Rights of the prisoner : an evolving jurisprudence

M.C. VALSON*

Imprisonment is the most common method of punishment resorted to by almost all legal systems. History stands proof to its employment in ancient times. Initially, the purpose of imprisonment was two-fold - deprivation of the prisoner of social life and his segregation from the society as a security measure. In course of time, however, several purposes such as deterrence, incapacitation and reformation came to be recognised. Even if it does not have any deterrent value, imprisonment atleast compels the prisoner to sit at leisure, repent his past conduct and then probably to change his attitude and behaviour.

There have been frequent enquiries into the purposes of punishment by the courts as well as the academics throughout the world. Retribution, deterrence, expiation, reformation or rehabilitation are generally considered to be the purposes of punishment. Since imprisonment is almost the universal form of punishment, the purposes of punishment came to be identified as the purposes of imprisonment as well.

Prison system which is a method of handling criminals was the result of historic accidents. It was not a carefully thought out plan. The great prison in Rome was built by Pope Innocent X in 1655. There were generalised institutions for the care of criminals. The seventeenth and eighteenth centuries saw the rise of "Prisons", "Jails", "Houses of correction", etc. See John Lewis Gillin, Criminology and Penology (1977). p.373.

There is deterrence, but without naked terror, there is prevention, but by methods that are generally regarded as just: there is reform, but by way of expiation rather than by cure; there is education, both in knowledge of the laws themselves and in the need to recognise the rights of others; and there is public denunciation too. H.B. Action (Ed.). The Philosophy of Punishment (1969), p.28; J.D. Mc Clean and J.C. Wood, Criminal Justice and Treatment of Offenders (1969), pp.85-87.

1. Prison system which is a method of handling criminals was the result of historic accidents. It was not a carefully thought out plan. The great prison in Rome was built by Pope Innocent X in 1655. There were generalised institutions for the care of criminals. The seventeenth and eighteenth centuries saw the rise of "Prisons", "Jails", "Houses of correction", etc. See John Lewis Gillin, Criminology and Penology (1977). p.373.

2. There is deterrence, but without naked terror, there is prevention, but by methods that are generally regarded as just: there is reform, but by way of expiation rather than by cure; there is education, both in knowledge of the laws themselves and in the need to recognise the rights of others; and there is public denunciation too. H.B. Action (Ed.). The Philosophy of Punishment (1969), p.28; J.D. Mc Clean and J.C. Wood, Criminal Justice and Treatment of Offenders (1969), pp.85-87.


4. Imprisonment may be analysed according to the subject which it is designed to serve: to hold the prisoner until he can be tried, to punish him

*LL.M., Ph.D.(Cochin); Lecturer (Sr. Grade), Govt. Law College, Trichur, Kerala.

(f.n. contd on next page)
New theories of crime causation and new approaches to punishment emerged in the earlier part of the nineteenth century. The old free will theory and hedonism were submerged in the flow and the focus was shifted from the individual to the society. The problem of crime began to be considered not as individual problem of criminals but as a social problem of eradicating the evils that fell upon society. This change transformed the societal attitude towards the offenders.

While retribution supports harsh methods, rehabilitative techniques call for a kind attitude which conforms with the achievement of the purpose - rehabilitation. Rehabilitation was one of the purposes of punishment in the latter half of the nineteenth century. Consequently the need was felt to change the attitude towards the prisoners. Old habits die hard. The change did not take place swiftly. The established institutions were reluctant to adopt the new attitudes towards rehabilitation. This confused situation coupled with the difficulty in understanding the real purpose of imprisonment hardly inspired the administration for taking up correctional programmes.

after he has been convicted, or to make life unpleasant for him that he yields to his captor's will. In the first case it will be custodial, in the second punitive, and in the third coercive. The three types tend to merge and in the middle ages were never clearly kept apart. See, Ralph P. Pugh, *Imprisonment in Medieval England* (1968), p.1.

5. Cesare Beccaria was the exponent of this theory. He deliberately ignored questions regarding the individuals motives and in any event considered them unimportant since he believed that all people have a free will and in this sense are alike. See John F. Galliher and James L. Mc Cartney, *Criminology* (1977), p.110.

6. It is often referred to as the hedonistic calculus. Jeremy Bentham was the exponent of this theory. He viewed people possessing a free will. According to him the criminal laws should prescribe punishment just severe enough to offset the pleasure people receive from committing a criminal act. See Galliher and Mc Cartney, *op.cit.*, p.110.


Prisoner Rights: The Problem

When a person is put 'behind bars' he loses many of his rights. A sentence of imprisonment does not automatically extinguish all legal rights of a prisoner. Except the rights deprived to the person by the incarceration, some residuary rights remain. A person's liberty is circumscribed by the very fact of his confinement. The full panoply of fundamental rights cannot be enjoyed by him, but the physical restrictions imposed on him may not be more than reasonably necessary for security.

Different class of persons inside prisons, undertrials and detainees have various rights. How the scope and content of each type of prisoner rights are determined by courts? What are the standards adopted by the courts in this approach? This study has mainly focussed upon the rights of the convicted prisoners. However, the rights of other classes of prisoners are also probed into. The consequences of conviction and the scope of the rights after conviction are analysed in the light of a comparative perspective of UK and USA. New prisoner rights are to be evolved out of such a comparative study.

Conviction in the form of a sentence of imprisonment undermines the family cohesion and security, destroys the prospects of legal earning for himself and family and results in loss of employment and assets.

A convicted prisoner loses his right to vote. The usual justification for the loss of the right to vote as a consequence of conviction is that anti-social elements should not take part in the political life of the country. The quantum and nature of such loss differs from country to country. It is true that after conviction what rights the prisoner does retain is a controversial topic. The attitude of the judiciary differs from country to country. But everywhere the rights of prisoners are a recognised fact though the scope varies.

In theory, the most serious impact of imprisonment is the loss of liberty. If the prisoner is equipped with constructive training when he is discharged from prison after punishment he could lead a good and useful life. But the official view stands contrary to this development. It indicates that in practice many a prisoner who at the end of a long sentence is in a state of bewilderment and fear as to what the future will hold for them. The social stigma will continue. The innocent dependents will also be affected by this stigma.

A prisoner is deprived of many things than his liberty. Some of them are inevitable results of institutional treatment. How can they be alleviated? What are the practices existing in different systems?

In many countries alternatives to imprisonment are being explored. Instead of sending the prisoners directly to the prison, they are sent to attendance centres and weekend detention or semi-detention centres depending upon the nature of the crime and the character of the offender. Are these innovative techniques feasible in Indian context? Probation has become a very useful means of reforming the first and young offenders and preventing him from being contaminated by the hardened criminals in jail life. The stigma attached to his incarceration prevents him from seeking and getting an employment. He will be a

12. See Justice M.M. Ismail Commission Report (1977), p.184. It is significant to note the following statement of J.D. Mc Clean and J.C. Wood: "It is difficult to avoid the pessimistic conclusion that all this experimentation with forms of sentence is carried out on the outer fringes of the problems. It is possible that the use and form of imprisonment will one day be radically affected by the results of psychological research. It is becoming clearer that certain types of personality are likely to respond to firm discipline in institutions not unlike present prisons; and that other types of personality require wholly different treatment methods. But work in this field is in the infancy". op.cit., p.139.

13. At present in England many prisoners serving relatively long terms have one short period of home leave near the end of their sentence. It is intended to be used in seeking employment and making other arrangements for release. In many countries regular home leaves are allowed at intervals throughout the sentence. See J.D. Mc Clean and J.C. Wood, op. cit., p.141.

suspect and be subjected to surveillance by the police and wherever he goes, his previous incarceration will be a disqualification for any employment and may even make him a person shunned by the rest of the society. It is in this context, the necessity for effective aftercare is recognised and it is carried out in some countries by voluntary organisations with the assistance of official agencies. Are the present correctional and rehabilitative techniques adequate? In this study the prisoners' rights with regard to the aftercare services are also looked into.

In this context it will be relevant to indicate the broad prevalent thinking on this subject matter. Mahatma Gandhi observed in 1947:

“Criminals should be treated as patients in hospitals, and jails should be hospitals admitting such patients for treatment and cure. The outlook of the jail staff should be that of physicians in a hospital. The prisoners should feel that the officials are their friends”.

These words reflect the conception of treating the prison as a hospital-cum-educational institution. The aim of imprisonment is to restore

---

15. Aftercare is considered to be the released prisoner's convalescence. It is the process which carries him from artificial and restricted prison life to the satisfactory citizenship, resettlement and ultimate rehabilitation in a free society. Hence, the institutional education, training, life, treatment and post-release assistance etc. is a continuous process and it should form an integral part of any correctional work. See James Vadukumcherry, *Criminology and Penology* (1983), p.244.


17. The said thoughts of Mahatma Gandhi was echoed by Justice V.R. Krishna Iyer in his inaugural address at the Sixth Annual Conference of the Indian Society of Criminology at Madras on the 25th March, 1977. He stated: “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”. *Ismail Commission Report* (1977), p.186.
the imprisoned man to ordinary standards of citizenship. Unless the period of imprisonment is properly used to change the antisocial outlook of the offender and to bring him into a more healthy frame of mind he will, on leaving the prison gates, again become a danger or a nuisance to the society. Thus the functions of the twentieth century prison have become as of educative and reformative. How far these principles are put into practice in India? This is another focus of the study.

Evolving Prisoner Rights Jurisprudence

It was from the beginning of this century that the prisoners were recognised as societal human beings who should be made useful to the society. The Universal Declaration of Human Rights recognises that the individual is entitled to certain basic rights. The universal norm is that human rights are sacrosanct regardless of the individual. It is therefore imperative to recognise that prisoners too are human beings, and as human beings they are entitled to certain basic rights even while in incarceration. Deprivation of prisoner’s liberty is a serious in-road into the existence and exercise of human rights. In the light of this international developments various rights of prisoners are recognised in USA, UK and other western countries.

