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PRISONERS AND THEIR FUNDAMENTAL RIGHTS- CHALLENGES & RECOMMENDATIONS

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INTRODUCTION

“To improve prison conditions does not mean that the prison life should be made soft; it means that it should be made human and sensible”—Pt. Jawaharlal Nehru

The criminal justice system of India follow ‘reformatory theory of punishment’, in this the prisons are not used only to punish the convicts or protect the society from the offenders but to help the convicts to transform their life as the main objective is to make them the law abiding member of the society once again. Because the justice system in India believe to ‘abhor the crime and not the criminal’.¹One of the crucial role in the reformation of the prisoners is the administration of the prison. Now the first question here is what is prison and where in Indian laws the word prison is define. As per section 3(1) of the prisons act 1894, “the prison is basically a place or jail used for the detention of the prisoners under the general or special orders of the respected State Government”.²In the act the ambit of the prisoners are wide as it includes ‘criminal prisoner’, ‘convicted criminal prisoner’ and ‘civil prisoner’.The condition of prison is unacceptable in India because of the issue of poor management, overcrowding of prison, poor infrastructure and lack of training to the personnel. Because of which the prisoners are deprived of their basic necessities as they are ill-treated and kept in inhuman conditions.Sometimes, in

¹ Tanu Priya, Reformatory theory of punishment, Academike (Sept. 02, 2014), <https://www.lawctopus.com/academike/reformatory-theory-of-punishment/#:~:text=The%20reformatory%20theory%20is%20also,of%20the%20community%20once%20again.&text=Such%20criminals%20should%20be%20punished,authority%20of%20the%20moral%20law.>

²Shagun Bahl, Prison laws in India- the forgotten law, Ipleaders (Aug. 24, 2017), <https://blog.ipleaders.in/prison-laws-india/>.

prisons they are considered as a mere object and not as human being. Interestingly, the Hon'ble Apex court time to time emphasized on the position that the person are not ceased to be human beings if in prisons.³ Prisons are considered as public property and it is the duty of the respected government to focus on the proper administration of prisons but in reality there is very less transparency and accountability in Indian prisons. It is almost impossible to find out that what is happening in the prisons by an ordinary person or even by media. The condition of Indian prisons are deteriorating day by day.

Despite having almost 5 lakhs inmates in different prisons in India, still, we didn't have any codified law specifically for the rights of the prisoners in India.⁴ This raises a question on the functioning of the biggest democracy in the world. Though, the Constitution of India acts as saviour in this issue because it enumerate few fundamental rights that can be exercised by any person including prisoners.⁵ But, in reality the scenario is different as the fundamental rights is only limited to Constitution and very few prisoners in India can invoke these rights for justice. The situation is so pathetic that majority of the prisoners are not even aware of their rights. Apart, from this there are few procedural rights also that is highlighted in Code of Criminal Procedure, 1973.⁶ Though, the paper will only cover the analysis of the prisoner's fundamental rights.



Fundamental Rights of the Prisoners

The article 14 of the Constitution of India prohibits discrimination which means all the fundamental rights that can be invoked by ordinary person can also be invoked by the prisoners. But, this part cover only few specific & significant fundamental rights of the prisoners.

- Right of equality- As per article 14, every person is entitled to right to equality. Hon'ble Apex Court in *E.P. Royappa v. State of Tamil Nadu*⁷ stated that "arbitrariness is antithetic

³ Vivek Narayan Sharma, Prisoner's rights in India, The Times of India (Oct. 20, 2018), <https://timesofindia.indiatimes.com/blogs/lawtics/prisoners-rights-in-india/>.

⁴ Vijdan Mohammad Kawoosa, Prison overcrowding in 2019 highest in 10 years, Hindustan Times (Sept. 07, 2020), <https://www.hindustantimes.com/india-news/prison-overcrowding-in-2019-highest-in-10-years/story-Mm8VGVG0J12zFvqC9rRFZJ.html#:~:text=As%20on%2031%20December%2C%202019,capacity%2C%20the%20highest%20since%202010.>

⁵ MP JAIN, Indian Constitutional Law (8th ed. Lexis Nexis, 2019).

⁶ R. V. Kelkar, Criminal Procedure (6th ed., Eastern Book Company, 2014).

⁷ AIR 1974 SCC 555.

to the right to equality".⁸ By virtue of this the prisoners in India are protected from any arbitrary or unreasonable action from the authorities.

