

PRISONERS'S RIGHT TO AWARENESS

AIMS AND OBJECTIVES OF THE PROPOSED WORK

“Hundreds of guilty persons may get scot free but even one innocent should not be punished”.

Present article is an attempt to highlight need to spread legal awareness among the convicts / detainees. These rights and protections aim at providing a fair trial to an accused person so as to eliminate any possible abuse of process resulting in miscarriage of justice and striking balance between individual liberty and social needs. Legal education can play a great role to upgrade their knowledge and enhance their competencies. Education has been treated as a right of prisoners. Education has a key role in rehabilitating prisoners into society and finding them secure position.

INTRODUCTION

The aim of criminal law is to protect the right of individuals and the state against the invasion by others, to protect the weak against the strong, the law abiding against lawless, the peaceful against violent. In the modern welfare state this protection is sought to be ensured by punishing the accused after the accusation against him has been investigated into and proved beyond doubt in a legal proceeding in accordance with the provisions of law. To ensure free and fair trial so that innocent person may not be victimized, an accused person is entitled to certain basic rights and privileges to defend himself effectively and prove his innocence before he is condemned and punished.

Criminal law both substantive and procedural have incorporated the common law and principle of natural justice to be followed in the administration of criminal justice as enumerated in detail in code of criminal procedure 1973 and Evidence Act 1872. These rights are conferred on accused at all stages, not only when FIR or complaint lodged against him and investigation commences or complaint leading to initiation of an inquiry and trial including the sentencing stage as also after conviction when he is lodged in jail.

CURRENT STATIC DATA OF PRISONERS: (2015-2018)¹

- No. of jails: 10
- Sanctioned capacity: 6250
- No. of women prisoners: 579
- No. of convicts: 3242
- No. of under trials: 10879
- No. of foreigners: 342
- Total admissions of prisoners in a year: 60159
- Total releases of prisoners in a year: 59826
- No. of inmates taken to court: 282802 (avg. per day 1036)
- No. of inmates provided medical attendance: 266871 (avg. per day 927)
- No. of prisoners referred to outside hospital: 15508 (avg. per day 54)
- No. of prisoners granted parole: 362
- No. of prisoners granted furlough: 1651
- No. of complaints received from NHRC: 28
- No. of life convicts: 1375
- No. of death sentence prisoners: 09
- Percentage of Repeater prisoners:

Under trial: 37.51%.
Convicts: 10.68%.
- No. of Prisoners death: 45
- Total accomplishment of mandate – no escape, no riots, no major violation.

Prison Statistics & Classification of Prison Population (as on 31 January 2018)

TOTAL CAPACITY			PRISON POPULATION		
Male	Female	Total	Male	Female	Total
9378	648	10026	14402	563	14965

¹ Official website of Tihar Jail till 17 April 2018

	MALE	FEMALE
Convicts	2800	125
Under trails	11573	438
Detenues	02	0
Others	27	0
Total	14402	563
TOTAL	14965	

Age wise Classification of Prisoners (as on 31 January 2018)

	MALE	FEMALE
18-21 years	797	08
21-30 years	7339	161
30-50 years	5184	282
50-65 years	885	94
Total	14402	563
TOTAL	14965	

Foreign Prisoners(as on 31 January 2018)

	MALE	FEMALE
Convicts	79	09
Under trail	246	44
Others(civil and detenues)	0	0
Total	325	53
TOTAL	378	

Classification of Under trials as per the Length of stay in Jail (as on 31 January 2018)

PERIOD	MALE	FEMALE
Upto 01 months	2041	64
1-3 months	1950	136
3-6 months	2520	45

6-12 months	1717	59
12-24 months	1688	66
24-36v	903	29
36-48 months	493	15
48-60 months	130	12
Above 60 months	131	12
Total	11573	438
TOTAL	12011	

Classification of Convict Prisoners as per term of imprisonment
(as on 31 January 2018)

PERIOD	MALE	FEMALE
Upto 1 month	7	1
1-3 months	21	0
3-6 months	32	3
6-12 months	65	3
1-2 years	160	2
2-5 years	293	10
5-10 years	654	41
Above 10 years	263	2
Life sentence	1293	63
Death sentence	12	0
Total	2800	125

BASIC TENETS OF CRIMINAL JURISPRUDENCE

The rights of accused are basically parts of human rights. If these rights are not recognized by the law or even if recognized they are not respected and observed, no person would be protected against authoritarian rule of state; and the right to freedom and life given under the constitution would remain merely pious declarations.²Three basic.

