Human Rights of Detainees and Prisoners: Suggestions for Prison Reform

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HUMAN RIGHTS: EXTENT AND SCOPE

In modern times the state has undertaken the task of affording adequate protection of the individual and providing reasonable opportunities to every one for full development of individual's personality. It is on this universal recognition of the dignity of individual's freedom that the concept of Human Rights has been evolved.

The concept of Human Rights was originally evolved in England when religion and organised church exercised considerable influence on the evolution of human rights in the days of Magna Carta which King John was forced to accept in 1215 stating the grant was made "through the inspiration of God for the honour of God and the exaltation of Holy Church." The Magna Carta was followed by the Petition of Rights (1627) and the Bill of Rights (1689). In the American Continent the Charters of New Plymouth of 1620 expressed the principles of Human Rights.

In 1929, the Institute de Droit International at a meeting of the outstanding scholars from many parts of the world, issued a Declaration of the International Rights of Man which proclaimed that the judicial conscience of the civilised world demands the recognition for the individual of rights prescribed from all infringements on the part of the State.

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1. Z. Chafee, Documents on Fundamental Human Rights, (Harvard, 1951) p. 239.
That it is important to extend to the entire world international recognition of the right of man. With the outbreak of the World War II came the conviction of the urgent need to safeguard the political and civil rights of individuals everywhere, and to provide for economic and social security and determination to safeguard such rights. On January 1, 1948 the World Community declared its common objectives to defend life, liberty, independence and religious freedom and preservation of human rights and justice in their own land as well as in other's land.

And on December 10, 1948 the Universal Declaration of Human Rights was proclaimed by the General Assembly as a first step in the formulation of an International Bill of Human Rights which became a reality in 1976. The covenants require countries ratifying them to recognize and protect a wide range of human rights.

Human rights have been described as touchstone of the development and recognised as the basic principles essential for the development of individuals. The rights are essential and basic to the very well being of individuals and their development. In the absence of these rights men would be enslaved and subjected to torture at the hands of the State. The democracy envisages concept of human rights as one of the basic tenets for individuals' growth in the society. The affirmation of human rights and fundamental freedoms in the Charter of the United Nations was a solemn protest against the brutal oppression, torture and assassination associated with the Nazi-Fascist method of government.

2. 35, American Journal of International Law, (1941) 662.
5. The three significant instruments are as follows:
   (i) The International Covenant on Economic, Social and Cultural Rights contains 31 Articles;
   (ii) The International Covenant on Civil and Political Rights consists of 53 Articles, and
   (iii) The Optional Protocol to the latter covenant comprises of 14 Articles.
The enjoyment by men and women everywhere of human rights and liberties is as much a pre-requisite to international peace and security as is the construction of an international organization capable of maintaining peace.6

Human rights in simple language may be categorized as those fundamental rights to which every man or woman living in any part of the world is entitled by virtue of having been born as a human being. In other words, human right is the genus of which humanitarian law is a species. The former relates to the basic rights of all human beings everywhere, at all times, and the latter relates to the rights of particular categories of human beings, particularly, the sick, the wounded, prisoners of war during armed conflict and hostility. The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights lay down standards of general application to all human beings which are applicable at all times and in all circumstances setting the standards for advancement of human rights.7 The Declaration did not have the force of law at the time of its adoption, but since then it had a powerful influence on the development of contemporary international law.

HUMAN RIGHTS UNDER INDIAN CONSTITUTION

The Constitution of India in Part III and IV dealing with the Fundamental Rights and Directive Principles cover almost the entire field of the Universal Declaration of Human Rights. Thus human rights jurisprudence in India has a constitutional status and sweep so that this *Magna Carta* may well toll the knell of human bondage 'beyond civilised limits.

The human rights enshrined in Part III of the Constitution have been made non-derogatable under Art. 13(2)8 and their

8. Art. 13(2) reads as follows:

"The State shall not make any law which takes away or abridges the rights conferred by this part and any law made in contravention of this clause shall, to the extent of the contravention be void."
enforcement has been guaranteed under Article 32 of the Constitution as one of the basic rights.

As early as 1959, Subba Rao, J., said in *Bishambhar Nath v. C.I.T.*, that it is the duty of the Court to protect the rights of the people, who are economically poor, educationally backward and politically not yet conscious of their rights and such people could not be pulled against the state.