- Right to freedom of speech and expression- By virtue of article 19 of the Constitution of India, every prisoners also have the fundamental right of the speech and the expression. This will help the prisoners to raise voice against the atrocities or inhuman treatment in the prison.⁹ This also empowered the prisoners to register their grievances against any abuse of powers by the authorities. In simple language, we can say that this right is essential because it help the victim prisoners to raise their issue which contribute in the access of justice.¹⁰
- Right to speedy trial- The Supreme Court in plethora of cases highlighted that the accused i.e. under trial prisoners have the fundamental right of speedy trial.¹¹ Long, pending or tiresome trials infringes the fundamental right of speedy trial of the under-trial prisoners and this is also considered as denial of justice. The concept of speedy trial is integral to the criminal justice system followed in India as well as universally recognized human right by different international conventions & treaties. Though, no Indian laws brief on the time limit to disposed a case.¹²
- Right to fair trial- In a democratic society a fair trial is important not only for the under-trial prisoners but also for the society. This is one of the basis on which criminal jurisprudence is based and entirely follow the principle of rule of law.¹³ In context of prisons this prevent the prosecution as well as prison authorities to use unfair means to extract the confession or do any similar things in prison. This right ensures that the prosecution will proceed only as per the law in every trial.
- Right to life and personal liberty- This right is prima facie based on life which is meaningful, complete & worth living which is more than the physical survival of a being.

⁸Shivam, Arbitrariness analysis under article 14 with special reference to review of primary legislation, ILI Law Review (2016), <http://ili.ac.in/pdf/paper11.pdf>.

⁹Ritesh Kumar, Rights of prisoners under Indian Law, Legal Desire (Sept. 15, 2017), <https://legaldesire.com/rights-prisoners-indian-law/>.

¹⁰Id. At 9.

¹¹Diganth Raj Sehgal, Rights of prisoners and major judgments on it, Ipleaders (Nov. 06, 2020), <https://blog.ipleaders.in/rights-prisoners-major-judgments/>.

¹² Id. At 8.

¹³Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158: AIR 2004 SC 3114.

It includes bare necessities of life such as clothing, shelter, adequate nutrition etc.¹⁴ Also, the ambit of personal liberty is very wide in nature.¹⁵ By virtue of article 21, even the prisoners has the right to life and personal liberty.

- Right to live with human dignity- The dignity of the human beings is protected by the constitution. Many times prisoners are considered mere as object but because of this fundamental right they are treated with dignity irrespective of the situations which mean even in prisons.¹⁶
- Right to privacy- In last few years the concept of right to privacy evolved a lot. By virtue of various judgments, convicts & prisoners can also exercise the right to privacy. It prima facie prohibits unwarranted interference into individual's personal liberty.¹⁷ It prioritise adequate space is ensured for voluntary administration for the techniques with regard to criminal justice.¹⁸ The conversation between the prisoners and their spouse should not be monitored by authorities because of the right to privacy of the prisoners.¹⁹
- Right against solitary confinement and bar fetters- In this the prisoners are not allowed to keep in a different cell with almost zero contact with other inmates. Though, the apex court allowed the solitary confinement in exceptional cases where the prisoner is of violent or dangerous nature and solitary confinement is necessity for the benefit of others.²⁰ The court considered solitary confinement and bar fetters as derogatory & dehumanizing in nature and against the fundamental principle of the Constitution of India.²¹
- Right to health and medical treatment- One of the crucial elements of article 21 is 'right to health & medical treatment'. As it creates obligation on the State to protect an individual's life. In context of prisoners, in plethora of judgments, the court directed the

¹⁴Francis Coraliee v. Delhi Administration, AIR 1981 SC 849.

¹⁵Kharak Singh v. State of Uttar Pradesh, AIR 1963 SC 1295.

¹⁶PTI, Prisoners too have a right to live life with dignity: SC, The Times of India (Sept. 15, 2017), <https://timesofindia.indiatimes.com/india/prisoners-too-have-a-right-to-live-life-with-dignity-sc/articleshow/60702664.cms#:~:text=If%20the%20fundamental%20right%20to,%22chattel%22%2C%20it%20said.>

¹⁷Id. At 11.

¹⁸Rohit Shekhar v. N.D. Tiwari, RFA (OS) No. 1 of 2010.

¹⁹Manu Sebastian, Conversations between a prisoner and spouse should be unmonitored: Madras HC reads down prison rules, Live Law (May 28, 2019), <https://www.livelaw.in/news-updates/conversations-between-a-prisoner-and-spouse-should-be-unmonitored-madras-hc-145330>.

²⁰Sunil Batra v. Delhi Administration, 1980 AIR 1579; 1980 SCR (2) 557.

²¹Diganth Raj Sehgal, Rights of prisoners and major judgments on it, Ipleaders (Nov. 06, 2020), <https://blog.ipleaders.in/rights-prisoners-major-judgments/>.

jail authorities to provide proper mental & physical healthcare, if the prisoners are suffering from any illness.²²The court also directed the authorities to ensure facilities like ICCU, pathology labs, sufficient doctors & staffs in all central and district jails.²³

