

“RIGHTS OF PRISONERS WITH SPECIAL RIGHTS TO BAIL”

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RESEARCH METHODOLOGY

The present research work is doctrinal research based on primary and secondary data collection. Number books and have been studied and analysed case law for better and clear understanding of this topic and able to deeply understand the rights of the Prisoners, types of Prisoners, types of jail, special rights as to bail and bonds with respect to International rights.. Thereafter a conclusive viewpoint is formulated in hope of encompassing the different methods of study.

RESEARCH OBJECTIVE:

To understand the concept of Prisoner's Rights in a very pervasive content to categorise the need of an hour to overcome the problems faced by the prisoners. To organise the chapter into deep study of the reason of understanding the major outcome of understanding types of jail. The reason to analyse into deep study organises the content to understand the concept of Women Prison in India. To overview the chapter into clear initiation to bring out different cases where the rights of prisoners started from.

RESEARCH QUESTIONS:

1. WHAT IS A NEED TO UNDERSTAND THE RIGHTS OF PRISONERS?
2. IN WHICH SCENARIO COMMUNALLISM EVEOLVED?
3. IS THERE ANY SOCIAL AWARENESS REQUIRED FOR THE RIGHTS OF PRISONERS?
4. WHO ARE THE SPECIAL PROVISIONS AS TO BAIL AND BONDS?
5. IS THERE ANY CORRECT TIME TO UNDERSTAND THE LIFE OF RISONERS?

PREFACE

Prison has become a topic of a great concern for everyone around and has been deeply examined the problems of prison administration, management, outcome in several stages. The atrocities in various jails, persuaded the courts to think about the prisoners seriously in consideration with the conditions in jails. Writing letter to Courts i.e Plea Bargaining, printing various articles in newspaper, filing Writ Petitions, involving social activists actually gave a deep and wide view to take a step by Courts to implement the better side of the prisoners. Courts with a due respect to the Constitution of India have granted many rights to the prisoners by taking into consideration Article 21. This project makes an attempt to visualise and identify the rights of the prisoners and to evaluate and study through the contributions of the courts in evolving the prisoner rights. During this research, researcher carried out the case study which is based on the primary and secondary data gathered from various sources, books, journals, newspapers and preliminary proceedings. The paper aims to examine the judicial attitudes towards the Indian Prison system. The purpose of this study is to analyze the rights of prisoners under Indian law. The research covers the historical background, constitutional and statutory provisions of the prisoners which is supported by case laws. Moreover, the rights enjoyed by Prisoners, under Article 14, 19 and 21, though limited, are not static and will rise to human rights when challenging a situation arises. The state of health is also an important issue which needs attention to the prison authorities. The unique characteristics of prisons have important implications for treating clients in this setting. Though by no means exhaustive, this paper highlights the most salient affecting the delivery of effective treatment to a variety of populations within the prison system. Correction is a scientific approach for achieving the positive purpose of punishment. The focus of attention always remains on the prisoners, in order to reformulate his attitude and habits by adopting scientific methods and suitable programmes so that after release, he may lead the life of a law-abiding citizen. The Indian prison system are no better for the reason that economic conditions do not permit to evolve better modes of prison management. Therefore, reconstructing of prisons in India needs prime attention.

INTRODUCTION AND MEANING OF PRISON:

The term prison is derived from the Latin term which means to seize. According to Oxford English Dictionary prison means a place properly efficient and equipped for the reception of persons who by legal process are committed to it for safe custody while pending of trail and punishment.

Under the Government of India Prisons Act, 1870 prison means any goal or penitentiary including the airing grounds and other grounds or buildings engaged for the use of the prison. Prison means jail or any place which is used for the detention of prisoners permanently or temporarily under the general and special orders of a Local Government.

Prison means an institution used for the confinement of persons who convicted for major crimes or felonies.

Traditionally, prison means a place in which persons are kept in custody when trail is pending or in which they are confined as punishment after conviction. The meaning of prison is different for different people like for law abiding person it is a place where criminals end up and for criminals it may be a vague peril or an unavoidable humiliation and for social inadequate it may be a shelter and for some isolated persons prison may be a place where they can find some appearance of championship and for prison officer prison is a place of work and for the psychologist it is a career in studying behaviour and for other persons it is an experience which slows up time, which crows them together, sets them apart and changes the course of their lives.

A prison constitutes a walled world of its own. Generally speaking, a prisoner is a person who is confined in prison or kept in custody as the result of legal process by competent authority. In popular parlance, a prisoner is an offender, a threat to societal order and personal security — a person safest in institutionalised cells isolated from the world outside.¹ He is held in confinement against his will for deviant behaviour or as preventive measure. He is best forgotten once he is locked away. Resounding tales from within prison. walls find little sympathy.

¹ G.Ramaswamy, "Human Rights in Prison Justice", in World (1988)

All men are born equal and are endowed by their creator with some basic rights. These rights are mainly right to life and liberty, but if any person doesn't comply with ethics of the society then that person is deprived by these rights with proper punishments. Around 300 years ago, conditions of prisoners was just next to worse, because they were brutally treated and there was no specific provisions for them. After a long struggle society recognized that there are, Rights of Prisoners which should be made available to them. Main objective of prisons is to bring the offenders back to the mainstream of the society. If a person commits any crime, it does not mean that by committing crime, he ceases to be a human being and that he can deprive off those aspects of life which constitutes human dignity.



As per the State List provided in the Seventh Schedule of Indian Constitution, all issues related to prisons, reformatories, borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other States for the use of prisons and other institutions come under the domain of State Governments. The rules of incarceration are determined by following laws:

- Indian Penal Code, 1860
- Prison Act, 1894
- Prisoner's Act, 1900
- Identification of Prisoner's Act, 1920
- Exchange of Prisoner's Act, 1948
- Transfer of Prisoner's Act, 1950
- Prisoner (Attendance in Court) Act, 1955
- Probation of Offenders Act, 1958
- Code of Criminal Procedure, 1973
- Repatriation of Prisoner's Act, 2003
- Model Prison Manual, 2003
- Model Prison Manual, 2016

HISTORICAL BACKGROUND OF PRISON AND PRISONERS:

The word 'Prison' doesn't means "to use sudden force" or "to cage". The prison is an old age foundation. Prison is a place, properly arranged for those culprits through legal process are kept for safe custody while in trial or for punishment.

During Vedic period administration of a justice was not a part of the state duties. In this period offences such as theft, murder and adultery are mentioned but there is nothing which designate that the king or an authorised person as a judge have power to pass any judicial judgement either in criminal or civil cases. Even in the sutras and shastras we rarely come across the word prison or jail.

In general the history of prison system is divided into three phases. In the first phase which lasted until the middle of the 16th century prison institution was chiefly cell of detention room in safe and secure parts of the cities or villages in which prisoner whose trial is pending or whose sentence is executed was kept. In the second phase there was experimentation with imprisonment a form of punishment for certain types of offenders specially juveniles. In the third phase there was universal adaptation of imprisonment as a substitute for all capital punishments.

Initially, it was just a place where offenders are kept for trials and ultimate punishment, but their occurred an intermediate point-imprisonment was regarded in itself. Lord Macaulay in his book “Minutes of 1835” said that –“Imprisonment is the punishment to which we must chiefly trust”. He was the one who put the idea for the establishment of such rules and regulations, main aim was to destroy criminal streak among convicted offenders. If we turn the pages of our past Indian history, there are descriptions of prisoners, in Manusmriti it is stated that king should have all the prisons where all the evil and wrongdoers are kept. 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 to 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.²

ANCIENT INDIA:

In the ancient time, in India prison was only a place of detention where an offender was detained till his trial and judgment and the execution of the judgement. In ancient time, the structure of society was based on the principles pronounced by Manu and explained by Yagnavalkya, Kautilya and others. Imprisonment was the easiest kind of penalty known importantly in ancient Indian Penology among the various kinds of bodily punishments such as branding, hanging, mutilation and death.

This type of punishment was suggested in Hindu scriptures that the wrongdoer or evildoer was put into prison to set aside him from the society. The main aim of imprisonment was to keep away the wrongdoer and not corrupt the members of social doer. These prisons were totally dark hole, cool and damp, unlighted and unwarmed. There was also not proper arrangement for sanitation and no means of facility for human residence. In ancient time fine, imprisonment, banishment, mutilation and death sentence were the modes of punishment. Fine was the most common punishment and when a person who was not able to pay the bill, was condemned to bondage until it was paid by his labour. Fines for murder of a Brahmin were 1000 cows, for murder of Kshatriya 500 cows, for murder of Vaishya 100 cows and for murder of Shudra or women of any caste. The Indian law also gave some description of jail life. A few Smriti writers also gave some information related to the jail. Yagnavalkya stated that a person who assists the prisoner in escaping from the prison was liable for capital punishment. Vishnu suggested the penalty of imprisonment for that person who hurt the eye of a man. Kautilya described the place of prison and also the occasions on which prisoner was released. The officer of the jail was known as Bhandanagaradhyaksa who was the superintendent of jail and karka who was his assistant of superintendent. The jail department was work under the charge of Sannidhata. Kautilya also described the duties of the jailor who always keeps eye on the movement of the prisoners and proper functioning of the prison.

In the post Ashokan age the Jatakas said that prisoner should be released at the time of war. From Harshacharita it appears that the conditions of the prisoners were not satisfactory. At the time of the Royal coronation the prisoners were released from the jail. The treatment with the prisoners was generally harsh. In ancient time the regular prison system as such was not in existence. Imprisonment as a mode of punishment was not a regular in comparison to Modern System in India.

MEDIAEVAL INDIA:

The legal system in the mediaeval India is similar to Ancient India and existing Muslim rulers seldom. During the Mughal period source of law is the Quran. Crimes were divided into three groups that is crime against god, crime against state, crime against private person. The punishments for these crimes were divided into four categories that is Hadd, tazir, qisas and tasir. Imprisonment was not considered as a punishment in the case of ordinary criminals.

It was mostly used as a means of detention only. There were fortresses which were situated in different parts of the country in which criminals whose trial and judgement was pending, were detained. There were three Noble prisons or Castles in Mughal India. One was at Gwalior, second was at Ranathambore and the last one was at Rohtas.