In *A.K. Gopalan v. State of Madras*, the court observed that Article 32 being a fundamental right cannot be diluted or whittled down by parliamentary legislation. Section 14 of the Preventive Detention Act, 1950 was challenged on the ground that it prevented the detenu on pains of prosecution from disclosing to a court the grounds of his detention communicated to him by the detaining authority. The court held that this rendered the exercise of the court’s power nugatory and so Sec. 14 was declared to be unconstitutional.

The Supreme Court of India has declared more than once that technicalities and legal niceties are no impediments to the court’s entertainning even an informal communication as a proceeding under Articles 32 and 226 of the Constitution if the basic facts are found true.

In *Sunil Batra v. Delhi Administration*, the Supreme Court has observed relying on the American and English decisions that the scope of writ of habeas corpus is very wide and its circumference has become wider from time to time to achieve its objectives, i.e., the protection of individuals against erosion of the right to be free from wrongful restraint on their

11. A.I.R. 1980 S.C. 1579. Sunil Batra, a convict under death sentence lodged in the Tihar Central Jail, Delhi, came to know of a crime of torture practised upon another prisoner, Prem Chand who sustained serious anal injury on or about August 26, because a rod was driven into that sore aperture to inflict inhuman torture by a jail warder, Maggar Singh, as a means to extract money from the victim through his near visiting relations.
liberty. The courts have started to examine the manner in which an inmate is held or treated during the period of his sentence.

The writ petition originated in a letter by a prisoner addressed to a judge of the Court complaining of a brutal assault by a Head Warder on another prisoner Prem Chand. Forms were forsaken since freedom was at stake and the letter was metamorphosed into a habeas Corpus proceeding and was judiciously navigated with eclectic creativity.

The case is a symptom, a symbol and a signpost vis-a-vis human right in prison situations. The petitioner does not seek the release of the prisoner because a life sentence keeps him in confinement. The resume of facts brings into focus the basics of prisoner’s rights and helps the court forge remedial directives so as to harmonise the expanding habeas jurisprudence with dawning horizons of human rights and enlightened measures of prison discipline beyond the conventional blinkers have started to examine the manner in which an inmate is held or treated during the period of his sentence.

"Where injustice verging on inhumanity, emerge from hacking human rights guaranteed in Part III and the victim beseeches the court to intervene and relieve, the court will

12. The court took support from American Jurisprudence (2nd ed. Vol. 39) p. 185 para II Coffin v. Raichard, 143 F. 2d. 443 at p. 445, where the Court of Appeal said that:
"The Government has the absolute right to hold prisoners for offences against it but it also has the correlative duty to protect them against assault, or injury from any quarter while so held. A prisoner is entitled to the writ of habeas corpus when, though lawfully in custody, he is deprived of some right to which he is lawfully entitled even in his confinement for deprivation of which serves to make his imprisonment more burdensome than the law allows or curtails his liberty to a greater extent than the law permits."

In (1974) 40 L. Ed. 2d. 224, the Supreme Court of the United States gave habeas relief against censorship of prisoner’s mail and the bar on the use of law students to conduct interviews with prison inmates in matters of legal relief. Again in Johnson v. Aver (1969) 21 L. Ed. 2d. 718, a disciplinary action was challenged by a prisoner through a writ of habeas corpus.
be functional futility as a constitutional instrumentality, if its guns do not go into action until the wrong is righted. The court is not a distant abstraction omnipotent in books but an activist institution which is the cynosure of the public hope"\textsuperscript{13}

The Court accordingly issued the writ directing the authorities that the prisoner Prem Chand shall not be subjected to physical manhandling by any jail official, that the shameful and painful torture to which he has been subjected, a bolt on Government's claim to protect human rights, shall be ended and the wound on his person given proper medical care and treatment.