- Right to legal aid- This was introduced in the directive principles of state policy after the 42nd amendment in the Constitution of India. In the case of framing the rules to provide legal assistance the state must keep in mind the interest of prisoners, criminals or convicts. Furthermore, it is the obligation on the government to provide legal service to the prisoners.²⁴
- Right against inhuman treatment- This right safeguards prisoner from any type of cruel or inhuman treatment. This means that no harsh method will be adopted for the treatment of the prisoners. The right also barred method such as handcuffs, chains, strait jackets etc for punishing the prisoners.²⁵ Though, any sort of restraint in exceptional circumstances can be used on prisoners but that restraint cannot be for a longer time, otherwise considered as inhuman in nature.²⁶
- Right to receive books/magazines- Every prisoners has the right to receive books & magazines in prison. The court considered restraint on knowledge, learning & happiness as the restraint on liberty of the individual.²⁷
- Right to education- Here education means regulation of work & education of the prisoners. In this it is the duty of the concerned government to check the nature of the work given to the prisoners. The nature of the work “must not be monotonous, mechanical and intellectual or like type mixed with a little manual labour”.²⁸
- Right to publication- By virtue of this right prisoner is allowed to write or publish a book. If the authority didn't permit the prisoner to hand over his unpublished book for publication to his wife then this is considered as violative of article 21 of the Constitution of India, even if the person is arrested under preventive detention act.²⁹

²²Rasikbhai Ramsingh Rana & Another v. State of Gujarat & Others, 1999 Cr. L.J. 1975: (1999) 1 GLR 176.

²³Id. At 22.

²⁴Madhav Hayawadanrao Hoskot v. State of Maharashtra, 1978 AIR 1548: 1979 SCR (1) 192.

²⁵Sunil Gupta and Others v. State of Madhya Pradesh and Others, 1990 SCR (2) 871: 1990 SCC (3) 119.

²⁶Kadra Pehadiya and Others v. State of Bihar, AIR 1981 SC 939: 1981 (29) BLJR 300: (1981) 3 SCC 671.

²⁷George Fernandes v. State of Maharashtra, (1964) 66 BOMLR 185.

²⁸Mohammad Giasuddin v. State of Andhra Pradesh, 1977 AIR 1926: 1978 SCR (1) 153.

²⁹Prabhakar Pandurang Sanzgiri v. State of Maharashtra, 1986 (1) Bom. CR. 272.

Apart, from these above mentioned rights there are other rights as well like 'right to reasonable wages in prison'³⁰, 'right of inmates of protective homes'³¹ etc. Further, the prison act of 1894 also guarantees few rights like accommodation & sanitary conditions for the prisoners, provisions with regard to examination of prisoners by qualified medical officer, provision to keep female prisoners separately etc.³²

JUDICIAL PRONOUNCEMENTS & INTERNATIONAL OBLIGATIONS

This chapter initially emphasize on the judgment by different Constitutional Courts on the prisoners right of India. As we know that the right given to the prisoners are mainly because of the broader interpretation of the fundamental rights enshrined in the Constitution of India. This is why in this chapter we will discuss few landmark cases on prisoner's right in India. As the rights of prisoners are not codified but evolved from last few decades because of the judicial activism. Apart from this this chapter also include a brief on the international obligation that safeguards the prisoner's interest all over the world.

Judicial Pronouncements

The Hon'ble Supreme Court and different High Courts of India time to time decided in the favour of the prisoner's fundamental rights to improve their deteriorating conditions. The Court also highlighted that the right emphasized by the court must be implemented in a proper way otherwise it will contradict the principles on which our criminal justice delivery system is based. Here are the few landmark decision that contributed in the evolution of the prisoner's jurisprudence in India.

- In the case of *D. Bhuvan Mohan Patnaik & ors v. State of Andhra Pradesh & ors*³³, the court stressed on the point that prisoners are also human being which means a natural & a legal person and their rights cannot be snatched away at the desire of the prison administration. This is why the prison authorities cannot impose any other punishment

³⁰*People's union for democratic rights v. Union of India*, AIR 1982 SC 1473.

³¹*Upendra Baxi v. State of U.P.*, (1983) 2 SCC 308.

³²Saisreenadh, *Regulation of prison labour and the prisoner's act 1894*, Legal Services India (2016), <http://www.legalserviceindia.com/legal/article-2665-regulation-of-prison-labour-and-the-prisoners-act-1894.html>.

³³1974 AIR 2092: 1975 SCR (2) 24.

on the prisoners which infringes their fundamental rights. The same principle was reiterated in the judgment of *Sunil Batra v. Delhi Administration*³⁴. In *T.V. Vatheeswaran v. State of Tamil Nadu*³⁵, the court again emphasized that there is no difference between a freeman and a prisoners in the context of applicability of fundamental rights.

- Recently, in *State of Andhra Pradesh v. Challa Ramkrishna Reddy*³⁶, the court said that the prisoners can exercise all fundamental rights but not those who are constitutionally curtailed. In *State of Maharashtra v. Prabhakar Pandurang Sanzgir*³⁷, the court explain the concept of free citizens and said the prisoners can also exercise rights like free citizen but not those who are necessary to curtail for the confinement. Also, the fundamental right of the prisoners in article 14, 19 & 21 are not static but they will rise to new human heights in case of challenging circumstances as highlighted in the case of *Charles Sobraj v. Supdt. Central Jail Tihar*³⁸.
- In the context of right to privacy the two celebrated judgments are *Rohit Shekha v. N.D. Tiwari*³⁹ and *Rahmath Nisha v. Additional Director General of Prisoner and Others*⁴⁰. The judgment prioritise adequate space is ensured for voluntary administration for the techniques with regard to criminal justice. Furthermore, the court also stated that the conversation between the prisoners and their spouse should not be monitored by authorities because of the right to privacy of the prisoners.
- The Hon'ble Apex in *Batra case*⁴¹ also barred imposition of solitary confinement and keeping the prisoners in bar fetters. As it deteriorates the mental health and creates impact on the mind of the prisoner for a longer duration and considered as dehumanizing, derogatory & against the fundamental of the Constitution.
- In *Rasikbhai Ramsing Rana v. State of Gujarat*⁴², the court highlighted that the prisoners are also entitled to exercise right to health and medical treatment. The prison authorities

³⁴1980 AIR 1579: 1980 SCR (2) 557.