The only redeeming feature of the prisoners was that the order for his release was issued on special occasions. In 1638 AD Sahajahan issued the order of release of prisoners on the occasion of the celebrations of recovery from illness of the favourite Princess Begum Sahib. There were some rooms which were reserved for prisoners and culprits who commit the serious crimes. These rooms were known as Bhandhikhanas or Adab khanas.

During the Maratha period also imprisonment was not a common form of punishment. At that time death, mutilation fine were the common forms of punishment. The form of punishment in Maratha period was also same as of Ancient and Mughal period.

The main features of the prison system that was prevailed in the pre- British period are as follows:

- There were no prisons in Modern sense.
- There were no descriptions of internal administration of prisons.
- There were no rules for maintenance and functioning of prisons.
- There were no existence of separate prison service and courts were not feeding centre for prisons.

MODERN INDIA:

The present prison system of our country is a gift of the British rule. It was a creative creation of the colonial rulers our local penal system with the motive of making imprisonment a terror to wrong doers. There was a great leap in the history our penal reforms as

² Justice M.M.Ismail Commission Report (1977), p.184.

it makes possible the abolition of our old system of barbarous punishment and substitution of imprisonment as the chief form of punishment for crimes.

In 1784 the British Parliament gave power to the East India Company to rule over the India. There were some attempts also made to introduce improvement in the administration of the law and justice. There were 143 civil jails, 75 criminal jails and 68 mixed jail presented at that time. These jails were the extension of Mughal rule which were managed by the members of the East India Company.

The East India Company made their efforts to maintain peace and security and wanted to establish their trade. The British only believed in keeping the prisoners in custody as economically as possible and with the intention of making maximum profit of the government. The early British Administration formulated its prison policy easily with a view to serve its colonial interest alone.

In 1835 Lord Macaulay drew the attention of the Legislative Councils of India towards the unacceptable conditions of the Indian Jails and proposed to appoint a committee for the purpose of collecting information related to the condition of the Indian prisons and preparing an improved plan of prison discipline and also for the suggestion related to the reforms in the prison due to this jail will become the model for other prisons. The Legislative Councils of India accepted the proposal of Lord Macaulay and appointed 'The Prison Discipline Committee'. Honorable H Shakespeare was the president of the committee and Lord Macaulay was one of the members of the committee. This committee submitted his report in 1838. The Enquiry Committee was the landmark in the history of the penal administration in India. After this the meaning, nature, and character of the prison institution was changed and also got different treatment but this change was basically penal in nature. For the very first time, this committee directed the attention of the English rulers of India towards the variety of vices of the administration of the Indian jails. This report criticised the corruption of subordinate establishment, the carelessness of discipline and the system of employing prisoners in extra mural labour or public roads. This committee deliberately rejected all types of reforms which influenced moral and religious teaching, education or the system of giving reward for the good conduct.

The focus of the authority of committee is in favour of increased rigour of treatment and also proposed to engage all prisoners in dull, monotonous work and interesting task in which quicker relief was secured by working harder for a time. According to this committee the purpose of prison was to make the prison a place of dread through a brutal process of severe privation, really hard work, solitude, silence and separation. On the report, suggestion, and advice and in the pursuance of the recommendations of the committee a Central Prison was established at Agra in 1846. This was the first Central Prison in India after that a central prison was established at Barilley and Allahabad in 1848, at Lahore in 1852, at Madras in 1857, at Bombay in 1864, at Alipore in 1864, at Banaras and Fatehgarh in 1864, and at Lucknow in 1867. This was a positive contribution in the history of the prison reforms in our country, along with its advocacy of the theory of retribution in prison administration.³

In 1884 the first inspector General of prison was appointed on the experimental basis for two years in the North Western province and tenure was further extended. In 1850 the Government of India made this post as a permanent post and also recommended that each province should appoint an inspector General of prisons. In 1862 the North Western province employed civil surgeon as a Superintendent of District Jails.

The Prison Act was passed by the Government of India in 1870. This Act laid down that there should be a Superintendent, a medical officer, a jailor and some other subordinate officers as the local government thinks necessary.

This Act also specified and categorised the duties of the prison officers. This Act also provides provision related to the separation of male prisoners from female, separation of children offenders from adult, and separation of criminal from civil offenders. In 1877 and 1889 third and fourth enquiry committee was constituted. On the recommendations of the committees the Prison Act 1894 was passed. Due to the effect of this Act there was a considerable material progress in the concept of jails during this period.

In 1919 the British government appointed a joint commission of officials which investigate about the management of jails and suggest improvement in the maintenance of jails. This commission gave recommendations related to the separate institution like Borstal school for juvenile delinquents. Offenders whose trial is pending should be kept separate from the convicted offender, there should be classification of habitual and casual offenders between the adults.

The report of the committee also throws some light on the view of the transportation of offenders to the Andaman Island and recommended to stop this practice. Solitary confinement was also abolished after this report. All convicts who were below 29 years of age were to be cared under the adult education programmes and libraries were also established in the jails. The quality of food was also improved and two pairs of clothes should be provided to the prisoners.

The main idea or purpose of the committee was the reformation of the inmates which was the ultimate object of imprisonment and rehabilitation of prisoners as social necessity. This prison reform system received a sudden obstruction due to the constitutional changes which were brought by the Government of India Act, 1919. This Act transferred the control of the Jail Department from the Government of India to the Provincial Government. After the Independence of India there was an increase in the reforms of prison. Indian leaders were ready with a blueprint for the industrial development of the country, but the jail reforms could not escape their

³ <http://ncrb.gov.in>

eyes as all of them passed their prime life in the jail. Under the Indian constitution prison administration was the subject of state. This organisation was headed by the Inspector General of Prisons. This organisation consist several central prisons, sub jails, district jails. All states adopt different patterns of jail administration. The central jails are intended for long term prisoners who were convicted in court.

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 at least compels the prisoner to sit at leisure, repent his past conduct and then probably to change his attitude and behaviour.⁴

FUNDAMENTAL RIGHTS:

Fundamental rights form the core of human rights in India. They are the basic rights of the citizens which cannot be taken away under any circumstances. The law of the country also guarantees some of these rights to the prisoners too like Article 14, 19 and 21. However, it cannot impose the fundamental rights in its full panoply to the advantage of the prisoners. Giving prisoners Right to Fair procedure forms the soul of Article 21. Levying reasonableness in any restriction is the essence of Article 19 (5) and sweeping discretion degenerating into arbitrary discrimination is anathema for Article 14. All of these statements are supported by various judgments of the lower courts and the higher court. Some of them are listed below.

1. In **STATE OF ANDHRA PRADESH V. CHALLA RAMKRISHNA REDDY**, the court held that a prisoner is entitled to all the fundamental rights unless curtailed by the constitution.
2. In **STATE OF MAHARASHTRA V. PRABHAKAR**, the Supreme Court stated that the mere fact that someone is detained cannot deprive one of his fundamental rights and that such conditions are not to be extended to the extent of the deprivation of fundamental rights of the detained individual. The Court further ruled that every prisoner retains all such rights that are enjoyed by free citizens except the one that is lost necessarily as an incident of confinement.

RIGHT TO LIFE AND PERSONAL LIBERTY:

The Honorable Supreme Court has repeatedly applied the rule of Article 21 in numerous cases and asserted its significance in several other. It has expanded the connotation of the word "life" given in the much-known case of **KHARAK SINGH V. STATE OF UTTAR PRADESH**⁵. In the said case, the court ruled that the term "life" connotes more than mere existence like that of an animal. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye or the destruction of any other organ of the body through which the soul communicates with the other world. It can be said that right to live is not restricted to a mere animal existence. It connotes something more than just the physical survival of a being.

RIGHT TO LIVE WITH HUMAN DIGNITY:

The right of a human being to live with dignity is protected by the constitution. This right is also given to the prisoners as their mere conviction does not render them inhuman. This right forms a significant part of right to life guaranteed under the constitution of India. The idea behind is that every person's life is precious and irrespective of the circumstances, he should be given a sense of dignity to help him continue living. The courts have enlarged the scope of Article 21 to include this right.

TYPES OF PRISON IN INDIA:

In India there are three levels of Prison such as Taluka level, district level and central level (sometime it is also known as zonal /range level). The jails in these levels are known as Sub jails, district jails and central jails respectively. In general the infrastructure, security, medical facilities, educational and rehabilitation facilities are better from sub jail to central jail. There are also some other types of jail such as women jails, Borstal school, open jails, and special jails.

⁴ V.N.Rajan, Whither_ Criminal Justice Policy? (1983), p.178.

⁵⁵⁵ <http://IndianKanoon.org/doc/619152>



CENTRAL JAIL:

The criteria for dividing a jail as a central jail are different from state to state. The common feature of all states central jail is that those prisoners are confined in the central jails who are sentenced to imprisonment for a long period that is more than two years. These jails are made for lifers and for those people who commit heinous crime. In this type of prison, effort is made to re-establish the morality and integrity of the prisoners. The criminals in these jails earn their wages by doing some hard work. These jails have larger capacity of accommodation in comparison to other jails. These jails also have additional facility of rehabilitation. There are total 134 central jails. Delhi has the highest number of central jails that is 16, Madhya Pradesh have 11, Maharashtra, Punjab, Rajasthan and Tamil Nadu each have 9 central jails, Karnataka has 8 central jails, Gujarat has 4 central jails. Arunachal Pradesh, Meghalaya, Andaman and Nicobar Islands, Dadra and Nagar Haveli, Daman and Diu and Lakshadweep do not have a single central jail.

DISTRICT JAIL:

There is not much difference between the central jails and district jails. District jails are the main jails for those states and union territories where there is no central jail. There are total 379 district jails in India. Uttar Pradesh has 57 district jails, Madhya Pradesh has 39, Bihar has 31, Maharashtra has 28, Rajasthan has 24, Assam has 22, Karnataka has 19, Jharkhand has 17, Haryana has 16, Gujarat has 11, Kerala has 11, West Bengal has 12, Chhattisgarh has 11, Jammu Kashmir and Nagaland each has 10 district jails.

SUB JAILS:

In India these sub jails play the role of the sub-divisional jails. These jails are the smaller institution situated at the sub-divisional level of the state. These jails have the well organised and better set up of prison because they are formed at the lower level. There are 9 states which have higher number of sub jails in India. These states are Maharashtra has 100 sub jails, Andhra Pradesh has 99, Tamil Nadu has 96, Madhya Pradesh has 72, Karnataka has 70, Odisha has 73, Rajasthan has 60, Telangana and West Bengal each has 33. Odisha had the highest capacity of inmates in various sub jails.

