 1

LEARNING UNITS (LUs)

LU – 1 - Introduction

1.1 Introduction to the concept of “Rights” and its importance

1.2 Rights of Prisoners – A General Analysis [Right as a legal concept, its correlative to duty.

1.3 Right as human right, as fundamental right, legal relevance of the terms

Day – 2

LU – 2 International Covenants and Human Rights of Prisoners

2.1 Introduction to International Legal Instruments and their importance

2.2 Importance of compliance with international legal instruments relating to human rights of prisoners

2.3 Prisoner’s Rights and UDHR, ICCPR and ICESCR

Day – 3

LU - 3 International Covenants and Human Rights of Prisoners [Continuation]

3.1 Prisoner’s Rights and other International Covenants

3.2 Prisoner’s Rights and other Regional Conventions and Covenants

Day – 4

LU – 4 Judicial Precedents on Prisoner's Rights

4.1 SC on Rights of persons facing criminal process including Under-trial Prisoners

4.2 Other Judicial Orders on Prisoner's Rights

Post Lunch - Field Visit to any prison / Juvenile Observation homes/ NHRC/SHRC office visit

Day – 5

LU – 5 Other Related Issues

5.1 Other Rights of Prison Officers – An Overview

5.2 Grievance Redressal Mechanism in Prisons

Followed with Feed Back and Assessment & Valediction Program

PART – C

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Emergence of the course

The BPR&D has prepared 50 Prison Training Manuals for various ranks of Staff and Officers in Prison Administration under the categories viz., 05 Basic Courses, 08 In-Service Courses, 30 Specialized Courses, 02 Vertical Interaction Courses and 05 Handbooks for improving the quality and standardizing training of all Prison Officers and Staff across the country and to augment professional competency and capacity building of Prison Officers and Staff.

These Prison Training Manuals are objective oriented, learner centric and are outcome of several brainstorming sessions, consultative meetings (Online and Offline) and workshops for conceptualizing the drafts. Comments of the Monitoring Committee, Reports of Training Needs Analysis (TNA) for Prisons & Correctional Administration, National Training Policy (2012) have also been taken into account. In addition, various national and international practices, MHA Advisories, Landmark Judgements of the Apex Court and the High Courts, Statutory Acts/Rules have also been referred to in course of preparation of these training manuals. The design perspective of the Department of Personnel & Training, Government of India, has been adopted.

Introduction

This Training Manual titled ‘Rights of Prisoners - International Covenants and Supreme Court Judgments’ covers International Legal instruments as well as judicial precedents of India through which various rights of prisoners are conferred and ensured. Legally recognizing and enforcing rights of prisoners is an important legal duty as well a moral obligation of the State, apart from being a concern from human right perspective. The Prison Administration is hence obliged to implement these legal instruments and judicial precedents thereby ensuring better protection of rights of prisoners.

The objective of this one-week course for the rank of Assistant Superintendent to Superintendent of prisons to sensitize them on legally guaranteed rights of prisoners and related issues, impart training on their subjects in terms of knowledge and skills to officials of Prison Administration.

This training course which has five learning units focuses on understanding the ways and means of ensuring human rights protection through prison administration.

(For Trainers and Participants)



COURSE GUIDE

**Specialised Course of Prison Warders
(Warder to Chief Head Warder)
on
Rights of Prisoners -- International Covenants and
Supreme Court Judgments
(One Week)**

INTRODUCTION

Prison is an important machinery administering criminal justice system. Hence prison administration is a crucial aspect of states obligations. Constant and periodical training of prison officers adds to efficiency and effectiveness of the prison administration.

Ensuring protection of human rights of prisoners in prisons is an important objective of prison administration. Though prison administration is a State subject, principles laid down in the Prisoners At of 1894 and State specific Prison Manuals are uniform on aspects related to human rights protection of prisons inmates. Additionally guidelines issued by Central Government and precedents laid down by Indian judiciary on prisons administration forms the basis for designing prison administration strategies. This training course focuses on understanding the ways and means of ensuring human rights protection through prison administration.

AIM OF THE COURSE:

Sensitize on human rights issues, impart related Knowledge and skills in Officials involved in Prison administration.

DESIGNED FOR

Assistant Superintendent or Deputy Jailor rank officers to Superintendent of Jails rank officers.

FACILITATORS

In House faculty or Guest faculty who are subject experts relevant to the Course.

STYLE OF THE COURSE

This course encompasses a series of sessions with combination of theoretical session with adoption of Socratic Method of learning along with practical learning activities. The Course is delivered through multiple media, styles and activities with a 'self-directed learning approach that is simulated by the use of field-based situations and sharing of best practices in Prison administration.

OBJECTIVES - At the end of the training, participants will be able to:

Unit -1

Training Objective

Explain the concept of Rights

Enabling Objective

1. Define the concept of Rights.

2. Explain the scope and importance of Rights of Prisoners
3. Explain constitutional provisions related to Fundamental Rights of Prisoners
4. Explain prisoner's human rights as forms of fundamental rights.
5. Explain legal relevance of these rights and related terms.

Unit -2:

Training Objective

Explain Rights of Prisoners from international legal instruments perspective.

Enabling Objective

1. List the International legal instruments relating to Prisoner's Rights

Unit - 3:

Training Objective

Explain Rights of Prisoners from the perspective of specific international and regional level legal instruments related to Rights of Prisoners.

Enabling Objective

1. Describe legal provisions related to rights of prisoners from the perspective of Specific International legal instruments related to Prisoner's rights.
2. Explain prisoner's rights from perspective of related regional conventions on Rights of Prisoners

Unit -4:

Training Objective

Explain judicially recognized and interpreted rights of prisoners

Enabling Objective

1. Describe the powers of Supreme Courts and High Courts in granted legal protection to rights of prisoners.
2. State rights of prison officers as interpreted by Supreme Court of India
3. Identify rights of prisoners through the judgments of courts.

Unit 5:

Training Objective

Identify other issues of concerns related to rights of prisoners

Enabling Objective

1. Identify other rights of prisoners and their related issues
2. Identify ways of redressing grievances of prisoners within the prison.

ASSESSMENT:

The priority during the course is to assist participants to develop their skills. Assessment is, therefore, concerned with informal feedback and advice to individual participants.

Day Wise Schedule

Time	Topics	Objectives
Day 1		
	Registration	
Session I	Inauguration of the Course & UNIT 1	
Session II	Ice breaking Session and Ground rules	
Session III	Introduction to the concept of “Rights”	1.1
Session IV	Legal importance of ‘Right’ and its correlatives	1.2
Session V	Rights of Prisoners – A general Analysis	1.3, 1.4 & 1.5
Day 2	UNIT 2	
0900 - 0915	Learning Points- Recap of Day 1	
Session I	Introduction and importance of the International Legal Instruments and their importance.	2.1
Session II	UDHR, ICCPR AND ICESR and Rights of Prisoners	2.1
Session III	Other related conventions of UNO including – on torture, CEDAW, UNCRC	2.1
Session IV	International Instruments & Rights Of Prisoners - Convention Against Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment	2.1
Session V	- Convention On The Elimination Of All Forms Of Discrimination Against Women - United Nation Convention On The Rights Of The Child	2.1
Day 3		
0900 - 0915	Learning Points- Recap of Day 2	
Session I	UN Standard Minimum Rules For The Treatment Of Prisoners	<u>3.1</u>

Session II	The Standard Minimum Rules for The Treatment of Prisoners of 2015 [Nelson Mandela Rules]	<u>3.1</u>
Session III	Bangkok Rules And Women Prisoners Rights	<u>3.1</u>
Session IV	UN's Body of Principles For The Protection Of All Persons Under Any Form Of Detention Or Imprisonment (1988)	<u>3.1</u>
Session V	United Nations Basic Principles For The Treatment Of Prisoners: United Nations Standard Minimum Rules For The Administration Of Juvenile Justice The European Convention For The Prevention Of Torture And Inhuman Or Degrading Treatment Or Punishment	<u>3.1 & 3.2</u>
Day 4		
0900 - 0915	Learning Points- Recap Of Day 3	
Session I	Judicial Powers Of Supreme Courts And High Courts [Courts As Guardians Of Rights]	4.1
Session II	Judicial Precedents And Human Rights & Fundamental Rights Of Prisoners	4.2 & 4.3
Session III	SC On Rights Of Persons Facing Criminal Procedure Including Under-Trial Prisoner	4.2 & 4.3
1430 to 1730	Other Rights Of The Prisoners Including Under Trial Prisoners Including Right To Bail.	4.2 & 4. 3
Day 5		
0900 - 0915	Learning Points- Recap Of Day 4	
Session I	Prisoner's Right To Livelihood, Right To Be Released On Furlong	<u>5.1</u>
Session II	Right To Family and Other Related Rights	<u>5.1</u>
Session III	Right To Redressal Of Grievances	<u>5.2</u>

Session IV	Feedback And Assessment	
Session V	Valediction Program	

Note:

Session I	0915-1030
Session II	1045-1200
Session III	1215-13.30
Session IV	1430-1530
Session V	1545-1645
Yoga	0630-0730
Library	1700-1730
Sports	1730-1830
Tea Break	1030-1045 1200-1215 (Break) 1530-1545
Break Fast	0800-0845
Lunch	1130-1430
Dinner	1930-2100

(For Trainers only)



TRAINER GUIDE

**Specialised Course of Prison Warders
(Warder to Chief Head Warder)
on
Rights of Prisoners -- International Covenants and
Supreme Court Judgments
(One Week)**

2022

INTRODUCTION

The ‘Trainer Guide’ is a comprehensive overview of the content and process of the Course. It is designed in a structured format that presents the assembled information and the planned activities with learning outcomes. Trainer Guide serves as a “Map” for sequential implementation of following content segments.

THE TRAINER GUIDE ALSO

- Helps continuous recall;
- Provides scope for storing illustrations, faculty questions, anticipated participants questions and appropriate responses ;
- Contains details of points for briefing & debriefing of case study, exercises, Films, etc.
- Serves as reminders when to administer exercises; and
- Guides on the use of media

FOR TRAINERS

1. Trainer guide
2. Glossary of terms
3. References
4. Resources
5. MCQs with Answers.
6. List of case laws for group discussion

FOR PARTICIPANTS

1. Course Guide
2. Feedback Questionnaire

Day Wise Schedule

**SPECIALISED COURSE FOR PRISON WARDERS
(WARDER TO CHIEF /HEAD WARDER)
ON
RIGHTS OF PRISONERS -- INTERNATIONAL COVENANTS AND
SUPREME COURT JUDGMENTS
(ONE WEEK)**

Time	Topics	Remarks
Day 1		
	Registration& distribution of course guide	Format Registration Form – Appendix 1
Session I	Inauguration of the Course	Address by the Chief Guest
Session II	Ice breaking Session and Ground rules Self-Introduction of Participants • Name • Designation • Training Years of service • Distribute training material folders to participants Course Overview: Aims and Objects of the Course by the Training Coordinator	
Session III	Introduction to the concept of “Rights”	Lecture and Discussion
Session IV	Legal importance of ‘Right’ and its correlatives	Same as above
Session V	Rights of Prisoners – A general Analysis	Identified Case laws discussion to be used to identify legal provisions related to Rights-

		Appendix A[trainer to use this list to direct case law discussion] Distribution of handouts [Appendix A2] on case laws - Appendix 2
Day 2		
0900 - 0915	Learning Points- Recap of Day 1	Encourage each participant to say one learning point at least
Session I	Introduction to International Legal Instruments and their importance.	Lecture and Discussion mode. Distribute Handouts on List of International Instruments – Appendix 3
Session II	UDHR, ICCPR AND ICESR and Rights of Prisoners	Lecture and discussion mode
Session III	Other related conventions of UNO including – on torture, CEDAW, UNCRC	Lecture and Discussion mode.
Session IV	International instruments & Rights Of Prisoners - Convention Against Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment	MCQ at the conclusion of all the sessions of the day - Trainer can use to MCQ provided in
Session V	Other conventions and instruments including: - Convention On The Elimination Of All Forms Of Discrimination Against Women - United Nation Convention On The Rights	Appendix 4 to conduct a quiz / class test