³⁵ AIR 1983 SC 361: (1983) 2 SCC 68.

³⁶(2000) 5 SCC 712: AIR 2000 SC 2083.

³⁷1986 (1) Bom Cr. 272.

³⁸ 1978 AIR 1514: 1979 SCR (1) 512.

³⁹ (2012) 12 SCC 554.

⁴⁰ WP (MD) No. 12488 of 2019.

⁴¹1980 AIR 1579: 1980 SCR (2) 557.

⁴² 1999 Cr. L.J. 1975: (1999) 1 GLR 176.

is under obligation to take measures to provide proper physical & mental healthcare. In this case the court issued guidelines directing central government to ensure facilities like ICCU, doctors & staff etc. in all central & district jails.

- In *Hussainara Khatoon v. State of Bihar*⁴³, the court emphasized that every under-trial prisoner has the right to speedy trial irrespective of the nature of the alleged crime. The principle of speedy trial is considered as paramount in criminal justice delivery system because delay in trials is almost equivalent to the denial of justice. The parties during the trial suffers lots of hardship because of which it is the right of the parties for the speedy disposal of his indictment. The same principle was reiterated again by the apex court in *AR Antulay v. RS Nayak*⁴⁴.
- The Supreme Court often expressed their anger on inhuman treatment of the prisoners by the prison authorities. The court in different cases prohibited different method of inhuman treatment like in *Kadra Pehadiya v. State of Bihar*⁴⁵, the use of leg irons for the under-trial prisoners and in *Sunil Gupta v. State of Madhya Pradesh*⁴⁶, the court prohibited unreasonable handcuffing of the prisoners. The court always stress that if authorities acted unjustly & unreasonable in keeping the prisoners or escorting the prisoners then the act considered as inhuman in nature which is violative of the fundamental right of the prisoners.
- The judiciary also highlighted that the prisoners are entitled to right to publication. As in the case of *Rajgopal v. State of Tamil Nadu*⁴⁷, the court said that no authority as per the law has the power to deny the publication of auto-biography of the prisoner on any ground.

These are only few judgments in which the court highlighted the prisoner's right. Also, the concept of fundamental right is evolving. In light of judicial activism, we can say that the broader interpretation of different article always be in the interest of the prisoners.

Analysis of International Obligations

⁴³ (1980) 1 SCC 81.

⁴⁴ 1988 AIR 1531: 1988 SCR Supl. (1) 1.

⁴⁵ AIR 1981 SC 939: (1981) 3 SCC 671.

⁴⁶ 1990 SCR (2) 871: 1990 SCC (3) 119.

⁴⁷ 1995 AIR 264: 1994 SCC (6) 632.

Various international instruments guaranteed prisoner's right and acts as a guiding nature to different countries including India. Here are few of the international instruments;

First, the Universal Declaration of Human Rights, 1948 (UDHR) which promotes human right in the world. Article 1 of the UDHR highlight that every human beings is equal in dignity & rights and article 3 stress on right to life, liberty & security of the individual.⁴⁸ Further, article 5 prohibits torture, cruel, inhuman or degrading treatment or punishment to any individual.⁴⁹

Second, 'the international covenant on civil and political rights', 1966 (ICCPR). The most important in context of prisoner's right is article 10 which provides all person to be treated with humanity and with respect to inherent dignity of the person. Furthermore, the entire covenant stress on the reformation & social rehabilitation of the prisoners.⁵⁰

Third, 'the United Nations standard minimum rules for the treatment of prisoners, 1955' contain different rules for the treatment of the prisoners. Few of the most important provisions like provision for medical services, provision for corporeal punishment or punishment in dark cell, provision for cruel, inhuman or degrading punishment etc.⁵¹

Fourth, 'the United Nations basic principles for the treatment of prisoners, 1990' which emphasize that the prisoners are treated with dignity and as human beings without any sort of discrimination.⁵²

CHALLENGES FOR THE FUNDAMENTAL RIGHTS

The conditions of Indian prison is deteriorating day by day. Prisoners often face atrocities by the prison staff & authorities in prison. Problem like overcrowding, poor management is very common in almost all the prison of India. Apart from this there are other issues also that violates fundamental right of the prisoners. Here, in this chapter we will discuss few issues to highlight that how normal the violation of fundamental rights in the prisons in India.