Mr. Justice Chandrachud has very nicely explained the prisoner's rights in jail in the case of \textit{Bhuvan Mohan Patnaik. v. State of A.P.},\textsuperscript{14} in the following words:

"Convicts are not, by mere reason of the conviction, denuded of all the fundamental rights which they otherwise possess. A compulsion under the authority of Law, following upon a conviction, to live in a prison house entails by its own force the deprivation of fundamental freedoms, like the right to move freely throughout the territory of India or the right to practise a profession. A man of profession would thus stand stripped of his right to hold consultation while serving out his sentence. But the constitution guarantees other freedoms, like the right to acquire, hold and dispose of property for the exercise of which incarceration can be no impediment. Likewise, even a convict is entitled to the precious right guaranteed by Art. 21 of the Constitution that he shall not be deprived of his life or personal liberty except according to procedure established by law"\textsuperscript{14a}

In 1978 the Supreme Court was ceased with the question of prison justice, the conceptualisation of freedom behind bars and the role of judicial power as constitutional sentinel in a prison in the case of \textit{Sunil Batra v. Delhi Administration}\textsuperscript{15}

\textsuperscript{13} \textit{Supra}, n. 11, p. 1589.
\textsuperscript{14} \textit{A.I.R.} 1974 S.C. 2092.
\textsuperscript{14a} \textit{Id.} at p. 2094.
\textsuperscript{15} \textit{A.I.R.} 1978 S.C. 1675.
Two petitioners, Batra, an Indian and Sobraj, a French national, the former under death sentence and the latter under trial facing grave charges have challenged traumatic treatment in jail as illegal. The former has questioned solitary confinement without legal sanction pending his appeal against the sentence of death passed by the Delhi High Court, and the latter has questioned the distressing disablement by bar fetters of under-trials for unlimited duration of time in the prison. The Court was ceased with three important questions, viz.,

(i) a jurisdictional dilemma between 'hands off prisons' and take over jail administration;

(ii) a constitutional conflict between detentional security and inmate liberties; and

(iii) the rule of processual and substantive reasonableness in stopping brutal jail conditions.

Basic prison decency is an aspect of criminal justice. By isolating criminals and confining them in an isolated place in jail from the rest of the society mainly two objectives are served. Firstly, criminals as well as other people are deterred from committing crime. Secondly, it serves protective function by quarantining criminal offenders for a given period of time. Also it is hoped that after their release from jail they will be rehabilitated properly. The latter objective is the central theme of all correctional facilities themselves.16

"HANDS OFF" DOCTRINE

During the nineteenth century it was customary to deprive an accused of all of his personal rights and liberty except those humanity accords to him and was treated as slave of the State.17 However, in course of time the courts have wittled down the doctrine and by 1975 the U.S. Supreme Court in Eve Fell, 18 have sustained the indubitable proposition that constitutional

rights did not desert convicts but dwindled in scope. And Mr. Justice Douglas in his dissenting note clearly stated: “Prisoners are still ‘persons’ entitled to all constitutional rights unless their liberty has been constitutionally curtailed by procedure that satisfy all requirements of due process.” 19

Justice Douglas further observed that, conviction of a crime does not render one a non-person whose rights are subject to the whim of the prison administration, and therefore, the imposition of any serious punishment within the prison system requires procedural safeguards.

It is a crime of punishment to further torture a prisoner undergoing imprisonment as the remedy aggravates the malady and thus ceases to be a reasonable justification for confiscation of personal freedom and is arbitrary because it is blind action and geared to the goal of social defence, which is one of the primary objectives of ends of imprisonment.

The Royal Commission on Capital Punishment has rightly observed,

“Imprisonment itself is the penalty and that it is not the function of the prison authorities to add further penalties day by day by punitive conditions of discipline, labour, diet and general treatment.” 20

Realising the spirit of reform and humanism, Justice Krishna Iyer, said in Sunil Batra’s case,

“Our Constitution has no ‘due process’ clause or the VIII Amendment, but after Cooper 21 and Meneka Gandhi, 22 consequence is the same. For what is punitively outrageous, scandalising, unusual or cruel and rehabilitatively counter productive, is unarguably unreasonable and arbitrary and

is shot down by Arts. 14 and 19 and if inflicted with pro-
cedural unfairness, falls foul of Article 21. Part III of the
Constitution does not part company with the prisoner at
the gates, and judicial oversight protects the prisoner's
shrunken fundamental rights, if flouted, frowned upon or
frozen by the prison authorities." 223

The operation of Articles 14, 19 and 21 24 of the Indian
Constitution may be curtailed for a prisoner but not puffed al-
together. For example, public address by a prisoner may be put
down but talking to fellow prisoners cannot; vows of silence or
taboo on writing, reading poetry or drawing cartoons are viola-
tive of Article 19. Likewise, locomotion may be curtailed by
the needs of imprisonment but binding hand and foot, with hoops
of steel every man or woman sentenced for a term is violative
of part III. Even a person under death sentence has human rights
which are non negotiable and even a dangerous prisoner, standing
trial, has basic liberties which cannot be bartered away.