	Of The Child	
Day 3		
0900 - 0915	Learning Points- Recap of Day 2	Encourage each participant to say one learning point at least
Session I	UN Standard Minimum Rules For The Treatment Of Prisoners	Lecture and Discussion mode.
Session II	The Standard Minimum Rules for The Treatment of Prisoners of 2015 [Nelson Mandela Rules]	Lecture and Discussion mode.
Session III	Bangkok Rules And Women Prisoners Rights	Lecture and Discussion mode.
Session IV	UN's Body Of Principles For The Protection Of All Persons Under Any Form Of Detention Or Imprisonment (1988)	Lecture and Discussion mode.
Session V	United Nations Basic Principles For The Treatment Of Prisoners: United Nations Standard Minimum Rules For The Administration Of Juvenile Justice The European Convention For The Prevention Of Torture And Inhuman Or Degrading Treatment Or Punishment	Lecture and Discussion mode.
Day 4		
0900 - 0915	Learning Points- Recap of Day 3	Encourage each participant to say one learning point at least
Session I	Judicial Powers Of Supreme Courts And High Courts [Courts As Guardians Of Rights]	Quiz / groups to answer MCQ questions – Appendix 5
Session II	Judicial Precedents And Human Rights & Fundamental Rights Of Prisoners	
Session III	SC On Rights Of Persons Facing Criminal Procedure Including Under-Trial Prisoner; Other	

	Rights Of The Prisoners Including Under Trial Prisoners Including Right To Bail.	
1430 to 1730	Field Visit	Field report format in Appendix 6
Day 5		
0900 - 0915	Learning Points- Recap of Day 4	Encourage each participant to say one learning point at least
Session I	Prisoner's Right To Livelihood, Right To Be Released On Furlong	Discussion / Group Discussion mode
Session II	Right To Family and Other Related Rights	Discussion/ Group Discussion mode
Session III	Right To Redressal Of Grievances	Discussion cum lecture mode.
Session IV	Feed Back and Assessment	Feedback Format Form – Appendix 7
Session V	Valediction Program	

Day Wise Tasks

DAY-1

1. Registration
2. Inauguration
3. Detailed Introduction
4. Expectations
5. Course Objectives and Ground Rules
6. Self-Assessment Questionnaire
7. Course Guide distribution
8. Training
9. Learning / Unlearning / Relearning

DAY-2

10. Recap of Day-1
11. Training Sessions
12. Lunch
13. Post Lunch
14. Training

DAY-3

15. Recap of Day2
16. Training
17. Post Lunch
18. Training

DAY-4

19. Recap of Day 3
20. Training
21. Post Lunch
22. Field Visit to prison/SHRC/NHRC

DAY-5

23. Recap day 4
24. Training
25. Feedback
26. Valediction
27. Certificate Distribution
28. Group photo with Chief Guest

The Course coordinator should compile the feedback of the participants and submit to the Head of the Training Institute.

End of Course

PART-B

COURSE GRID LEARNING EVENT

COURSE GRID

1 INTRODUCTION	2 INTERNATIONAL COVENANTS AND HUMAN RIGHTS OF PRISONERS	3 INTERNATIONAL COVENANTS AND HUMAN RIGHTS OF PRISONERS [CONTINUATION]
4 JUDICIAL PRECEDENTS ON PRISONER’S RIGHTS	5 OTHER RELATED ISSUES	6 FIELD VISIT

LEARNING UNITS

LEARNING EVENT- 1

Unit		1						
Learning Unit		INTRODUCTION						
Training Objective		Explain the concept of Rights						
Enabling Objectives At the end of training, participants will be able to -		CONTENT	METHOD	MEDIA	TIME [Min]	TRAINER	PERFORMANCE AID	ASSESSMENT
	1. Define the concept of Rights. 2. Explain the scope and importance of Rights of Prisoners 3. Explain constitutional provisions related to Fundamental Rights of Prisoners 4. Explain prisoner's human rights as	Introduction - to the concept of "Rights" and importance Correlatives of Rights Rights of Prisoners – A general Analysis – their Human rights and Fundamental Rights.	Lecture-cum-Discussion	White Board, Marker, Projection System	45 each session	Guest Faculty/ In-House		Legal principles application on case law based scenario and discussion

	forms of fundament al rights. 5. Explain legal relevance of these rights and related terms.							
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LEARNING EVENT- 2

Unit	2						
Learning Unit	INTERNATIONAL COVENANTS AND HUMAN RIGHTS OF PRISONERS						
Training Objective	Explain Human Rights from international legal instruments perspective.						
Enabling Objectives- At the end of training, participants will be able to	CONTENT	METHOD	MEDIA	TIME	TRAIN ER	PERFOR MANCE AID (IF ANY)	ASSESS MENT
1. List the International legal instruments relating to Prisoner's Rights	Introduction to International Legal Instruments and their importance. UDHR, ICCPR AND ICESR and Human rights of Prisoners Other related conventions of UNO including – on torture, CEDAW, UNCRC International instruments & Rights Of Prisoners - Convention Against Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment Other conventions and instruments including: - Convention On The Elimination Of All Forms Of Discrimination Against Women - United Nation Convention On The Rights Of The Child	Lecture-cum-discussion	White Board, Marker, Projection System	45 each session	Guest Faculty/ In-House		QUIZ/M CQ

LEARNING EVENT- 3

Unit	3						
Learning Unit	INTERNATIONAL COVENANTS AND HUMAN RIGHTS OF PRISONERS [CONTINUATION]						
Training Objective	Explain Rights of Prisoners from the perspective of specific international and regional level legal instruments related to Rights of Prisoners.						
Enabling Objectives- At the end of training, participants will be able to	CONTENT	METHOD	MEDIA	TIME (Min)	TRAINER	PERFORMAN CE AID (IF ANY)	ASSESSMEN T
1. Describe legal provisions related to rights of prisoners from the perspective of Specific International legal instruments related to Prisoner's rights. 2. Explain prisoner's rights from perspective of related regional conventions on Rights of Prisoners.	UN Standard Minimum Rules For The Treatment Of Prisoners The Standard Minimum Rules for The Treatment of Prisoners of 2015 [Nelson Mandela Rules] Bangkok Rules And Women Prisoners Rights UN's Body Of	Lecture-cum-discussion	White Board, Marker, Projection System	45 each session	Guest Faculty/ In-House		Formative Q&A

	Principles For The Protection Of All Persons Under Any Form Of Detention Or Imprisonment (1988) United Nations Basic Principles For The Treatment Of Prisoners: United Nations Standard Minimum Rules For The Administration Of Juvenile Justice The European Convention For The Prevention Of Torture And Inhuman Or Degrading Treatment Or Punishment						
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LEARNING EVENT- 4

Unit	4						
Learning Unit	JUDICIAL PRECEDENTS ON PRISONER'S RIGHTS						
Training Objective	Explain judicially recognized and interpreted rights of prisoners						
Enabling Objectives- At the end of training, participants will be able to	CONTENT	METHOD	MEDIA	TIME [Min]	TRAINER	PERFORMANCE AID (IF ANY)	ASSESSMENT
1. Describe the powers of Supreme Courts and High Courts in granted legal protection to rights of prisoners. 2. State rights of prison officers as interpreted by Supreme Court of India 3. Identify rights of prisoners through the judgments of courts.	Judicial Powers Of Supreme Courts And High Courts [Courts As Guardians Of Rights] Judicial Precedents And Human Rights & Fundamental Rights Of Prisoners SC On Rights Of Persons Facing Criminal Procedure including Under-Trial Prisoner; Other Rights Of The Prisoners Including Under Trial Prisoners Including Right To Bail. FIELD VIIST IN THE AFTERNOON [POST LUNCH SESSION]	Lecture-cum-discussion	White Board, Marker, Projection System	45 each session	Guest Faculty/ In-House		GROUP DISCUSSION / SNAP TEST FIELD VISIT REPORT to be submitted by Trainee the next day of Field visit.

LEARNING EVENT- 5

Unit	5						
Learning Unit	OTHER RELATED ISSUES						
Training Objective	Identify other issues of concerns related to rights of prisoners						
Enabling Objectives- At the end of training, participants will be able to	CONTENT	METHOD	MEDIA	TIME	TRAINER	PERFORMAN CE AID (IF ANY)	ASSESSMEN T
1. Identify other rights of prisoners and their related issues 2. Identify ways of redressing grievances of prisoners within the prison.	Human rights of prisoners and administration of prisons – ways and means of integrating the two concerns + Feed Back and Assessment Valediction program	Lecture-cum-discussion	White Board, Marker, Projection System	45 mins	Guest Faculty/ In-House		MCQ

TRAINING MANUAL

This training manual is designed to provide an insight into the important International Covenants and other legal instruments that guarantees protection of rights of prisoners by obligated on State to ensure such protection. The manual also examines various judicial precedents laid down by the Supreme Court of India on the issue of ‘rights of prisoners’

UNIT 1:

INTRODUCTION

“It has been well established that convicts are not by mere reason of the conviction denuded of all the fundamental rights which they otherwise possess.”

- Supreme Court of India¹.

Rights are legally recognized entitlements. Irrespective of where a person is, one's right must be legally safeguarded. Human rights are universally recognized rights of human beings which must be respected at all times and places. These rights must be protected even in correctional institutions of States. Human rights protection of prison inmates is an important aspect, for the protection of which various laws are made and mechanism is set.

International law is a valuable source of law for countries. Most often a nation's law is based on models of laws created by international community. On the other hand, there are laws that are enacted in a country in order to comply with requirements of international laws. In the domain of human rights laws, various laws in India are made, for being insisted upon by internal bodies such as United Nations and its organs. Various international legal instruments have been the basis for national legal instruments drafted in the domain of human rights protection in India, including in relation to the rights of prisoners. International legal instruments including national legal instruments enunciate various rights of prisoners. While some rights are guaranteed through human rights related legal instruments, others are proclaimed through judicial precedents specific to prisoners' rights. In addition to international legal instruments, the precedents [case laws] established by judiciary especially the Supreme Court of India helps in conceptualizing and widening the scope and ambit of 'rights of prisoners'.

¹Sunil Batra Etc. v. Delhi Administration and Ors, 1978 AIR 1675

CONCEPT OF 'RIGHT', LEGAL INTERPRETATION AND IMPORTANCE OF 'RIGHTS'

Rights as already mentioned connote 'entitlement'. One person's right is often another person's duty. Hence rights of a prisoner indicate a basis for imposition of 'duty' on State and prison authority. Depending upon legal importance attached and the nature of entitlements conferred, rights can be constitutionally protected fundamental rights, individual's human rights or enactment recognized statutory rights.

A prisoner also is entitled with right to enjoy rights that are guaranteed by International Legal instruments, Indian Constitution and statutes. Judicial precedents too have widened the horizon of various rights of prisoners.

RIGHTS OF PRISONERS – A GENERAL ANALYSIS

Rights are legally sanctioned entitlements. While some rights are considered as Human Rights for being fundamentally essential for a human being to lead a decent life, some rights are further guaranteed as fundamental rights by concerned nation's constitution. Additional some rights are guaranteed by statutes thereby being referred to as statutory rights.

Since rights are entitlements of a person, it inter alia indicates duty on the other party to ensure that such rights are protected and promoted to the best possible. Human rights and constitutionally guaranteed fundamental rights impose duty upon state to extend such protection of rights of its citizens.

With regard to a prisoner, Indian law confers various rights to a prisoner including Human Rights, Fundamental Rights and Statutory Rights. There are various judicial precedents also that have widened the concept and component of rights of prisoners.

It is important to note that a person including a prisoner is vested with these rights to the maximum extent possible, thus making him entitled to enjoy such rights everywhere and at every time. He is conferred with these rights even when he is custody of police or in a prison. It is important to understand that a prisoner doesn't cease to be a human being to be deprived of his

right to life guaranteed under Article 21 of the Constitution.² A prisoner like anybody else is entitled to enjoy some of fundamental and human rights. These rights include the following:

- Right to life and personal liberty.
- Right to privacy
- Right to live with dignity;
- Right to health
- Right to humane facilities
- Right to live with dignity
- Right to equality
- Rights to freedom of speech and expression,
- Right to freedom of religion
- Etc.

Indian Constitution guarantees fundamental rights of all including to the maximum extent possible to prison inmates. There are various provisions under the Constitution through which various human rights are guaranteed in form of fundamental rights. Most of these rights hence are commonly recognised under human rights law including international legal instruments relating to human rights as well as constitutionally guaranteed fundamental rights. While international laws obligates states to ensure protection of promotion of its citizens human rights, constitutionally recognised fundamental rights obligates state not just to protect and promote such fundamental rights but to also provide remedies against breach of such fundamental rights. Such constitutional remedies are available under Article 32 and 226 of the Indian Constitution.

According to Article 14³ of the Indian Constitution, every person is vested with right to equality before law and equal protection of law. A prisoner hence is also empowered with right to

² Bombay High Court, <https://www.livelaw.in/news-updates/prisoner-human-right-to-life-bombay-hc-allows-palliative-care-alleged-naxal-181314>, last visited on 10th December 2021.

³According to Article 14 which guarantees” Equality before law”: “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.”

equality, equal treatment and equal protection by law. Hence discrimination without legal justification is unconstitutional.