Justice Krishna Iyer has aptly indicated the need of a national prisoner rights policy in the new situation. He said:\textsuperscript{18}

“A reformative philosophy, rehabilitative strategy, therapeutic prison treatment and enlivening of prisoner’s personality through a technology of fostering the fullness of being such a creative art of social defence and correctional process activising fundamental guarantees of prisoner’s rights, is the hopeful note of national prison policy struck by the Constitution and the court”.

Origin and development of the concept of prisoner rights

Over a period of time there had been new awakening of prisoner’s rights throughout the world. More and more rights were recognised as part of the world human rights movement. An examination of the historical evolution of the rights of prisoners will help to get the proper meaning and content of those rights in the present day context.

United States of America

Till very recently in some states of USA a person convicted of a crime was considered to be legally dead. The conditions of incarceration and every aspect of institutional life were left to the unregulated discretion of the prison administrators. But only a few states invoke such a harsh form of humiliating treatment. Most states, however, deprive the convicted men of some civil rights. Depending upon his residence he may find himself deprived of one or more of the rights like the right to vote, the right to testify as a witness or serve as a juror, the right to hold an office, the right to make a contract etc. Prisoners will not be allowed to retain or enjoy unlimited personal possessions while in prison.

American courts were reluctant to recognise the existence of prisoner’s rights at earlier times. This reluctance has contributed to the dehumanising conditions which have existed in prisons there. Judicial intervention into the prison conditions provided the impetus for reform. It restricted the abuses of discretionary power, by correctional

20. See James Inciardi (1987), op.cit., p.586. The courts maintained a hands off position regarding correctional matters. They unequivocally refused to consider inmate complaints regarding the fitness of prison environments, the abuse of administrative authority, the constitutional deprivations of penitentiary life, and the general conditions of incarceration.
22. Ibid.
authorities. Ultimately, it emphasised the ties between the community and the offender. The belief that the inmates have a place in the society was also established. Realisation of these principles would require adherence to a humanistic view, a new perception of the prisoner as a human being and as someone having rights as well as obligations. Despite the proposed benefits of such a conception of prisoner's rights, several factors have coalesced to prevent its growth and expansion. For most of this century in USA, the courts have subscribed to a "hands off" policy regarding the rights of prisoners. In effect, the judiciary abdicated their responsibility as arbiters of the constitution and left the control of all the internal operations of the prison in the hands of correctional authorities. The courts were reluctant to introduce impediments to the correctional process, since judges felt that they were lacking the expertise necessary to run a prison. Their greatest fear was that a judicial order will somehow serve to subvert prison discipline and internal security. Apart from that the courts generally cited the separation of powers doctrine which made the operation of the penal system a


25. "Hands off" Policy means the following: The Courts concerned themselves mainly with protecting the rights of persons accused of a crime rather than with defining the rights of those already convicted. The general notion was that the judiciary should not interfere with the executive function of prison administration. The second is the fear that judicial review of administrative decisions will seriously interfere with the ability of prison officials to carry out the objectives of the penal system. Richard P. Vogelman, "Prison Restrictions - Prisoner Rights" in Leon Radzinowicz and Marvin E. Wolfgang (Ed.), The Criminal in Confinement (1971), p.52. The shift from hands-off to hands on was brought about by several factions that had common goals. Increasingly militant and volatile inmates, many of whom saw themselves as political prisoners, stubbornly insisted on having their day in court. See Gerald D. Robin, Introduction to the Criminal Justice System (1980), p.385.

26. There are several reasons for the adoption of this doctrine of judicial non-intervention in correctional affairs. The first is the societal demand for retribution. The common feeling is that incarceration involves the forfeiture of rights. As a consequence of his crime, the prisoner has, not only forfeited his liberty, but all of his personal rights except those which the law in its humanity accords him. He is for the time being the slave of the State. See Gennaco F. Vito and Judith Hails Kachi, "Hands On or Hands Off? The use of Judicial Intervention to Establish Prisoner's Rights" in Nicoletti Parisi (Ed.), Coping with Imprisonment (1982), p.79 at p.80.
responsibility of the legislative and executive branches of the government. Adherence to these arguments has allowed the judiciary to bow to the discretionary authority of correctional administrators.

There are some significant judicial pronouncements by the U.S. Supreme Court which clarifies various aspects of prisoner rights there. A U.S. Supreme Court decision in *Lanza v. New York*\(^\text{27}\) indicates that none of the private property rights associated with life in the outside world are likely to have any relevance to prison life. Right of privacy to a certain extent is deprived to the prisoner while he is inside the prison. Mr. Justice Stewart of the U.S. Supreme Court stated that the right of privacy can hardly obtain in prison, for it is obvious that a jail shares none of the attributes of privacy of a home, an automobile, an office, or a hotel room.\(^\text{28}\) In prison, official surveillance has traditionally been the order of the day. The necessity of a thorough search on prisoners has been pointed out in the same case. Prison security necessitates extreme restrictions on access to and possession of personal property.\(^\text{29}\)

Although convicted of crime, and legitimately deprived of their rights, prisoners retain a residue of constitutional rights. It is true that inmates lose many rights when they are lawfully confined, but they do not lose all civil rights. Inmates in jails, prisons, or mental institutions retain certain fundamental rights of privacy; they are not like animals in a zoo to be filmed and photographed at will by the public or by media reporters, however ‘educational’ the process may be for others.\(^\text{30}\) To protect these rights, the Supreme Court has recognised that prisoners have a constitutional right of access to the courts.\(^\text{31}\) This right of access

\(^{27}\) 370 U.S. 139 (1962).

\(^{28}\) Id., p.143.

\(^{29}\) In the same case the court has observed that a thorough search should be made of all packages to prevent forbidden articles being smuggled into the jail. The number of articles permitted to be taken into the jail should be kept to the minimum. Saws have been secreted in bananas, in the soles of the shoes, under the peaks of caps, and drugs have been secreted in cap visers, under postage stamps on letters, in cigars and various other ways. See *ibid*.


\(^{31}\) See *Bell v. Wolfish*, 441 U.S. 520 (1979), at p.557.
includes a right to legal assistance. This has been established beyond reasonable doubt in *Bounds v. Smith*. Bounds held that prisoners are constitutionally entitled to be provided with either access to law libraries or help from persons trained in the law. This case also recognised that some obstacles to access, whether in the prison regulations or in the rules and laws governing the courts, could be removed by imposing a duty of assistance upon the state. In *Bell v. Wolfish* the U.S. Supreme Court specifically recognised prisoners privacy rights as fundamental.

Under American law person’s rights are supreme and may be taken away only by due process of law. A common truism of correctional philosophy is that the penal law and correctional treatment have two consistent purposes - treatment of the offender and the protection of the public. Another common saying is that the treatment of the offender should be individualised, that is, it should be appropriate for him. Thus it can be seen that beginning in the 1960s and gaining momentum in the 1970s, the U.S. Supreme Court proved receptive to prison suits. At present various rights has been recognised and prisoners can approach the judiciary for getting these rights enforced. But the prisoners’ rights are necessarily tempered both by the fact of their confinement and by the legitimate needs of penal administration.

**England**

In England also the development of prisoner rights jurisprudence is a gradual process, and it was recognised as a specific right recently. When an offender was convicted, originally the presumption was that

---

33. 430 U.S. 817 (1977) at p.821.
34. 441 U.S. 520 (1979) at p.557.
35. Eighth Amendment of U.S. Constitution.
he has forfeited all his rights. The common belief was that virtually anything could be done with an offender in the name of correction and punishment. A prisoner was under the mercy of correctional administrators and their staff. Whatever comforts, services or privileges the offender received were a matter of grace of the prison officials. For a long time nobody was bothered about the brutalities going on within the jails. Inhumane conditions and practices were permitted to develop and continue in many systems. A gradual change in this regard was visible from the beginning of this century. A new attitude came up with regard to prisoner's right.

In the beginning the rule was that the court has no authority to interfere with regulations of punishment imposed upon a person. Civil rights were lost automatically. Automatic loss of rights can be justified only if it serves some universally useful purpose in rehabilitating the defendant or protecting the public.

At present in England a sentence of imprisonment does not automatically extinguish a prisoner's right. All public and private legal disabilities of convicted prisoners have been abolished, except that they are disenfranchised for the duration of their sentences. A person sentenced to more than a year's imprisonment in the United Kingdom is disqualified for membership of the House of Commons while serving the sentence; and the seat of a member of the House of Commons who becomes disqualified by virtue of such sentence is vacated.

The ordinary civil and criminal law operates in prisons and governs prisoners and prison staff, subject only to the special legislative provisions governing penal establishments and their inmates. In spite of his imprisonment, a convicted prisoner retains all civil rights which are not taken away expressly or by necessary implication. Prisoners are

subject to a special regimen and have special status; but they remain invested with residuary rights pertaining to the nature and the conduct of their incarceration.\textsuperscript{43}

There may arise situations where injuries may be caused to prisoners as a result of the misdeeds of other prisoners. A prisoner who suffered inconvenience and detriment as a result of breach of prison rules was having no cause of action for damages against prison authorities.\textsuperscript{44} A breach of the rules does not in itself created any civil liability. There is no statutory duty which incurs to a prisoner's benefit, so that he can bring an action for infringement, and a breach of the rules cannot be relied on to establish or support a cause of action.\textsuperscript{45} Thus it was a settled law in England that a breach of the rules did not entitle a prisoner to sue for damages.