There are 7 states or union territories which have no sub jails. The names of these states or union territories are Arunachal Pradesh, Haryana, Mizoram, Manipur, Meghalaya, Nagaland, Sikkim, Chandigarh and Delhi.

OPEN JAILS:

The name of these types of jails may appear contradictory but this is true. These jails are the minimum security prisons. According to the Rajasthan Prison Rules open jails means the prison without walls, bars and locks. In these jails only those convicted prisoners are admitted who possess good behaviour and satisfying the norms which are prescribed in the prison rules. Minimum security is kept in these jails and prisoners are engaged in the agricultural activities and allowed to earn for their families.

First open jail in India was introduced in the Kerala by the Home Minister of Kerala P.T. Chacko in Nettukaltheri near Neyyar Trivandrum on 28 August 1962. There are 63 open jails in the seventeen states of India. Rajasthan has the highest number of open jails that is 29. Till the end of 2015 there were no open jails in the union territories of India. In December 2017 Supreme Court of India directed the centre to establish more open prisons in India.

SPECIAL JAIL:

These jails are the maximum security prisons and have special arrangements for the prisoners. In these jails prisoners of particular class or classes are confined. Prisoners who are confined in special jails are those who are convicted for the offence of terrorism, violent crimes, habitual offenders, serious violation of prison discipline and inmates are violent and aggressive towards other inmates. There are total 43 special jails in India. Kerala has the highest number of special jails that is 16. Provisions related to the keeping female prisoners in the special jail are also available in the state of Tamil Nadu, Gujarat, West Bengal, Kerala, Assam, Karnataka and Maharashtra.

WOMEN'S JAILS:

Women's jails are those which are exclusively only for the female prisoners. These jails are established for the safety of the women prisoners. These jails comprise of female staff members. These jails are existing at sub-divisional, district and central level. There are total 20 women's jails in India. Women's jails have limited capacity so mostly female prisoners are confined in other forms of jail. Maharashtra has 5 women's jails; Kerala and Tamil Nadu each have 3 jails.

SPECIAL PROCEDURE FOR ARREST OF WOMEN:

The Cr.P.C contains certain special provisions for the arrest of women – the arrest of women after sunset and before sunrise (except with the prior permission of Judicial Magistrate First Class) is prohibited and a female arrestee is mandated to only be searched by a female officer with due regard to decency.

The police official arresting the woman should ideally be dressed in plain clothes and not their uniform so as to reduce the stigma associated with incarceration.

Provisions should also be made for the custody of minor children of the woman at the time of arrest. She must provide in writing the name and details of the person with whom she wishes her minor children to stay during her period of incarceration, and this must be complied with strictly. In case where no family/friends are available to care for the child and he/she cannot accompany the mother to prison, the child should be appropriately placed in a Child Care Institution.

PREGNANCY AND BIRTH OF A CHILD IN PRISON:

In case of pregnant prisoners, the provisions of the National Model Prison Manual must be followed strictly to make arrangements for temporary release for delivery of children in a hospital outside the prison. Suspension of sentence may be considered in the case of casual offenders. Information about a woman's pregnant status should also be made to the Court that has ordered the detention, to enable the Court to grant bail (where appropriate) or modify the detention order as deemed necessary.

The birth certificate of the child born to a woman in prison should never mention the prison as place of birth to protect them against social stigma.

Pregnant and lactating women should be provided with special diet as per the National Prison Manual. Mothers in postnatal stage should also be allowed separate accommodation to maintain hygiene and protect their infant from contagion, for at least a year after childbirth. Further, instruments of restraint, punishment by close confinement or disciplinary segregation should never be used on pregnant or lactating women.

Pregnant and lactating women should receive advice on their health and diet under a program to be drawn up by a qualified health practitioner. Inmates should not be discouraged from breastfeeding their children. Medical and nutritional needs of women prisoners who have recently given birth whose babies are not with them in prison, women who have undergone abortion or have had a miscarriage should also be included in treatment and nutrition program.

Women prisoners must have access to urine pregnancy test kits within prison, as per their requirement, free of cost. Pregnant women must also be provided information and access to abortion during incarceration, to the extent permitted by law.

Pregnant women must be given the option to take up work during their pregnancies and in the post - natal phase if they so choose. Work provided to them must be suited to their health conditions. Aadhar cards must be made for all inmates, especially for mothers and infants to enable them to become beneficiaries of various government welfare schemes.

CHILDREN OF WOMEN PRISONERS:

When deciding on the prison to which the woman is to be sent, regard should be had to her caretaking responsibilities if she has a child, and as far as possible, the woman must be given the choice of selecting the prison.

Children must be kept in the prison in a manner that they are not made to feel like offenders. Administration should ensure that the facilities provided are tailored towards children living under their care. NGOs, schools and pediatricians can be engaged to ensure that children in prisons have access to basic facilities of education, day care, recreation and a healthy lifestyle.

To the extent possible, prison administration shall strive to create a suitable environment for children's upbringing, which is as close as possible to that of a child outside prison. E.g. airy rooms with adequate natural light, minimum security restrictions, outdoor play area, opportunity to socialize with peers outside prison if not available within prison etc. The Board of visitors shall inspect these

facilities at regular intervals. Women prisoners whose children are in prison with them shall be provided with the maximum possible opportunities to spend time with their children.

Children should receive a special diet and be regularly examined by a Lady Medical Officer at least once a month to monitor their physical growth and condition of physical and mental health. They should have access to a Lady Medical Officer as per their need.

Children, whether living in prison or visiting, should never be treated as prisoners. The prison staff must display sensitivity, respect and dignity when searching children. Body cavity searches should never be applied to children.

Ideally, no child shall be admitted into or retained in prison if he/she has attained the age of six years. The best interest of the child should be the determining criteria to determine whether and for how long they should stay with their mothers in prison.

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

In case where no family/friends are available to care for the child and he/she cannot accompany the mother to prison, the child should be appropriately placed in a Child Care Institution. It must be ensured that children of the same woman prisoner are housed together in alternative care. The prison administration must ensure that the child be placed in a manner that she/ he can interact with the mother regularly at least once a week.

Children must be removed from the mother's care with utmost sensitivity, and only after making adequate arrangements for his/her stay. A register recording particulars of guardians/persons in whose custody the children of women prisoners are kept must be maintained. It should also be ensured that the inmate could take custody of her child from the Child Care Institution on her release from prison. In case of foreign nationals, removal and alternative arrangements should only be done in consultation with their consular representatives.

Prison administration should ensure that links between inmates and children outside prison are maintained throughout her incarceration. The place of interaction between inmates and their children living outside prison should be one where easy conversation can take place, in a positive environment, where physical contact is possible between mother and child.

Overnight visits for minor children living outside prison to maintain a bond with their mothers must be allowed at least once every quarter. A separate area with a positive homely environment must be provided within the prison for purpose of this stay with the mother.

Prisons should provide educational scholarships for women inmates' children above 6 years. E.g. In Tihar Jail, Delhi, children of inmates who are from Delhi are provided educational scholarship of Rs. 3,500 for one child and Rs. 6,000 for two children per month, subject to conditions like income etc. This could be replicated in other states as well.

ARRANGEMENTS OF WOMEN IN PRISON:

Women prisoners sentenced to six months imprisonment or below should be issued 3 sets of clothing, 2 towels and 3 sets of customary undergarments. This number will increase to 5 sets of clothing, 3 towels and 5 sets of customary undergarments for women sentenced to over six months. Inmates should be able to choose type of clothing from a set of options as per preference. At a minimum this should include saree with blouse and petticoat, kurta with salwar and dupatta, shirt with trouser/long skirt in light colours, but not necessarily white.

Women in their post-natal phase must be given separate accommodation for one year after delivery to maintain a certain standard of hygiene and to protect the child from infections and other diseases. Also, sick women prisoners must be kept isolated for health purposes.

ORGANISING AND MANAGEMENT OF HEALTH AND NUTRITION:

Women prisoners sentenced to six months imprisonment or below should be issued 3 sets of clothing, 2 towels and 3 sets of customary undergarments. This number will increase to 5 sets of clothing, 3 towels and 5 sets of customary undergarments for women sentenced to over six months. Inmates should be able to choose type of clothing from a set of options as per preference. At a minimum this should include saree with blouse and petticoat, kurta with salwar and dupatta, shirt with trouser/long skirt in light colours, but not necessarily white.

Women in their post-natal phase must be given separate accommodation for one year after delivery to maintain a certain standard of hygiene and to protect the child from infections and other diseases. Also, sick women prisoners must be kept isolated for health purposes.

BORSTAL SCHOOL:

It is a type of youth detention centre and is used exclusively for the confinement of minors or juveniles. The main and primary object of these schools are to ensure care, welfare and rehabilitation of young offenders in which environment which is suitable for

children and keep them away from infecting atmosphere of the prison. The juveniles in conflict with law are detained in Borstal School and provide various vocational and educational training with the help of trained teachers. For the reformation of juvenile and to prevent him from crime main emphasis given to the education, training and moral influence.

Nine states have Borstal School. The names of these states are Himachal Pradesh, Jharkhand, Karnataka, Kerala, Maharashtra, Punjab, Rajasthan, Tamil Nadu, and Telangana. Tamil Nadu has the highest capacity for keeping inmates in Borstal school. Himachal Pradesh and Kerala are the only states which have capacity to keep female inmates in 2 of their Borstal school. There are no Borstal school in union territories of India till the end of 2015.

OTHER JAILS:

Jails which do not fall under the above mentioned categories then these jails are come under the category of other jails. Only three states have other jails. The name of these states is Karnataka, Kerala and Maharashtra and each state have one other jail. Karnataka has the highest capacity to keep the inmates in other jail after that Kerala and then Maharashtra has. In spite of these state no other state or union territories of India have other jails.