Indian constitution confers certain fundamental rights that are of value in a criminal justice system since they empower a person in fairly facing a criminal prosecution. According to Article 20, right against double jeopardy and right against self-incrimination are guaranteed. These are also procedural rights guaranteed to a person facing criminal prosecution. Additionally no criminal laws can have retrospective effect as per Article 20⁴. According to Article 22 a person if arrested, must be produced before magistrate within 24 hours of his arrest.

A prisoner [convict] is entitled to the precious right guaranteed by Article 21⁵ that he shall not be deprived of his life or personal liberty except according to the procedure established by law.⁶ As per Article 20 and Article 21, an accused is conferred with rights to bail, right to legal aid, right against custodial torture, etc. Since ‘right to life’ is a very wider term, under law it is meant to include all those rights that are essential for a person to live a life of dignity. Right to life in India connotes both the following:

- Rights related to procedures of laws, that is, procedural rights, such as right to fair trial.
- Rights that are substantive, that is right to health, right to drinking water, right to clean environment, etc.

⁴ According to Article 20, Indian Constitution: [Protection in respect of conviction for offences]:

(1) No person shall be convicted of any offence except for violation of the 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

⁵ According to Article 21: ““No person shall be deprived of his life or personal liberty except according to a procedure established by law.”

⁶ Sunil Batra Etc. v. Delhi Administration And Ors, 1978 AIR 1675

Since Article 21 is regarded as an ‘umbrella’ provision through various basic rights of human beings are guaranteed, it is wide enough to extend such guarantee to a prison inmate to the extent possible in the prison. Right to life under this provision includes right to health, right to sleep, right to shelter, right to water, right to education, right to internet, right to family, etc.

Right to health is paramount for living a life of dignity and decency. Right to health includes right to clean drinking water, hygienic atmosphere and clean sanitation. According to a statement issued by UN, “States must ensure that everyone, including people in detention, have access to safe sanitation. Without it, detention conditions are inhumane, and contrary to the basic human dignity which underpins all human rights.”⁷ Sanitation itself is increasingly recognized as a human right, which should be enjoyed without discrimination, in all settings, including detention.⁸

According to the Model Prison Manual⁹ “Right to fulfillment of basic minimum needs such as adequate diet, health, medical care and treatment, access to clean and adequate drinking water, access to clean and hygienic conditions of living accommodation, sanitation and personal hygiene, adequate clothing, bedding and other equipment.” It also states “all accommodation provided for use of prisoners, particularly for sleeping, will meet basic requirements of healthy living.”¹⁰

Recently the Bombay High Court recognizing the importance of right to life, directed for the shifting of an accused from prison to hospice for palliative care on account of her terminal

⁷ Prisoner access to sanitation a human right, say UN experts on World Toilet Day, 19th November, 2009, available at <https://news.un.org/en/story/2009/11/321952-prisoner-access-sanitation-human-right-say-un-experts-world-toilet-day>, last visited on 10th December 2021.

⁸Ibid.

⁹ Ministry of Home Affairs, Model Prison Manual, 2016, available at <https://www.mha.gov.in/sites/default/files/PrisonManual2016.pdf>

¹⁰Ibid.

cancer.¹¹ The court in this case held “Article 21 of the Constitution is a basic postulate of human right. A prisoner, be he a convict or under-trial or a detenue, does not cease to be a human being, and even when lodged in the jail, he is not deprived of his right to life guaranteed to him under Article 21 of the Constitution, which includes the right to obtain medical treatment. A prisoner cannot be deprived of health services as it would violate the guarantee conferred under Article 21 of the Constitution of India.”¹²

State’s power to restrict right to life of an accused also is subject to this Article 21. “To glamorize impressionistic orders as discretionary may, on occasions, make a litigative gamble decisive of a fundamental right. After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of ‘procedure established by law’. The last four words of Article. 21 are the life of that human right.”¹³

As per Article 19(1) (a) every citizen of India has right to freedom of speech and expression. This right must also be extended to a prisoner to the extent to which it does not interfere with prison administration. So is also the case with a person’s right to freedom of religion. Every prisoner has the right to speech and the right to freedom of religion to the extent that these rights do not interfere with their status as jail inmates.¹⁴

Prisoners must also be allowed to enjoy their other fundamental rights while in custody if not to the fullest extent but at least to the maximum extent possible as far as such enjoyment of rights don’t interfere with fair administration of prison. Such rights are:

- Right to equality
 - Article 14 - Equal protection of laws and Equality before law.

¹¹https://www.business-standard.com/article/current-affairs/move-terminally-ill-blast-accused-to-hospice-bombay-hc-to-maha-govt-121090901339_1.html., last visited on 10th December 2021.

¹²Nirmala Kumari Uppuganti v. The State of Maharashtra and Anr, Bombay High Court decided on 9 September, 2021.

¹³Gudikanti Narasimhulu And Ors v. Public Prosecutor, 1978 AIR 429, 1978 SCR (2) 371

¹⁴N Kamini, Vellore Deputy Inspector General of Police, <https://timesofindia.indiatimes.com/city/chennai/where-do-prisoners-right-to-speech-and-freedom-of-religion-end/articleshow/73663261.cms>, last visited on 8th December 2021.

- Article 15 - Prohibition of discrimination on grounds of religion, caste, sex, place of birth or race.
 - Article 17 - Abolition of untouchability and prohibition of its practice.
- Right to freedom (Articles 19–22)
 - 19(1) Right to -
 - (a) to freedom of speech and expression;
 - (b) to assemble peaceably and without arms;
 - (c) to form associations or unions;
 - (d) to move freely throughout the territory of India;
 - (e) to reside and settle in any part of the territory of India; and
 - (g) to practise any profession, or to carry on any occupation, trade or business
 - “19(2) Nothing in sub clause (a) of clause (1) shall affect the operation of 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 relation to contempt of court, defamation or incitement to an offence
- Article 20 - Protection in a conviction for offences.
- Article 21 - Protection of life and personal liberty. Courts have held right to life as also inclusive of Right to privacy, health, food, etc. [above discussed in detail]
- Article 21A - Right to elementary education [can become relevant in relation to children in custody].
- Article 22 - Protection against arrest and detention in certain cases.
- Right against exploitation (Articles 23–24)
 - Article 23 - Prohibition of traffic in forced labour and human beings.

- Article 24 - Prohibition of employment of children in Companies and factories, etc.
- Right to freedom of religion (Articles 25–28)
 - Article 25 - Freedom of conscience and free profession, practice and propagation of religion.
- Right to constitutional remedies (Article 32): Right to move the Supreme Court for the enforcement of Fundamental Rights

Each of the above rights are guaranteed as Fundamental Rights by Indian Constitution as well as internationally recognized as Human Rights. Most of these rights are also widely interpreted by judicial decisions. To illustrate, right to life's interpretation to include right to drinking water, right to health, etc.

Declaring rights as human rights makes such rights more an entitlement on the part of the prisoner being its owner and simultaneously imposes obligations upon concerned states to ensure the protection of the same. Similarly declaring rights as fundamental rights makes such rights legally enforceable rights of its owners and on the other hand imposes obligations upon the State to ensure its protection, failure of which further becomes a ground to seek for remedies against such infringement of such rights. Hence most of the rights discussed in this chapter being human rights and fundamental rights are not just rights by mere declaration they are legally of vital importance. This chapter focuses on such rights and its further possible legal interpretations so as to provide an understanding of its scope.

UNIT 2:

INTERNATIONAL COVENANTS

AND

HUMAN RIGHTS OF PRISONERS

Importance of International Legal Instruments:

International legal instruments form to be the basis for various legal systems law framework. While member states are required to show maximum extent of compliance to these instruments, in India, many laws are framed. India too has adopted in various forms, mandates prescribed by these instruments. Indian Constitution too provides for implementation of international laws including treaties, agreements and conventions. According to Article 253 of the Indian Constitution: “Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.” Article 51(c) too requires State to ‘foster respect for international law and treaty obligations in the dealings of organised peoples with one another.’

The Supreme Court of India in *Vishaka & Ors v. State Of Rajasthan*¹⁵ observed “Any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee.” The court held “The international conventions and norms are to be read into them in the absence of enacted domestic law occupying the fields when there is no inconsistency between them. It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law.”¹⁶

International Legal Instruments on human rights of prisoners – An Introduction:

Various legal instruments recognize various rights of human beings in general and of prisoners in specific as their legal entitlements. States are obliged to ensure protection of such rights. Some of the important legal instruments are as follows:

¹⁵AIR 1997 SC 3011

¹⁶Ibid.

UNIVERSAL DECLARATION OF HUMAN RIGHTS - UDHR:

Various international legal instruments recognize various rights, recognizing them as ‘human rights’. Hence these are also referred to as international human rights instruments. These instruments recognize human rights that are fundamental for any human being.

Considered as a milestone document in the history of human rights, the Universal Declaration of Human Rights [henceforth referred to as UDHR] sets up a ‘common standard of achievements for all peoples and all nations.’ According to the declaration, fundamental human rights must be promoted and protected by States.

According to UDHR following rights are declared as human rights:

- Right to be born free and right to equality in dignity and rights under Article 1.
- Rights and freedoms provided under UDHR shall be ensured to all, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, under Article 2.
- Right to life, liberty and security of person under Article 3.
- Right against torture or cruel, inhuman or degrading treatment or punishment under Article 5
- Right to equality before the law and right to equal protection of the law under Article 7
- Right against arbitrary interference with privacy, family, home or correspondence, attacks upon one’s honour and reputation under Article 12.
- Right to freedom of thought, conscience and religion under Article 18
- Right to freedom of opinion and expression under Article 19, etc.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS - ICCPR:

According the **International Covenant on Civil and Political Rights, 1966** [henceforth referred to as ICCPR], following rights are guaranteed:

- According to Article 2, each State should respect and ensure to rights recognized in the Covenant, without distinction of any kind, such as race, colour, sex,

language, religion, political or other opinion, national or social origin, property, birth or other status.

- equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant under Article 3,
- Right to life which shall be protected by law and not arbitrarily deprived under Article 6,
- Right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment under Article 7,
- Right against slavery under Article 8,
- right to liberty and security under Article 9,
- **right not to be** subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation and right to the protection of the law against such interference or attacks **under Article 17,**
- right to freedom of thought, conscience and religion under Article 18,

Most importantly ICCPR recognizes rights of a person facing criminal prosecution and arrested. According to Article 9:

“1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time

or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.”

Further, Article 10 lays down as follows:

“1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons; (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.”

According to Article 14:

“1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal

established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (order public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.”

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS - ICESCR:

International Covenant on Economic, Social and Cultural Rights [henceforth referred to as ICESCR], adopted in 1966 guarantees to every human being economic, social and cultural rights. To the extent best possible these rights should be safeguarded even in case of prison inmates. According to Article 3, States Parties must ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights.

Most importantly, Article 12 recognizes right to life of individuals which becomes a crucial issue with respect to prison inmates. According to this Article:

“1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all, medical service and medical attention in the event of sickness.”

CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT WAS ADOPTED IN 1984:

This convention aims to prevent all forms of torture on custodial inmates including degrading treatment and punishment on individuals. The convention states that “having regard to Article 5 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

According to the convention, states must prevent torture of all forms. According to Article 2(3), ‘An order from a superior officer or a public authority may not be invoked as a justification of torture’. Being an important legal instrument in relation to the rights of prisoners as against custodial torture, this convention declares various rights of prisoners vis-a-vis obligations of the state.

Following are some of the relevant provisions from the convention:

- According to Article 10, State must “ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.”
- According to Article 11, State should “keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.”
- According to Article 12, state must “ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”
- Article 13 requires State to “ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities.
- Article 14 requires State to “ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.”
- According to Article 15, State should “ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”

OTHER IMPORTANT CONVENTIONS:

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN - CEDAW:

According to the Convention on the Elimination of All Forms of Discrimination against Women (henceforth referred to as CEDAW), State must “undertake a series of measures to end discrimination against women in all forms, including:

- to incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women;
- to establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and
- to ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.”

UNITED NATION CONVENTION ON THE RIGHTS OF THE CHILD - UNCRC:

In addition to the above, the Convention on the Rights of the Child (UNCRC) recognizes that the ‘inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world” and further provides that “recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.” This is the basis for grant of various rights of children including those that must be ensured even in case of “child in conflict with law”. This is also the basis for the approach India has adopted through its Juvenile Justice laws as well.

According to Article 9, UNCRC, a child should preferably not be separated from parents. However if separation results “from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family

unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.”¹⁷

According to Article 73, UNCRC: “States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.”

Being a child centric legal instrument UNCRC mandates states to ensure protection of children at all circumstances including in custody of State. It further mandates states to take all such actions, essential to protect the ‘best interest’ of a child.