² ADM Jabalpur vs shivakantshukla AIR 1976 SC1207

Principles of criminal law are:-

1. Every person shall be presumed to be innocent until he is proved guilty, and
2. The burden of proving the guilt of accused lies heavily on the prosecution and it must be discharged beyond reasonable doubt; and
3. The benefit of doubt is accorded to the accused coupled with the privilege of silence.

CONSTITUTIONAL RIGHTS

A. Protection against ex post fact law article 20(1)

No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence;

No person shall be subject to penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

B. Doctrine of “double jeopardy” article 20(2)

The expression 'Double Jeopardy' means that if a person is tried and thereafter acquitted or convicted of an offence, he cannot be tried again for the same offence. This doctrine has been substantially incorporated in the Article 20(2) of the Constitution and is also embodied in Section 300 of the Criminal Procedure Code, 1973.³

C. Right against self-incrimination or testimonial compulsion article 20(3)

Article 20(3) provides that no person accused of any offence shall be compelled to be a witness against himself. The cardinal principle of criminal law is that an accused must be presumed to be innocent till the contrary is proved. In **Nandini Satpathy v. P.L. Dani**⁴, the Supreme Court has held that the prohibitive scope of Article 20(3) goes back to the stage of police interrogation not commencing in court only. It extends to, and protects the accused with regard to other offences-pending or imminent, which may deter him from voluntary disclosure.

³Natrajan v. State, 1991 Cri LJ 2329 (Mad)

⁴Nandini Satpathy v. P.L. Dani, AIR 1954 SC 300

The phrase compelled testimony must be read as evidence procured scientifically and not by physical threats / violence, psychic (mental) torture, atmospheric pressure, environmental coercion, tiring interrogatives, proximity, overbearing and intimidatory methods and the like.

In case of **Smt. Selvi & Ors. v. State of Karnataka & Ors.**⁵, wherein the question was- Whether involuntary administration of scientific techniques namely Narco analysis, Polygraph (lie Detector) test and Brain Electrical Activation Profile (BEAP) test violates the 'right against self-incrimination' enumerated in Article 20(3) of the Constitution. In answer, it was held that it is also a reasonable restriction on 'personal liberty' as understood in the context of Article 21 of the Constitution. Following observations were made in this landmark case:

- a) No individual should be forcibly subjected to any of the techniques in question, whether in the context of investigation in criminal cases or otherwise. Doing so would amount to an unwarranted intrusion into personal liberty.
- b) Section 53, 53-A and 54 of Criminal Procedure Code permits the examination include examination of blood, blood- stains, semen swabs in case of sexual offences, sputum and sweat, hair samples and finger nail dipping by the use of modern and scientific techniques including DNA profiling. But the scientific tests such as Polygraph test, Narco analysis and BEAF do not come within the purview of said provisions.
- c) It would be unjustified intrusion into mental privacy of individual and also amount to cruel, inhuman or degrading treatment.
- d) Voluntary administration of impugned techniques is, however, permissible subject to certain safeguards, but test results by themselves cannot be admitted in evidence which are:-

⁵2010 (2) R.C.R. (Criminal) 896.

- i. No Lie Detector Tests should be administered except on the basis of consent of the accused. An option should be given to the accused whether he wishes to avail such test.
- ii. If the accused volunteers for a Lie Detector Test, he should be given access to a lawyer and the physical, emotional and legal implication of such a test should be explained to him by the police and his lawyer.
- iii. The consent should be recorded before a Judicial Magistrate.
- iv. During the hearing before the Magistrate, the person alleged to have agreed should be duly represented by a lawyer.
- v. At the hearing, the person in question should also be told in clear terms that the statement that is made shall not be a confessional statement to the Magistrate but will have the status of a statement made to the police.
- vi. The Magistrate shall consider all factors relating to the detention including the length of detention and the nature of the interrogation.
- vii. The actual recording of the Lie Detector Test shall be done by an independent agency (such as a hospital) and conducted in the presence of a lawyer.
- viii. A full medical and factual narration of the manner of the information received must be taken on record.