Even this earlier position has now changed. Courts have taken a different view. They have held that they do have jurisdiction to make declarations as to the "true meaning" of the Prison Rules and they have been prepared to analyse the Prison Rules and they have been prepared to analyse the Prison Rules closely in order to determine the legality of the actions of the prison authorities.\textsuperscript{46} A particular rule has been even said to confer a right on a prisoner.\textsuperscript{47} Prisoners must, by Article 10 of the Civil Rights covenant be treated with humanity and with respect for the inherent dignity of the human person. Except to the extent that their other rights are expressly or by necessary implication limited, prisoners still continue to have such rights.\textsuperscript{48}


\textsuperscript{44} Arbon v. Anderson, [1943] K.B. 252.

\textsuperscript{45} Ibid.


\textsuperscript{47} Raymond v. Honey, [1982] 1 All E.R. 756 at p.759.

\textsuperscript{48} Id., p.758 per Lord Diplock. But litigation by convicted prisoners asserting their such rights conceived from Lord Denning a consistently chilly reception. See J.L. Jowell and J.P.W.B. Mc Austin (Eds.), Lord Denning: The Judge and the Law (1984), p.304.
Thus there is a legal duty upon the government to take reasonable care for the safety of the prisoners. Where a prisoner sustains injury at the hands of another prisoner in consequence of the negligent supervision of prison authorities, the authorities are liable. The prison authorities also owe a duty of care to the members of the public, and an action will lie where property is damaged by prisoners which result from negligence on the part of the authorities. While a person is undergoing imprisonment his right to sue for torts committed in relation to his person remain intact. They are as effective as any person outside the bars. He cannot sue for torts to his property since it vests in the crown by statute. This is based on the principle that even a convict remain the Queen's subject, and does not become her enemy merely by breaking the law.

The concept of prisoner's rights in England is comparatively a modern phenomenon. It is the result of the pragmatic approach of judicial officers who have been greatly influenced by the American prisoner's right movement and certain human rights conventions in the past decades. As there are no formal declarations of the rights of prisoners, the courts through the process of the judicial activism have provided certain minimum protection to prisoners there. Apart from that fair treatment will enhance the chances of rehabilitation also. The need for better after care of discharged prisoners was recommended by Gladstone Committee.

52. But the philosophy of prisoner rights is an ancient concept. Julius Stone says: “A first group of reforms in a line descending through Montesquieu and Baccaric to Bentham, was in criminal law and administration resulting in the elimination of many unnecessary cruelties or in Bentham, is terms unnecessary pain. They included the beginnings of prison reforms, of reform of lunacy laws, laws for the protection of children and animals and for the emancipation of slaves”.
53. R.M Jackson, “Prison Administration”, 10 C.L.J. 33 at p.36 (1948-50). One of the remarkable contribution to the reformation of the British Prison System was the report of Gladstone Committee. It is considered as the most important and far reaching document in prison history.
Other Countries

Very few countries explicitly provide that conviction of certain offences entails loss of citizenship. But disenfranchisement sometimes attaches to conviction of specific offences, sometimes as mandatory, at other times at the discretion of the judges. Thus for instance, in Norway, the judge may deprive the convict of the right to vote only upon conviction of particular offences and with the further proviso that this disqualification be required in public interest.\(^{54}\) Similar provisions are found in Ethiopean Penal Code.\(^{55}\)

In many countries, the disqualification from voting is only temporary. In others, the disqualification may often be permanent.\(^{56}\) Some countries provide for loss of the right to vote only while the convict is imprisoned. The disqualification, in other words, does not outlive the execution of the sentence. This limited disqualification is found in Japan, Spain, England and various Canadian jurisdictions.\(^{57}\)

International Sphere

Way back in Europe, the Assembly of the League of Nations stressed the aspect of readaptation of offenders as a means of reclamation.\(^{58}\) Then the long night of gas chambers came. Since Hitler's fall the ideology of human rights within the prison bars has risen high. The U.N. Charter has put human rights on a high footing than ever before and has spawned new penological thinking on prisoner’s personhood and consequential rights.

Standard Minimum Rules for the treatment of Prisoners were drafted and they were accepted by the United Nations after world war II. This


55. Ibid.

56. For example in France it is a permanent feature. See ibid.

57. Ibid.

paved ground for discussion on this crucial issue at international level in subsequent years.

In 1948 the General Assembly of United Nations adopted a Universal Declaration of Human Rights. This document is one of the major and basic documents on human rights. Even though, it is not generally binding instrument, the articles contained in this document are basic principles of law and represent the elementary considerations of humanity. It provided certain basic principles of law which should be applied by the courts in the process of administration of justice. These principles embodied certain remarkable concepts like equality of treatment, right to life, liberty and security of person and freedom from torture, cruel, inhuman or degrading treatment. By declaring in explicit terms the rights that must be respected in every person, it provides the ambience and the content for a sensitisation on the issue of human rights. Subsequently the U.N. General Assembly by consensus has adopted the Declaration of Protection from Torture 1975. These declarations are valuable guidelines for the prisoner's rights.

Amnesty International in 1955 adopted certain standard rules for the treatment of prisoners. These rules form certain basic principles of law in most of the democratic countries. It provides for the segregation of prisoners on the basis of age, sex, nature of punishment and the gravity of the offence committed. The rules also condemned the

---

59. Article 5 of Universal Declaration of Human Rights reads as follows: "No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment". It is not a legally binding provision. The articles contained in the Universal Declaration of Human Rights are either basic principals of law or represent the elementary considerations of humanity. This declaration has been regarded as a part of the law of United Nations, by General Assembly. This declaration has been considered as a landmark in the history of human rights and fundamental freedoms. See Naresh Kumar, Constitutional Rights of Prisoners (1986), p.10.

60. The Declaration of Protection from Torture was adopted on 9th December 1975. Article 2 of the Declaration reads: "Any act of torture or other cruel, inhuman or degrading treatment or punishment is an offence to human dignity and shall be condemned as a denial of the purpose of the charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights".
punishments like solitary confinement, reduction in diet and other heavy deprivative measures used by the prison authorities as a punishment for prison offences. The rules also speak of social rehabilitation and after-care programme of the prisoners. Thus various conventions on Human Rights guarantees to every person freedom from torture.\textsuperscript{61} If the courts are receptive to the grievances of prisoners it will resolve individual and collective prison problems.\textsuperscript{62}

**Prisoners’ Rights in India**

In India also the status of a prisoner and the rights granted to him are almost the same as that of England and USA. His movements are restricted and some disabilities are imposed upon the prisoner. Various restrictions are imposed upon the exercise of the fundamental rights also. Conviction of certain offences also result in the loss of civil rights.\textsuperscript{63} But unlike in England a convict is unable to sue for torts in India.\textsuperscript{64} No permanent voting disqualification exists in India. It is only for the period of imprisonment.

History of prisoners and prison administration goes back even prior to the enactment of the Prison Act and Prison Manuals. Concern for the betterment of conditions of prisoners have been attempted in India from earlier times in various legislations. Legislations that deals with the prisoners in India are Prisons Act 1894, Prisoners’ Act 1900, Transfer of Prisons Act 1950 and Prisoners (Attendance in Courts) Act 1955. Apart from the specific legislations, Articles 14, 19 and 21 of the Constitution of India are also very much relevant with regard to prisoner’s rights. In

\begin{itemize}
\item \textsuperscript{62} Nicoletti Parisi, “The Prisoner’s Pressures and Responses” in Nicoletti Parisi (Ed.), *Coping with Imprisonment* (1982), p.9 at p.17.
\item \textsuperscript{63} Section 10 (d) of the Citizenship Act 1955 prescribes that a citizen by naturalisation or registration loses his citizenship if he has, within five years of its acquisition, been sentenced in any country to imprisonment for a term not less than two years.
\item \textsuperscript{64} Sinha, *op.cit.*, p.1116.
\end{itemize}
Kerala, the Travancore-Cochin Prisons Act 1950 extends to the area of the whole of the erstwhile State of Travancore-Cochin. Central Act 9 of 1894 applies to the Malabar District of the erstwhile State of Madras.

Prisons Act 1894 and Prisoners Act 1900 were enacted at a time when prison was intended to be a torture house with a dehumanising environment. Prison reform was not visible on the horizon at that time. More important at that time was discipline and control, not rehabilitation and socialisation. What demanded special attention was the subject of offences inside prisons and their punishment. Correctional treatment, with the new orientation of making offenders non-offenders was irrelevant. Irons on prisoners, security in prisons, award of punishment etc. claimed legislative priority. Naturally, the absence of the Indian Constitution gave the central legislature absolute power of disposal of prisoners. It can be seen that the British government gave scant regard to the human rights principles to prisoners. This was in tune with their philosophy of prison administration as a tool for oppression of their opponents. But when the permanent law, which created rights came to govern lesser legislations the court, true to its oath to uphold the constitution, had to reinterpret the provisions of the Prisons Act so as to obliterate the absolutism of the British Indian Prison Administration and to broaden the meaning in such a manner that the paramountcy of constitutional provisions was read into the text of the Prisons Act. It was this process which produced revolutionary changes in the area of prisoner rights through various case laws. Women and children in protective custody’, mentally ill persons unable to find a place in mental hospitals, undertrials who had spent years in prison without trial having commenced against them - these and many more of distinctive qualities have claimed the attention of the Indian Supreme Court.