HUMAN RIGHTS OF PRISONERS

The Court has upheld the right of a prisoner in the case of
State of Maharashtra v. Pandurang, 25 to have his work entitled
'Inside the Atom' published, if it does not violate prison disci-
pline. The martyrdom of Gopalan 25a and resurrection by Cooper 26
paved the way for Meneka, 27 where the potent invocation of the
rest of part III, even after one of the rights was validly put out
of action, was affirmed in indubitable breadth. So the Law is
that for a prisoner all fundamental rights are an enforceable
reality, though restricted by the fact of imprisonment. The omens

23. Supra, n. 15 at p. 1690

24. Article 14 guarantees equality before Law; Article 19 confers six
fundamental freedoms to citizens, such as freedom of speech and ex-
pression, freedom of assembly, freedom of association, freedom of
movement, freedom of residence and settlement and freedom of pro-
Fession, occupation travel or business and Article 21 protects life
and personal liberty of every person.


25a. Supra, n. 10.


are hopeful for imprisoned humans, because they can enchantingly invoke Maneka and, in its wake, Arts. 14, 19 and even 21, to repel the deadening impact of unconscionable incarceratory inflictions based on some lurid legislative text or untested tradition.

Prisons are built with stones of law and so, when human rights are hashed behind bars, Constitutional justice impeaches such law. In this sense, courts which send citizen into prisons have an onerous duty to ensure that, during detention and subject to the Constitution, freedom from torture belongs to the detenue.

If solitary confinement is a revolt against society’s human essence, there is no reason to permit the same punishment to be smuggled into the prison system by naming it differently. Law is not a formal label, nor logomachy but a working technique of justice. The penal code and the criminal procedure code regard punitive solitude too harsh and the legislature cannot be intended to permit preventive solitary confinement, released even from the restrictions of Ss. 73 and 74. I.P.C., S. 29 of the Prisons Act and the restrictive prison Rules.

Confinement inside a prison does not necessarily import cellular isolation. Segregation of one person all alone in a single cell is solitary confinement. That is a separate punishment which the court alone can impose. It would be a subversion of this statutory provision (Ss. 73 and 74 I.P.C.) to impart a meaning to S. 30(2) of the Prisons Act, whereby a disciplinary variant of solitary confinement can be clamped down on a prisoner, although no court has awarded such a punishment, by a mere construction, which clothes an executive officer, who happens to be the governor of the jail, with harsh judicial powers to be exercised by punitive restrictions and unaccountable to anyone, the power being discretionary and disciplinary.

This safe keeping in jail custody is the limited jurisdiction of the Jailor. The convict is not sentenced to imprisonment. He is not sentenced to solitary confinement. He is a guest in custody, in the safe keeping of the host jailor until the terminal hour of terrestrial farewell whisks him away to the halter. This is trusteeship in the hands of the Superintendent, not imprisonment in the
true sense. Section 366(2) Criminal Procedure Code (Jail Custody) and Form 40 (safely to keep) underscore this concept, reinforced by the absence of a sentence of imprisonment under section 53 read with section 73, Indian Penal Code.

The black hole of Calcutta is not a historic past but a present reality. The recent brutal act of blinding of prisoners in Bhagulpur jail has rocked the humanity and shattered the concept of basic human values. If such instances of barbaric hostility and astrocities against prisoners are not checked the very basis of human values will be in danger.

While admitting the cases of blinding in Bhagulpur Jail Mr. Justice Bhagwati and Mr. Justice Venkataramaiah of the Supreme Court of India condemned the acts of blinding and described it as a barbaric act and a crime against the mankind. It shows how low can the administration in Bihar sink. 28

The police are to observe law and not to break it. But the blinding of undertrials shows, that they have behaved in the most lawless manner. The acts deserved the strongest condemnation by all sections of the humanity. It is difficult to believe how the administration could be so ruthless as to deprive fellow human beings of their eye-sight.