D. PROTECTION UNDER ARTICLE 22 OF THE CONSTITUTION

I. Right to be informed of grounds of arrest: article 22(1)

Article 22 (1) of the Constitution provides that a person arrested for an offence under ordinary law be informed as soon as may be the grounds of arrest. In addition to the constitutional provision, Section 50 of Criminal Procedure Code

also provides for the same. The grounds of arrest should be communicated to the arrested person in the language understood by him; otherwise it would not amount to sufficient compliance with constitutional requirements.

II. Right to be defended by lawyer article 22(1)

It is one of the fundamental rights enshrined in our Constitution. The right is recognized because of the obvious fact that ordinarily an accused person does not have the knowledge of law and the professional skill to defend him before a court of law wherein the prosecution is conducted by a competent and experienced prosecutor.

In **Hussainara Khatoon (IV) v. Home Secretary, State of Bihar**⁶, the Supreme Court after adverting to Article 39-A of the Constitution and after approvingly referring to the creative interpretation of Article 21 of the constitution as propounded in its earlier epoch-making decision in **Maneka Gandhi v. Union of India**⁷, has explicitly observed as follows:

The right to free legal services is, therefore, clearly an essential ingredient of „reasonable, fair and just“ procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21. This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation and the State is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so required, provided of course the accused person does not object to the provision of such lawyer.⁸

III. Right to be produced before magistrate: article 22(2)

As per Article 22 (2) of the Constitution provides that an arrested person must be taken to the Magistrate within 24 hours of arrest. Similar provision has been incorporated under Section 56 of Criminal Procedure Code. A police officer

⁶ 1980 SCC 98: 1980 SCC (Cri) 40, 47: 1979 Cri LJ 1045

⁷ 1978 SCC 248: AIR 1978 SC 597

⁸ Hussainara Khatoon (IV) v. Home Secy., State of Bihar, (1980)

making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station.

In **Hariharnand v. Jailor**, the court been held that the arrested person will be entitled to be released, If twenty four hours passed and the person arrested has not been produced before Magistrate. The magistrate before whom the arrested person is presented is required to apply his judicial mind to determine be whether the arrest is regular and in accordance with law.

IV. No detention beyond 24 hours except by order of the magistrate (section 57 of Cr.P.C.)

The right to be brought before a Magistrate within a period of not more than 24 hours of arrest has been created with aims:

- (i) to prevent arrest and detention for the purpose of extracting confessions, or as a means of compelling people to give information;
- (ii) to prevent police stations being used as though they were prisons – a purpose for which they are unsuitable.
- (iii) to afford an early recourse to a judicial officer independent of the police on all questions of bail or discharge. If a police officer fails to produce an arrested person before a magistrate Within 24 hours of the arrest, he shall be held guilty of wrongful detention.

V. Right to free legal aid (Article 39-A)

The right to counsel" would remain empty if the accused due to his poverty or indigent conditions has no means to engage a counsel for his defence. The state is under a constitutional mandate (implicit in Article 21 of the constitution, explicit in Article 39-A of the constitution-a directive principle) to provide free legal aid to an indigent accused person **Sukhdas Vs. Union Territory of**

Arunachal Pradesh.⁹ In **Khatri (II) Vs. State of Bihar**¹⁰, the Supreme Court has held that the State is under a constitutional mandate to provide free legal aid to an indigent accused person, and that their constitutional obligation to provide legal aid does not arise only when the trial commences but also when the accused is for the first time produced before the Magistrate as also when he is remanded from time to time. However this constitutional right of an indigent accused to get free legal aid may prove to be illusory unless he is produced before promptly and duly informed about it by the court when he is produced before it. The Supreme Court has therefore cast a duty on all Magistrate and courts to inform the indigent accused about his right to get free legal aid.

VI. Right to speedy trial (under article 14 and 21 of the Constitution)

Justice delayed is justice denied. This is all the more true in a criminal trial where the accused is not released on bail during the pendency of the trial and trial is inordinately delayed. It is also the constitutional obligation of this court, as the guardians of the fundamental rights of the people, as a sentinel on the qui vie, to enforce the fundamental right of the accused to speedy trial by issuing necessary directions to the State¹¹. The spirits underlying these observations have been consistently rekindled by the Supreme Court in several cases¹². This has again been expressed in **Raj Deo Sharma v. State of Bihar**¹³ wherein the court ordered to close the prosecution cases, if the trial had been delayed beyond a certain period in specified cases involving serious offences.