In the Indian Constitution the human rights principles are given a prominent place. Later developments in prisoners rights truly reflect the constitutional goals and ideals. The Supreme Court has dealt with

prisoner rights in an elaborate manner in *Sunil Batra (I) v. Delhi Administration*\(^{66}\) upon a writ petition under Article 32 of the Constitution. Here it was laid down that a court sentence does not deprive the prisoner of his fundamental rights. The Constitution Bench in *Sunil Batra cases* laid down important principles regarding the status of prisoners. The constitution bench brushed aside the "hands off" prison doctrine, upheld the fundamental rights of prisoners, though circumscribed severally by the reality of lawful custody. The fundamental rights did not forsake prisoners, and that the penological purpose of sentence was reformatory even though deterrent too.\(^{67}\) Further it was explained that the courts has a continuing responsibility to ensure that the constitutional purpose of the deprivation is not defeated by the prison administration.\(^{68}\)

At present the court need not adopt a "hands off" attitude in regard to the problem of prison administration in India.

The inadequacy of prison administration and ill-treatment of prisoners has invited criticism not only from academics but from official bodies as well. An overview of the existing studies and reports relating to prisoner rights shows that there is preponderance of publications; but they relate to certain specific aspects like prison administration, prison atrocities etc.

*Committee Reports*

In India the first committee on the subject of prisons reforms was appointed in 1836 with Lord Macaulay as the member. Though this committee advocated increased rigour of treatment of prisoners and

\(^{66}\) There are two cases of the same facts. *Sunil Batra (I) v. Delhi Administration*, A.I.R. 1978 S.C. 1675; *Sunil Batra (II) v. Delhi Administration*, A.I.R. 1980 S.C. 1579. The legality of Section 56 of the Prisons Act 1894 was challenged on the ground that it violated Articles 14 and 21 of the Constitution because it empowered the superintendent to confine a prisoner in irons, on the ground that the impugned section conferred unguided and uncanalised power on the superintendent.

\(^{67}\) *Sunil Batra (I) v. Delhi Administration*, A.I.R. 1978 S.C. 1675.

\(^{68}\) Ibid.
rejected all reforming influences, nevertheless its advocacy of proper buildings, health care and intramural employment laid the foundation of future progress.

The next committee to deal with the subject was appointed in 1864. There was a conference of experts in 1877 to enquire into prison administration. In 1888-89 another committee was appointed to examine jail administration and on the basis of its report, the Prisons Act 1894 and the Prisoners Act 1900 and other statutes dealing with prisons were passed.

The most comprehensive study of the prison administration in all its aspects was done by the Indian Jails Committee in 1919-20 which examined the conditions of prisons not only in India but also in England, Scotland, U.S.A., Japan, Philippines and Hong Kong.

In the meantime, the Government of India sought assistance of the United Nations for the deputation of an expert to study the prison administration in India. Accordingly, Dr. W.C. Reckless visited India in 1951 and made several valuable suggestions such as revising boards for the selection of prisoners for premature release and the introduction of legal substitute for short sentences.

In 1956, the Government of India set up the All India Jail Manual Committee which prepared the Model Prison Rules in 1959 mainly for the guidance of the State Governments. But except the state of Maharashtra, no other state has completely revised the jail manuals on the basis of the said Model Rules.

---

69. The Committee recommended that the reformation and rehabilitation of offenders should be the main objective of prison administration and care of criminals should be entrusted to officers who have received adequate training. They suggested that short term imprisonment should be replaced by probation, fine or warning or other substitutes such as work in lieu of imprisonment.

The Ismail Committee which submitted its report in 1977 mainly dealt with allegations of ill-treatment and beating. Along with that it has made some suggestions for prison reforms, rights of the prisoners and other ancillary matters: The Committee has recommended that scientific classification of prisoners and diversification of institutions are essential for treatment programmes in prisons. Dealing with delay and indifference to prison reforms, Justice Ismail said that so long as prisoners have not been cast out of society and they continue to be members of the society, though segregated temporarily, but are expected to rejoin the mainstream of the society after their release, it is the duty of the State to spend for their rehabilitation reformation and re-entry into the mainstream of the society.

The Government of India, concerned at the large number of undertrial prisoners in Indian jails, has brought to the notice of the Law Commission the need for undertaking suitable judicial reforms and changes in the law, in order to deal with the problem posed thereby. The Commission has recommended speedy investigation of the case. It highlighted the need to liberalise provisions for release on bond. It also suggested separate places of detention for undertrial prisoners.

The Tamil Nadu Prison Reforms Commission has suggested that all persons deprived of their liberty shall still be entitled to be treated

---


73. Id., p.194.
75. Id., p.21.
76. Id., p.25.
77. It was constituted by G.O. MS No. 397/Home Department dt. 17th February 1978. The Committee consisted of the following persons: Chairman - R.L. Narasimhan, Members - S.M. Diaz and Dr. A. Venkoba Rao.
with humanity and with respect for the inherent dignity and rights of human person.\(^7\) Accused persons shall, save in exceptional circumstances, be segregated from convicted person and shall be subject to separate treatment appropriate to their status as unconvicted persons.\(^7\) Short term prisoners should also be given useful work, so that they may not remain idle and given wages.\(^8\) The Committee made some progressive suggestions with regard to women prisoners. The co-operation of public spirited, dedicated social workers and voluntary organisations should be enlisted for rehabilitation of female prisoners released from prisons.\(^8\)

Justice A.N. Mulla Committee of Jail Reforms has suggested setting up of National Prison Commission as a continuing body to oversee modernisation of prison in India.\(^8\) It has suggested that the existing diarchy of prison administration at Union and State level should be removed.\(^8\) The Committee specially recommended a total ban on the heinous practice of clubbing together juvenile offenders with the hardened criminals in prisons.\(^8\) According to its suggestion the classification of prisoners in jails should be scientific and rational.\(^8\) For this purpose certain advanced countries have appointed ombudsman for deciding about the prisoner’s grievances. Similar measures may be adopted in India as well.

Recently the National Expert Committee on Women Prisoners headed by Justice V.R. Krishna Iyer in its report submitted to the Union Government has recommended induction of more women in the police force in

\(7\) Ibid.
\(8\) Id., p.30.
\(8\) Ibid., p.47.
\(82\) Justice Mulla Committee was appointed by the Union Ministry and the Committee submitted its Report on Jail Reforms to Home Ministry on 31st March 1983.
\(83\) Justice Mulla Committee Report.
\(84\) Ibid.
\(85\) Ibid.
view of their special role in tackling woman and child offenders. The Committees key recommendations in respect of conscientizing women inmates suggests that at the time of admission, and through fortnightly orientation sessions, women in custody must be made aware of their rights and duties while in custody. The Committee suggested that for literate prisoners, the prison should display the fundamental rights of prisoners written in an easy, readable text, in a central location in the prison. Socio-legal and emotional support to women inmates should be extended through a socio-legal counselling cell and by means of legal aid camps held in prison.

More recently the Estimate Committee of the 9th Kerala Legislature made some valuable suggestions with regard to the rights of prisoners in the State of Kerala. According to the committee, taking into consideration the new reformative objective of imprisonment sufficient opportunities must be provided for interview of the prisoners. Prison labour can be made more profitable and useful if provisions are made for distributing work according to the ability and taste of the prisoner. The Committee made an important recommendation to the government suggesting enhancement of punishment for those prisoners who violates conditions of parole.

86. Report of the National Expert Committee on Women Prisoners (1986-87), p.254. The Committee has submitted its report to the government in February 1988. Justice Krishna Iyer was the Chairman of the Committee. Dr. N.K. Sohoni, L.J. Arora, Ms. Sheela Barse, Ms. Kum Kum Chadda, Dr. Sudha Kalda’ta, Ms. Shyamala Pappu, Ms. Sanobar Sekhar, C.P. Sujaya were the members. B.R. Atre and A.K. Sharma were the Co-opted members.

87. Id., p.254.
88. Ibid.
89. Ibid.

91. Ibid.
92. Id., p.10.
93. Ibid.
The study shows that Judiciary was much cognisant of prisoners rights in all countries. Contribution of legislation was not substantial. It can be seen that the judiciary was influenced by the deliberations and recommendations made in the international human rights conventions. Apart from the international conventions the recommendation made by various Prison Reforms Committees in India also influenced Indian Judiciary especially the apex court. This is clear from the judgement delivered by the Supreme Court in relation to prisoners rights. The judiciary made many inroads in to this arena of prisoner rights through a value oriented interpretation of the provisions contained in the Indian Constitution.

Prisoner rights: Constitutional perspective

The fundamental rights guaranteed under the Constitution are not absolute and many restrictions have been imposed on their enjoyment. Right to freedom of person is one of the most important rights among the fundamental rights. When a person is convicted or put in prison his status is different from that of an ordinary person. A prisoner cannot claim all the fundamental rights that are available to an ordinary person. The Supreme Court of India and various High Courts in India have discussed the scope in various decisions. Before discussing these decisions it is necessary to see various constitutional provisions with regards to prisoners rights.

94. Ibid.
95. The right to freedom of the person comprises the following:-
   Article 20(1) protection against ex-post facto laws;
   Article 20(2) protection against double jeopardy;
   Article 20(3) privilege against self incrimination;
   Article 21 protection of life and personal liberty;
   Article 22 (1 to 3) protection in case of arrest; and
   Article 22 (4 to 7) safeguards in case of preventive detention.

The fundamental rights under Article 19 are conferred only on citizens, but the other rights discussed above are available to all persons, whether citizens or not.
Statutory Provisions

There is no guarantee of prisoner’s right as such in the Constitution of India. However, certain rights which have been in part III of the Constitution are available to the prisoners also because a prisoner remains a “person” inside the prison. The right to personal liberty has now been given very wide interpretation by the Supreme Court. This right is available not only to free people but even to those behind bars. The right to speedy trial, free legal aid, right against torture, right against inhuman and degrading treatment accompany a person into the prison also.