It is important to note that prisoners in Samastipur Jail (Bihar) revolted against the misbehaviour of Jail officials and lack of adequate facilities for prisoners, which ultimately resulted in firing and killing of nine inmates. 29

**Fair Procedure and Right of Appeal**

The component of fair procedure is natural justice. Generally speaking and subject to just exceptions at least a single right of appeal on facts, where criminal conviction is fraught with long loss of liberty, is basic to civilised jurisprudence. 30 It is integral to fair procedure, natural justice and normative universality save in special cases like the original tribunal being a

high bench sitting on a collegiate basis. In short, a first appeal from the Sessions Court to the High Court, as provided in the Criminal Procedure Code S.374 manifests this value upheld in Article 21 of the Constitution. Every step that makes the rights of appeal fruitful is obligatory and every action or inaction which stultifies it is unfair and, ergo, unconstitutional.

The law requires compliance of two conditions in such cases, viz., (1) Service of a copy of the judgment to the prisoner in time to file an appeal, and (2) Provision of free legal services to a prisoner, who is indigent or otherwise disabled from securing legal assistance where the ends of justice call for such service.

Duty of Jail Authorities

Any jailor who by indifference or vendetta withholds the copy thwarts the court process and violates Article 21, and may pave the way for holding the further imprisonment illegal. Deviant jail officials should be punished. And courts, when prison sentence is imposed should make available a copy of the judgment, if the accused is straight marched into the prison. All the obligations are necessarily implied in the right of appeal conferred by the Criminal Procedure Code read with the commitment to procedural fairess in Article 21. Section 363 of the Criminal Procedure Code which requires copies of judgement given to the accused and other persons is an activist expression of import of Article 21 and is inviolable.

Legal Aid to Prisoners and Under-Trials

Legal aid, as a pipe line to carry to the court the breaches of prisoners’ basic rights, is a radical humanist concominant of the rule of prison law. Article 39A is an interpretative tool


32. Article 39A provides that:
“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 any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.”
for Article 21 of the Constitution. Partial statutory implementation of the mandate is found in S. 304 Criminal Procedure Code,\textsuperscript{32a} which provides for legal aid to the accused in other situations. Courts cannot be inert in the face of Articles 21 and 39A of the Constitution. If a prisoner sentenced to imprisonment is virtually unable to exercise his constitutional and statutory right of appeal, inclusive of special leave to appeal, for want of legal assistance, there is implicit in the Court under Article 142\textsuperscript{33} read with Articles 21 and 39A of the Constitution power to assign counsel for such imprisoned individual for doing complete justice. This is a necessary incident of the right of appeal conferred by the Code of Criminal Procedure and allowed by Article 136 of the Constitution. The inference is ineluctable that this is a State’s duty and not government’s charity. Equally affirmative is the implication that while legal services must be free to the beneficiaries, the lawyer shall be reasonably remunerated for his services. In order to provide adequate opportunity to an accused convicted of crime to go in appeal against the sentence the following facilities may be given by the concerned authorities.

(i) Courts should forthwith furnish a free transcript of the judgment when sentencing an accused to imprisonment.

(ii) In the event of any such copy being sent to the jail authorities for delivery to the prisoner by the appellate revisional or other court the official concerned should get it delivered to the accused,

(iii) Where the prisoner seeks to file an appeal or revision, every

\textsuperscript{32a} Section 304(1) states that where in a trial before the Court of Sessions, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the state.

\textsuperscript{33} Art. 142(i) states, that:
"The Supreme Court in the exercise of its jurisdiction may pass such decrees or make such orders as is necessary for doing complete justice in any cause or matter pending before it and any decree so passed or order so made shall be enforceable,"
facility for exercise of that right should be made available by the jail administration.

(iv) Where the prisoner is disabled from engaging a lawyer on reasonable grounds as indigence or incommunicade situation, the Court should if the circumstances of the case, the gravity of the sentence, and the ends of justice so require, assign competent counsel for the prisoner’s defence, provided the party does not object to that lawyer.

(v) The state should pay to assigned counsel such sums as the court may equitably fix.34

SLAVERY IN JAIL AND BONDED LABOUR

Perhaps the most shocking and revealing state is that of 'slave system' operating in Indian Jails. The slaves are boys mostly under-trial prisoners, between ten and eighteen years of age employed as helpers. They cook, wash utensils, clean rooms, fetch water and do back breaking labour to help the men, who are employed to do these chores. They would be asked to get up early in the morning to prepare tea and would be allowed to go for sleep late at night after scrubbing the pots and pans. They are kept confined into a ward which had no fan and no proper sanitary facilities. The boys are kept in jail as long as possible because without them the persons employed to do the menial duties would have no time to relax. They are taken from one court to another to be tried under one charge or another and kept in jail all the while.