⁴⁸Eileen Byrnes & Ismael Hayden, A summary of the universal declaration of human rights, Development Education (Jun. 11, 2007), <https://developmenteducation.ie/feature/human-rights/a-summary-of-the-universal-declaration-of-human-rights/#:~:text=On%20the%2010th%20of,adopted%20by%20an%20international%20organisation.>

⁴⁹Id. At 48.

⁵⁰Unknown, Summary: International covenant on civil and political rights (ICCPR), Canadian Civil Liberties Association (Oct. 27, 2015), [https://ccla.org/summary-international-covenant-on-civil-and-political-rights-iccpr/.](https://ccla.org/summary-international-covenant-on-civil-and-political-rights-iccpr/)

⁵¹ Ritesh Kumar, Rights of prisoners under Indian Law, Legal Desire (Sept. 15, 2017), [https://legaldesire.com/rights-prisoners-indian-law/.](https://legaldesire.com/rights-prisoners-indian-law/)

⁵²Id. At 51.

Violation of right to speedy trial

As per the 2019 prison report, under-trial prisoners are almost 70% of the prison population. Under-trial prisoners are basically those individual who are detained in prison during the investigation, inquiry or trial for the alleged offence committed under any law.⁵³ In different law commission reports, it was highlighted that lots of under-trial prisoners spend more than one year because of the delayed trials.⁵⁴ In 2021, Calcutta High Court release a Nepali citizen who was an under-trial prisoner alleged with murder case in Darjeeling.⁵⁵ He was arrested in 1981 and released in 2021, this mean 40 years as under-trial prisoner and now, the court declare the accused as 'unfit for the trial'. The condition of the accused was so bad that he didn't knew anything about his native home in Nepal.⁵⁶ Even recently, Allahabad High Court released a man from Agra jail after 20 years of trial. Though, the lower court declared its judgment within 3 years but the delay in trial was because of the appellate court. The court said that the accused was wrongfully incarcerated on the charge of rape.⁵⁷ In 2006, the apex court of India released a 70 year-old-man who was in the jail for last 40 years. He was arrested for allegedly murdering his sister-in-law but the authorities lost the paper of his case. Chief Justice YK Sabharwal in his order of bail also highlighted the disorganised & callous justice system.⁵⁸ After a month of this order, another person from Unnao district jail was released who was detained in the year 1961.⁵⁹ There are more than thousand cases where the accused is in the detention for more than a decade and lakhs of cases where the under-trial prisoners are in the prison for more than a year. There are ample of reports on the same issue by Law Commission and by different government report. These reports and the above discussed incident clearly justify the violation of prisoner's right to speedy trial.

⁵³Seventy-Eight report on congestion of under-trial prisoners in jails, Law Commission of India (Feb., 1979), <https://lawcommissionofindia.nic.in/51-100/Report78.pdf>.

⁵⁴ Vidushi Gupta, The state of under-trial incarceration in India, The Criminal Law Blog (Oct. 25, 2020), <https://criminallawstudiesnluj.wordpress.com/2020/10/25/the-state-of-undertrial-incarceration-in-india/#:~:text=Undertrial%20prisoners%20formed%2070%25%20of,only%2091%20were%20civil%20inmates>.

⁵⁵Wire Staff, Nepali Man, in jail for 40 years, released by Calcutta HC after being found unfit for trial, The Wire 9Mar. 18, 2021), <https://thewire.in/law/nepali-man-jail-40-years-release-calcutta-high-court-unfit-for-trial-dipak-jaishi>

⁵⁶Id. At 55.

⁵⁷Deepak Lavania, Innocent man walks out of Agra jail after 20 years, The Times of India (Mar. 04, 2021), <https://timesofindia.indiatimes.com/city/agra/innocent-man-in-jail-for-20-yrs-walks-free-as-fellow-inmates-cheer-says-first-hell-reclaim-honour/articleshow/81317111.cms>.

⁵⁸Rahul Bedi, Forgotten man of Indian justice spent 40 years in jail, The Irish Times (Feb. 16, 2006), <https://www.irishtimes.com/news/forgotten-man-of-indian-justice-spent-40-years-in-jail-1.1016150>.

⁵⁹Id. At 58.

Violation of fundamental right of women

The population of women in prison is rising by 61 percent but still no safeguard provision to respect their rights. They are deprived of basic necessity like clean water, good food, sanitary napkins etc. In one of the report submitted by 'Citizens for Justice and Peace' (CJP) they highlighted that the women inmates are subject to custodial torture, sexual assault & rape. They are forced to live in inhuman conditions inside Indian jails.⁶⁰ In one of the testimony IN CJP report, a 14 year old girl highlighted severe harassment by the prison authorities and wanted to die instead of staying in prison.⁶¹ In context of women atrocities, one of the famous incident is 'Byculla prison death'. In this a lady named Manjula Shetye complained the authorities that the inmates are not receiving sufficient food because of which she was pulled by hair assaulted through kicks & blows by six jail staff including the jailor and the prison guards.⁶² The prison guard also inserted a stick in her vagina by opening her legs.⁶³ Initially, she was denied medical assistance but because of the inmates protest she was taken to the medical office in jail and then transfer to the hospital where she was declared dead because of her injury.⁶⁴ Many activist including a senior lawyer Indira Jaising considered this incident as parallel to horrific 2012 Delhi gang rape case. Sexual violence, rape, torture, custodial death in prison is increasing drastically. Not only this the women inmates didn't find proper sleeping are because of the over-crowding & poor management by the prison authorities as they didn't consider them as human but as mere object. There are 1350 prison in India in this only 31 are reserved for women & only half of the States have specific women jails otherwise the women are accommodated in smaller enclosures

⁶⁰Teesta Setalvad, Women prisoners recount jail horror stories, CJP (Jan. 24, 2019), <https://cjp.org.in/women-prisoners-recount-jail-horror-stories/>.