One of the important provisions of the Constitution of India is generally applied by the courts is Article 14 in which the principle of equality is embodied. The rule that “like should be treated alike” and the concept of reasonable classification as contained in Article 14 has been a very useful guide for the courts to determine the category of prisoners and their basis of classification in different categories.

Article 19 of the Constitution guarantees six freedoms to the citizens of India. Among these certain freedoms like ‘freedom of movement’, ‘freedom to reside and to settle’ and 'freedom of profession, occupation, trade or business' cannot be enjoyed by the prisoners because of the very nature of these freedoms and due to the condition of incarceration.

But other freedoms like “freedom of speech and expression”, "freedom to become member of an association” etc. can be enjoyed by the prisoner even behind the bars and his imprisonment or sentence has nothing to do with these freedoms. But these will be subjected to the limitations of prison laws.

97. Infra, n.106.
98. Infra, n.134.
99. Infra, n.159.
100. Infra, n.160.
101. Constitution of India, Article 14 reads:- “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”.

Article 21 of the Constitution has been major litigation so far as the prisoners' rights are concerned. It embodies the principal of liberty. This provision has used by the Supreme court of India to protect certain important rights of prisoners. After Maneka Gandhi's case, this article has been used against arbitrary actions of the executive especially the prison authorities. After that decision it has been established that there must be fair and reasonable procedure for the deprivation of the life and personal liberty of the individuals. The history of judicial involvement in prison administration shows that whenever the prison officials have intervened to protect their rights. The issue of prison conditions and environment has emerged as one of the predominant theme of correctional philosophy raising questions concerning inmate's rights and fate of prison life.

Originally the treatment of prisoners inside the prisons were cruel and barbarous. When a person was convicted, it was thought that he lost all his rights. The prison community was treated as a closed system and there was no access to outsiders in the affairs of the prisoners. The authorities under the guise of discipline were able to inflict any injury upon the inmates. The scope of judicial review against the acts of prison authorities was very restricted. The courts were reluctant to interfere in the affairs of the prisoners; it was completely left to the discretion of the executive. But gradually a change was visible.

Right to Fair Procedure

When we trace the origin of the prisoner's right in India, the embryo we can find in the celebrated decision of A.K. Gopalan v. State of Madras. One of the main contentions raised by the petitioner was that the phrase "procedure established by law" as contained in article 21 of the Constitution includes a 'fair and reasonable' procedure and not a mere semblance of procedure prescribed by the State for the deprivation of life or personal liberty of individuals.
The majority view in *Gopalan* was that when a person is totally deprived of his personal liberty under a procedure established by law, the fundamental rights including the right to freedom of movement are not available. It was held:

"There cannot be any such thing as absolute or uncontrolled liberty wholly freed from restraint, for that would lead to anarchy and disorder....In some cases, restrictions have to be placed upon free exercise of individual rights to safeguard the interest of the society: on the other hand, social control which exists for public good has got to be restrained, lest it should be misused to the detriment of individuals rights and liberties".

Another important decision was *State of Maharashtra v. Prabhakar Pandurang*. In *Pandurang* the Court held that conditions of detention cannot be extended to deprivation of other fundamental rights consistent with the fact of detention. The respondent was detained by the government in the district prison of Bombay in order to prevent him from acting in a manner prejudicial to the defence of India, public safety and maintenance of public order. While he was inside the jail he wrote with the permission of the government a book in Marathi under the title "Anucha Antaranga" which means *inside the atom*. The book was purely of scientific interest and it did not cause any prejudice to the defence of India, public safety or public order. The detenue applied to the government and the Superintendent for the permission to send the manuscript out of the jail for publication; but both were rejected. On approaching the High Court, it held that there were no rules prohibiting a detenue from sending a book outside the jail with a view to get it published. High Court held that the civil rights and liberties of a citizen were in no way curbed by the order of detention and that it was always open to the detenue to carry on his activities within the conditions governing

---

105. *Id.*., p.93 per B.K. Mukerjee, J.
his detention.\textsuperscript{107} It further held that there were no rules prohibiting a
detenue from sending a book outside the jail with a view to get it
published.\textsuperscript{108} Supreme court also affirmed the decision of the High
Court and held that the said conditions regulating the restrictions on
the personal liberty of a detenue are not privileges conferred on him,
but are the conditions subject to which his liberty can be restricted.\textsuperscript{109}

In \textit{D.B.M. Patnaik v. State of Andhra Pradesh}\textsuperscript{110}, the Supreme Court
categorically asserted that convicts are not by the mere reason of their
detention, denuded of all the fundamental rights they possess. In \textit{Patnaik}
the petitioners were undergoing their sentences in the central jail,
Visakapatanam. They were also at the same time prisoners under trial in
what is known is what as the \textit{Parvathipuram Naxelite Conspiracy Case}.\textsuperscript{111}
The petition was filed for the removal of the police guards posted around
the jail and dismantling live wires electrical mechanism fixed on the
top of the jail-wall.\textsuperscript{112} The Supreme Court held that the right of personal
liberty and some of other fundamental freedoms are not to be totally
denied to a convict during the period of incarceration. Here there was
no deprivation of any of their fundamental rights by the posting of the
police guards immediately outside the jail. The policemen who live on
the vacant jail land are not shown to have any access to the jail which is
enclosed by high walls. But the court laid down some important aspects
regarding prisoners rights. Chandrachud, J. held:\textsuperscript{113}

\begin{enumerate}
\item 107. \textit{Id.}, p.425.
\item 108. \textit{Ibid.}
\item 109. \textit{Ibid.}
\item 111. \textit{Ibid.}
\item 112. It was contended that even the discipline of the prison must have the author-
ity of law and that there should be a sort of "iron-curtain" between the
prisoners and the police so that the convicts and undertrial prisoners may be
truly free from the influence and tyranny of the police. Since prison
includes lands apurtenent thereto the members and offices of police - who
were posted to guard the jail from outside occupied a part of the prison and
that must be prevented as it is calculated to cause substantial interference
with the exercise by the prisoners of their fundamental rights. Section 3(1)
of the Prisoners Act 1895 defines prison to mean any jail or place used
permanently or temporarily for the detention of prisoners, including all
lands and buildings apartment thereto".
\item 113. \textit{Supra}, n.110 \textit{per} Chandrachud, J. at p.2095.
\end{enumerate}
"The security of one’s person against an arbitrary encroachment by the police is basic to a free society and prisoners cannot be thrown at the mercy of policemen as if it were a part of an unwritten law of crimes. Such intrusions are against the very essence of a scheme of ordered liberty”.

The petitioners also questioned the installation of high-voltages wires installed on the top of the compound wall. Regarding this the court held that the prisoners cannot complain of the installation of the live-wire mechanism with which they are likely to come into contact only if they attempt to escape from the prison. According to the court, there was no possibility of the petitioners coming into pursuit of their daily chores. Whatever be the nature and extent of the petitioner’s fundamental right to life and personal liberty, they have no fundamental freedom to escape from lawful custody.

Here the court has found that the rights claimed by the petitioners as fundamental may not readily fit in the classical mould of fundamental freedoms.

Thus there was a movement away from Gopalan in 1966 and 1974 concerning the availability of fundamental rights to prisoners. Even though in Gopalan, the courts did not interfere in the matters of detention there was a gradual change visible. But in reality, the courts did not in their actual decisions provide much relief to the prisoners. Even the violation of procedure established by the law in the Prisons Act or Jail Manuals did not entitle prisoners to any relief.

In Patnaik the court was unable to find, from the affidavit and counter affidavits, satisfactory proof that the conditions in Visakhapatnam Jail were such, that would involve violation of right to life and liberty guaranteed by Article 21 of the Constitution. The fact that the “Naxelite” prisoners had resorted to marathon hunger strikes was judicially noticed; the idyllic description of jail conditions by the authorities was not taken at face value.

114. Id., p. 2097.
115. Supra, n. 110.
The court notices that there were subtle forms of punishment to convicts and under trial prisoners are sometimes subjected to. These barbarous relics of a bygone era offended the letter and spirit of the Constitution.\textsuperscript{116} The matters complained of did not amount to deprivation of the right to life and liberty in \textit{Patnaik} and the plea of the prisoners were dismissed.

\textbf{Personal Liberty}

The Supreme Court had to consider the relationship of Article 19 and 21 with the prisoners' rights in \textit{Kharak Singh v. State of U.P.}\textsuperscript{117} The Supreme Court contrasted Article 21 of the Constitution with the Fourth and Fourteenth Amendments to the United States Constitution.\textsuperscript{118} The word 'liberty' in Article 21 is qualified by the word 'personal'. The word 'personal' liberty in Article 21 is used as a compendious term to include within itself all varieties of right which go to make the personal liberties of men other than those within several classes of Article 19(1).

\begin{itemize}
  \item \textsuperscript{116} \textit{Supra}, n. 110 at p.2096.
  \item \textsuperscript{117} A.I.R. 1963 S.C. 1295. The petitioner Kharak Singh had been charged in a dacoity case but was released as there was no evidence against him. Under the U.P. Police Regulations the police opened a history sheet for him and he was kept under police surveillance which included secret picketing of his house by the police domiciliary visits at nights and verification of his movements and activities. 'Domiciliary visits' mean visits by the police in the night to the private house for the purpose of making sure that the suspect is staying home or whether he has gone out. The Supreme Court held that the domiciliary visits of the policemen were an invasion on the petitioners personal liberty. By the term 'life' as used here something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limits and facilities by which life is enjoyed.
  \item \textsuperscript{118} Fourth Amendment reads as follows:— "The right of the people to be secure in their persons, house papers affects against unreasonable searches and seizures, shall not be violated and no warrant shall issue, but upon probable cause, supported by oath and affirmation, and particularly describing the place to be searched, and the persons or things to be seized". Fourth Amendment reads:— "All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of U.S. and of the state where in they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the U.S. nor shall any state deprive any person of life, or liberty without the due process of law; no delay to any person within its jurisdiction the equal protection of the laws".
\end{itemize}
According to Subba Rao, J. who dissented in *Kharak Singh*, it is not correct to say that the expression 'personal liberty' in Article 21 excludes the attributes of freedom specified in Article 19. He brought out the relationship between Article 19 and 21 observing that the fundamental right of life and liberty have many attributes and some of them alone are found in Article 19. A person's fundamental rights under Article 21 may be infringed only by law; and that law should satisfy the test laid down in Article 19. It is true that in Article 21 the word 'liberty' is qualified by the word 'personal' but this qualification is employed in order to avoid overlapping between those incidents of liberty which are mentioned in Article 21. An unauthorised intrusion into a person's home and the disturbance caused to him is the violation of the personal liberty of the individual.