Though this chapter is about general international legal instruments guaranteeing important rights of individuals yet to the extent possible they must be extended towards people in custody including in prisons.

¹⁷Article 9(4), UNCRC.

UNIT III

INTERNATIONAL COVENANTS

AND

HUMAN RIGHTS OF PRISONERS [CONTINUATION]

In addition to Conventions related to human rights and other general rights, there are conventions especially relevant to the rights of prisoners. These provide guidelines for member states to follow so as to ensure that prisoners are treated humanely while in custody.

UN STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS:

This Standard was adopted in 1955 by the UN First Congress on the Prevention of Crime and the Treatment of Offenders¹⁸. The standard prescribes ‘good principle and practice in the treatment of prisoners and the management of institutions.’ Following are some of the rights guaranteed through the Standard:

- Right to accommodation: the Standard states: “Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room.” “All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.”
- Right to sufficient light and fresh air: The Standard requires that “In all places where prisoners are required to live or work, (a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation; (b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.”
- Right to sanitary and hygiene needs and right to clean environment: the standard states: “The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.” Further “Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature

¹⁸Also approved by – the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

- suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.” It also states “All parts of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.”
- Right to Personal hygiene, this further requires access to water, toilet articles, etc. which are ‘necessary for health and cleanliness.’ According to Rule 15, “: Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.” Further according to Rule 16, “In order that prisoners may maintain a good appearance compatible with their self-respect, facilities shall be provided for the proper care of the hair and beard, and men shall be enabled to shave regularly.”
 - Right to Clothing and bedding: This requires that “Every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating. All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene.” “If prisoners are allowed to wear their own clothing, arrangements shall be made on their admission to the institution to ensure that it shall be clean and fit for use.”
 - Right to bedding: this requires state to provide to every prisoner ‘a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.’
 - Right to food and drinking water: this further requires that the food provides has ‘nutritional value adequate for health and strength, of wholesome quality and well prepared and served.’
 - Right to Exercise and sport
 - Right to medical services: this right also requires right to have ‘psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.’ Prisoner must also have access to ‘specialist treatment’ when necessary and the ‘services of a qualified dental officer shall be available to every prisoner.’

The rule insists for separate administration for women prisoners. It under Rule 53 states: “(1) In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution. (2) No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer. (3) Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women.”

With regard to women and children in prison, the Standard states as follows:

- “(1) In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.(2) Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.”¹⁹
- “The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work.”
- Right to communicate with family and friends
- Right to library [books]
- Right to retain property

¹⁹Rule 23

The Standard makes a distinction between

- Prisoners who are insane and mentally abnormal prisoners
- Prisoners under arrest or facing trial [that is under-trial prisoners]
- Civil prisoners
- Persons arrested without charge

The standards requires state ensure protection of all these category of prisoners to the possible extent.

The above principles were also reiterated in revised Rules of 2015, that is – popularly known at the ‘UN Nelson Mandela Rules’

THE STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS OF 2015 [NELSON MANDELA RULES]:

The Standard Minimum Rules are often regarded by states as the primary – if not only – source of standards relating to treatment in detention, and are the key framework used by monitoring and inspection mechanisms in assessing the treatment of prisoners.²⁰ This consists of 122 Rules covering all aspects of prison management and outline the agreed minimum standards for the treatment of prisoners – whether pre-trial or convicted and they are supplemented by the UN Bangkok Rules on women prisoners.²¹

The 122 Rules cover all aspects of prison management and outline the agreed minimum standards for the treatment of prisoners – whether pre-trial or convicted. They are supplemented by the UN Bangkok Rules on women prisoners.].

Rule 1 states “All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times.”

²⁰ <https://www.penalreform.org/issues/prison-conditions/standard-minimum-rules/>

²¹ Ibid.

BANGKOK RULES AND WOMEN PRISONERS RIGHTS:

The UN United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (popularly referred to as the Bangkok Rules). The Bangkok rules were adopted by the General Assembly in 2011. It invites ‘Member States to take into consideration the specific needs and realities of women as prisoners when developing relevant legislation, procedures, policies and action plans and to draw, as appropriate, on the Bangkok Rules’.²²

According to Rule 1, the states must endure nondiscrimination of prisoners. Hence ‘account shall be taken of the distinctive needs of women prisoners in the application of the Rules. Providing for such needs in order to accomplish substantial gender equality shall not be regarded as discriminatory.” At the time of admission of women prisoners, care must be taken to address specific concerns of theirs.

According to rule 2:

“1. Adequate attention shall be paid to the admission procedures for women and children, due to their particular vulnerability at this time. Newly arrived women prisoners shall be provided with facilities to contact their relatives; access to legal advice; information about prison rules and regulations, the prison regime and where to seek help when in need in a language that they understand; and, in the case of foreign nationals, access to consular representatives, as well.

2. Prior to or on admission, women with caretaking responsibilities for children shall be permitted to make arrangements for those children, including the possibility of a reasonable suspension of detention, taking into account the best interests of the children.”

It is important to note that Rule 2(2) aims to address the concerns of both women and children with women prisoners in prisons.

In addition to Rule 2, Rule 3 states as follows:

²²See: <https://cdn.penalreform.org/wp-content/uploads/2016/07/BangkokRules-Updated-2016-with-renumbering-SMR.pdf>

“3(1). The number and personal details of the children of a woman being admitted to prison shall be recorded at the time of admission. The records shall include, without prejudicing the rights of the mother, at least the names of the children, their ages and, if not accompanying the mother, their location and custody or guardianship status.

3(2). All information relating to the children’s identity shall be kept confidential, and the use of such information shall always comply with the requirement to take into account the best interests of the children.”

Since women’s right to family is also important, Rule 4 provides: “Women prisoners shall be allocated, to the extent possible, to prisons close to their home or place of social rehabilitation, taking account of their caretaking responsibilities, as well as the individual woman’s preference and the availability of appropriate programmes and services.”

With regard to personal hygiene, Rule 5 requires that “The accommodation of women prisoners shall have facilities and materials required to meet women’s specific hygiene needs, including sanitary towels provided free of charge and a regular supply of water to be made available for the personal care of children and women, in particular women involved in cooking and those who are pregnant, breastfeeding or menstruating.”

Health care services in order to be effectively provided require medical screening of women prisoners at the entry or admission level. Hence Rule 6 states: “The health screening of women prisoners shall include comprehensive screening to determine primary health-care needs, and also shall determine:

- (a) The presence of sexually transmitted diseases or blood-borne diseases; and, depending on risk factors, women prisoners may also be offered testing for HIV, with pre and post-test counselling
- (b) Mental health-care needs, including post-traumatic stress disorder and risk of suicide and self-harm;
- (c) The reproductive health history of the woman prisoner, including current or recent pregnancies, childbirth and any related reproductive health issues
- (d) The existence of drug dependency;

(e) Sexual abuse and other forms of violence that may have been suffered prior to admission.”

To address the problems of sexual abuse, Rule 7 states as follows:

“1. If the existence of sexual abuse or other forms of violence before or during detention is diagnosed, the woman prisoner shall be informed of her right to seek recourse from judicial authorities. The woman prisoner should be fully informed of the procedures and steps involved. If the woman prisoner agrees to take legal action, appropriate staff shall be informed and immediately refer the case to the competent authority for investigation. Prison authorities shall help such women to access legal assistance.

(2). Whether or not the woman chooses to take legal action, prison authorities shall endeavor to ensure that she has immediate access to specialized psychological support or counselling. (3). Specific measures shall be developed to avoid any form of retaliation against those making such reports or taking legal action.”

Most importantly the rules also states the following:

- The right of women prisoners to medical confidentiality, including specifically the right not to share information and not to undergo screening in relation to their reproductive health history, shall be respected at all times. [Rule 8]
- If the woman prisoner is accompanied by a child, that child shall also undergo health screening, preferably by a child health specialist, to determine any treatment and medical needs. Suitable health care, at least equivalent to that in the community, shall be provided [rule 9]
- Gender-specific health-care services at least equivalent to those available in the community shall be provided to women prisoners. [Rule 10(1)]
- Individualized, gender-sensitive, trauma-informed and comprehensive mental health care and rehabilitation programmes shall be made available for women prisoners with mental health-care needs in prison or in non-custodial settings. [Rule 12]
- Effective measures shall be taken to ensure that women prisoners’ dignity and respect are protected during personal searches, which shall only be carried out by

women staff who have been properly trained in appropriate searching methods and in accordance with established procedures. [rule 19]

- Punishment by close confinement or disciplinary segregation shall not be applied to pregnant women, women with infants and breastfeeding mothers in prison. [rule 22]
- Instruments of restraint shall never be used on women during labour, during birth and immediately after birth [Rule 24]
- Women prisoners' contact with their families, including their children, and their children's guardians and legal representatives shall be encouraged and facilitated by all reasonable means. Where possible, measures shall be taken to counterbalance disadvantages faced by women detained in institutions located far from their homes [rule 26]
- Where conjugal visits are allowed, women prisoners shall be able to exercise this right on an equal basis with men. [rule 27]
- Visits involving children shall take place in an environment that is conducive to a positive visiting experience, including with regard to staff attitudes, and shall allow open contact between mother and child. Visits involving extended contact with children should be encouraged, where possible. [rule 28]
- Prison authorities shall put in place measures to meet the protection needs of juvenile female prisoners.[rule 36]

UN'S BODY OF PRINCIPLES FOR THE PROTECTION OF ALL PERSONS UNDER ANY FORM OF DETENTION OR IMPRISONMENT (1988):²³

Yet another important international legal instrument in relation to the protection of prisoners is the UN's Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment. These principles apply for the protection of all persons under any form of detention or imprisonment.

According to these principles:

²³See: <http://hrlibrary.umn.edu/instreet/g3bpppdi.htm>

- All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person. [Principle 1]
- Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose. [Principle 2]
- There shall be no restriction upon or derogation from any of the human rights of persons under any form of detention or imprisonment recognized or existing in any State pursuant to law, conventions, regulations or custom on the pretext that this Body of Principles does not recognize such rights or that it recognizes them to a lesser extent. [Principle 3]
- Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority. [Principle 4]
- Measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles, aged, sick or handicapped persons shall not be deemed to be discriminatory. The need for, and the application of, such measures shall always be subject to review by a judicial or other authority. [Article 5(2)]
- No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment. [Principle 6]
- Persons in detention shall be subject to treatment appropriate to their un-convicted status. Accordingly, they shall, whenever possible, be kept separate from imprisoned persons.[Principle 8]
- The authorities which arrest a person, keep him under detention or investigate the case shall exercise only the powers granted to them under the law and the exercise of these powers shall be subject to recourse to a judicial or other authority. [Principle 9]

- Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him. [Article 10]
- A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations. [Article 19]

UNITED NATIONS BASIC PRINCIPLES FOR THE TREATMENT OF PRISONERS:

The Basic Principles for the Treatment of Prisoners was adopted by the General Assembly in 1990. According to the guidelines, following rights of prisoners are to be ensured by State:

- Right to treated with the respect due to their inherent dignity and value as human beings
- Right against discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- Right to follow one's religious beliefs and cultural precepts
- State must ensure that prisoner's well-being and development is promoted.
- Right to retain all human rights and fundamental freedoms as far as possible in the situations of incarceration. This includes 'human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the 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'
- Right to take part in cultural activities and education aimed at the full development of the human personality

Guidelines also require State to abolish solitary confinement as a punishment, or its usage should be restricted. The guidelines also requires that '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'. It further states that '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, favourable conditions shall be created for the reintegration of the ex-prisoner into society under the best possible conditions'. The guidelines require application of all the principles [stated above] impartially.

UNITED NATIONS STANDARD MINIMUM RULES FOR THE ADMINISTRATION OF JUVENILE JUSTICE:

These rules are referred to as “Beijing Rules” and were adopted in 1985. The rules require states to further the well-being of the juvenile and her or his family. The rules require states to further the well-being of the juvenile and her or his family.

Rule 1.6 of the Standard states that “Juvenile justice services shall be systematically developed and coordinated with a view to improving and sustaining the competence of personnel involved in the services, including their methods, approaches and attitudes.”

Rule 2.3 requires States to ensure that efforts are made “to establish, in each national jurisdiction, a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed”, so as to “meet the varying needs of juvenile offenders, while protecting their basic rights.”²⁴

Rule 8 emphasises on the need to protect right to privacy of juveniles. According to the rule, “the juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling.” Hence, “in principle, no information that may lead to the identification of a juvenile offender shall be published.”²⁵ This obligation to protect privacy of juvenile also lies on officers of correctional authorities. Parallel to this rule, rule 21 also requires that the “records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons.” It

²⁴<https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-standard-minimum-rules-administration-juvenile>, last visited on 16th July 2022.