⁶¹Id. At 60.

⁶² Express News Service, Byculla prison death: inmate identifies six jail staffers who assaulted Manjula Shetye, Indian Express (Dec. 13, 2018), <https://indianexpress.com/article/cities/mumbai/byculla-prison-death-inmate-identifies-six-jail-staffers-who-assaulted-manjula-shetye-5490971/>.

⁶³Vidhi Doshi, A brutal sexual assault sparked riots in Indian prison, The Washington Post (Jun. 29, 2017), <https://www.washingtonpost.com/news/worldviews/wp/2017/06/28/an-inmate-was-brutally-assaulted-in-an-indian-prison-sparking-a-riot-but-media-coverage-has-turned-her-death-into-a-footnote/>.

⁶⁴Scroll Staff, Byculla jail inmate's murder: Mumbai court frames charges against six accused prison personnel, Scroll (Jun. 19, 2018), <https://scroll.in/latest/883260/byculla-jail-inmates-murder-mumbai-court-frames-charges-against-six-accused-prison-personnel>.

within men's prison.⁶⁵ These above things contribute a lot in the violation of fundamental right of the women in Indian prison.

Violation of right to privacy

As per the Prisons Statistics India (PSI) for 2019, the capacity for prisoners in India is 4.03 lakhs person but almost 4.8 lakhs inmates are in different prison all over India.⁶⁶ The occupancy ratio in 2019 was 119 percent which is highest till now. This increase in the occupancy ratio raises a question on the privacy of the inmates inside the prisons. Also, the court in many case highlights that privacy of an individual is paramount while examining the permissibility of the compulsory testing but these guidelines are ignored in the prison to extract confession by the under-trial prisoners. Not only this, the heavy monitoring of the prisoners meeting with their families by the prison staff is also considered as violation of privacy. In one of the incident when the prison escort monitor meeting of the prisoner and his wife in a hospital is considered as violation of privacy. Further, installation of CCTV cameras in women inmates' prison is also an issue of the privacy in summer season where they wear minimum clothes because of extreme summer. Majority of the prisoners are not even aware about their right to privacy because of which many incidents are not even reported.

Violation of right against solitary confinement

In India solitary confinement of the prisoners is not allowed but only in exceptional cases. On October 2020, the JNU leader Umar Khalid in his statement in the court said that he was in solitary confinement and was not allowed to step out of the cell.⁶⁷ In this the additional session's judge stated that the prisoners are allowed to step out as per the rules and cannot be kept in solitary confinement.⁶⁸ The solitary confinement is used as mean to torture prison and violates the right of the prisoners. Another famous case is of Mohammad Aamir Khan who was often in solitary confinement in his 14 years of jail period. In his book titled "Framed as a Terrorist: My

⁶⁵Jahnavi Sen, Buzz of a mosquito but with the sound of grief: the lives of India's women prisoners, The Wire (Mar. 08, 2021), <https://thewire.in/women/india-women-prisoners-rights>.

⁶⁶Prisons Statistics India 2019, National Crime Records Bureau (2019), <https://ncrb.gov.in/en/prison-statistics-india-2019>.

⁶⁷Wire Staff, Umar Khalid tells court he is being kept 'practically in solitary confinement', The Wire (Oct. 22, 2020), <https://thewire.in/rights/umar-khalid-tells-court-he-is-being-kept-practically-in-solitary-confinement>.

⁶⁸Richa Banka, Let Umar Khalid step out of jail cell: court, The Hindustan Times (Oct. 24, 2020), <https://www.hindustantimes.com/cities/let-umar-khalid-step-out-of-jail-cell-court/story-1ouWNA5y2Kew5ebfyuso4L.html>.

14-Year Struggle to Prove My Innocence”, he highlighted that he only saw lights of the tower and heard sound of the boots during his escort to the jail & the court for the trial, otherwise almost zero encounters with the outside world.⁶⁹ Even in 2018, Delhi High Court ordered Tihar jail administration to shift gangster Neeraj Bawana from solitary confinement to regular ward.⁷⁰ In solitary confinement they suffer from depression, trauma, anxiety which affects them psychologically & physiologically.