*Maneka Gandhi v. Union of India* was the turning point in the human rights jurisprudence especially in personal liberty. *Maneka Gandhi* accepted the dissenting view of Justice Subba Rao in *Kharak Singh*. The expression 'personal liberty' in Article 21 is of the widest amplitude and covers every one of the rights which constitutes personal liberty of man. The personal liberties have been raised to the status of distinct liberties and they have been raised to the status of distinct fundamental right and given additional protection under Article 19.

### The Extent of Judicial Interference

There may arise occasions which compel the prisoners to approach the courts for the redressal of their grievances. Whether a court can interfere with the treatment of prisoners by jail authorities and prescribe fair procedure? What is the remedy available to the convicted persons if their fundamental rights are encroached upon by the acts of prison authorities? The Supreme Court in *Charles Shobraj v. Superintendent, Central Jail, Tihar* analysed in detail the extent of judicial interference. The Supreme Court not only reiterated the power of courts

120. *Supra*, n. 103
to issue writs but also highlighted their duty and authority to see that the judicial warrant was not misused.\textsuperscript{122} The prisoners should get the protection of the fundamental rights guaranteed to the citizens under the Indian Constitution against any arbitrary and discriminatory treatment by the prison authorities.\textsuperscript{123}

In \textit{Charles Shobraj} the Supreme Court held that the prison authorities are justified in classifying between dangerous prisoners and ordinary prisoners. While dismissing the petitions the court held that in the present case the petitioner is not under solitary confinement. A distinction between "under trial" and convict is reasonable and the petitioner is now a convict. A lazy relaxation on security is a professional risk inside a prison.\textsuperscript{124}

Though the plea of the petitioner was not allowed the court made some noteworthy observations regarding the role of Articles 19 and 21 in a prison setting. Krishna Iyer, J. of the Supreme Court observed:\textsuperscript{125}

"Confronted with cruel conditions of confinement, the court has an expanded role. True, the right to life is more than mere animal existence, or vegetable subsistence. True, the worth of the human person and dignity and divinity of every individual inform articles 19 and 21 even in a prison setting. True constitutional provisions and municipal laws must be interpreted in the light of the normative laws of nations, wherever possible and a prisoner does not forfeit his part III rights".

Considering the question of the rights available to the prisoners, the Supreme Court has rightly affirmed that imprisonment does not spell farewell to fundamental rights, though the courts may refuse to allow in

\begin{enumerate}
\item \textsuperscript{122} \textit{Ibid}.
\item \textsuperscript{123} \textit{Ibid}.
\item \textsuperscript{124} \textit{Ibid}.
\item \textsuperscript{125} \textit{Id.}, p.1517.
\end{enumerate}
full the fundamental rights enjoyed by free citizens. The court made it clear that the claims of prisoners against cruel and unusual punishments need not necessarily depend for their soundness upon specific constitutional provisions prohibiting such treatment.\textsuperscript{126}

Thus it is evident that \textit{Charles Shobraj} is a landmark decision in the "prisoner rights jurisprudence". Through this case the court widened the scope of judicial interference in the administration of prisons.

Another opportunity for advancing human rights in the field of criminal jurisprudence came up before the Supreme Court in \textit{Francis Coralie Mullin v. The Administrator, Union Territory of Delhi}.\textsuperscript{127} The right to life protected under Article 21 is not confined merely to the right of physical existence but it also includes within its broad matrix the right to the use of every faculty or limb through which life is enjoyed as also the right to live with basic human dignity.\textsuperscript{128}

The Supreme Court observed that as a necessary component of the right to life, the prisoner or detenue would be entitled to have interviews with the members of his family and friends and no prison regulation or procedure laid down by prison regulation regulating the right to have interviews within the members of the family and friends can be upheld as constitutionally valid under Article 24 and 21, unless it is reasonable, fair and just\textsuperscript{129} Justice Bhagwathi further held.\textsuperscript{130}

\begin{enumerate}
\item \textsuperscript{126} Supra, n. 121
\item \textsuperscript{127} A.I.R. 1981 S.C. 746. The petitioner, a British national was arrested and detained in the Central Jail, Tihar. She preferred a petition in the Supreme Court for a writ of habeas corpus challenging her detention. Her petition was rejected with the result that she continued to remain under detention in the Tihar Central Jail. Whilst under detention, the petitioner experienced considerable difficulty in having interview with her lawyer and the members of her family. Her daughter aged five years and her sister, who was looking after the daughter, were permitted to have interview with her only once in a month and she was not allowed to meet her daughter more often, though a child of very tender age.
\item \textsuperscript{128} \textit{Id.}, p. 750 \textit{per} Bhagwathi, J.
\item \textsuperscript{129} \textit{Id.}, p.753 \textit{per} Bhagwathi, J.
\item \textsuperscript{130} \textit{Id.}, p.754.
\end{enumerate}
“The same consequence would follow even if this problem is considered from the point of view of the right to personal liberty enshrined in Article 21, for the right to have interviews with members of the family and friends is clearly part of personal liberty guaranteed under that Article. The expression “personal liberty” occurring in Article 21 is of the widest amplitude and it includes the right to socialise with members of the family and friends subject, of course, to any valid prison regulations and under Article 14 and 21, such prison regulations must be reasonable and non-arbitrary. If any prison regulation or procedure laid down by it regulating the right to have interviews with members of the family and friends is arbitrary or unreasonable, invalid as being violative of article 14 and 21.”

The state cannot, by law or otherwise deprive any person of the right to live with basic human dignity. Torture or cruel, inhuman or degrading treatment or punishment which trenches upon human dignity would be impermissible under the Constitution. Thus the Supreme Court elevated immunity against torture or degrading treatment to the status of the fundamental right under Article 21, though it is not specifically enumerated as a fundamental right in the Constitution.¹³¹

The Supreme Court was not prejudiced by the fact that the petitioner was not a citizen of India. Human rights are universal; and the Supreme Court’s endorsement of this proposition is much in evidence in this decision. The extension of the understanding of ‘life’ to include human dignity is an unmistakable reflection of the court’s sensitivity to the pervasive aspect of human rights. The depth of understanding went beyond the words to the substance, and is now an inalienable parts of Indian constitutional law.

Sunil Batra Cases

An awareness about prisoners rights was created among the people by the above mentioned decisions. But no substantial reform have been made by the Central Government or the State Governments except the appointment of some Prison Reforms Committees. In spite of this, the Supreme Court has taken initiative in order to humanise jail administration to some extent. The two Sunil Batra cases are significant decisions in this direction.

The petition in Sunil Batra (I) was filed by two inmates confined in Tihar Jail challenging the legality of sections 30 and 56 of the Prisons Act. Sunil Batra, a convict under sentence of death challenged his solitary confinement. Charles Sobraj, a French national and then an undertrial prisoner challenged the action of the superintendent of jail putting him in bar fetters for an unusually long period commencing from the date of incarceration. Such a gruesome and hair raising picture was pointed out that at some stage of hearing, Chief Justice M.H. Beg, V.R. Krishna Iyer, J. and P.S. Kailasam, J., who were the judges hearing the cases visited the Tihar Central Jail.

132. In 1980 the Government of India appointed Mulla Committee on Jail Reforms. Justice A.N. Mulla was the Chairman of the Committee. Ismail Committee was appointed in Tamil Nadu.

133. Supra, n. 66.

134. Supra, n. 67.

135. Prisons Act 1894, Section 30 reads:- “1. Every prisoner under sentence of death shall, immediately on his arrival in the prison after sentence, be searched by, or by order of, the jail and all articles shall be taken from him which the jailor deems it dangerous or inexpedient to leave in his possession.

2. Every such prisoner shall be confined in a cell apart from all other prisoners, and shall be placed by day and night under the charges of guard”.

136. Id., section 56 reads:- “Whenever the Superintendent considers it necessary (with reference either to the state of the prison or the character of prisoners) for the safe custody of any prisoners that they should be confined in irons, he may, subject to such rules and instructions as may be laid down by the Inspector General with the sanction of the State Government, so confine him”.

The petition was dismissed by the court. But through various interim orders the court has guaranteed a fair treatment to the petitioner inside the prison. The Supreme Court said:\(^{137}\)

"Convicts are not wholly denuded of their fundamental rights. No iron curtain can be drawn between the prisoner and the Constitution. Prisoners are entitled to all constitutional rights unless their liberty has been constitutionally curtailed."

Here the Supreme Court established that convicts are not merely by reason of conviction denuded of all the fundamental rights which they otherwise possess. The conviction deprives the prisoner the fundamental freedoms like the right to move freely throughout the territory of India and the right to practice a profession.