The right to speedy trial came to receive examination in the Supreme Court in **Motilal Saraf v. State of J&K**¹⁴.

⁹1986 SCC (Cri) 166: (1986) 2 SCC 401: 1986 Cri LJ 1084

¹⁰(1981) 1 SCC 627: 1981 SCC (Cri) 228

¹¹Madheshwardhari Singh v. State of Bihar, 1986 Cri LJ 1771 (Pat)

¹²A.R. Antulay v. R.S Nayak, (1992) 1 SCC 225: 1992 SCC (Cri) 93

¹³1998 SCC(Cri) 1692

¹⁴2007) 1 SCC (Cri) 180

Dismissing a fresh complaint made after 26 years of an earlier complaint the Supreme Court explained the meaning and relevance of speedy trial right thus the concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with actual restraint imposed by arrest and consequent incarceration, and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impressible and avoidable delay from the time of the commission of the offence will if consummates into a finality, can be averted.

VII. Right of appeal

“One component of fair procedure is natural justice. Generally speaking and subject to just exceptions, at least a single right of appeal on facts, where criminal conviction is fraught with loss of liberty, is basic to civilized jurisprudence. 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. Appeal is one of the two important review procedures.

RIGHTS OF PRISONERS UNDER Cr.P.C. 1973

- a. Person arrested to be informed of grounds of arrest and of right to bail (section 50)
- b. Person arrested to be taken before Magistrate or officer in charge of police station (section 56)
- c. Person arrested not to be detained more than twenty-four hours (section 57)
- d. Report of police officer on completion of investigation (section 173)
 - 1. Framing of charge (section 240)
 - 2. Evidence for defence (section 243 & 247)
 - 3. Right of person against whom proceedings are instituted to be defended (section 303)

4. Legal aid to accused at State expense in certain cases (section 304)
5. Person once convicted or acquitted not to be tried for same offence (section 300)
6. Suspension of sentence pending the appeal (section 389)
7. Copy of judgment given to accused at free of cost (363)

CLASSIFICATION OF RIGHTS OF PRISONERS :-

RIGHTS OF UNDER TRIAL PRISONERS	RIGHT OF CONVICTED PRISONERS
Right to speedy trial (article 21)	To receive copy of judgments at free cost section 363 Cr.P.C.)
Protection against instrument to restraint (article 21)	Protection of custodial torture and maltreatment of prisoner's(article 20(3))
Handcuffing is unconstitutional (article 21)	Right to be released on due date (article 21)
Right to compensate to custodial violence(article 132&227)	Right to education (article 21A)
Compensation in case of illegal detention (section 357 of Cr.P.C.)	Power of high court to release after pardon
Right of mercy application	Right to security of life inside of jail
Right to leave and special leave	Right to have basic amenities
Prohibition against self-incrimination(article 20(3))	
Right to know ground of arrest(article 22)	Right to compensate prisoners death during work(article 21)
Right to be defend by lawyer(article 22)	Right to remit (section 432 crpc)
Right to be produce before magistrate within 24 hrs.(article 22)	Right to commutation(section 433)
Right to be tried in presence of accused (article 22)	Right against inhuman treatment (article 21)
Right to appeal (section 383 Cr.P.C.)	

Right to bail (section 436 to 438 Cr.P.C.)	

GUIDELINES LAID DOWN BY SUPREME COURT

Further in **Joginder Kumar v. State of U.P**¹⁵, the power of arrest and its exercise has been dealt with at length. It would be appropriate to refer to certain perceptive observations in the judgment: “The horizon of human rights is expanding. At the same time, the crime rate is also increasing. Of late, this court has been receiving complaints about violation of human rights because of indiscriminate arrests. How are we to strike a balance between the two?

A realistic approach should be made in this direction. The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of deciding which comes first – the criminal or society, the law violator or the law abider; of meeting the challenge which Mr. Justice Cardozo so forthrightly met when he wrestled with a similar task of balancing individual rights against society’s rights and wisely held that the exclusion rule was bad law, that society came first, and that the criminal should not go free because the constable blundered.

The quality of a nation’s civilization can be largely measured by the methods it uses in the enforcement of criminal law.”