²⁵Ibid.

also requires that the “Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.”

Further, according to rule 13:

- Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations.
- Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.
- While in custody, juveniles shall receive care, protection and all necessary individual assistance-social, educational, vocational, psychological, medical and physical-that they may require in view of their age, sex and personality.

According to rule 15, throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country.

It is important to also understand and realize the object behind rule 19 according to which “The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.” Hence detention of prisoners should be the last resort of the state.

Need for specific training of officers handling juveniles in prison can be seen in Rule 22, according to which “Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.” The Rule further states that “Juvenile justice personnel shall reflect the diversity of juveniles who come into contact with the juvenile justice system. Efforts shall be made to ensure the fair representation of women and minorities in juvenile justice agencies.”

Rule 26 sets objectives for institutional treatment which is as follows:

- The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.
- Juveniles in institutions shall receive care, protection and all necessary assistance- social, educational, vocational, psychological, medical and physical-that they may require because of their age, sex, and personality and in the interest of their wholesome development.
- Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.
- Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.
- in the interest and well-being of the institutionalized juvenile, the parents or guardians shall have a right of access.
- Inter-ministerial and inter-departmental co-operation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalized juveniles, with a view to ensuring that they do not leave the institution at an educational disadvantage.

Rule 27 requires that the “Standard Minimum Rules for the Treatment of Prisoners and related recommendations shall be applicable as far as relevant to the treatment of juvenile offenders in institutions, including those in detention pending adjudication”. It further requires efforts to be “made to implement the relevant principles laid down in the Standard Minimum Rules for the Treatment of Prisoners to the largest possible extent so as to meet the varying needs of juveniles specific to their age, sex and personality.”

THE EUROPEAN CONVENTION FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT:²⁶

Another important though a regional level legal instrument is this European Convention, which aims to prevent torture and other inhuman or degrading treatments or punishments.

This convention provides for the Constitution of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which is empowered as well as obligated to take care of concerns related to prisoners in relation to torture, etc. The Committee in order to check on the issue, is empowered to visit prisons and prepare reports on the issue and make recommendations.

The Committee as per Article 7 read with Article 2 can organize visits to any places “within its jurisdiction where persons are deprived of their liberty by a public authority.” Concerned State party where visit is to be carried is required to provide all essential coordination and support to the committee during such visits. Under article 8, the committee is empowered to ‘interview in private persons deprived of their liberty’, to ‘communicate freely with any person whom it believes can supply relevant information’ etc. Based on its visit the committee prepares a report and submits to the concerned state party if necessary also with suitable recommendations. According to Article 10(2) “If the Party fails to co-operate or refuses to improve the situation in the light of the Committee’s recommendations, the Committee may decide, after the Party has had an opportunity to make known its views, by a majority of two-thirds of its members to make a public statement on the matter.”

²⁶ <https://rm.coe.int/168007a67f>

UNIT IV
JUDICIAL PRECEDENTS
ON
PRISONER’S RIGHTS

Constitutional Courts in India have often been guardians of protection of human rights. Social Justice is the signature tune of our Constitution and the little man in peril of losing his liberty is the consumer of Social Justice.²⁷ In case of rights of prisoners, Indian Supreme Court as well as various High Courts in India has ensured this protection through its case laws. “Every prison sentence is a conditioned deprivation of life and liberty, with civilized norms built in and unlimited trauma interdicted. In this sense, judicial policing of prison practices is implied in the sentencing power. The Criminal judiciary has thus a duty to guardian their sentences and visit prisons hen necessarily. Many of them do not know or exercise this obligation.”²⁸

The Supreme court of India made a very important observation in Mohammad Giasuddin v. State of Andhra Pradesh saying: “Progressive criminologists across the world will agree that the Gandhian diagnosis of offenders as patients and his conception of prisons as hospitals-mental and moral-is the key to the pathology of delinquency and the therapeutic role of ‘punishment]” “Our prisons should be correctional houses, not cruel iron aching the soul.” “Indeed, the direction of prison reform is not towards dehumanization but rehumanization, not maim and mayhem and vulgar callousness but man-making experiments designed to restore the, dignity of the individual and the worth of the human person.”²⁹

Courts have a duty to protect human rights of all, including rights of prisoners. With regard to this duty of the courts, and the right to be protected through judicial intervention, the Gujarat High court in Aniruddhsinh Mahipatsinh Jadeja v. State of Gujarat And Ors.,³⁰ had rightly observed: “Where the rights of a prisoner either under the Constitution or under other law, are violated the writ power of the Court can and should run to his rescue. There is a warrant for this vigil. The Court process casts the convict into the prison system and the deprivation of his freedom is not a blind penitentiary affliction but a blighted institutionalization geared to a social good. The Court has a continuing responsibility to ensure that constitutional purpose of the

²⁷Moti Ram & Ors v. State Of M.P, 1978 AIR 1594, 1979 SCR (1) 335

²⁸Charles Sobraj v. The Suptd., Central Jail, Tihar, 1978 AIR 1514

²⁹1977 AIR 1926

³⁰(2002) 1 GLR 594

deprivation is not defeated by the prison administrative. “³¹ “A prisoner wears the armour of basic freedom even behind bars and that on breach thereof by lawless officials the law will respond to his distress signals through 'writ' aid. The Indian human has a constant companion -- the Court armed with the Constitution.”³²

The Supreme Court of India in *Sunil Batra Etc., v. Delhi Administration and Ors*³³ had extended legal protection of human rights to prisoners in the context of solitary confinement. The Apex Court observed: ““Personal liberty of the person who is incarcerated is to a great extent curtailed by plaintive detention. It is even curtailed in preventive detention. The liberty to move, mix, mingle, talk, share company with co-prisoners, if substantially curtailed, would be violative of Art. 21 unless the curtailment has the backing of law. Section 30(2)³⁴ establishes the procedure by which it can be curtailed but it must be read subject to the interpretation placed in this judgment. Once Section 30(2) is read down, its obnoxious element is erased and it cannot be said that it is arbitrary or that there is deprivation of personal liberty without the authority of law.”

*Prem Shankar Shukla v. Delhi Administration*³⁵, Hon'ble Justice Krishna Iyer observed: “the guarantee of human dignity forms part of an Constitutional culture and the positive provisions of Articles 14, 19 and 21 spring into action to disshackle any man since to manacle man is more than to mortify him; it is to dehumanize him and, therefore, to violate his very personhood, too often using the mask of 'dangerousness' and security. Even a prisoner is a person not an animal, and an under-trial prisoner is a fortiori so. Our nation's founding document admits of no exception. Therefore, all measures authorised by the law must be taken by the Court to keep the stream of prison justice unsullied.”

³¹Ibid.

³²Ibid.

³³1978 AIR 1675

³⁴Section 30(2) in The Prisons Act, 1894: “(2) Every such prisoner shall be confined in a cell apart from all other prisoners, and shall be placed by day and by night under the charge of a guard.”

³⁵1980 AIR SC 1535

In *Francis C Mullin v Union Territory of Delhi & Ors*³⁶, it was observed: “While arriving at the proper meaning and content of the right to life, the attempt of the court should always be to expand the reach and ambit of the fundamental right rather than to attenuate its meaning and content. A constitutional provision must be construed, not in a narrow and constricted sense, but in a wide and liberal manner so as to anticipate and take account of changing conditions and purposes so that the constitutional provision does not get atrophied or fossilized but remains flexible enough to meet the newly emerging problems and challenges. This principle applies with greater force in relation to a fundamental right enacted by the Constitution. The fundamental right to life which is the most precious human right and which forms the ark of all other rights must therefore be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person.”

In *D. Bhuvan Mohan Patnaik & Ors v. State of Andhra Pradesh & Ors*³⁷ the court tried summarising scope of rights of prison inmates, saying “Convicts are not, by mere reason of the conviction, denuded of all the fundamental rights which they otherwise possess. A compulsion under the authority of law, following upon a conviction, to live in a prison-house entails to by its own force the deprivation of fundamental freedoms like the right to move freely throughout the territory of India or the right to "practice" a profession. A man of profession would thus stand stripped of his right to hold consultations while serving out his sentence. But the Constitution guarantees other freedoms like the right to acquire, hold and dispose of property for the exercise of which incarceration can be no impediment. Likewise, even a convict is entitled to the precious right guaranteed by Article 21 of the Constitution that he shall not be deprived of his life or personal liberty except according to procedure established by law.”

In *Rakesh Kaushik v BL Vig, Superintendent Central Jail, New Delhi*³⁸ the court observed “To reform and deter the criminal and to work out that process geared to social defence, the convict is cast into prison-not to make him more hardened, more brutal, more cunning and dangerous to society. This *raison d'etre* of penological institutions in our Gandhian country, with humanism as

³⁶1981 AIR SC 746

³⁷1974 AIR 2092

³⁸1980 SCR (3) 929

basic to the constitutional scheme, cannot be written off without peril.” The Court held “Whether inside prison or outside, a person shall not be deprived of his guaranteed freedom save by methods, 'right, just and fair'.”

Ramamurthy v State of Karnataka³⁹ the court recognises that “The literature on prison justice and prison reform shows that there are nine major problems which afflict the system and which need immediate attention. These are:

- “(1) overcrowding;
- (2) delay in trial;
- (3) torture and ill- treatment;
- (4) neglect of health and hygiene;
- (5) insubstantial food and inadequate clothing;
- (6) prison vices;
- (7) deficiency in communication;
- (8) streamlining of jail visits; and
- (9) management of open air prisons.”

The court analysis these problems and suggests recommendations in addressing these concerns.

In the case of State of Gujarat & Anr v Hon’ble High Court of Gujarat⁴⁰ the court observed: “Reformation should hence be the dominant objective of a punishment and during incarceration every effort should be made to recreate the good man out of a convicted prisoner.” It also stated that “Thus, reformation and rehabilitation of a prisoner are of great public policy. Hence they serve a public purpose. Reformative approach is now very much intertwined with rehabilitative aspect to a convicted prisoner.”

³⁹Supreme Court, decided on 23 December, 1996

⁴⁰ Supreme Court, decided on 24 September, 1998

Madhukar B Jambhale v State of Maharashtra⁴¹, the court held: “convicts do not wholly shed their fundamental rights, though their liberty is in the very nature of things circumscribed by the very fact of their conviction. The consequent responsibilities of prison administrators have to be borne in mind. These responsibilities broadly stated are:

- (i) maintenance of internal order and discipline,
- (ii) securing the institutions against unauthorised access or escape and
- (iii) rehabilitation of prisoners.

The maintenance of penal institutions is an essential part of the Government's task in preserving social order through enforcement of criminal law and the governmental interests are the preservation of internal order and discipline, the maintenance of institutional security against escape or unauthorized entry and above all the rehabilitation of prisoners as indicated above. As a matter of fact the modern concept of criminology calls for greater attention to the reformation of a prisoner.”

SC ON RIGHTS OF PERSONS FACING CRIMINAL PROCEDURE INCLUDING UNDER TRIAL PRISONER

Prisoners retain all rights enjoyed by free citizens except those lost necessarily as an incident of confinement. Rights guaranteed under Indian Constitution must be ensured to the extent possible in respect of a prisoner. “The Preamble sets the human tone and temper of the Founding Document and highlights justice, Equality and the dignity of the individual. Article 14 interdicts arbitrary treatment, discriminatory dealings and capricious cruelty. Article 19 prescribes restrictions on free movement unless in the interests of the general public. Article 21 is the sanctuary of human values, prescribes fair procedure and forbids barbarities, punitive or procedural. Such is the apercu.”⁴²

Rights enjoyed by prisoners under Arts 14, 19 and 21 though limited are not static and will rise to human heights when challenging situations arise.”⁴³ However it is inevitable that

⁴¹1984 (2) Bom C R 709

⁴²Prem Shankar Shukla v. Delhi Administration, 1980 AIR 1535, 1980 SCR (3) 855

⁴³Charles Sobraj v. The Suptd., Central Jail, Tihar, 1978 AIR 1514

some of the rights of the accused gets compromised in the course of criminal procedure, such as arrest, search, custodial detention, etc. This concern was raised by the Supreme Court in *Joginder Kumar v. State Of U.P.*⁴⁴ in which court said:” The horizon of human rights is expanding. At the same time, the crime rate is also increasing. Of late, this Court has been receiving complaints about violation of human rights because of indiscriminate arrests. How are we to strike a balance between the two? A realistic approach should be made in this direction. The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first the criminal or society, the law violator or the law abider; of meeting the challenge...” While answering these issues and related questions, the court rightly observed: “The quality of a nation's civilisation can be largely measured by the methods it uses in the enforcement of criminal law.”