FUNCTIONS OF PRISON:

The legal system of the India is always based on the non violence, mutual respect for each other and treating other human with dignity. If a person commits crime that does not means that the person stops or barred from been a human being or becomes a non-human or non-person, he cannot deprived from personal liberty. The prisoners are also entitled for the human rights because torture is a confession to the failure of the justice system. Interestingly, Lord Macaulay, who drafted the Indian Penal Code, was in favour of drastic punishments like death penalty, solitary confinement and even whipping. Contradiction leads with late Father of our Nation, Mahatma Gandhi who accordingly established the humanist, compassionate and correctional approach to the punishment in the societal behaviour.

Article 21 of the Constitution of India guarantees personal liberty and prohibit all kinds of inhuman, cruel and degrading treatment towards any person whether an Indian national or an alien. The law abiding citizen is the only moto of the prison system. The violation of this Article would attract the article 14 of the Constitution of India which talks about the right to equality and equal protection under the law. The rights of prisoners are covered under the Prison Act, 1894.

In other words, prisoners continue to enjoy all fundamental rights, including in particular, those conferred by Article 14, 19, 20, 21 and 22- although to a limited extent. Apart from fundamental rights, Article 39- A, which is a Directive Principle of State Policy, calls upon the State to secure that the operation of the legal system promotes justice on the basis of equal opportunity. The State is also mandated to provide legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Prisons have the function of upholding the rights of the prisoners which are as follows:

In this context it will be relevant to indicate the broad prevalent thinking on this subject matter. Mahatma Gandhi observed in 1947:⁶

“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’”.

RIGHT TO LEGAL AID/ASSISTANCE:

The human rights and personal liberty are of no use if person not getting the proper legal aid to enable that they have proper access of justice in case of violation of their rights. Legal aid is a legal right of every person it is not a charity. The main purpose of legal aid is that justice should be administered properly and easily available and accessible.

It should be ensure that legal aid is available for all persons who want to enforce their rights. Legal aid provides an opportunity to the Indian society for the redressal of the damages of the poor and the needy and establishes the foundation of rule of law. Judiciary plays a important role in the development of the concept of legal aid and expand its scope.

In the case of **M.H. WADANRAO HOSKOT VS. STATE OF MAHARASHTRA AIR 1978 SCC 1548, (1978) 3 SCC 544** the court held that the right to legal aid is the basic necessity of free trail. It should be free for indigent and poor accused.

RIGHT TO SPEEDY TRIAL:

This is a most important fundamental right of prisoners. This right is implied in the Article 21 of the Constitution of India. This aspect covers the both social interest as well as public interest. In the case of **HUSSAINARA KHATOON VS. STATE OF BIHAR 1979 AIR 1369, 1979 SCR (3) 532** this case laid down the foundation for ensuring speedy justice after seen that there are large number of cases of men, women and juveniles are pending and men, women and juveniles are still in prison.

In the case of **MATHEW AREEPARMTIL AND OTHERS VS. STATE OF BIHAR 1984 AIR 1854, 1985 SCR (1) 776** the court passed an order for the release of those persons who are in prison and their case was still pending. In this case Court had seen that there were large number of people who have committed offences and still waiting for trial of minor offences.

⁶ The said thoughts of Mahatma Gandhi was echoed by Justice V.R.Krishna Iyer — is the key to the pathology of delinquency and the therapeutic role of punishment".

In the case of **RAJ DEO SHARMA VS. STATE OF BIHAR (1998) 7 CC 507** Supreme Court issued following directions: If the trial is of the committed offence for which the period of imprisonment exceeds the seven years then the court should close the prosecution evidence within two years from the date of the record of plea, no matter that accused was in jail or not.

The trial court have power to release the accused on bail on certain conditions if the accused was in jail for the half of the period of punishment as mention for that offence which was committed by accused. If the offence has been in trail is punishable with imprisonment for a period exceeding 7 years then the prosecution must close the evidence within three years from the date of the recording of the plea, no matter accused was in jail or not.

CONSTITUTIONAL AND OTHER STATUTORY PROVISIONS RELATING TO THE RIGHTS OF PRISONERS IN INDIA:

According to our article 21 of the constitution which prohibits any inhuman, cruel or degrading treatments to any person (either citizen or non-citizen) will be punished. In the same way, Prisoners Act, 1984 specifically dealt with cruelty of prisoners. If any excesses are committed on a prisoners, the prison official is responsible for that. The Indian judiciary, specially Supreme Court in the recent past years has been very vigilant against encroachments upon the human rights of the prisoners. Right to Legal Aid- Although our country is having a complex economic structure and hence crisis arise like poverty, destitution and illiteracy, so providing legal machinery itself is expected to deal with that. Legal Aid gives assurance to:

- Equality before law
- Right to Counsel
- Right to fair trial.

Indian judiciary has played a vital role in developing the concept of legal aid and also widened it's scope so as to give fair justice to the prisoners. In the case of **M.H. WADANRAO HOSKOT V. STATE OF MAHARASHTRA**, the court held that the right to legal aid is one of the ingredients of the procedure. Right to Speedy Trial - One of the fundamental right of a prisoner mentioned in article 21 of the constitution. It ensures just, fair and reasonable procedure. It also ensures that prosecutor may not delay the trial of a criminal suspect arbitrary which serves the social welfare of the state and to give justice to the victims of the crimes. Initially, right to speedy trial was firstly discussed in the landmark document of English law, the Magna Carta. Right to speedy trial is an abstract idea which deals with the disposal of along with the justice.

In the landmark case **HUSSAINARA KHATOON V. HOME SECRETARY, STATE OF BIHAR**⁷, it was held that speedy trial of an accused is his fundamental right under Article 21. If any person who denied his right to speedy trial can directly go to Supreme Court under Article 32 for enforcing such rights. Right against Solitary Confinement, Handcuffing & Bar Fetters and Protection from Torture- "Solitary Confinement", in general sense, means the separate confinement of a prisoner with only occasional access of any other person, and that too only at the discretion of the jail authorities and in stricter sense, it means the complete isolation of a prisoners from all human society and his confinement in a cell is arranged that he has so no direct intercourse with or sight of no human being or no employment or instruction.

In **SUNIL BATRA V. DELHI ADMINISTRATION**⁸ it was held that solitary confinement could be imposed only in exceptional cases where a convict was of such a dangerous character that he must be segregated from other prisoners. Solitary confinement has a degrading and dehumanizing effect on prisoners. Constant and unrelieved isolation of prisoners represents the most destructive abnormal environment. Results of long solitary confinement are disastrous to the physical and mental health of those who subjected to it. Right to reasonable wages- Whenever during the imprisonment, the prisoners are made to work in the prison, they must be paid at the reasonable rate. The wage rate should not trival or below minimum wages.

In **MOHAMMAD GIASUDDIN V. STATE OF A.P.**, the court directed the State to take into account this factor, while finalizing the rules for payment of wages to prisoners as well as to give retrospective effect to wage policy. In the matter of Wages of Prisoners, the court has held that labour taken from the prisoners, which has not properly remunerated was "forced labour" and hence violative of article 23 of the constitution. Right to meet friends and their Consult lawyer- Prisoners are not only protected physically but also mentally. It is necessary for individuals to meet for the purpose of information, it's people's right. Consult lawyers are their legal representatives, the act done by them directly affects the convict's case. Visiting of friends and family members give them mental stability to survive in such a worst condition where people are unknown to each other.

In **FRANCIS CORALIE MULLIN V. THE ADMINISTRATOR, UNION TERRITORY OF DELHI AND OTHERS**, the Supreme Court held that prisoners can have interview with family members, friends and lawyers without any severe restrictions, and allowed to go outside the jail and could not socialize with persons outside jail.

IN THE LANDMARK CASE MANEKA GANDHI V. UNION OF INDIA⁹:

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 sentinels. Procedure means 'fair and reasonable procedure which comforts with civilized norms like natural justice rooted firm in community consciousness.

IN THE LANDMARK CASE OF M. H. HASKOT V. STATE OF MAHARASHTRA:¹⁰

⁷ A.I.R. 1979 S.C. 13607 A.I.R. 1969 S.C. 1369; A.I.R. 1979 S.C. 1377

⁸ A.I.R. 1980 S.C.1579

⁹ A.I.R. 1978 S.C. 597 at p.622.

¹⁰ A.I.R. 1978 S.C. 1548 at pg. 1553

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 delivery of 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.

Justice Krishna Iyer has aptly indicated the need of a national prisoner rights policy in the new situation:¹¹

He said "A reformatory philosophy, rehabilitative strategy, therapeutic prison treatment and enlivening of prisoner's personality through a technology of fostering the fulness of being such a creative art of social defence and correctional process activating fundamental guarantees of prisoner's rights, is the hopeful note of national prison policy struck by the Constitution and the court".

RIGHT AGAINST SOLITARY CONFINEMENT AND PROTECTION FROM TORTURE:

There is a prohibition of separate or solitary confinement of the prisoner or the complete isolation of the prisoner from the entire society. Torture is the something that was consider normal by an investigating officer or agency for the confession. Morally it shows the burden of the stronger over the weaker.

In **PREM SHANKAR SHUKLA VS. DELHI ADMINISTRATION 1980 AIR 1535, 1980 SCR (3) 855** in this case the appellant are in an under trial prisoner in Tihar jail. He was supposed to be taken from the jail to the magistrate and come back to the prison periodically in relation to the certain cases that are pending against him. In such cases handcuffs should not be permitted or practiced if there is no warrant. The Supreme Court held that handcuffs must be used only as a last alternative.

In the case of **D.K. BASU VS. STATE OF WEST BENGAL 1997 1 SCC 416** the court held that torture during custody is a gross violation of human dignity and is degrading to the individual personality. The right to life and liberty is an expression of human right. So, the court held that no person who is arrested can be detained in custody without giving him knowledge and information about the grounds of the arrest and he should not be denied for the right of the legal practitioner.

"Man is by nature a **social animal**; an individual who is unsocial naturally and not accidentally is either beneath our notice or more than human. Society is something that precedes the individual.", i.e, **man** cannot live alone.

Solitary confinement is a form of punishment in which the prisoner or an inmate is isolated from any type of human contact. In **Kishore Singh Dev v. State of Rajasthan¹²**, Supreme Court defined solitary confinement as a confinement in which there is complete isolation of prisoners from other co-prisoners and segregation from outside the world of fellow prisoners. Solitary confinement is an extreme measure and is to be rarely invoked in exceptional cases, of unparalleled brutality and atrocity. It is the slow vivisection of the soul. Solitary confinement deteriorates the mind until it begins to border on insanity. Solitary confinement tortures the inmates mentally, physically, emotionally and is considered to be the most heinous kind of punishment. Even if a man survives it, he becomes abnormal and an absolute misfit in the world.