COMMISSIONS

National Police Commission¹⁶

The National Police Commission (NPC) was appointed by the Government of India in 1977 with wide terms of reference covering the police organization, its role, functions, accountability, relations with the public, political interference in its work, misuse of powers, evaluation of its performance etc. This was the first Commission appointed at the national level after Independence. The Commission produced eight reports

¹⁵AIR 1994 SC 1349

¹⁶ http://humanrightsinitiative.org/old/publications/police/npc_recommendations.pdf

between 1979 and 1981, suggesting wide ranging reforms in the existing police set-up. Guidelines regarding use of Handcuffs:

- i. The threat of putting handcuffs on persons under arrest is another source of corruption and harassment. The following guidelines must be observed:
- ii. No person shall be handcuffed who, by reason of age, sex or infirmity can be kept in custody without handcuffs.
- iii. No person arrested on a bailable offence shall be handcuffed, unless for some special reasons, it is believed that he is likely to escape.
- iv. In cases under judicial custody, court's instructions should be obtained before handcuffing the accused.
- v. Under trial prisoners and other accused persons should not be handcuffed and chained unless there is reasonable expectation that such persons will use violence or attempt to escape. The police escort must be sufficiently strong to prevent escape.
- vi. Whenever any accused is handcuffed, the fact and reasons should be stated in the Sentry Relief Book.
- vii. In no case should prisoners or accused persons, who are aged and bed-ridden in hospitals, or women or juvenile or civil prisoners, be handcuffed or fettered.

Law Commission Report (Report No.268 in 2005)

Recently Law Commission released its report on bail law reform which deserves urgent attention.

- a) The Law Commission, in its **268th Report**, highlights the problem where it has become the norm for the **rich and powerful to get bail with ease**, while others languish in prison.

- b) The Commission, headed by former Supreme Court judge B.S. Chauhan recommend making it easier for all those awaiting trial to obtain bail.
- c) The commission said that one of the first duties of those administering criminal justice must be that bail practices are “fair and evidence-based”.
- d) “Decisions about custody or release should not be influenced by factors such as gender, race, ethnicity, financial conditions or social status,” the report says.
- e) The main reason that 67% of the current prison population is made up of undertrials is the great inconsistency in the grant of bail.
- f) Even when given bail, most are unable to meet the onerous financial conditions to avail it.
- g) The Supreme Court had noticed this in the past and said that poverty appears to be the main reason for the incarceration of many prisoners, as they are unable to afford bail bonds.
- h) The Commission seeks to improve on a provision introduced in 2005 to grant relief to thousands of prisoners languishing without trial and to decongest India’s overcrowded prisons.
- i) **Section 436A of the Code of Criminal Procedure** stipulates that a prisoner shall be released on bail on personal bond if he or she has undergone detention of half the maximum period of imprisonment specified for that offence.
- j) The Law Commission recommends that those detained for an offence that would attract up to seven years’ imprisonment be released on completing one-third of that period, and those charged with offences attracting a longer jail term, after they complete half of that period.
- k) For those who had spent the whole period as undertrials, the period undergone may be considered for remission.

- l) In general terms, the Commission cautions the police against needless arrests and magistrates against mechanical remand orders.
- m) It gives an illustrative list of conditions that could be imposed in lieu of sureties or financial bonds.
- n) It advocates the need to impose the “least restrictive conditions”.
- o) However, as the report warns, bail law reform is not the panacea for all problems of the criminal justice system.
- p) Be it overcrowded prisons or unjust incarceration of the poor, the solution lies in expediting the trial process.

ENACTMENT AND RULES FOR PRISONERS

The Prisons Act, 1894 :

This act is the first legislation regarding prison regulation in India. The following are some of the important provisions regarding prisoners' rights:

- Accommodation and sanitary conditions for prisoners.
- Provisions relating to mental and physical state of prisoners.
- Examination of prisoners by qualified medical officer.
- Separation of prisoners for male, female, criminal, civil, convicted and under trial prisoners.
- Provisions for treatment of under trials, civil prisoners, parole and temporary release of prisoners.

The Prisoners Act, 1990:

- It is the duty of the government for the removal of any prisoner detained under any order or sentence of any court, which is of unsound mind to a lunatic asylum and other place where he will be given proper treatment.

- Any court which is a high court may in case in which it has recommended to government the granting of a free pardon to any prisoner, permit him to be at liberty on his own cognizance.