In *Prem Shankar Shukla v. Delhi Administration*⁴⁵ it was observed that “the functional compulsions of security must reach that dismal degree that no alternative will work except manacles. Our Fundamental Rights are heavily loaded in favour of personal liberty even in prison, and so, the traditional approaches without reverence for the worth of the human person are obsolete, although they die hard.” In this case the court also laid down that an order of superior officer also cannot justify illegal treatment of a prisoner such as custodial torture or handcuffing. The court held: “Even orders of superiors are no valid justification as constitutional rights cannot be kept in suspense by superior orders, unless there is material, sufficiently stringent, to satisfy a reasonable mind that dangerous and desperate is the prisoner who is being transported and further that by adding to the escort party or other strategy he cannot be kept under control.” Again while referring to the rights of an arrested person the court in *Shri D.K. Basu, Ashok K. Johri v State of West Bengal*⁴⁶ has observed: “Fundamental rights occupy a place of pride in the India Constitution. Article 21 provides "no person shall be deprived of his

⁴⁴1994 AIR 1349, 1994 SCC (4) 260

⁴⁵ 1980 AIR 1535, 1980 SCR (3) 855

⁴⁶(1997) 1 SCC 416

life or personal liberty expect according to procedure established by law". Personal liberty, thus, is a sacred and cherished right under the Constitution. The expression "life of 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. Article 22 guarantees protection against arrest and detention in certain cases and declares that no person who is arrested shall be detained in custody without being informed of the grounds of such arrest and shall not be denied the right to consult and defend himself by a legal practitioner of his choice. Clause (2) of Article 22 directs that the person arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the Magistrate. Article 20(3) of the Constitution lays down that a person accused of an offence shall not be compelled to be a witness against himself. These are some of the constitutional safeguards provided to a person with a view to protect his personal liberty against and unjustified assault by the State. In tune with the constitutional guarantee a number of statutory provisions also seek to protect personal liberty, dignity and basic human rights of the citizens.

Chapter V. of Criminal Procedure Code, 1973 deals with the powers of arrest of a person and the safeguards which are required to be followed by the police to protect the interest of the arrested person. Section 41, Cr. P.C. confers powers on any police officer to arrest a person under the circumstances specified therein without any order or a warrant of arrest from a Magistrate. Section 46 provides the method and manner of arrest. Under this Section no formality is necessary while arresting a person. Under Section 49, the police is not permitted to use more restraint than is necessary to prevent the escape of the person. Section 50 enjoins every police officer arresting any person without warrant to communicate to him the full particulars of the offence for which he is arrested and the grounds for such arrest. The police officer is further enjoined to inform the person arrested that he is entitled to be released on bail and he may arrange for sureties in the event of his arrest for a non-bailable offence. Section 56 contains a mandatory provision requiring the police officer making an arrest without warrant to produce the arrested person before a Magistrate without unnecessary delay and Section 57 echoes Clause (2) of Article 22 of the Constitution of India. There are some other provisions also like Section 53, 54 and 167 which are aimed at affording

procedural safeguards to a person arrested by the police. Whenever a person dies in custody of the police, Section 176 requires the Magistrate to hold an enquiry into the cause of death.”

A prisoner or an accused’s right to legal aid and legal services are of immense importance. It is through this right that the criminal process he follows can be made fair and reasonable to him. In *Hussainara Khatoon & Ors v. Home Secretary, State Of Bihar*⁴⁷ while emphasising on the need to ensure free legal service to an accused the court held: “The right to free legal service is therefore, clearly an essential ingredient of ‘reasonable, fair and just’ procedure for a person accused of, an offence and it must be held implicit in the guarantee of Article 21. This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services, on account of reasons such as poverty, indigence or incommunicado situation and the State is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require, provided of course the accused person does not object to the provision of such lawyer.”

In *Sheela Barse v. State of Maharashtra*,⁴⁸ an accused’s right to legal aid was recognized by court. The court in this case observes “Imagine the helpless condition of a prisoner who is lodged in a jail who does not know to whom he can turn for help in order to vindicate his innocence or defend his constitutional or legal rights or to protect himself against torture and ill-treatment or oppression and harassment at the hands of his custodians. It is also possible that he or the members of his family may have other problems where legal assistance is required but by reason of his being incarcerated, it may be difficult if not impossible for him or the members of his family to obtain proper legal advice or aid. It is therefore absolutely essential that legal assistance must be made available to prisoners in jails whether they be under-trial or convicted prisoners” and further rightly said: “Legal assistance to a poor or indigent accused, arrested and put in jeopardy of his life or personal liberty, is a constitutional imperative mandated not only by Art. 39A but also by Articles 14 and 21 of the Constitution. It is a Necessary sine qua non of justice and where it is not provided, injustice is likely to result and every act of injustice corrodes the foundations of democracy and rule of law. It is possible that a prisoner lodged in a jail does not

⁴⁷1979 AIR 1369, 1979 SCR (3) 532

⁴⁸1983 AIR SC 378

know to whom he can turn for help to indicate his innocence or defend his constitutional or legal rights or to protect himself against torture and ill-treatment, oppression and harassment at the hands of his custodians. It is also possible that he or the members of his family may have other problems where legal assistance is required but by reason of his being incarcerated. It may be difficult if not impossible for him or the members of his family to obtain proper legal advice or aid. It is therefore essential that legal assistance must be made available to prisoners in jails whether they be under-trials or convicted prisoners.”

In the case of *Madhav Hayawadan Rao Hosket v. State of Maharashtra*, the Supreme Court rightly observed that “the right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.”

Various other rights that an under-trial prisoner gets are:

- Right to consult a lawyer of his choice during investigation and trial [Section 303, CR P C., and reiterated by SC in *Nandini Satpathy* case]
- Right to a free legal aid lawyer, during a criminal trial conducted by Sessions Court [Section 304 Cr P C]
- Right to speedy trial [Section 309 Cr P C as well as Article 21, Indian Constitution. While speedy trial cannot be completely granted to an accused, his detention beyond legally permitted period pending criminal proceedings is also not allowed. In the course of a pending investigation it is only for a maximum period of 60 or 90 days [in case of a regular crime] that a person can be detained in prison. Post this period if investigation continues accused will be released on

bail as per section 167. Similarly in case of a pending trial an accused's detention cannot go beyond the period prescribed by provisions such as section 436A.⁴⁹

The Court while referring to this right of a prisoner in *S.C. Legal Aid Committee v. Union of India*⁵⁰ had observed: "we have felt that deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article 21. Of course, some amount of deprivation of personal liberty cannot be avoided in such cases; but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. It is because of this that we have felt that after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualised by Article 21, which has to be telescoped with the right guaranteed by Article 14 which also promises justness, fairness and reasonableness in procedural matters. What then is the remedy? The offences under the Act are grave and, therefore, we are not inclined to agree with the submission of the learned counsel for the petitioner that we should quash the prosecutions and set free the accused persons whose trials are delayed beyond reasonable time. Alternatively he contended that such accused persons whose trials have been delayed beyond reasonable time and are likely to be further delayed should be released on bail on such terms as this Court considers appropriate to impose." Supreme Court in *A.R. Antulay v. U.S. Nayak*, [(1992) 1

⁴⁹Section 436A of Criminal Procedure Code prescribes time bar for detention of an accused pending trial [that is an under trial prisoner]. According to this provision, "Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties; Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties; Provided further that no such person shall in any case be detained during the period of investigation inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law."

⁵⁰ 1994 SCC (6) 731, JT 1994 (6) 544.

SCC 225] and *Raj Deo Sharma v. State of Bihar*, [(1998) 7 SCC 507], has held that the right of speedy justice is a fundamental right as envisaged under Article 21 of the Constitution.⁵¹

Right to appeal: Right to appeal is also an important right of an accused person as per our criminal laws and constitutionally guaranteed fundamental rights. The Supreme court in *M.H. Hoskot v. State of Maharashtra*⁵²... observed that “One component of ‘fair procedure’ is natural justice. Generally speaking and subject to just exceptions, at least a single right of appeal on facts, where criminal conviction is fraught with long loss of liberty, is basic to civilized jurisprudence. It is integral to fair procedure, natural justice and normative universality” Further, every step that makes the right of appeal fruitful is obligatory and every action or inaction which stultifies it is unfair and, ergo, unconstitutional (In a sense, even Article 19 may join hands with Article 21.”⁵³ In this case, the court also emphasized upon the need to provide free legal services of a lawyer to an indigent prisoner. The court states: “If a prisoner sentenced to imprisonment, is virtually unable to exercise his constitutional and statutory right of appeal, inclusive of special leave to appeal, for want of legal assistance, there is implicit in the Court under Art. 142, read with Arts. 21, and 39A of the Constitution, power to assign counsel for such imprisoned individual for doing complete justice. This is a necessary incident of the right of appeal conferred by the Code and allowed by Art. 136 of the Constitution. The inference is inevitable that this is a State's duty and not government's charity. Equally affirmative is the implication that while legal services must be free to the beneficiary, the lawyer himself has to be reasonably remunerated for his services. Surely, the profession has a public commitment to the people but mere philanthropy of its members yields short mileage in the long run. Their services, especially when they are on behalf of the State, must be paid for. Naturally, the State concerned must pay a reasonable sum

⁵¹ Allahabad High Court quoted these decisions in *Amarawati and Anr. (Smt.) v. State Of U.P.* [2005 (1) AWC 416], while upholding right to be released on bail as per section 167.

⁵² 1978 AIR 1548, 1979 SCR (1) 192

⁵³ *Ibid.*

that the court may fix when assigning counsel to the prisoner. Of course, the court may judge the situation and consider from all angles whether it is necessary for the ends of justice to make available legal aid in the particular case. In every country where free legal services are given it is not done in all cases but only where public justice suffers otherwise. That discretion resides in the court.”⁵⁴ It is also important to note that in this case the court has also reiterated to need of ensuring that the accused gets freely a copy of the judgment of the court.

- **Right to bail** since as courts have repeatedly said “bail should be the rule and jail should be an exception. Hence denial of bail must be with justifiable reasons. The court in Lt Col Prasad Shrikant Purohit v. The State Of Maharashtra⁵⁵, has rightly held that “though an accused has a right to make successive applications for grant of bail, the court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the court also has a duty to record the fresh grounds which persuade it to take a view different from the one taken in the earlier applications.” This interpretation has come more clearly in relation to the default bail granted under Section 167 of Criminal Procedure Code. The Delhi High court in Abhishek v. State NCT of Delhi⁵⁶ has held that “The right to seek default bail under Section 167(2)Cr.P.C. is a fundamental right and not merely a statutory right, which flows from Article 21 of the Constitution of India. It has been held to be an indefeasible part of the right to personal liberty under Article 21 of the Constitution of India, and such a right cannot be suspended even during a pandemic situation. The right of the accused to be set at liberty takes precedence over the right of the State to carry on the investigation and submit a charge sheet.” The Supreme Court too in its latest decision in Bikramjit Singh v. The State Of Punjab⁵⁷ Has rightly reiterated that “The right to default bail, as has been correctly held by the judgments of this Court, are not mere statutory rights under the first

⁵⁴Ibid.

⁵⁵ (2018) 11 SCC 458.

⁵⁶ CRL.M.C. 2242/2020, decided in October 2021.

⁵⁷ 2020 SCC OnLine SC 824 or see - <https://indiankanoon.org/doc/10807134/>

proviso to Section 167(2) of the Code, but is part of the procedure established by law under Article 21 of the Constitution of India, which is, therefore, a fundamental right granted to an accused person to be released on bail once the conditions of the first proviso to Section 167(2) are fulfilled.”

- Etc.

In *State of Punjab v. Balbir Singh*⁵⁸ the court while referring to the right of an accused to be informed of his rights arising from and during procedure of arrest and search, reiterated the need to inform about these rights including that of accused’s right to remain silent. While emphasising on these rights the court observed: “When such is the importance of a right given to an accused person in custody in general, the right by way of safeguard conferred under Section 50⁵⁹ in the context is all the more important and valuable. Therefore it is to be, taken as an imperative requirement on the part of the officer intending to search to inform the person to be searched of his right that if he so chooses, he will be searched in the presence of a Gazetted Officer or a Magistrate.” The court further stated “To afford such an opportunity to the person to be searched, he must be aware of his right and that can be done only by the authorized officer informing him. The language is clear and the provision implicitly makes it obligatory on the authorized officer to inform the person to be searched of his right.”