ORIGINS OF SOLITARY CONFINEMENT:

The origins of Solitary Confinement dates back to the 1800s in the United States, where it had started out as an experiment. An assumption was held back then that prisoners in isolation would use their time in isolation to "repent their sins". But the results were very negative than what they had hoped for. The prisoners who experienced solitary confinement began to develop mental disorders, sometimes referred to as "prison psychosis".

SECTION 73 – SOLITARY CONFINEMENT:

Under the Indian Penal Code, 1860, section 73 deals with Solitary Confinement with certain limits which are stated below:

"Whenever any person is convicted of an offence for which under this code the court has power to sentence him to rigorous imprisonment, the court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say-

A time not exceeding one month if the term of imprisonment shall not exceed six months;

A time not exceeding two months if the term of imprisonment shall not exceed six months and [shall not exceed one] year;

A time not exceeding three months if the term of imprisonment shall exceed one year."

IMPORTANT ELEMENTS OF SOLITARY CONFINEMENT:

Solitary confinement can only be imposed by the court, where it has power to sentence the offender with rigorous imprisonment.

Under the Indian Penal Code 1860, imprisonment can be categorised into two :

¹¹ .V.R.Krishna Iyer, National Prison Policy: Constitutional Perspective and Pragmatic Parameters 1981.

¹² Allindialegalforums.solitary-confinement

1. Rigorous Imprisonment

• Simple Imprisonment

Rigorous imprisonment is basically a punishment with hard labour, where the convicted person is put to do some hard work in the prison, for which the prisoner is compensated with minimum wages.

Whereas simple imprisonments are, unlike rigorous imprisonment, imposed for lighter sentences.

So, it is very clear from the language of Section 73 that, only in the cases where the offender has committed a crime for which the court can award rigorous imprisonment, can the offender be kept in solitary confinement.

SECTION 74 – LIMITS OF SOLITARY CONFINEMENT:

Section 74 of the Indian Penal Code talks about the limit of solitary confinement, and it reads as follows,

“In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods; and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.”

Due to the damages that could be caused to the mind and body of a person who goes through prolonged periods of isolation, legislators have provided that no inmate can be kept in solitary confinement for more than 14 days at a time.

Furthermore, according to this section, the judiciary cannot place an inmate in solitary confinement for more than three months and in the rare instance that it does exceed three months, they shall not be placed in solitary confinement for more than 7 days a month. These limitations are imposed on the awarding of solitary confinement by section 74, owing to its barbarous, torturous and inhumane nature and any more time in solitary confinement, than what is specified in sections 73 and 74 of the Indian Penal Code, would be violative of the basic human rights of the prisoners.

SOLITARY CONFINEMENT UNDER PRISONS ACT, 1894:

The Prisons Act also deals with how an inmate should be put in solitary confinement.

Section 29 of the act says,

“No cell shall be used for solitary confinement, unless it is furnished with the means of enabling the prisoner to communicate at any time with an officer of the prison, and every prisoner so confined in a cell for more than twenty-four hours, whether as a punishment or otherwise, shall be visited at least once a day by the Medical officer or Medical Subordinate”.

In the case of **Charles Sobraj vs The Suptd., Central Jail, Tihar**¹³ Supreme Court has held that any harsh isolation of a prisoner from the society of fellow prisoner by cellular detention under the prisoners act, 1894 section-29 and 30 is penal and it must be inflicted only in accordance with the fair procedure and in the absence of which the confinement would be a violation of Article-21 of the Indian Constitution.

In the case of **Kishor Singh Ravinder Dev Etc v. State of Rajasthan**, the Supreme Court held that prisoners can be kept in solitary confinement only in exceptional cases. Further, the court was of opinion that to keep prisoners in isolation i.e., in solitary rooms for long periods from eight months to eleven months are enough to be regarded as torturous and barbarous and would amount to breach of law which had laid down by the Supreme Court in **Sunil Batra v. Delhi Administration**¹⁴ So prisoners can be kept in solitary confinement only in rarest of the rare cases otherwise it would be a major violation of Article 21 of the Indian Constitution. Also, section 30(2) and 56 of Prisoners Act 1894 are violations of prisoner’s right which are guaranteed by the Constitution of India.

In the case of **Unni Krishnan v, State of Andhra Pradesh**, the Supreme Court declared that “Right against solitary confinement” comes under Article 21 of the Indian Constitution which states that no person shall be deprived of his life or personal liberty.

In the case of **T.V. Vatheeswaran v. state of Tamil Nadu**, the two judge bench considered whether the appellant, who was convicted for the offence of murder and was sentenced to death in January 1995 and was also kept in solitary confinement for 8 years along with the commutation of the death sentence.

CONVICTS ON DEATH ROW:

When a prisoner is committed under warrant for jail custody under section 366(2) CrPc, 1973 and if he is detained in solitary confinement with a punishment prescribed under section 73, IPC, 1860, it will amount to imposing punishment for the same offence more than once which would be violative of Article 20(2)- “no person shall be prosecuted and punished for the same offence more than once”. Practice of keeping prisoners in condemned cells before confirmation is a pre-constitutional practice and such practices should be avoided. Therefore, practice adopted in the jail until now cannot be a ground of putting the petitioners in solitary confinement or separate condemned cells.

In the case of **State of Uttarakhand v. Methab, Sushil and Bhura**, there was a debate over the legitimacy of solitary confinement. Advocates in favour of its abolition say that it is inhuman, barbaric and most torturous punishment as it violates basic human rights. So, in the view of its increasing trend towards its abolition, Uttarakhand High Court delivered a judgement and held that to keep the inmate in solitary confinement before the exhaustion of his rights (constitutional, legal and fundamental) is violative of constitution. According to the bench, solitary confinement is not a part of the punishment but it amounts to the additional punishment adopted by the jail authorities. What happens is as soon as the punishment of death penalty is confirmed, jail authorities put the convict in isolation in a solitary confinement which secludes him from any type of contact from the co-prisoners. The court held it unconstitutional stating that the convict shall not be isolated till the death sentence has become final, conclusive and indefeasible which cannot be challenged or further annulled or voided by any procedure. Further, the court was of the opinion that the prisoner can be kept in solitary confinement for the shortest possible time. Court advocated that such treatment is barbaric, inhuman which

¹³ Allindialegalforums-solitary confinement

¹⁴ Solitary confinement- legalrows.in

causes immense pain and agony and violates Article 20(2) and 21 of the Indian Constitution. So, with the decision, the High Court has abolished the practice to keep death row convicts in solitary confinement after the sentence is pronounced.

EFFECTS OF SOLITARY CONFINEMENT:

There is a difference between loneliness (*it is an unpleasant emotional response to perceived isolation and imposition of social isolation also described as social pain*) and aloneness (*a disposition toward being alone/ the choice of being alone*) and thus the brain reacts in very different ways. Loneliness or social isolation causes changes in the brain, possibly causing more serious consequences such as depression and other mood disorders.

Solitary confinement as a punishment is closure to a form of torture, with serious consequences for neurological health. Confined inmates experience multitude of psychological effects, including emotional, cognitive, and psychosis-related symptoms.

Solitary confinement is considered harmful to the mental health of inmates because it restricts meaningful social contact, a psychological stimulus that humans need in order to remain healthy and functioning. Longer stay in solitary confinement is associated with greater mental health symptoms that have serious emotional and behavioral consequences.

Solitary confinement also has a considerable impact on the sensory deprivation of the inmates or prisoners. The sensory deprivation contributes to important health impairments, such as alterations of circadian rhythms, the internal biological clock that regulates overall the proper functioning of our body. Further research has concluded that confined inmates may experience an increased oversensitivity to normal stimuli, such as the sound of closing doors, something that may contribute to sleeping difficulties. The increased likelihood that inmates will overreact to stimuli makes their return into the general prison population much more difficult. These physical symptoms may worsen with repeated visits to solitary confinement and aggravate already existing psychological symptoms, as well as lead to the development of new psychological effects.

The traumas that the inmates or prisoners go through or face when they are released is severe and the impact it lays on their mental health is heinous. Isolated inmates often often report trembling, sweating palms, extreme dizziness and heart palpitations. Inmates also experience trouble eating and digestion, especially within the first three months of solitary confinement. Inmates in isolation may also have troubling sleeping. Consequently, inmates report feelings of chronic lethargy. The psychological effects of solitary confinement can corrupt the whole mind of a person and can produce the symptoms such as:

└Visual and auditory hallucinations

└Hypersensitivity to noise and touch

└Depression

└Insomnia

└Uncontrollable feelings to rage and fear

└Distortions of time and perception

└Increased risk of suicide

└Struggling being around people

└Post-traumatic stress disorder (PTSD)

The majority of those held in solitary confinement experience adverse emotional effects that can range from acute to chronic, depending on the individual and the length of stay in isolation. Confined prisoners also report feelings of panic and rage, including irritability, hostility, and poor impulse control. Additionally, they frequently exhibit the symptoms of anxiety that vary from low level of stress to severe panic attacks. Isolated inmates also experience symptoms of depression, such as hopelessness, mood swings, and withdrawal. These depressive symptoms may even escalate to thoughts of self-harm and suicide. As compared to the general prison population, rates of suicide and self-harm, such as cutting and banging one's hand against the cell wall, are particularly in prisoners assigned to solitary confinement.

In addition to having disruptions in their emotional process, inmates' cognitive process tend to deteriorate while they are in isolation. Some confined inmates report memory loss, and a significant proportion of isolated inmates report impaired concentration. Confined inmates also report feeling extremely confused and disoriented in time and space. Another confined related psychological symptom that inmates may experience is disorganized thinking, defined as an inability to maintain a coherent flow of thoughts. This disrupted thinking can result in symptoms of psychosis. Inmates who exhibit these symptoms of psychosis often report experiencing hallucinations, illusions, and intense paranoia, such as a persistent belief that they are being persecuted. In extreme cases, inmates have become paranoid to the point that they exhibit full-blown psychosis that requires hospitalization.