Violation of right to health & medical treatment

The government always frame policy in such a way that every individual receive best possible health care but every-time in the policies the prisoners are ignored. One of the biggest problem in prison is health hazard. The prisoners are often infected by infectious diseases because of the poor hygiene in the prison. NHRC time to time point out at inadequate medical facilities in Indian prison. Also, during the admission of the prisoners, it is mandatory to undergo medical examination but this is also a mere formality.⁷¹ In one of the 2010 report, almost 10 % of the individual in the prison of India suffer from HIV-AIDS.⁷² The Directorate of Health Services specify a prison ward in every civil hospital but only few of them are functional. The medical staff to prisoners ration in India is 243:1.⁷³ Apart from this there are incidental issues like less staff to escort the prisoners & unfeasible arrangement. In an interview given by a senior doctor to the wire, he said ‘even if a patient condition is critical then also the escort party want the patient to return to the prison because in hospital there is an arrangement for the prisoner but not for the escorting party’. Second, like only few prison ward are functional, so, in case if the prisoner from Kalyan district taken to the other functional ward then he face two challenges i.e., arrangement of escort party as we know the staff are very less and second reaching the hospital before time.⁷⁴ As per the statistics of National Crime Records Bureau 2018 (NCRB), almost 2000 people

⁶⁹Anthony Lawrence, Solitary Confinement: Out of the hell hole, India legal live (May 05, 2018), <https://www.indialegalive.com/top-news-of-the-day/legal-eye-articles/solitary-confinement-out-of-the-hell-hole/>.

⁷⁰ Id. At 69.

⁷¹Ms. Sameeksha Sharma, Health and safety of prisoners in India, International Journal of Innovative and Informative Multidisciplinary Research (Fe., 2019), http://ijimr.com/uploads/F_9_Sharma_Studt._40-46.pdf

⁷²Id. At 71.

⁷³Madhurima Dhanuka and Siddharth Lamba, Analysis: India’s prison system needs urgent reform, The Hindustan Times (Jan. 25, 2020), <https://www.hindustantimes.com/analysis/analysis-india-s-prison-system-needs-urgent-reform/story-HYecwGnYLtYqCZqfV3rycL.html>.

⁷⁴Sukanya Shantha, Poor medical care for prisoners explains why number of custodial deaths is only rising, The Wire (Jan. 15, 2020), <https://thewire.in/rights/prison-custodial-death-medical-care>.

died in Indian prison in which almost 1700 are from 'natural causes'.⁷⁵ These deaths may be natural in the record of the government but in reality this is one of the way to evade the state responsibility for ensuring proper health safety, security & mental health care.⁷⁶

Violation of other fundamental rights

Apart from discussed above, there are also other fundamental rights of the prisoners are violated by prison staff & authorities. Like violation of right against bar fetters & handcuffing which is a common method and easily noticed during criminal trial in lower court of few States like Bihar. Also, the prisoners has the right to meet friends & consult lawyer but in Indian prison these rights are only for the privileged class and poor these rights are myth as they can't even meet their family members for years. Furthermore, a prisoner is entitled to reasonable wages in prison as per article 23 of the Constitution of India but in reality the prisoners are not even aware about the wages policy that they are entitled to certain minimum wages. Because of the few corrupt officials in the system they are not getting what they deserve as per the law.⁷⁷ Recently, a UP Man was acquitted after 20 years of trial and he only receive Rs 600 as the money, despite working for years in the jail.⁷⁸

Further, the incident of custodial torture in prison is drastically increasing, this torture may be for different reason like to extract confessions, to punish in prison if they raise any complaint against the prison staff or jailor etc.⁷⁹ Furthermore, the violation of right to expression as the authority several times deny the publication or the release of the books during detention period because of the high chance that might the book reveal the status of prison which means the highlights of the atrocities in the prison. The prisoners are also protected from arbitrary prison punishment but in prison these rights are of no use. Even the court in different judgment pointed out that the action of the jailor was arbitrary and considered as punishment which is unconstitutional as it violates

⁷⁵Statistics Volume- I, Crime in India 2018, National Crime Records Bureau Ministry of Home Affairs (2018), <https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202018%20-%20Volume%201.pdf>.

⁷⁶Id. At 74.

⁷⁷Saurabh Kothari, Taking prisoner's right seriously, Legal Services India (2017), <http://www.legalserviceindia.com/articles/po.htm>.

⁷⁸Namita Bajpai, Falsely accused of rape, UP man freed after spending 20 years in jail, The New Indian Express (Mar. 03, 2021), <https://www.newindianexpress.com/nation/2021/mar/03/falsely-accused-of-rape-up-man-freed-after-spending20-years-in-jail-2271749.html>.

⁷⁹ Shilpi, Violations of Human Rights of prison inmates, Legal Service India (2015), <http://www.legalserviceindia.com/legal/article-194-violations-of-human-rights-of-prison-inmates.html>.

article 14 of the Constitution of India.⁸⁰ Also, right to legal aid is a fundamental right given to the accused but one of the reason behind delay in trials is the non-appointment of defense lawyer or delay in the appointment of the defense lawyer because poor people cannot afford a lawyer and it was the duty of the government to provide lawyer to the needy at earliest.