A touching account of crime of punishment which in fact touches beyond tears is for children being lapped up and locked up for use as bonded labour on tramped charges in the punitive house of justice. Whenever the number of prisoners goes up, the police are asked to bring the boy to help the chores. One such instance has been narrated in Sunil Batras’s case, when one boy was picked up from Defence colony in New Delhi kept to police lock-up for the night and brought to jail in the morning.35 In

34. Supra, n. 11 at p. 1587.
35. Ibid.
this way young persons, exposed to violence and sufferings of a jail life, rub shoulders with hardened criminals and lead a tragic existence.

**Corruption and Lawlessness in Jails**

An admirable account of the chaotic and deplorable state of affairs prevailing in the Central Jail situated right in the capital of the country and the nose of the Home Ministry in Delhi is an eye opener to all those champions of the cause of human rights, personal liberty and human dignity. Corruption in Jail is so well organised and so systematic that everything goes like clockwise once the price had been paid.\(^{36}\)

Justice Iyer has very aptly described conditions in Tihar Jail in the following words;

"The Tihar prison is an arena of tension, trauma, tantrums and crimes of violence, vulgarity and corruption and to cap it all, there occurs the contamination of pretrial accused with habituals and injurious prisoners of international gangs. The crowning piece is that the jail officials themselves are allegedly in league with the criminals in the cells, That is, there is a large net work of criminals, officials and non-officials in the house of correction. Drug racket, alcholism, smuggling, violence, theft, unconstitutional punishment by

\(^{36}\) Following are some of the instances of corruption;

1. Dharma Teja, the shipping magnate who served his sentence in Tihar Jail had thousands of rupees in Jail and all the comforts. He had an air cooler in his cell, a radio-cum-record player set and even the phone.

2. Haridas Mundhra, a business man not only did he have all the facilities in Jail, but he could also go out of jail whenever he liked. At times he could be out for several days and travel beyond Delhi.

3. Ram Kishan Dalmia, a business magnate spent most of his jail term in hospital.

4. Smugglers imprisoned in Tihar Jail get their food from posh hotels and whisky from Connaught place in Delhi and women for recreation on payment of money.
way of solitary cellular life and transfers to other jails are not uncommon. 37

If the administration does not immediately have the horrendous situation prevailing in our jails examined by an independent and impartial authoritative body to acquaint itself with the criminal life style of correctional institutions, and take appropriate measures to help improve the condition of our modern jails, the conditions can not be improved.

The situations in Tihar Jail and incidents of blinding of under-trial prisoners that has happened in Bhagalpur Jail, 38 is a reflection of crime explosion, judicial slow motion and mechanical police action coupled with unscientific nugativity and expensive futility of the prison administration. Some of the causes of deplorable conditions in Indian prison are following.

1. Over crowding in Jails:

Normal capacity of jail remains 1273 as against the actual prisoners between 2300 to 2500.

2. Lack of Proper Classification of Prisoners:

No proper classification of different categories of prisoners depending on the nature and type of criminals is made, such as

37. Supra, n. 11 p. 1586.
38. The details of blinded prisoners are as mentioned below: Sunday Vol. 8 issue No. 20 December 21, 1980 p. 21.
When the victims were blinded:
for undertrials, females, habituals, casual offenders, juveniles, first offenders and political prisoners etc.

3. Untrained Staff:

At present most of the jail staff, such as Assistant Superintendents, Warders, guards are appointed without any training in Jail administration.

4. Lack of Sanitation:

Sanitary conditions in jails are far from being satisfactory as reported by a number of committees on Jail Reforms.

Plight of Under-trial Prisoners

The plight of under trials has once again come to the notice of the Supreme Court recently when it issued appropriate writs to the concerned State Government. But the problem does not seem to come to an end. The court has directed the Bihar Government and State Judiciary to dispose of the cases of thousands of undertrials languishing in jails without a committal or a trial for more than two years. The direction is complementary to the courts decision in Hussainara Khatoon's case in 1979 when it granted a charter of freedoms for undertrials who had spent virtually their whole life awaiting trial, i.e., for a much longer period than the maximum, they could have served in jail had they been found guilty of the charge.