With regard to the importance of ensuring protection of prisoners’ rights in *Prem Shankar Shukla v. Delhi Administration*⁶⁰ it was held “the basic assumption we humanistically make is that even a prisoner is a person, not an animal, that an under-trial prisoner a fortiori so. Our nation’s founding document admits of no exception on this subject as Sunil Batra’s case has clearly stated. Based on this thesis, all measures authorised by the law must be taken by the court to keep the stream of prison Justice unsullied”

⁵⁸1994 AIR 1872, 1994 SCC (3) 299

⁵⁹Section 50, Narcotic Drugs and Psychotropic Substances Act, 1985 provides for the procedure relating to search of persons.

⁶⁰1980 AIR 1535, 1980 SCR (3) 855

UNIT 5

OTHER RELATED ISSUES:

Apart from the judicial decisions referred to in the previous unit, there are many other judicial decisions that have recognized various rights of prisoners which will be focused in the initial part of the unit.

Some of the rights are as follows:

Right to livelihood:

“The Supreme Court in Olga Tellis case laid it down that the right under Article 21 comprehends the right to earn one's livelihood. A person because he is in prison does not lose this right so long as his right under Article 21 can be exercised by him consistently with his imprisonment. Work is necessary for the preservation of life. In England, therefore, a prisoner is not only entitled but he is also bound to work and he is paid for his work at the rates approved by the Secretary of State. The right of the prisoner to earn his livelihood and to preserve his life thus imposes a corresponding obligation on the State to provide work to the prisoner and pay for it. Such right of the prisoner can only be taken away by a valid law enacted by the found by the constitutional legislature, courts to be fair and reasonable. That is the ratio of the two hall-mark decisions of the Supreme Court in Mithu's case and Panduranga Prabhakar's case as there is no law enacted by the legislature authorising the State to deny the payment for the work extracted from prisoner the State would be violating Article 21 in extracting work from the prisoner without payment.”⁶¹ The court in this case further observed: “the failure of the State to pay for the work extracted from the prisoner amounts to violation of the prisoners right to earn his livelihood. This reasoning cannot be found fault with on the basis that imprisonment will then become the best form of getting employed. Where the State kept the prisoner in its custody, the above implication becomes unavoidable.”⁶²

⁶¹Poola Bhaskara Vijayakumar v. State Of Andhra Pradesh And Anr, AIR 1988 AP 295

⁶²Ibid.

Right to be released on Furlong:

“The idea of granting furlough to a prisoner is that the prisoner should have an opportunity to come out and mix with the society and the prisoner should not be continuously kept in jail for a considerable long period. The interaction with the society helps the prisoner in realizing the folly which he has committed and the liberty which he is deprived of. In modern times the effort is to improve the prisoner and the punishment is to be considered as an action for reformation of an individual. It is futile to suggest that a prisoner should be kept behind the bars continuously and should not be permitted to come out on furlough unless the authorities think it wise.”⁶³

As regards to the nature of the facilities of release on Furlough are concerned, it is well settled that the said right is held to be a substantial, legal right conferred on the prisoner. Rules cannot deprive the prisoner of the substantive right to be released on Furlough, provided, requirement in the Rules are complied with.⁶⁴ The Court in this case has clarified the distinction between furlough and parole. It held ‘Parole is granted for certain emergency and release on Parole is a discretionary right, while release on Furlough is a substantive right and accrues to a prisoner on compliance of certain requirements,’⁶⁵

Right to be in contact with family& right to conjugal visits:

The court in Dharambir and Anr v. State Of U.P.,⁶⁶ the court recognising the importance of a prison inmate’s right to be in touch with his family said: “the humanizing process will be facilitated by keeping the prisoners in contact with their family. This can be made feasible (a) by allowing members of the family to visit the prisoners and (b) by the prisoners, under guarded conditions, being permitted, at least once a year, to visit their families. We therefore, direct that all these be done by the State Government and the Superintendent under the authority of this

⁶³ Sharad Keshav Mehta v. State Of Maharashtra And Others, decided by Bombay High Court on 19 July, 1988

⁶⁴ Central Prison v. State Of Maharashtra, Bombay High court decided on 7th August, 2008.

⁶⁵ Ibid & also see: Sharad Keshav Mehta v. State Of Maharashtra And Others, decided by Bombay High Court on 19 July, 1988.

⁶⁶ 1979 AIR 1595

Court's order. The prisoners will be permitted to go on parole for two weeks, once a year, which will be repeated throughout their period of incarceration provided their conduct, while at large, is found to be satisfactory. “

Right to conjugal visits and related aspects: Though right to conjugal visits and right to procreation is not yet guaranteed as a right of prisoner across India, yet in some states and in some cases, the same has been provided through court decisions. In *Mrs. Meharaj v. The State*, the Madras High court granted conjugal visit right to a prisoner and observed as follows:

“Man is a social animal. He needs a family as well as a society to live in. The man needs both to share his emotions and feelings. Being human beings, prisoners also would like to share their problems with their life partner as well as with the society. Just because, they are termed as prisoners, their right to dignity cannot be deprived.

Out of four theories of punishment, India has accepted the theory of reformation also. The concept of reformatory theory is best, as it says that the human being to be reformed would become the productive member of the society. If that is to be done, prisons have to be transformed as homes for the purpose of giving training morally as well as intellectually, so that the prisoners are denuded of the qualities of a criminal. The psychologists and psychiatrists believe that the frustration, tension, the ill feelings and the heart burnings can be reduced and a human being can be better constructed if they are allowed conjugal relationship even rarely. Therefore, while considering the merits and demerits of allowing conjugal visits or permitting leave for the purpose of artificial insemination, the advantages are more than the disadvantages.

Conjugal visit leads to strong family bonds and keep the family functional rather than the family becoming dysfunctional due to prolonged isolation and lack of sexual contact..... Therefore, it is a right time that the Government should constitute a committee to consider the possibility of providing conjugal visit and analyze the merits and demerits of permitting conjugal visits and to provide the facility for conjugal visits to eligible prisoners subject to the precautions / safety measures to be taken.

Conjugal visits of the spouse of the prisoners is also the right of the prisoner. This right is recognized at least in few countries of the world. When the prisons are overcrowded providing

place for conjugal visits may be a problem, but the Government has to find out a solution. Today, conjugal visits are called extended family visits (or, alternately, family reunion visits). The official reason for these extended family visits is three-fold: to maintain the relationship between the prisoner and the members of his family, to reduce recidivism, and to motivate or to provide an incentive for the good behaviour.” The court in this case also examined the question - whether permission should be granted in the name of parole or by way of suspending the sentence? In response to this question, the court held: “We hold that until a legislation is made or appropriate rules are issued by the Tamil Nadu government regulating the grant of parole (temporary release), there shall be no temporary release of any prisoner on parole.” The term parole as repeatedly used in Chapter XIX of the Tamil Nadu Prisons Rules is not relating to the temporary release of a prisoner, but it is a release by granting remission.”

It is important to note that in an earlier case from Punjab, the state’s concerned prison related rules were interpreted to include prisoner’s right to conjugal visit. In *Arun v. State Of Haryana And Others*⁶⁷... the court held that “The right was recognized” and that the “provisions of the Punjab Good Conduct Prisoner's (Temporary Release) Act, 1962” can be interpreted to include this right and the court held that “the parole for conjugal visits and procreation could be considered under Section 3(1) (d) "any other sufficient cause".

Though India lacks a law recognising prisoner’s right to conjugal visit, it is important to note that many other countries recognises this right of the prisoner.

Right to visitation:

“In 1973, the National Advisory Commission argued that prisoners should have a "right" to visitation. Task Force Report, Corrections (1973) at 66. It also argued that correctional officials should not merely tolerate visiting, but should encourage it, particularly by families. Although the Commission recognised that regulations were necessary to contend with space problems and with security concerns, it proposed that priority be given to making visiting areas pleasant and unobstrusive. It also urged that correctional officials should not eavesdrop on conversations or

⁶⁷<https://indiankanoon.org/doc/80068790/> [decided in 2019 by Punjab & Haryana High Court in the matter of CWP No.3311 of 2019 (O&M).

otherwise interfere with the participants' privacy. Thus, although there may be current limitations on the possible use of the Constitution on visitations by family and friends, public policy should dictate substantial improvements in this area, in any event. We see no reason why the right to be visited under reasonable restrictions, should not claim current constitutional status. We hold, subject to considerations of security and discipline, that liberal visits by family members, close friends and legitimate callers, are part of the prisoners' kit of rights and shall be respected."⁶⁸ "We see no reason why the right to be visited under reasonable restrictions, should not claim current constitutional status. We hold, subject to considerations of security and discipline, that liberal visits by family members, close friends and legitimate callers, are part of prisoners' kit of rights and shall be respected."⁶⁹

Right to Communication:

Right to Communication will include the right to communication with the outside world, right to periodic interviews, and right to receive information about the outside world through communication media.⁷⁰ Right to communication also includes right to write. A prison inmate has right to communication to the extent to which it does not affect the object of sanctions and prison administration. This right further includes 'right to write' letters to his family members or friends. According to the Maharashtra Prison Manual 1979, a convicted Class I prisoner is permitted to write two letters on government cost and two letters on his own cost per month, while Class II prisoners can write one letter each; letters to their advocates were additional.⁷¹ The Mulla Committee in its 1983 report recommended that there should not be any limit on incoming letters and no restrictions on number of letters prisoners may send at their own cost.⁷²

⁶⁸Aniruddhsinh Mahipatsinh Jadeja v. State Of Gujarat and Ors, (2002) 1 GLR 594.

⁶⁹Madras High Court in P. Nedumaran v. The State of Tamil Nadu, decided on 14 August, 2001, referring to SC's Sunil Batra's precedent.

⁷⁰Mulla 1983, pp. 46, Vol I), quoted by Baljeet Kaur, Prisoners' Right to Write: Why SC Rulings Should be Taken Seriously by Prison Authorities, available at <https://www.epw.in/engage/article/prisoners-right-write-why-sc-rulings-should-be-considered>.

⁷¹ <https://www.epw.in/engage/article/prisoners-right-write-why-sc-rulings-should-be-considered>

⁷²Ibid.

Like the above there are various rights of the prisoners that are constitutionally guaranteed, legally ensured and assured through judicial precedents.

Right to Redressal of Grievances:

Rights if breached must be remedied. Redressal of grievances of prisoners is one such remedy available against breach of rights of prisoners. Whenever prisoners have any grievances they must have access to redressal mechanism which is also an important right of such prisoners.

According to Mulla Committee, prisoner's right includes right to effective presentation of individual complaints and grievances during confinement in prison to the appropriate authorities. Hence a robust grievance redressal mechanism should be put in place in all prisons to ensure the rights of prisoners are not violated and their concerns are heard impartially and there should be both internal and external mechanisms for inmates to represent their grievances.⁷³

The Mulla Committee also recognized prisoners right to "communicate with prison administration, appropriate government and judicial authorities, as the case may be, for redressal of violation of any or all of prisoner's rights and for redressal of grievances" as an important right.⁷⁴

- The National Model Prison Manual prescribes the creation of a Prisoners' Panchayat to organise events and activities for prisoners as well as provide an avenue to represent concerns and seek redress of grievances. A 'Mahapanchayat' should be held at least once a quarter with the Superintendent in attendance for the redressal of prisoners' grievances and implementation of their suggestions. The practice of fortnightly or weekly 'Nari Bandhi Sabhas' (women prisoners' councils) should also be encouraged.
- The Prisons Manual also provides for the setting up of a Grievance Redressal System in every prison, with complaint boxes to be prominently installed,

⁷³ <https://wcd.nic.in/sites/default/files/Prison%20Report%20Compiled.pdf>

⁷⁴ Quoted in <https://wcd.nic.in/sites/default/files/Prison%20Report%20Compiled.pdf>

especially accessible to female prisoners. A Grievance Redressal Committee is to examine the complaints twice every week.⁷⁵

- An additional complaint box should also be in place for serious complaints such as sexual abuse, torture etc. which only Board of Visitors can open. A register can be placed at an accessible spot in the prison for submitting grievances. Apart from the prisoner herself, her legal adviser or family members should be allowed to make complaints regarding her stay in prison. In case the lady medical officer notices signs of torture during medical examination, she may, with the consent of the woman prisoner, raise a complaint on her behalf.
- Prisoners should also be able to represent their grievances verbally or in writing during visits by Board of Visitors, DLSA, State Commissions for Women, District Magistrate, etc.
- Prisons that house women inmates must have a senior female officer as part of the Grievance Redressal Committee, which should examine complaints in an unbiased manner. Women prisoners should have a chance to raise their concerns to the Superintendent during weekly parades. In managing the grievance redressal mechanism, steps should be taken to avoid the risk of retaliation, and to ensure that the complaints are not censored.