Many of the issues that confined prisoners have during isolation are also prevalent post-isolation. Those who are isolated also exhibit maladjustment disorders and problems with aggression, both during confinement and afterwards. Furthermore, inmates also have difficulty adjusting to social contact post-isolation, and may engage in increased prison misconduct and express hostility

towards correctional officers. While cases in which inmates have exhibited positive behavioral change after isolation have been documented, such a result is rare.

ALTERNATIVES FOR SOLITARY CONFINEMENT:

Solitary confinement is likely to cause or increase aggression in inmates. The point of solitary confinement increasing prison violence is made obvious in a Mississippi prison, where mentally ill prisoners were removed from solitary confinement and were given treatment, which actually reduced prison-wide violence. The idea of solitary confinement discouraging aggression is disproven in other cases such as in the prison system of Britain, where they give prisoners more access to mental health treatment and social programs, as well as allowing them to air grievances and earn social visits instead of enforcing harsher punishments for bad behaviour, they rewarded the good behaviour. The results have been very positive, there is very little long term isolation and less violence.

If solitary confinement must be used then the time an inmate is in solitary confinement must be limited. Solitary confinement starts to have ill effect after five to seven days. This should be used as a maximum time limit for keeping an inmate in solitary confinement. There should also be regulations on the frequency that inmates could be put in solitary confinement.

CONCLUSION:

Solitary confinement is abuse made to the inmates or prisoners. It negatively affects mental health and can cause pre-existing mental health problems to worsen. Physical health of inmates is put at risk when in solitary confinement. Furthermore, juveniles who have suffered abuse already will be harder to positively impact if placed into solitary confinement. Solitary confinement is a broken system that was determined to be ineffective and harmful in the 1800's and yet is still used today. It does not lower prisoner aggression, in fact it seems to raise it solitary confinement should be controlled, used less frequently, and for shorter lengths of time. Combining this with alternative methods first, should be beneficial to the prison system and society as a whole.

PLEA BARGAINING

Section 265 A - 265 L, has been introduced in the Code of Criminal Procedure, 1973 by the 2005 Amendment. Plea Bargaining – a concept which is familiar to American Lawyers, which has now found its rightful place in Indian law also.

CONCEPT:

An Accused is allowed to file an application for plea bargaining in the Court in which the offence is pending for trial. Such an application must contain a brief description of the case including the offence to which the case relates. The application is to be supported by an affidavit sworn by the accused, stating that the application has been made voluntarily after understanding the nature and extent of the punishment. He must also state that he has not previously being convicted for the same offence.

When such an application is made, the court gives notice to the public prosecutor or the complainant, as the case may be. Thereafter the court examines the accused in camera, when the other party is not present to satisfy itself that the application was filed. If the court is satisfied that the application was filed voluntarily, it must give time to the accused and the Public Prosecutor (or the complainant, as the case may be) to work out a mutually satisfactory disposition of the case. This may include giving to the victim (by the accused) compensation and other expenses incurred by him during the pendency of the case.

If, however, the court finds that the application was filed involuntarily, or that he was previously convicted for the same offence, the plea bargain cannot be accepted, and the case continues as per the provisions of the Cr.P.C.

When working out a mutually satisfactory disposition, the court issues notice to the accused, the victim and the investigation Police Officer to participate in the meeting to work out a satisfactory disposition of the case.

If, in such a meeting, a satisfactory disposition of the case has been worked out, a report is prepared by the court. Such a report must be signed by the presiding officer of the court. Such a report must be signed by the presiding officer of the court and all other persons who participated in the meeting. If, on the other hand, no such disposition has been worked out, this fact has to be recorded and the case must continue as per the provisions of the Cr.P.C.

When a satisfactory disposition has been worked out, the court must dispose of the case as follows:

- (a) The court must award compensation to the victim and hear the parties on the quantum of punishment. It can also release the accused on probation of good conduct or after admonition under section 360 of the Code.
- (b) After hearing the parties, if there is no maximum punishment provided by law for such an offence, the Court may sentence the accused to half of the maximum punishment.
- (c) If the offence committed by the accused does not fall under the above clauses, the Court may sentence the accused to 1/4th of the punishment provided for such an offence.

Thereafter, the Court delivers its judgment and the same is signed by the presiding officer of the Court. Such a judgment is final and no appeal lies against it.

However, a Special Leave Petition (SLP) or a Writ Petition under Article 32 or Article 226 of the Constitution can be filed in such cases.

It is also to be noted that the period of detention already undergone by the accused should be set off against the sentence of imprisonment awarded to the accused in such cases, as in other cases under the Cr.P.C.

Furthermore, statements or facts stated by the accused in his application for plea bargaining can be used only for purpose and not for other purpose.

These provisions relating to plea bargaining do not apply if the offence which appears to have been committed by the accused:

- (a) Is one for which the punishment is a death sentence, life imprisonment or imprisonment for or a term exceeding seven years; or
- (b) Affects the socio –economic conditions of the country; or
- (c) Has below then committed against a woman or a child below the age of fourteen years.

This also does not apply to a “juvenile” or a “child” as defined in Section (k) Juvenile Justice (care and protection of children) Act, 2000.

By an Order dated 11th July, 2006, the Central Government has notified a list of 19 Acts as being laws which affect the socio-economic condition of the Country, as for instance,-

- The Dowry Prohibition Act, 1961
- The Commission of Sati (Prevention) Act, 1987
- The Indecent Representation of Women (Prohibition) Act, 1986, the Immoral Traffic (Prevention) Act, 1956
- The Protection of women from Domestic Violence Act, 2005
- The Army Act, 1950
- The Air Force Act, 1950
- The Navy Act, 1957

PRISON LABOUR

Work is the best alternative to channalize the energies of prisoners in a rightful way and for useful purpose. Inside the prison, keeping the inmates engaged in productive work would be helpful for their physical and mental fitness. It would also infuse self—confidence among the prisoners which would enable them to think of returning back to society as a normal man. The greatest advantage of putting the inmates to work is that the wages earned by the prisoners can be utilized for supporting their family and dependents. Thus it would save the entire family of the prisoners from being ruined. In this way, the inmates can help to support their family from inside the prison itself. In short, prison labour would be beneficial to inmates and at the same time remunerative to the State. So prisoners sentenced to rigorous imprisonment are assigned work inside the prisons. Prison labour is intended to develop a sense of personal responsibility.

History of Prison Labour:

Labour Originally the jails served only for pre-trial detention or as a place in which to impose a specific punishment. The concept of punishment changed radically with the advent of the Industrial Revolution. The revolution created a demand for manpower and convicts became the answer. The government found that it could sentence offenders to prison and simultaneously receive a payment for lending these prisoners to industry.

In India prison labour was intended in olden days to humiliate, disgrace and finally to crush the prisoners. Gradually, the idea of profitable employment of prison labour and its reformatory impact began to gain ground. Still the emphasis continue to be on the punitive aspect of prison labour. The Indian Penal Code is based on the punitive aspect of labour when it makes a distinction between simple imprisonment and rigorous imprisonment: hard labour being the distinguishing feature of the latter.

In the Constitution; Article 21 is the repository of human values. It prescribes fair procedure and forbids arbitrariness. Article 23 prohibits forced labour, i.e., labour or service which a person is forced to provide, Forced labour may arise in several ways where a person provides labour or service to ‘another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words forced labour under Article 23. Such a person is entitled to come to the court for enforcement of his fundamental right by asking the court to direct payment of the minimum wage to him so that the labour or service provided by him ceases to be forced labour.

Statutory recognition is given to prison labour in specific provisions. Civil prisoners with the Superintendent's permission can work and follow any trade or profession. The authorities should not insist a criminal prisoner sentenced to labour or employed on labour at his own desire to work for more than nine hours in a day. The medical officer has to make a periodical inspection of the prisoner and if he is of the opinion that the health of any prisoner suffers from employment on any kind or class of labour, such prisoner shall not be employed on that labour but shall be placed on such other kind or class of labour as the medical officer may consider suited to him.

Labour by Civil Prisoners:

Civil prisoners can work and follow any trade or profession with the permission of the superintendent. They can find and use their own implements. The prisoners will be allowed to receive the whole of their earnings. This is a distinction from the working condition of other prisoners. ‘Law did not treat them equally in this respect. There is no justification for such an unequal application of law. But if the implements are provided by the authorities or maintained by them a deduction will be made for the expenses. There is a discretionary power to the superintendent with regard to the amount to be deducted.

Working Conditions of Criminal Prisoners:

Even though a prisoner is doing work inside the prison under compulsion the law is very keen to provide adequate working conditions to him. Criminal prisoners employed at his own desire or sentenced to labour must not be kept to labour for more than nine hours in one day. The medical officer from time to time has to examine the labouring prisoners while they are employed, when the medical officer is of opinion that the health of any prisoner suffers from employment on any kind or class of labour, such prisoner should not be employed on that labour but has to be placed on such other kind or class of labour as the medical officer consider suitable. In the case of criminal prisoners sentenced to simple imprisonment if they desire, they can also work inside the prisons. The superintendent of prison has to make provision for that. But if they are unwilling to work they should not be compelled to work. There are various instances where prisoners are forced to do hard labour against their will. They are the steady supply of ‘bonded labour in jail. They never get a share of the produce. What these prisoners are made to do is patently illegal.

PROVISIONS AS TO BAIL AND BONDS

India is a democratic country and the basic concept of democracy is that every individual must have personal liberty and freedom. It is the basic right of an individual which is protected by the state. Thus the concept of bail and personal liberty goes hand in hand and therefore every individual including the accused person has the right to seek bail in order to get himself released from custody until and unless proven guilty by a court of law. As stated in Article 21 of the Constitution that the life and personal liberty of a person can't be deprived except by the procedures laid down by the law.

The basic goal behind arresting and detaining a person behind the jail is that when the accused is required by the court during the trial he must appear in court for the trial. The process of bail is a complex mechanism, it is considered to be very delicate and conflicting at the same time. The reason it is very delicate is that an accused seeks for bail when the trial is pending in the court and it can't be said that the accused is innocent or culprit. Sometimes when the bail is not granted to the accused person it may curtail the liberty of the innocent accused or while granting bail may result in giving extra-liberty and freedom to the actual culprit.

It is a comprehensive statement used in general that an accused person may escape his crimes but an innocent shall not pay the price of some other person's deed. Based on this ideology the code of criminal procedure has bifurcated the offences into two categories.