In *Sunil Batra (II)*\(^{138}\), arising out of a letter written by Sunil Batra to one of the judges of the Supreme Court alleging that a warden in Tihar Jail had caused bleeding injury to a convict by name Prem Chand by forcing a stick into his anus, the court liberalised the procedural rigidities of the writ of *habeas corpus* and employed the writ, following the American cases\(^{139}\) for the oversight of state penal machinery and for the condemnation of the brutalities and tortures inflicted on the prisoners. On the basis of this, the Supreme Court treated Batra’s letter as a petition for *habeas corpus* and issued the writ to the Lieutenant Governor of Delhi and the Superintendent of Central Jail ordering that Prem Chand should not be subjected to torture and the wound on his person should receive proper medical attention.

---

137. *Supra*, n. 134 at p.1727 *per* Desai, J.
138. *Supra*, n. 66
139. *Id.*, p. 1583.
In this case Justice Krishna Iyer openly acknowledged the activist policy-making role of the judicial process, particularly in view of the legislative laxity, in the humanisation of the prison system and observed thus:\textsuperscript{140}

"Of course, new legislation is the best solution, but when law-makers take far too long for social patience to suffer, as in this very case of prison reform, courts have to make-do with interpretation and carve on wood and sculpt on stone ready at hand not wait for far away marble structure".

The judge gave a number of guidelines on the humanist reforms of the penal process and the prison administration.

The Supreme Court has directed that the treatment of prisoners must be commensurate with his sentence and satisfy the tests of Articles 14, 19 and 21 of the Constitution. It expanded the scope of the writ of habeas corpus by recognising the right of a prisoner to invoke the writ against prison excesses inflicted on him or on a co-prisoner. Further, the court gave many directions to improve the prison administration.

Judicial interference into the prison administration is not a prohibited thing at present; on the other hand the interference is necessary and welcome to check arbitrary actions of jail authorities. Habeas corpus powers and administrative measures are the pillars of prisoners rights.\textsuperscript{141} The prisoners can invoke the attention of the courts at appropriate times. For instance, where a person sentenced to simple imprisonment with ‘B’ class treatment is put by the jail authorities under rigorous improvement with ‘C’ class treatment, or where a prisoner is subjected to brutal treatment, prisoners are able to approach the court for the redressal of their grievance.

\textsuperscript{140} Id., p. 1594.

\textsuperscript{141} Sunil Batra (II), Supra. n. 66 at p. 1599.
The post conviction visits by the judges to the prison will bear many beneficial results. They reduce the possibility of the vindictive attitude of the jail authorities and help the prisoner to get suitable treatment. The visits give an opportunity to the judges to observe the impact of a particular punishment on the criminal, to learn directly whether or not it helps to reform the criminal and to understand how they should act in future to make the penal system functionally effective. Highlighting the responsibility of the sentencing court to visit prisons and to guardian their sentences, Justice Krishna Iyer gave a new dimension to the sentencing power of courts. The popular prejudice that attaches itself to convicts did not deter the court in its attempt to eliminate prison injustice. The court expressly stated that conviction, however heinous an offence, did not make a non-person of a person. While imprisonment would deprive the convict of his personal liberty, his fundamental right did not otherwise stand automatically abrogated.

**New Dimensions of Reformative Jurisprudence**

The objectives of punishment justify the restrictions imposed upon the prisoner’s right to move freely within the jail. But since prisoners are entitled to the fundamental rights, the restrictions should have a rational relationship with the working of the correctional system.

Judiciary can prescribe standards of treatment by jail administration if the convict is likely to become more sociopathic than what he was prior to the sentence. Justice Krishna Iyer, in *L. Vijayakumar v. Public Prosecutor* stressed the need to keep first offenders who were young away from the hardened criminals in jail, so as to provide the former with opportunities of reforming themselves into better citizens.

In *Vijayakumar* all the accused persons who were around seventeen years were sentenced to 2 1/2 years imprisonment by the sessions court.

---

142. This aspect has been highlighted by Justice Krishna Iyer in *Sunil Batra, supra*, n. 67
for robbing a bank with non-violent use of crude pistols and country bombs. The High Court enhanced the sentence to seven years rigorous imprisonment. Eventhough the full bench of the Supreme Court did not interfere in the sentence passed, Justice Krishna Iyer gave various guidelines with regard to the treatment of prisoners to reduce their criminal tendencies. Justice Krishna Iyer pointed out that the court has responsibility to see that punishment serves social defence.144

“A hospital setting and a humanitarian ethos must pervade our prisons if the retributive theory, which is but vengeance in disguise, is to disappear and deterrence as a punitive objective gain success not through the hardening practice of inhumanity inflicted on a prisoner but by reformation and healing whereby the creative potential of the prisoner is unfolded. These values have their roots in Article 19 of the Constitution which sanctions deprivation of freedoms provided they render a reasonable service to social defence, public order and security of the state”.

The purpose of confinement is not to pass a person to the jail authorities to be punished vindictively. Confinement is the punishment and it has to be administered according to law. The responsibility of a judge is not over by rendering a decision on the guilt of the accused and by passing a sentence of punishment.145 The judge has a greater role to play.

In Sunil Batra (1)146 Justice Krishna Iyer canvassed for positive experiments in rehumanisation including meditation, music, arts and self expression, games, useful work with wages, prison festivals, visits by and to families, even participative prison projects and controlled community life. He observed:147

144. Id., p.1487.
145. Id., p.1488.
146. Supra, n.134.
147. Id., p.1685.
"The roots of our Constitution lie deep in the finer spiritual sources of social justice, beyond the melting pot of bad politicking, feudal cruelties and sublimated sadism, sustaining itself by profound faith in man and his latent divinity and the confidence that "you can accomplish by kindness what you cannot do by force" and so that it is that the Prison Act provisions and the Jail Manual itself must be revised to reflect their deeper meaning in the behavioural norms, correctional attitudes and human orientation for the prison staff and prisoners alike".

In Sunil Batra\textsuperscript{148}, the judges were unanimous in expressing their opinion in favour of a change in law. It was emphasised that there is a need for making the Jail Manual available to the prisoners. According to the court the decision on the necessity to put a prisoner in bar fetters under the power of Section 56\textsuperscript{149} of the Prisons Act 1894 has to be made after application of mind of the peculiar and special characteristic of each case. The nature and length of each sentence or the magnitude of the crime committed by the prisoner do not seem to be relevant for the purpose. Putting prisoners in bar fetters continuously for a long period is a cruel and unusual punishment which is anathema to the spirit of the Constitution.

Prison is not only a place of confinement and deterrence but also an abode of rehabilitation and refinement.\textsuperscript{150} It is a revolutionary suggestion that the sentencing court has duty to visit prisons at intervals and to

\textsuperscript{148} Ibid.
\textsuperscript{149} Section 56 of the Prisons Act 1894 reads:- "Whenever the superintendent considers it necessary (with reference either to the state of the prison or the character of the prisoners) for the safe custody of any prisoners that they should be confined in irons, he may, subject to such rules and instructions as may be laid down by the Inspector General with the sanction of the state government so confine him".
\textsuperscript{150} Although the concept of rehabilitation has profoundly shaped American sentencing and correctional policies, a constitutional right to rehabilitation remains unrecognised by the United States Federal Courts. In sharp
see that the convicts are treated according to law and in conformity with the norms of modern penological and correctional systems. There must be a procedure in the sentencing court itself for receiving complaints from convicted persons if their rights are infringed in jail. The present system of sentencing a person and forgetting him for ever should change. Effective improvement in prison justice administration is possible if the judiciary has a say in the treatment of offenders in jail.

There is a well known saying in law that 'justice delayed is justice denied'. It is implicit in the content of Article 21 because no procedure can be reasonable, fair and just which denies speedy trial to the accused. The Supreme Court in Hussainara Khatoon¹⁵¹ pointed out that speedy trial, though not a specifically enumerated fundamental right, can be claimed by prisoners. The state is under a constitutional obligation to take all steps necessary for ensuring the constitutional right to speedy trial to the accused and the state cannot be permitted to deny this right on the ground that it has no adequate financial resources to incur the necessary expenditure needed for improving the administrative and judicial apparatus with a view to ensuring speedy trial. The court in its anxiety to protect and enforce this right of speedy trial did not remain content with mere formulation and recognition of right but proceeded further to add that the court is entitled to enforce this right by issuing necessary directives to the state which may include taking of positive action calculated to ensure speedy trial. The court thus adopted an activist approach and took positive steps.

The right to approach the judicial forum for the redressal of the grievances is an important right of all persons. If that right is denied it will be a denial of fair procedure envisaged under Article 21 of the Constitution.

contrast, a number of European nations include rehabilitation as a constitutional mandate. Further, customary international law establishes a duty of rehabilitation as expressed, for example, in the 1955 United Nations Minimum Rules for the Treatment of Prisoners and the American Convention of Human Rights”. Edgar do Rotman, “Do Criminal Offenders have a Constitutional Right to Rehabilitation ?”, 77 The Journal of Criminal Law and Criminology 1023 (1986).

The important question in *M.H. Hoskot v. State of Maharashtra*\(^{152}\) was whether the right of appeal is an integral part of the fair procedure as envisaged in Article 21 of the Constitution. In *Hoskot* a Reader in the Saurashtra University was convicted for offences of attempting to issue counterfeit university degrees. The sessions court sentenced the person till rising of the court. High Court found the sentence too lenient and awarded 3 years rigorous imprisonment. Against this heavy sentence the accused approached the Supreme Court by special leave. The High Court judgment was pronounced in 1973 and the special leave petition was filed only after four years. The petitioner has undergone his full term of imprisonment during this period. A thorough probe by the Supreme Court has revealed that a free copy of the judgment has been sent promptly by the High Court, meant for the applicant, to the Superintendent, Yervada Central Prison, Pune.\(^{153}\) The petitioner contended that he did not get the copy. There was nothing on record which bears his signature in token of receipt of the High Court's judgment. The Court did not allow the special leave petition. The Supreme Court vehemently criticised the Sessions Court judgment awarding a nominal punishment to the prisoner under the corrective aspect of the punishment. The court observed:\(^{154}\)

"Social defence is the criminological foundation of punishment. The trial judge has confused between correctional approach to prison treatment and nominal punishment verging on de-criminalisation of serious social offences".