The court’s direction should mean immediate freedom to thousands of men, women and children who are languishing in Jail. But that may not be so as long as state authorities are indifferent to human misery. The legal process is tortuously complicated and costly, and the public are not vigilant. Otherwise more than half of those detained in jails in the country about 1,50,000 locked up in 1219 prisons would not have been undertrials. It is a well known legal dictum that until a person’s guilt is established in a court of law he or she is presumed to be innocent.

Thus there are more innocent captives than adjudged criminals in the country. To make things worse, prison conditions
are abominable and persons detained in prisons as undertrials are often subjected to various forms of torture, ranging from hand cuffing to maiming and blinding as had happened in Bhagalpur. There is little justice within the four walls of prison.

In case of under trial prisoners the period of detention should be included in the sentence meted out to them. But if they are to be acquitted, how can they be compensated for the agony which they have already undergone for no fault of theirs. This State of affairs is a sad commentary on our legal system and judicial process.

Some of the following steps may be taken to improve the diplorable conditions of under-trial prisoners.

1. Legal Aid:

    The under-trial prisoners must be provided with legal aid at the cost of the State.

2. Bail Bond Liberalised:

    The bail system which is now property oriented be changed so that even the poor can take advantage of the legal facility available under the law.

3. Trial Procedure Simplified:

    The trial procedure should be simplified in order to do away with the delay in disposal of cases.

4. Quick Disposal of Cases:

    The courts should be adequately manned so that cases can be properly disposed of within a reasonable time.

    It may be pointed out that the Supreme Court during the last 30 years of its existence has rendered invaluable service to the people by upholding the dignity of man by recognising human rights of people both outside and in side jail.

    In a recent case of Nari Singh v. Union of India, the Supreme Court held that continued detention of the petitioner for

a period of 20 days in considering the representation filed by the detainee without any reason is clearly violative of Article 22(5)\(^{40}\) of the Constitution of India.

In *Rajendra Prasad v. State of U.P.*,\(^{41}\) the Supreme Court held that the courts below were not competent to impose the extreme penalty of death on the appellant. It was submitted that neither the circumstances that the appellant was previously convicted for murder and committed these murders after he had served out the life sentence in the earlier case, nor the fact that these murders were extremely heinous and inhuman, constitute a ‘special reason’ for imposing the death sentence within the meaning of S. 354(3) of the Criminal Procedure Code 1973.

**Prison Reforms**

Our constitutional culture has now crystallised in favour of prison justice and judicial jurisdiction. Prisoners are entitled to all constitutional rights unless their liberty has been constitutionally curtailed by procedures that satisfy all the requirements of the due process. That is to say, a prisoner does not shed his basic constitutional rights at the prison gate. The interest of inmates in freedom from imposition of serious discipline is a liberty entitled to due process protection. Thus the time for prison reform has come when Indian methodology is given a chance. The treatment of prisoners should emphasise not their exclusion from the community, but their continuing part in it. Community agencies should assist the staff of the institution in the task of social rehabilitation of the prisoners. There should be in connection with every institution of social workers charged with the duty of maintaining and improving all desirable relations of a prisoner with the family and with valuable social agencies.

\(^{40}\) Article 22(5) says:

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

As suggested by Justice Krishna Iyer selected law students under the guidance of a teacher not only for their clinical education but as Prisoner Grievance Gathering Agency be allowed to visit jails in their respective areas and meet the prisoners and do the needful in the matter.

Grievance Deposit Box be kept in all jails and access to it should be allowed to all prisoners.

District Magistrates and Sessions Judges should visit jails periodically within their respective court jurisdiction and afford effective opportunities for ventilating grievances and take suitable remedial measures.

The institutions should utilize all the remedial, moral, spiritual and other forces and forms of assistance which are appropriate and available.

Community agencies be enlisted to assist the staff of the institution in the task of social rehabilitation of the prisoners. There should be liaison with every institution of social workers charged with the duty of maintaining and improving all desirable relations of prisoners with his family and with valuable social agencies. As stated by Supreme Court in *Mohammud Giassudin v. State of A.P.*, the role of Jail authorities should be that of doctors treating criminals as patients. The court's observation is very pertinent in this context, when it says,

"Progressive Criminologists across the world will agree that the Gandhian diagnosis of offenders as patients and his conception of prisons as hospitals mental or moral is the key to the pathology of delinquency and the therapeutic role of 'punishment.' The whole man is a healthy man and every man is born good. Criminality is a curable deviance. Our prison should be correctional houses, not cruel iron aching the soul."  