TYPES OF OFFENCES

- Bailable offence
- Non-bailable offence

BAILABLE OFFENCE:

The bailable offence is the type of offence in which an accused person is granted bail. This type of offences is generally punishable by the court with less than three years of imprisonment. In the case of bailable offence the chances of getting bail are much higher. Under Section 2 (a) of the Code - the term bailable offence has been described as the offence which has been specified in the first schedule of the code or if the offence is considered to be bailable by the law in force during the time.

NON-BAILABLE OFFENCE:

The non-bailable offence is the type of offence for which an accused person is not entitled to get bail. These are the offences which are non-bailable nature and are not shown as bailable under the first schedule of the code. These offences are grievous in nature when compared to bailable offences. In the case of non-bailable offences the punishment is three years or more.

A. CASE IN WHICH BAIL MAY BE GRANTED:

Section 436 of the Code provides that when any person other than a person who is accused of a non bailable offence, is arrested or detained without a warrant by an Officer in charge of a Police Station, or is brought before the Court, and is prepared to give bail, such person must be released on bail. Thus in the case of bailable offences the grant of bail is a matter of course.



If however such Officer or Court as the case may be thinks fit, he or it may instead of taking bail from such a person, discharge him on his executing a bond without sureties for his appearance before the Court. If such a person fails to comply with the condition of the bail bond, as regards the time and place of attendance, the Court may refuse to release him on bail, when on a subsequent occasion in the same case, he appears before the Court or is brought in custody. Further, any such refusal is always without prejudice to the powers of the Court to call upon any person bound by such a bond to pay the penalty thereof under Section 446.

Under Section 436A (inserted by the 2005 amendment), it is provided that if a person has, during the period of investigation, inquiry or trial under the Code, undergone imprisonment for a period extending up to one-half of the maximum imprisonment for an offence, he shall be released by the Court on his personal bond, with or without sureties. However, this cannot be done if the offence is one for which the death sentence has been specified as one of the punishments.

It is also provided that, in any case, a person cannot be detained during the period of investigation, inquiry or trial, for more than the maximum period of imprisonment for that offence.

As regards non-bailable offence, Section 437 provides that when any person accused or suspected of the commission of any non-bailable offence is arrested or detained without warrant by an officer-in-charge of Police Station, or appears, or is brought before the Court other than High Court or a Session Court, he may be released on bail, subject to the following two conditions:

- (a) Such a person cannot be released on bail if there are reasonable grounds for believing that he has been guilty of an offence punishable with death or life-imprisonment.
- (b) So also, such a person is not to be released on bail if the offence is a cognizable offence and he has been previously convicted-
 - i. Of an offence punishable with death, life-imprisonment or imprisonment for seven years or more; or
 - ii. On two or more occasions, of a non bailable and cognizable offence.

The only exceptions are in favour under the age of sixteen, a woman, or a person who is sick or infirm. Such person may be released on bail even if they are covered by clause (a) or (b) above.

Moreover, the Court is also empowered to direct that a person covered by clause (b) above be released on bail, if it is satisfied that it is just and proper to do so for any other special reason.

It is so clarified that mere fact that an accused person may be required for being identified by witnesses during an investigation would not be sufficient ground for refusing to grant bail to a person if he otherwise entitled to released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court.

If, at any stage of the investigation, inquiry or trial, it appears that there are no reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, pending such inquiry, the accused must be released on bail, or on the execution by him of a bond without sureties for his appearance in the Court.

Section 437 also provides that if any person accused or suspected of committing an offence punishable with seven years imprisonment or more, is released on bail, the Court may impose any condition which the court may consider necessary-

- i. To ensure that such a person will attend the Court in accordance with the bond executed by him;
- ii. To ensure that such a person shall not commit an offence similar to the one of which he is accused or suspended; or
- iii. Otherwise in the interests of justice.

Moreover, any Court which has released a person on bail, as above may, if it considers it necessary to do so, direct that such a person be arrested and commit him to custody.

It is further provided that if the trial of the person accused of a non-bailable offence is not concluded by the Magistrate within a period of sixty days fixed by taking evidence in the case, if such a person is in custody during the whole of the said period, he must be released on bail unless than the Magistrate otherwise directs for reasons to be recorded.

So also, if after the conclusion of the trial of such a person and before a judgment is delivered, the Court is of the opinion that there are reasonable grounds for believing that accused is not guilty of any non-bailable offence, the Court must release the accused if he is in custody, on the execution by him of a bond without sureties for his appearance to hear the judgment when it is delivered.

Section 437A- before the conclusion of the trial and before the disposal of the appeal, the trial court or the appellate court as the case may be require the accused to execute bail bonds with sureties to appear before the courts as and when the court issues notices in respect of any appeal or petition which may be filed against the judgment of the court. Such bail bonds are to be in force for a period of six months.

IN BALCHAND CASE¹⁵:

It will be seen that basic rule underlying the **above provisions** is bail, not jail. That is, of course, subject to exceptions where there are circumstances suggestive of fleeing from justice or thwarting the court of justice. The gravity of the offence involved must weigh with the considering the question of jail or bail.

IN NARASIMHULU CASE¹⁶:

The Supreme Court, commenting on bail provisions in the Code, observed as follows:

“Bail or jail at the pre- trial or post – conviction stage belongs to the blurred area of the criminal justice system, and largely hinges on the hunch of the bench, otherwise called judicial discretion. The Code is cryptic on this point and the Court prefers to the tacit, be the order custodial or not. And yet, the issue is one of the liberty, justice, public safety and burden of the public treasury.”

The Supreme Court, laid down the following ten criteria for grant or refusal of bail, in the case f a person who has either been convicted and has appealed, or one whose conviction has been set aside, but leave has been granted by the Supreme Court to appeal against the acquittal:

- (a) The nature of the crime,
- (b) The nature of the charge, the evidence and the possible punishment,
- (c) The possibility of interference with the Court of Justice
- (d) The antecedents of the applicant,
- (e) Furtherness of the interest of justice,
- (f) The intermediate acquittal of the accused,
- (g) Socio-geographical circumstances,
- (h) Prospective misconduct of the accused,
- (i) The period already spend in prison and the prospect of appeal being delayed for hearing,
- (j) Protective and curative conditions on which the bail may be granted.

¹⁵ A.I.R. 1977 S.C.2447

¹⁶ A.I.R. 1978 S.C. 429

The Constitutional validity of section 437 has been for in question and it has been held that just because the section makes a distinction between persons accused of grave offence and thus accused of lesser offence or that expectations are made in favour of young persons, women and infirm persons does not make the section violative of Article 14 of the Constitution. This classification is based on intelligible differentia and has a resemble relation of the object of the legislation in the matter of granting bail to accused person.

B. ANTICIPATORY BAIL



Section 438 of the Code of Criminal Procedure contains a due provision enabling superior Court to direct the release of person on bail prior to his arrest, which is commonly known as an Anticipatory Bail.

There was no express provision for anticipatory bail in the old Code. The Law Commission while recommending an introduction of this provision in the present Code, observed as follows:

“Though there is a conflict of judicial opinion on the power of Court to grant anticipatory bail, the majority view is that there is no such power under the existing provision of the old Code. The necessity for granting an anticipatory bail arise mainly because sometimes an influential persons try to implicate their rivals in the false case for the purpose of disgracing them or for the other purpose by getting them detained in jail for some days. In recent time, with this accentuation of political rivalry, this tendency is showing signs of steady increase. Apart from false cases, where there are responsible grounds for holding that a person accused of an offence is not likely to, or abscond, or otherwise, misuse his liberty while on bail, there seems no justification to require him first to submit to custody, remain in prison for some days and then apply for bail.”

Section 438A amended in 2005, lays down that if any person has reason to believe that he may be arrested on a accusation of having committed a non-bailable offence, he may apply to the High Court or to the Session Court for a direction that in the event of such arrest, he is to be released on bail. The Court may after considering the factors listed below, either reject the application or forthwith or issue an interim order for the grant of anticipatory bail.

The factors to be taken into consideration before granting or rejecting an application for such bail are:

- (a) The nature and gravity of the accusation,
- (b) The antecedents of the applicant, including whether he has, in the past, been imprisoned for having committed any cognizable offence,
- (c) The possibility of the applicant fleeing from justice, and
- (d) Whether the accusation has been made with an object of injury or humiliating the applicant by having him arrested.

If the Court has not passed any interim order or has rejected the application of anticipatory bail, it is open to an officer in charge of a police station to arrest the applicant without a warrant, on the basis of the accusation apprehended in such an application.

If on the other hand, the Court grants an interim order of anticipatory bail, it must cause a notice to be served on the Public Prosecutor and the Superintendent of Police, along with a copy of the Courts order, with a view to give the Police Prosecutor a reasonable opportunity of being heard when the application is finally heard by the Court.

It is also provided that the presence of the applicant seeking anticipatory bail is obligatory at the time of final hearing of the application and passing of, the final order, if on an application made to the Court by the Public Prosecutor, the Court considers such presence to be necessary in the interest of justice.

When the High Court or the Sessions Court passes an order granting anticipatory bail, it may include such conditions and directions as the Court thinks fit, include the following:

- i. A condition that the person should make himself available for interrogation by a Police Officer as and when required.
- ii. A condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him from disclosing such facts to the Court, or to any Police Officer.
- iii. A condition that the person shall not leave India without the previous permission of the Court,
- iv. Such other condition as may be imposed under Section 437 (3), as if the bail was granted under that Section.

If Anticipatory bail is granted to a person, and he is thereafter arrested without a warrant by an Officer-in-charge of a Police Station on such accusation, and is prepared to give bail. If, in such a case, the Magistrate taking cognizance of the offence decides that a warrant should be bailable warrant against that person.

In the case decided by the Supreme Court of India in GURBAKSH SINGH V. STATE OF PUNJAB¹⁷:

Anticipatory bail was defined as follows:

“An anticipatory bail is a pre-arrest legal process which directs that if the person in whose favour it is issued, is thereafter arrested on the accusation in respect of which the direction is issued, he shall be released on bail..... An order of anticipatory bail constitutes, so as to say, an insurance against police custody following upon arrest for the offence or offences in respect of which the order is issued.”