⁷⁵Ibid

CONCLUSION

Prison Jurisprudence, developed through case-law and derived from constitutional law, already exists.⁷⁶“Prison justice implies Court's continuing duty and authority to ensure that the judicial warrant which deprives a person of his life or liberty is not exceeded, subverted or stultified. It is a sort of solemn covenant running with the power to sentence. Where a prison practice or internal instruction places harsh restrictions on jail life, breaching guaranteed rights, the Court directly comes in. Every prison sentence is a conditioned deprivation of life and liberty with civilized norms built in and unlimited trauma interdicted.”⁷⁷

It is important to remember that the whole prison jurisprudence including those established in form of provisions of laws and precedents of courts emphasis on maximum extent of protection of prisoners' rights. As was rightly summarized in the Model Prison Manual, 2016, the three principles enunciated by Indian courts with respect to prisoner's rights are:

- “(1) A person in prison does not become a non-person;
- (2) A person in prison is entitled to all human rights within the limitations of imprisonment
- (3) There is no justification in aggravating the suffering already inherent in the process of incarceration.”

Courts extended hands of aid reaches prison inmates when his rights get violated. In this regard, various precedents in India are established by the Supreme Court and High Court. Writ jurisdictions are often invoked to check issues of rights violations in prisons. The Gujarat High court in Aniruddhsinh Mahipatsinh Jadeja v. State Of Gujarat and Ors.⁷⁸ said “Prisons are built with stones of law' and so it behaves the Court to insist that, in the eye of law, prisoners are persons, not animals, and punish the deviant 'guardians' of the prison system where they go berserk and defile the dignity of the human inmate. Prison houses are part of Indian earth and the

⁷⁶Ramesh Kaushik v. B. L. Vig, Superintendent And Anr, 1981 AIR 1767

⁷⁷Charles Sobraj v. The Suptd., Central Jail, Tihar, 1978 AIR 1514

⁷⁸(2002) 1 GLR 594

Indian Constitution cannot be held at bay by jail officials 'dressed ill a little, brief authority', when Part III is invoked by a convict. For when a prisoner is traumatized, the Constitution suffers a shock. And when the Court takes cognizance of such violence and violation, it does, like the, Hound of Heaven, 'But with unhurrying chase, and unperturbed pace. Deliberate speed and Majestic instancy' follow the official offender and frown down the outlaw adventure.”

Every imprisonment indicates compromising of concerned person’s right to life which hence must be as per procedure established by law. Such procedure must also be fair and just as was held by Supreme Court of India in Maneka Gandhi case.⁷⁹ The Court in this case also has emphasizes upon the importance of Article 21, by saying “It, is evident that Article 21, though so framed as to appear as a shield operating negatively against executive encroachment over something covered by that shield, is the legal recognition of both the protection or the shield as well as of what it protects which lies beneath that shield.”⁸⁰ It is important to ensure that all fundamental rights are guaranteed at all times including to the extent possible in prison. This can be assessed by the way the Apex court has interpreted the meaning, importance and scope of ‘fundamental rights’ in Maneka Gandhi case, according to which: “Articles dealing with different fundamental rights contained in Part III of the Constitution do not represent entirely separate streams of rights which do not mingle at many points. They are all parts of an integrated scheme in the Constitution. Their waters must mix to constitute that grand flow of unimpeded and impartial Justice (social, economic and political), Freedom (not only of thought, expression, belief, faith and worship, but also of association, movement, vacation or occupation as well as of acquisition and possession of reasonable property), of Equality (of status and of opportunity, which imply absence of unreasonable or unfair discrimination between individuals, groups and classes), and of Fraternity (assuring dignity of the individual and the unity of the nation), which our Constitution visualizes. Isolation of various aspects of human freedom, for purposes of their protection, is neither realistic nor beneficial but would defeat the very objects of such protection.”⁸¹

⁷⁹Maneka Gandhi v. Union of India. AIR 1978 SC 579

⁸⁰Ibid.

⁸¹Ibid.

The above is a brief summary of various judicial precedents through which various rights of prisoners are guaranteed. Referring to these judicial decisions, it was observed “Suffice it to say that this Court has, clearly and firmly, laid-down that the police and the jail authorities are under a public duty to prevent the escape of prisoners and provide them with safe custody but at the same time the rights of the prisoners guaranteed to them under Articles 14, 19 and 21 of the Constitution of India cannot be infringed. The authorities are justified in taking suitable measures, legally permissible, to safeguard the custody of the prisoners, but the use of fetters purely at the whims or subjective discretion of the authorities is not permissible.”⁸²

** ** *

⁸² Citizens For Democracy v. State Of Assam And Ors, (1995) 3 SCC 743

PART - C

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- The Staff Handbook, The Code of Conduct and Discipline
- Judicial precedents
- Committee reports [All India Committee for jail reforms, Mulla Committee, Krishna Iyer Committee, etc.]
- Government guideline

APPENDICES

- 1. REGISTRATION FORM**
- 2. PRE-COURSE ASSESSMENT**
- 3. POST-COURSE ASSESSMENT**
- 4. FEEDBACK FORM**
- 5. COURSE COORDINATOR’S REPORT**
- 6. FIELD-VISIT FORMAT**
- 7. ASSESSMENT – MCQ**
- 8. NOTE FOR THE FACILITATOR ON PANEL DISCUSSION**
- 9. PRISON STATISTICS, 2021 (IN BRIEF)**

(Name of the Training Institute)

(Name of the Course)

(Dates)

REGISTRATION FORM

PARTICIPANT DETAILS

1. Name :
2. Date of birth :
3. Male/Female
- 4.. Qualifications :
(a) Academic
(b) Professional
5. Designation :

ORGANIZATION DETAILS

6. Department/Organization :
7. Address
8. Telephone No.
9. E-mail id :

RESIDENTIAL DETAILS

10. Address
11. Telephone No.
12. Mobile No.
13. Emergency contact details :

Signature
Name
Date

APPENDIX- 2

PRE-COURSE ASSESSMENT EXERCISE

Answer the following –

S. No.	Name of Unit (As given in the Course Grid)	Pre-Assessment (Knowledge-level before training)		
		Absolutely Yes	Not Sure	No knowledge
_____	_____	_____	_____	_____
1.	Are you aware of.....			
2.	Do you have an understanding of.....			
.....				

POST-COURSE ASSESSMENT EXERCISE

Answer the following –

S. No.	Name of Unit (As given in the Course Grid)	Post-Assessment (Knowledge-level after-training)		
		Absolutely Yes	Not Sure	No knowledge
_____	_____	_____	_____	_____
1.	Are you aware of.....			
2.	Do you have an understanding of.....			
.....				

APPENDIX- 4

(Name of the Training Institute)
 (Title of the Course)
 (Dates of the Course)

FEEDBACK FORM

(To be filled-in by individual participants at the end of the Course)

1. To what extent the Objectives of the Course were met

To a great extent 4	To some extent 3	To a limited extent 2	Not at all 1

2. Did you receive advance intimation from the Institution about the Course. if so, did you respond to the Institution?

Yes

No

3. What do you think about the structure and organization of the Course to meet the objectives?

Very well Structured 4	Well Structured 3	Some-what structured 2	Un-structured 1

4. How useful this training would be to you immediately in your job?

Very Useful 4	Quite Useful 3	Of limited Use 2	Not at all Useful 1

5. How useful this training is likely to be for the future jobs you may handle?

Very Useful 4	Quite Useful 3	Of limited use 2	Not at all Useful 1

6. Practical Orientation of the course.

Highly Practical Oriented 4	Practically Oriented to a Great extent 3	Practically Oriented to a Limited extent 2	Not Practically Oriented 1

7. How far have you been benefited from interaction with the other participants in the Course?

Substantially 4	Considerably 3	Fairly 2	Not at all 1

8. How far was the Course Material supplied relevant and related to the Course Contents?

Extremely Relevant 4	Considerably Relevant 3	Fairly Relevant 2	Not at all relevant 1

9. To what extent are you satisfied with the following:
(The Training Institution may please block the parameters not applicable)

Satisfied fully 4	Satisfied to a large extent 3	Satisfied to a limited extent 2	Not satisfied 1
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a)	Reception & Transport				
b)	Residential Accommodation				
c)	Food Quality & Service				
d)	Classroom facilities				
e)	Library facilities				

f) Computer facilities

g) Interaction with the staff of the Institute

10. Feedback on the Training/Faculty:
(Kindly fill up the Annexure)

11. Which parts of the Course did you find most helpful?

12. Which parts of the Course did you find least helpful?

13. Your overall impression of the course:

Excellent 4	Very Good 3	Good 2	Fair 1

14. Did the Course give you any specific ideas about improvements in your working situation when you get back. Yes/No

15. If yes, kindly spell them out briefly?

16. Any other comments/observations you wish to make about the Course

Date:

Place:

Name :
Designation :
Organisation :

APPENDIX- 5

COURSE COORDINATOR'S REPORT
on
(Name of the Training Course)
(Duration)

1. Name of the Training Institution:
2. Whether the Course was conducted :
In the Institute's Campus or elsewhere
3. Title of the Course :
4. Duration of the Course :
5. Number of participants :
(Attach final list of participants)
6. Details of Training Facilitators :
(Name/Designation/Organization)
(In-House/Guest)
7. States/UTs represented :
8. Details of Sessions with working hours :
9. List of Training Material distributed :
10. Details of Methods/Methodology used:
11. Feedback of participants :
(Attach copies of Feedback Forms)
12. Summary of the Feedback :
13. Summary of the Pre/Post Assessments :
14. Any areas of improvement noticed :
15. Overall impression of the Course :
Coordinator

Signature
(Name of the Course Coordinator)

Designation

Date

(Mobile Number/E-mail)

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FIELD VISIT REPORT FORMAT

Format of Field Visit Report

Name of the trainee officer :

Batch No. :

Officer in charge of the visit :

Name of the Institute/organization visited :

Time and Date of visit :

Subject for which visit is made :

Signature of the trainee

Signature of the officer in charge of the visit

Structure of the Report

1. Introduction about the institute
2. Origin and history of the institute
3. Primary duties and functions of the institute
4. Officer with whom interacted
5. Report of the Visit [write summary of learnings from the visit] \
9. Any other Comments/ remarks about the visit and the learnings from the visit.

NOTE FOR THE FACILITATOR ON THE PANEL DISCUSSION

Instructions to Course Coordinator

Invite a member from each of the agencies to have a panel discussion

While conducting the panel discussion, faculty should act as a Moderator

The Moderator should introduce the theme and then the panelists. Each panelist can be given around 15 minutes time to speak and discuss the role of their agencies and areas where coordination is required. After all panelists have spoken, the panel should be open for discussion with question from the participants. The key points of each speaker should be summed up by the moderator and the discussion should be concluded by the moderator well within time. The participants should be instructed to ask specific questions to the panelists.

Group Discussion :

Each Participant should be encouraged to participate. Establish Ground Rules first. Cull out the important points that emerge from the discussion

Action Plan :Group Work Activity

Prison based Rehabilitation programs

Participants should be divided into groups of 5-6 members of all ranks (warder, to Superintendent)and all should brainstorm and discuss what goals to set for prisoner rehabilitation programs in a particular prison. Action Plan should be time bound and can be short term, medium term and long term. Work Sheets, Flip chart sheets and sketch pen should be distributed to all the groups and facilitator should ensure that all contribute their ideas. Each goal should make clear the responsibility-what you can do at your level (e.g. at Deputy Superintendent level),what can be done by others (e.g. at headquarters).Further review of action is essential. Make clear that there is a start and end date to the action, so the Plan is time bound.

APPENDIX - 8

PRISON STATISTICS INDIA – 2021

Total Number of Prison Inmates as on 31.12.2021		
Male	:	5,31,025
Female	:	22,918
Transgender	:	91
Prison Population	:	5,54,034

Prisoner Types and Demography

Convicts		Undertrials		Detenues		Others	
Male	117846	Male	409346	Male	3381	Male	452
Female	4990	Female	17745	Female	88	Female	95
Transgender	16	Transgender	74	Transgender	01	Transgender	00
Total	122852	Total	427165	Total	3470	Total	547

Number of Jails, Capacity, Population and Occupancy Rate in India at the end of 2021

Type of Jail	Number	Authorized Capacity	Population of Inmates	Occupancy Rate(%)
Central Jail	148	193536	239311	123.7
District Jail	424	163606	254214	155.4
Sub Jail	564	45436	46736	102.9
Special Jail	41	7473	6582	88.1
Open Jail	88	5953	2178	36.6
Women Jail	32	6767	3808	56.3
Borstal School	19	1775	745	42.0
Others	03	1063	460	43.3
Total	1319	425609	554034	130.2

Source : NCRB, MHA (2021) <https://ncrb.gov.in/en/prison-statistics-india-2021>