This chapter clearly justify that how common is the violation of the fundamental right of the prisoners in India. Interestingly, because of lack of transparency thousands of cases might not be reported. There are very less accountable to anyone, only in specific cases they are charged with criminal liability otherwise they are free by only slamming warning. India is one of the biggest democracy in the world and these challenges to the fundamental rights of the prisoners is a biggest concern on the functioning of India criminal justice system.

RECOMMENDATIONS & CONCLUSION

In India, the reform in the prison system is pivotal to strengthened criminal justice delivery system. Committees like 'All India Committee on Jail Reforms, 1980', 'Krishna Iyer Committee, 1987', 'Justice Roy Committee, 2018' etc. recommended several changes but still these changes are not incorporated completely in Indian law. Not only this even the Apex court of India criticized the government about the poor prison system and direct changes but still these changes are not even incorporated. The apex court declared fundamental rights was completely ignored by different prison authorities in India. The government contention of lack of resources is even cannot a justification because this is the case of poor management of the resources by the authorities. In light of the challenges on the fundamental rights, analysing the report of different committees on prison reforms, safeguarding constitutional interest and respecting international obligations the proposed recommendations is necessary for the issue;

➤ Introduction of the codified law on the rights of the prisoners;

There is an urgent need for the codification of law on the rights of the prisoners in light of Constitution of India, Code of Criminal Procedure, 1973, Supreme Court Judgments & recommendation of different committees. The codified law must include all the prisoners right along with the procedure to invoke and remedy if violated.

⁸⁰LFLNN, Rights of prisoners in India, Lex Forti (Oct. 11, 2020), <https://lexforti.com/legal-news/rights-of-prisoners-in-india/>.

➤ **Installation of Mobile Complaint box in the jail for registration of grievances;**

There must be a telephone booth like complaint box fitted in common area of a prison which can be access by every prisoner. In this prisoner can speak their grievances and the key of that complaint box is with the inspection authorities only.

➤ **Establishment of prison & probation Ombudsman for grievance redressal;**

Like in United Kingdom, there must be specialized inspection of prison takes place which ensure greater accountability & transparency in the functioning of the prison system in India.

➤ **Mandatory installation of CCTV Cameras in common area & even in men prison cell;**

To prevent custodial torture, inhuman treatment there is a need to create fear in the mind of the authorities that the footage can be used as evidence against him. But, no camera in women cell as in extreme summer they wear minimum clothes and the footage will be violation of their fundamental right to privacy.

➤ **Adequate arrangement for hygienic food, clean drinking water, clothing, shelter & proper ventilation in the cells for the prisoners;**

These necessity is mandatory for a healthy survival and every human being irrespective of inside the prison or outside the prison.

➤ **No monitoring of the meeting of prisoners and their families except in exceptional circumstances;**

Less monitoring safeguards the prisoner's right of privacy. Also, monitoring can be done in exceptional cases when the accused is charged for any terrorism case, possibility that accused might instruct to hide the evidences or affect the investigation or any reasonable grounds.

➤ **Trial by court must be done by video conferencing in most of the case;**

This will reduce the burden on the authorities which was created because of lack of staff. As sometime because of lack of stuff the under-trial cannot reach the court which ultimately lead to delay the trial and violates prisoner's right to speedy trial.

➤ **Creating prison ward in government hospital of every district;**

Creating prison ward at every district will reduce the long travelling time of the prisoner and save the time of the escort party also. The prison ward must include adequate equipment for the treatment of the prisoners.

➤ **Increase in the appointment of the prison staff;**

As we know that the staff is less in numbers as compared to the increase number of the prisoners. So, there is an urgent need to appoint more staff to conduct the functioning smoothly.

➤ **Proper training of all the staff including the jailors & warden;**

There must be proper training to all the staff in jails including the higher authorities on how to run the prison. The training must include session for human rights of prisoners which helps the staff to understand the rights of the prisoners in India.

➤ **Liability of the authorities including jailor, warden & other staff must be fixed;**

If the liability of all the staff is not fixed in the case of fundamental right violation then only violation will be reduced and prevented in future. There must be strict punishment for the violation as per the circumstance.

➤ **Awareness sessions for the prisoners in all prison of India;**

Every prisoners is entitled for few fundamental rights but these fundamental rights is of no use if the prisoners are not aware about these rights. Also, the list of prisoner's right in Hindi, English as well as in the local language must be affixed in the common area of the prison which also include the briefing on the remedy.

Though, in last few years there are few steps taken to reform the prison administration but the reform are not sufficient to solve all the issues in hand. There are systematic and drastic changes required to make the hell prison system comfortable for a human being. Because, right now the authorities consider themselves as object and they think that their duties is only to protect the society by the offenders and apart from this ignores all their obligation. As discussed above there

are other duties also attached in this because we need to understand that Indian justice delivery system is based on reformatory theory in which the main goal is to make the criminal suitable for the society once again after his/her release from the jail after completing the punishment. In Indian prison reform is the need of the hour otherwise the fundamental rights of the prisoners will be considered as myth and taken mere as a formality. Apart, from fundamental rights the international obligations must also need to be respected in context of the prisoner's right.