**Rehabilitation of Prisoners**

The purpose and justification for a sentence of imprisonment or a similar measure is ultimately to protect society against

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42. AIR. 1977 S.C. 1926.
42a. Id., at p. 1928.
That is to say, the objective of imprisonment is not only punitive but reformative and to make an offender a non-offender. This end can only be achieved if the period of imprisonment is used to ensure so far as possible that upon his return to society the offender is not only willing but able to lead a law abiding and self-supporting life. It is with these objective in view that in 1967 the Vera Institute of Justice in the United States established Manhattan Court Employment Project to rehabilitate prisoners into a programme of group therapy and employment counselling. If an accused succeeds in the programme and obtains a job, his pending criminal charges are dismissed. The goals of this innovative programme are eloquently stated in the Vera Institute of Justice’s Report as follows.

“The Manhattan Court Employment project aims to stop the development of Criminal careers by entering the Court process after an individual has been arrested but before he has been tried, and giving him the kind of counseling and opportunity for starting on a legitimate career that he needs and otherwise is not able to obtain. The defendant is offered the possibility that the charges against him will be dismissed, provided he is co-operative and responds to counseling and job placement within a 90 days period granted by the Court.

It is an attempt to convert the criminals arrest from a losing to a winning experience to build a bridge for the accused between the fractured world of the street and the orderly world of lawfulness and responsibility. The defendant wins because he gets a job he likes and the charges against him are dismissed and

44. The Manhattan (now New York) Court Employment project was one of the two pilot projects funded initially by the United States Department of Labour in 1967. A number of similar “employment diversion” projects have been established in other cities. See Vorenberg and Vorenberg, Early Diversion from the Criminal Justice System, Practice in Search of a Theory, in Prisons in America 151 (L. Ohlmsted 1973).
society wins also because an individual who might be developing a criminal lifestyle has been converted into a working employee and taxpayer. And the State has been relieved of the need to maintain him in jail perhaps throughout his life.

In Sweden the correctional work is done in a very scientific and systematic way with a humanitarian touch. The social and political system has a very high level of respect for individual human rights. The correctional work is regionalised into five geographic groups and into three special problem groups. Each geographic group provides a central prison and a range of classificatory and treatment institutions, pre-release centers and hostels, and extra-institutional facilities. There are, in effect, five operatively distinct correctional systems in Sweden, handling all problems of detention prior to trial, probation, imprisonment, parole, and aftercare in their regions. The three specialist groups - youth, women, internment - are not regionalized in this fashion. The institutions and facilities for the 18 to 21 year old group are administered as a nationwide system as are the facilities, institutional and within the community, for women offenders and for offenders sentenced as habitual or professional criminals to indeterminate commitment, conditional and final release under the indeterminate commitment is under the control of an internment board presided over by a judge or a retired judge of the Supreme Court, and with four other members, including a senior lawyer, a member of Parliament, usually a psychiatrist, and the Director General of the Correctional Administration.

A similar scheme as that of the United States and Sweden may also be successfully experimented in India.

**Administrative Grievence Committee**

It would be appropriate to set up an effective Administrative Grievance Procedure apart from provision for judicial review to look into the prisoner's grievances from time to time. The administrative grievance set up should consist of (1) Internal programmes (formal complaint procedure) and (2) External programmes involving outsiders (Ombudsman, Citizen's Investigation Committee, Mediators etc.)
It is surprising to observe that the model jail manual is in fact far from being model. It is perhaps a product of personnel who are ignorant of the basic philosophy of the Constitution and unawakened to the new concept of human rights.

There is an urgent need for a judicial agency whose presence direct or indirect within the prison walls will deal with grievances effectively. For this a Board of Visitors with sufficient powers be constituted for every jail to look into the grievances of the prisoners.

This would be a functional substitute for a Prison Ombudsman operating in the United States.

The role of Ombudsman is to hear inmates' complaints and grievances, conducting investigations and making recommendations to the court. Perhaps the most important right of a prisoner is the integrity of his physical person and the mental personality.

A new chapter of offences carrying severe punishments when prison officials become deliquent should be added. The prison is a morbid world where sun and light are banished and crime has neurotic dimensions. Special situations need special solutions. Perhaps a judicial agency directly or through its agency within the prison walls should deal with inmates' grievance.