The Transfer of Prisoners Act, 1950:

This act was enacted for the transfer of prisoners from one state to another for rehabilitation or vocational training and from over-populated jails to less congested jails within the state.

The Prisoners (Attendance in Courts) ACT, 1955:

This Act contains provisions authorizing the removal of prisoners to a civil or criminal court for giving evidence or for answering to the charge of an offence.

Delhi state legal service authority (DSLSA)

A legal Aid Cell is functioning in each Jail which is being visited by the advocates deployed by **Delhi State Legal Service Authority** as well as Delhi High Court Legal Service Committee. The Legal Aid Cell is being regularly visited by secretaries of District Legal Services Committee who on their visit are ensuring that effective legal aid mechanism exist for the welfare of prisoners. It is also being ensured that every eligible prisoner is able to file his appeal at the State expenses and such prisoners are being regularly counseled by the prison authorities as well as by the visiting legal aid counsel.

A free Legal Aid Cell in each Jail in which the stationary items, typing material, books etc. are provided by the Jail Department.

- Delhi Legal Services Authority deployed 27 advocates who are visiting the legal aid cells of the Jail and giving legal aid. The advocate deployed by Delhi High Court Legal Service Committee are also regularly visiting.
- The Law students from law faculty and national law university are visiting the Jail to help in legal aid activities.

- Regular drafting of application/petition/appeal of the prisoner by the advocates and legal panchayat formed by the legal literate prisoners.
- The matter for release of sick, infirm or old aged inmates are taken up with court.
- Custody parole to the convicts on the occasion of marriage, death, serious illness etc. by the Superintendent Jail.
- Special Court organized on monthly basis at Tihar Court Complex for the minor offenders languishing in Jail. Till date one hundred & fifty two courts have been organized and cases of 5454 prisoners settled. During the year 11 Special Court settled 140 cases.
- During the year 34384 male prisoners and 154 female prisoners were provided legal aid.

The prison department has sent a proposal to the GNCT of Delhi proposing therein the initiation of Open Jail for the convicted prisoner at Tihar who has undergone two year conviction in the Semi Open Jail. The main feature of this Open Jail will be that the inmates will be able to go outside Tihar Complex for work and will come back during the prescribed evening hours. In the process they will be able to earn the wages and will also familiarize themselves with outside world. The proposal has now been accepted.

INTERNATIONAL LAW & COVENANTS

HUMAN RIGHTS ;-

The idea for the protection for human rights and fundamental freedom was conceived in the **Atlantic charter (1941)** and in the **declaration of united nations (1942)**. When the founders of united nation met at **San Francisco conference in 1945** to draft the charter of united nation.

ENUMERATION OF RIGHT IN THE DECLARATION

The universal declaration contained 30 articles out of 30 articles while 21 articles enumerated civil and political rights and 6 covers economic and social rights are as follows-

CIVIL AND POLITICAL RIGHTS

- ❖ Right to life, liberty and security of person (article 3)
- ❖ Prohibition against torture (article 5)
- ❖ Recognition as a person before law (article 6)
- ❖ Equality before law (article7)
- ❖ Effective remedy before the national tribunal (article8)
- ❖ Freedom from arbitrary arrest (article9)
- ❖ Right to fair and public hearing by an independent and impartial tribunal (article10)
- ❖ Presumption of innocence until proved guilty in a public trial with all guarantee necessary for defense of criminal cases (article11 para 1)
- ❖ Freedom from ex post facto (article11 para2)
- ❖ Right to privacy (article12)
- ❖ Right to leave any country (article13 para 2)
- ❖ Right to seek and enjoy in other countries asylum from persecution (article14 para 1)
- ❖ Right to nationality (article15)
- ❖ Right to marry (article 16)
- ❖ Right to own property (article 17)
- ❖ Right to freedom of thought and religion (article 18)
- ❖ Right to participate in the government of his country (article 21)

ECONOMIC AND SOCIAL RIGHTS

- ❖ Right to social security (article22)
- ❖ Right to rest (article 24)
- ❖ Right to standard of living adequate for the health of himself and his family(article 25)
- ❖ Right to good social and international order (article28)

International Human Rights Law:

United Nation Charter:

The charter of the United Nations was signed on 26 June 1945, in San Francisco, at the conclusion of the United Nations conference on international organization, and came into force on October 24 1945.