The Supreme Court was critical about the silent deprivation of liberty caused by unreasonableness, arbitrariness and unfair procedures inside the jails. The Supreme Court made it clear that in the light of Article 21 such practices should be stopped. Procedure established by law are words of deep meaning for all lovers of liberty and judicial


\(^{153}\) Criminal Procedure Code 1973, Section 363 provides for furnishing a free copy of the judgment to the accused.

\(^{154}\) Supra, n. 152 *per* Krishna Iyer, J. at p.1552.
sentinels. Procedure means ‘fair and reasonable procedure which comforts with civilized norms like natural justice rooted firm in community consciousness’.155

Justice Krishna Iyer has followed this and held that the procedure which deals with the modalities of regulating, restricting or even rejecting a fundamental right falling within Article 21 has to be fair, not foolish, carefully designed to effectuate, not to subvert, the substantive right itself. Procedure must rule out anything arbitrary, freakish or bizarre. Procedure safeguards are the indispensable essence of liberty. The history of personal liberty is largely the history of procedural safeguards and right to a hearing has a human right ring. Procedure in Article 21 means fair, not normal procedure law is reasonable law, not any enacted piece.156

Natural justice is an essential part of fair procedure as envisaged in Article 21. So the right of appeal if it is provided by law, becomes an integral part of the fair procedure.

In Hoskot the Supreme Court laid down that the constitutional mandate under Article 21 read with Article 19 (1) (d) prescribes certain rights to the prisoners undergoing sentence inside the jail. The rights established in this case can be laid down in the following manner.

The most important duty is upon the court. The court has to furnish a free copy of the judgment when it is sentencing a person to a prison term. In the event of any such copy being sent to the jail authorities for

155. In the landmark case Maneka Gandhi v. Union of India, Bhagawathi, J. has explained this. “Does article 21 merely require that there must be some semblance of procedure, howsoever arbitrary or fanciful, prescribed by law before a person can be deprived of his personal liberty or that, procedure must satisfy certain requisites in the sense that it must be fair and reasonable? Article 21 occurs in Part III of the Constitution which confers certain fundamental rights. Is the prescription of some sort of procedure enough or must be procedure comply with any particular requirement? Obviously, the procedure cannot be arbitrary, unfair or unreasonable. A.I.R. 1978 S.C. 597 at p.622.
156. Supra, n. 152 at p.1553.
delivery to the prisoner by the appellate, revisional or other court, the official concerned has to see that it is delivered to the sentence and after that must obtain a written acknowledgement thereof from him.

Circumstances are common where the prisoner wants to file appeal from the jail. Where the prisoner seeks to file an appeal or revision every facility for exercise of that right has to be made available by the jail administration.

There are various circumstances where the prisoner is disabled from engaging a lawyer due to various reasons such as indigence or difficulty in communication with outsiders. In such cases the court has to assign competent counsel for the prisoner's defence provided the party does not object to that lawyer.

These guidelines are applicable from the lowest to the highest court where a deprivation of life and personal liberty is in substantial peril.

Of the rights mentioned, two have got special significance in Hoskot. The first requirement is service of a copy of the judgment to the prisoner in time to file an appeal and the second requirement is the provision of free legal service to a prisoner who is indigent or otherwise disabled from securing legal assistance where the ends of justice call for such service. Both these are state responsibilities if we give a wider interpretation to Article 21.157

There is something dubious about the delivery of the copy of the judgment by the Jailor to the prisoner in Hoskot. A simple proof of such delivery is the latter's written acknowledgement. Any jailor who by indifference or vendetta withholds the copy thwarts the court process

157. Constitution of India. Article 21 says": "No person shall be deprived of his life and personal liberty except according to the procedure established by law".
and violates Article 21. To give effect to the idea contained in Article 21, Section 363 has been incorporated in the Criminal Procedure Code.\textsuperscript{158} Jail Manuals will have to be updated to include these principles also.

One of the ingredients of 'fair procedure' to a prisoner, who has to seek his liberation through court process is lawyer's service. Free legal services to the needy is a constitutional mandate under Articles 21, 22 and 39A of the Constitution.\textsuperscript{159} Article 39A is an imperative tool to Article 21. Through section 304 of the Criminal Procedure Code\textsuperscript{160} the legislature has adopted some of the principles given in Article 39A of the Constitution.

In \textit{Maneka Gandhi}\textsuperscript{161} it has been established that personal liberty cannot be cut out or cut down without fair procedure. Enough has been set out to establish that a prisoner, deprived of his freedom by court sentence but entitled to appeal against such verdict, can claim as part of his protection under Article 2 and as implied in his statutory right to appeal, the necessary concomitant of right to counsel to prepare and argue his appeal.

\textsuperscript{158} Criminal Procedure Code, Section 363 reads:- “(1) When the accused is sentenced to imprisonment, a copy of the judgment shall, immediately after the pronouncement of the judgment, be given to him free of cost.
(2) On the application of the accused, a certified copy of the judgment, or when he desires, a translation in his own language if practicable or in the language of the court, shall be given to him without delay, and such copy shall, in every case where the judgment is applicable by the accused, be given free of cost. Provided that where a sentence of death is passed or confirmed by the High Court, a certified copy of the judgment shall be immediately given to the accused free.

\textsuperscript{159} Article 39A reads:- “The state shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities”.

\textsuperscript{160} Criminal Procedure Code 1973, Section 304 provides for legal aid to the accused at state expense in certain cases.

\textsuperscript{161} Supra, n. 103.
In *Hoskot*, the Supreme Court widened the scope of Article 21 with regard to the rights of prisoners. The court made it a government duty to provide free legal aid to the accused under state expense. The Court held:¹⁶²

"If a prisoner sentenced to imprisonment, is virtually unable to exercise his constitutional and statutory right of appeal, inclusive of special leave appeal, for want of legal assistance, there is implicit in the court under Article 142 read with Articles 21 and 39A of the Constitution, power to assign counsel for such imprisoned individual for doing complete justice. This is necessary incident of the right of appeal conferred by the Code and allowed by Article 136 of the Constitution. The inference is inevitable that this is a State’s duty and not Government’s charity”.

In *Khatri v. State of Bihar*¹⁶³ the Supreme Court laid down that the right to free legal services is clearly an essential ingredient of reasonable, fair and just procedure a person accused of an offence and it is implicit in the guarantee of Article 21.

In this famous case, popularly known as *Bhagalpur Blinding* Case large number of persons were put in prison. Neither at the time when the blinded prisoners were produced for the first time before the judicial magistrate nor at the time when the remand orders were passed, no legal representation were available to them. Barring two or three blinded prisoners who managed to get a lawyer to represent them at the later stages of remand, most of the blinded prisoners were not represented by any lawyer. A few of them were released on bail after being in jail for quite some time. While considering the grievances of prisoners the court held.¹⁶⁴

¹⁶² *Supra*, n. 152 at p.1556.
¹⁶⁴ *Id.*, p.931.
“The state is under a constitutional mandate to provide free legal aid to an accused person who is unable to secure legal services on account of indigence and whatever is necessary for this purpose has to be done by the State”.

Another question raised in *Khatri v. State of Bihar* was whether the state was liable to pay compensation to the blinded prisoners for violation of their fundamental rights under Article 21 of the Constitution.

It was contended that the blinded prisoners were deprived of their eyesight by the police officers who were government servants acting on behalf of the state and since this constituted a violation of the Constitutional right under Article 21, the state was liable to pay compensation to the blinded prisoners. The liability to compensate a person deprived of his life or personal liberty otherwise than in accordance with procedure established by law was implicit in Article 21. The court was reluctant to grant relief in the form of compensation. The court held:

“It is obvious that the petitioners cannot succeed in claiming relief under Article 32 unless they establish that their fundamental right under Article 21 was violated and in order to establish such violation, they must show that they were blinded by the police officials at the time of arrest or whilst in police custody”.

Some of the pronouncements by the Indian Supreme Court, which emphasize the rights of convicts and the need for treating them in conformity with those rights, are notable milestones in the path towards finding new penological goals of a correctional and reformative prison justice administration. They do not let the prison gates remain closed.

---

165. *Supra*, n. 163.
166. *Id.*, p.1074.
for ever against a system of humane treatment of prisoners and against effective judicial supervision of such a system. It was *Prabhakar Pandurang* which inspired and showed the way-in the spate of cases on condition of detention in the late seventies and early eighties. *Hoskot*, the two *Sunil Batra cases* and the decision in *Francis Coralie Mullin* were but extensions of the principle first enunciated in *Prabhakar Pandurang*.

**Conclusion**

The present trend is that even after conviction, the judiciary has an effective supervising role with regard to the treatment of prisoners inside the jail. When, a person is put in prison he loses some of the fundamental rights like the freedom of movement, freedom to form association etc. The prisoners are entitled to claim the residuary fundamental rights even inside the prisons. The State is under a constitutional obligation to honour and protect their rights including the right to life and human dignity.

A new jurisprudence of correctional reform based on reformative and rehabilitative aspects has now set in. Prisoners should not go out to society with a feeling that the rule of law is a casualty within prison walls. It has now been accepted that the purpose of prison life is to train the inmates for a proper social living where rule of law is respected. It will remain illusory and impaired if the scheme of prison regulation is afflicted by arbitrariness and injustice.