Basic Principles for the Treatment of Prisoners was adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990. The principles are as follows:

- ❖ Prisoners shall be treated with inherent dignity and valued as human beings.
- ❖ No discrimination on the grounds of race ,sex, colour, language, religion, political, national, social origin, property, birth, or other status.
- ❖ Respect the religious beliefs and cultural precepts of the group to which the prisoners belong.
- ❖ The responsibility of the prisons for the custody of the prisoners and for the protection of the society against crime and its fundamental responsibilities for promoting the well-being and development of all members of the society.
- ❖ All prisoners shall retain the human rights and fundamental freedoms set out in UDHR, ICESCR, ICCPR and the optional protocol as well as such other rights as are set out in other United Nations covenants.
- ❖ Right of the prisoners to take part in cultural activities and education aimed at the full development of the human personality.
- ❖ Abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken or encouraged.

- ❖ Prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the country labour market and permit them to contribute to their own financial support and to that of their families.
- ❖ Access to health services without discrimination on the grounds of their legal situation.
- ❖ With the participation and help of the community and social institutions and with regard to the interest of victims, favorable conditions shall be created for the reintegration of the ex-prisoner into society. The above principles shall be applied impartially.

International Bill of Rights:

a) Universal Declaration of Human Rights:

In 1948 a movement was started in the United Nations in the form of Universal Declaration of Human Rights which was adopted in the General Assembly of the United Nations. This organic document is also called as Human Rights Declaration.

- ❖ No one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
- ❖ Everyone has the right to life, liberty and security of person.
- ❖ No one shall be subjected to arbitrary arrest, detention or exile.
- ❖ Every one charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

b) The International Covenants On Civil and Political Rights, 1966:

The ICCPR remains the core instrumental treaty on the protection of the rights of the prisoners. Following relevant provisions of the covenants are as:

- ❖ No one shall be subjected to cruel, inhuman or degrading treatment or punishments
- ❖ Everyone has the right to liberty and security of person. No one shall be subject to arbitrary arrest or detention.
- ❖ All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
- ❖ No one shall be imprisoned merely on a ground of inability to fulfil a contractual obligation.

c) UN Core Conventions and Specific Instruments:

- ❖ Standard Minimum Rules For The Treatment of Prisoners: Amnesty International in 1955 formulated certain standard rules for the treatment of prisoners. Some important relevant rules are as follow:
- ❖ Principle of equality should prevail; there shall be no discrimination on grounds of race, sex, colour, religion. Political or other opinion, national or social origin, property, birth or other status among prisoners.
- ❖ Men and women shall so far as possible be detained in separate institution.
- ❖ Complete separation between civil prisoners and persons imprisoned by reason of criminal offence; young prisoners should be kept separate from the adult prisoners.
- ❖ All sorts of cruel inhuman degrading punishments shall be completely prohibited.
- ❖ Availability of at least one qualified Medical officer with the knowledge of psychiatry.

- ❖ Convention Against Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment:
- ❖ State party has to take effective legislative, judicial and other measures to prevent acts of torture.
- ❖ No state party shall expel, return or extradite a person who is in danger of being subjected to torture.
- ❖ State party should ensure that all acts of torture are offences under its criminal law

d) Regional Law:

European Convention on Human Rights (1953-69) has its own history in the importance of human rights. Some of the important provisions of this convention are as follows:

- ❖ No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
- ❖ No one shall subject to inhuman treatment or degrading treatment or punishment.
- ❖ Everyone who is deprived of his liberty by arrest shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release be ordered if the detention is not lawful.
- ❖ Everyone who been the victim of arrest in contravention of the provisions shall have an enforceable right to compensation.

CONCLUSION

The role of jail authorities should be that of the doctors treating criminals as patients. The court observation is very pertinent in this context, when it says, **“Progressive Criminologists across the world will agree that the Gandhian diagnoses of offenders as patient 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 well. Criminality is a curable deviance. Our prison should be correctional houses, not cruel iron aching the soul.”¹⁷**. To achieve the same, it is necessary that the prisoners be legally educated and made aware of their rights. The social activist including law students can play a significant role not only as a part of their clinical education but also as prisoner’s grievance gathering agency and spread legal awareness among the criminals.

¹⁷ Mohammad Giassudin v. State of A.P AIR 1977 SC1926(1977)