The scope of Section 438 of the Code was considered in the above mentioned case, the Supreme Court observed as under:

“In regard to anticipatory bail, if the proposed accusation appears to stem, not from motives of furthering the ends of justice, but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail, he will flee from justice, such an order would not be made.”

IN PYAARELAL V. STATE OF MADHYA PRADESH¹⁸:

An application for anticipatory bail was made by certain persons who were office bearers and active workers amongst labourers. It was alleged that they had incited the workers and by force prevented the Police from maintaining law and order and in the incidents that followed, One Police officer was killed. It was further alleged that several other culprits were absconding as there was a strong likelihood of tampering of evidence. In the circumstances it was held that there was no case for grant of anticipatory bail.

IN BALCHAND JAIN'S CASE¹⁹:

The Supreme Court laid down the following three propositions with respect to grant of anticipatory bail:

- i. The power under section 438 is of an extraordinary character, and must therefore be exercised sparingly and in exceptional cases only.
- ii. This power is not unguided or un-canalised, but the limitations imposed by Section 437 are to be read into Section 438 also.
- iii. In addition to the limitations imposed by Section 437, the Petitioner must further make out a special case for the exercise of the Court's power to grant anticipatory bail.

When granting anticipatory bail, the Court must strike a balance, so that, on the one hand, a person is protected from unnecessary humiliation, and on the other, the faith of the public and of the society in the administration of justice is not taken.

An interesting question is whether a person can apply to the Court within whose jurisdiction he resides for an order of anticipatory bail, in respect of an arrest which he apprehends in a case in another state. Conflicting views have been expressed on this question, the Calcutta High Court and the Karnataka High Court holding that such bail can be granted, and the Punjab and the Haryana Court observing that such bail cannot be granted.

DIFFERENCE BETWEEN BAIL AND ANTICIPATORY BAIL

The distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and therefore means release from the custody of the police, the latter is granted in anticipation of arrest and is therefore effective at the very moment of arrest. Police custody is an inevitable concomitant of arrest for non-bailable offences. An order of anticipatory bail constitutes, so to say, an insurance against police custody following upon arrest for offence or offences in respect of which the order is issued. In other words, unlike a post-arrest order of bail, it is a pre-arrest legal process which directs that if the person in whose favour it is issued is thereafter arrested on the accusation in respect of which the direction is issued, he shall be released on bail.

Section 46(1) of the Code of Criminal Procedure which deals with how arrests are to be made, provides that in making the arrest the police officer or other person making the arrest “shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action”. A direction under section 438 is intended to confer conditional immunity from this ‘touch’ or confinement.

There is no hard and fast formula for a Sessions Judge and/ or High Courts to allow and/ or reject the Applications for an anticipatory Bail. Generally on matters which rest on discretion and the attempt to discover formulae of universal application when facts are bound to differ from case to case frustrate the very purpose of conferring discretion on the Courts. No two cases are alike on facts and therefore, Courts have to be allowed a little free play in the joints if the conferment of discretionary power is to be meaningful. There is no risk involved in entrusting a wide discretion to the Court of Session and the High Court in granting anticipatory bail because, firstly these are higher courts manned by experienced persons, secondly their order are not final but are open to appellate or revisional scrutiny and above all because, discretion has always to be exercised by courts judicially and not according to whim, caprice or fancy.

Judges have to decide cases as they come before them, mindful of the need to keep passions and prejudices out of their decisions. And it will be strange if, by employing judicial artifices and techniques, this Court cuts down the discretion so wisely conferred upon the Courts, by devising a formula which will confine the power to grant anticipatory bail within a strait-jacket. While laying down cast-iron rules in a matter like granting anticipatory bail, as the High Court has done, it is apt to be overlooked

¹⁷ (1980) 2 SCC 565

¹⁸ 1980 Cr. L.J. 183

¹⁹ A.I.R. 1977 S.C. 366

that even Judges can have but an imperfect awareness of the needs of new situations. Life is never static and every situation has to be assessed in the context of emerging concerns as and when it arises.

Discretion, therefore, ought to be permitted to remain in the domain of discretion, to be exercised objectively and open to correction by the higher courts. The safety of discretionary power lies in this twin protection which provides a safeguard against its abuse.

It is true that the functions of judiciary and the police are in a sense complementary and not overlapping. An order of anticipatory bail does not in any way, directly or indirectly, take away from the police their right to investigate into charges made or to be made against the person released on bail. In fact, two of the usual conditions incorporated in a direction issued under section 438(1) are those recommended in Sub-section (2) (i) and (ii) which require the applicant to co-operate with the police and to assure that he shall not tamper with the witnesses during and after the investigation.

While granting relief under Section 438(1), appropriate conditions can be imposed under Section 438(2), so as to ensure an uninterrupted investigation. One of such conditions can even be that in the event of the police making out a case of a likely discovery under Section 27 of the Evidence Act, the person released on bail shall be liable to be taken in police custody for facilitating the discovery. Besides, if and when the occasion arises, it may be possible for the prosecution to claim the benefit of Section 27 of the Evidence Act in regard to a discovery of facts made in pursuance of information supplied by a person released on bail.

The power conferred by Section 438 is of an “extra ordinary” character only in the sense that it is not ordinarily resorted to and it is only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty then power is to be exercised under Section 438.

The captioned subject is complex by its very nature. We, therefore, always encourage our visitors & Clients to seek an independent legal advice by our empanelled lawyers. In such Cases, our lawyers devise most appropriate legal recourse for our Clients after examining the related provisions of law, i.e. The Indian Penal Code, 1860, The Code of Criminal Procedure, 1973, The Limitation Act, 1963, The Evidence Act, 1872, Other relevant Acts, Judgments and Citations of the Honorable Supreme Court Of India and the High Courts. Even otherwise, the question as to how to apply the laws, judgments and citations is rather more complex, as it involves a thorough examination of substantial laws, procedural laws and Court precedents in a given set of facts and circumstances.

C. SPECIAL POWERS OF HIGH COURTS AND SESSIONS COURTS REGARDING BAIL AND CANCELLATION OF BAIL

Section 439 confers special powers on High Court and Sessions Courts to direct-

- i. That any person accused of any offence and in custody be released on bail; and
- ii. That any condition imposed by a Magistrate when releasing any person on bail be set aside or modified.

However, in case of a person who is accused of an offence,-

- i. Which is triable exclusively by a Trial Court, or
- ii. Which though not so triable, is punishable with life imprisonment, the High Court or the Sessions Court must, before granting bail, give notice of the bail application to the Public Prosecutor, unless the Court is of the opinion, for reasons to be recorded by it, that it is not practicable to give such notice.

Although there was no express provision in the old code authorising a High Court to cancel a bail even in the case of a bailable offence. The existence of this power was recognised by the Supreme Court in **TELIB'S CASE**²⁰, Where the absence of an express provision to this effect was described as a “lacuna”. Therefore, Section 439 now expressly provides that a High Court or a Session Court may direct that any person who has been released on bail under this chapter be arrested and committed to custody.

It will be seen that no fetter is put on the powers of the Sessions Court to cancel the bail order by Section 439. It is not necessary that some new events should take place subsequent to the offender's release on bail for the Sessions Judge to cancel his bail. Thus it has been held that bail obtained by hoodwinking the Magistrate ought to be cancelled. In fact, refusal to cancel bail in such a case would amount to a failure to exercise jurisdiction.

IN NIRANJAN SINGH V. PRABHAKAR RAJARAM KHAROTE²¹:

Considering the scope of Section 439 the Supreme Court has observed that the Court should be satisfied only about a prima facie case and need not go into the merits of the matter, when the accused are Police men the Court should also keep in mind the possibility of intimidation of witnesses and tampering with the documents by such accused persons.

D. PROVISIONS RELATING TO BAIL – BONDS

Section 440-Amount of bond and reduction thereof:

(1) The amount of every bond executed under this chapter shall be fixed with due regard to the circumstances of the case and shall not be excessive.

(2) The High Court or Court of Session may direct that the bail required by a police officer or Magistrate be reduced.

Section 441-Bond of accused and sureties:

²⁰ A.I.R. 1958 SC 376

²¹ 1980 2 SCC 559

(1) Before any person is released on bail or released on his own bond, a bond for such sum of money as the police officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be.

(2) Where any condition is imposed for the release of any person on bail, the bond shall also contain that condition.

(3) If the case so requires, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

(4) For the purpose of determining whether the sureties are fit or sufficient, the Court may accept affidavits in proof of the facts contained therein relating to the sufficiency or fitness of the sureties, or, if it considers necessary, may either hold an inquiry itself or cause an inquiry to be made by a Magistrate subordinate to the Court, as to such sufficiency or fitness.



Section 441A-Declaration by Sureties:

Every person standing surety to an accused person for his release on bail, shall make a declaration before the Court as to the number of persons to whom he has stood surety including the accused, giving therein all the relevant particulars.

Section 442-Discharge from custody:

(1) As soon as the bond has been executed, the person for whose appearance it has been executed shall be released; and when he is in jail the Court admitting him to bail shall issue an order of release to the officer in charge of the jail, and such officer on receipt of the orders shall release him.

(2) Nothing in this section, section 436 or section 437 shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

INTERNATIONAL BILL OF RIGHTS:

i. 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. This important document provides some basic principles of administration of justice. Among the provisions in the document are follows:

I. No one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

II. Everyone has the right to life, liberty and security of person.

III. No one shall be subjected to arbitrary arrest, detention or exile.

IV. 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.

ii. 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:

- I. No one shall be subjected to cruel, inhuman or degrading treatment or punishments.
- II. Everyone has the right to liberty and security of person. No one shall be subject to arbitrary arrest or detention.
- III. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

CONCLUSION AND SUGESSTION

The new theories of crime causation propounded in the latter half of the nineteenth century gave rise to the feeling that the prisons could be used as appropriate institutions for reforming the offenders. It called for individualisation of punishment. It has been established that prisons are no more institutions designed to achieve only the retributive and deterrent aspects of punishment. They are now treated as places where the inmates are lodged not as forgotten members of the society but as human beings having some rights. Since it was the concern of the executive to look after maintenance of peace and tranquillity in the society, it was thought appropriate to entrust the work of prison administration with the executive. The courts in almost all common law countries followed the 'hands off' doctrine so far as prison administration was concerned. They believed that it was their concern to impose punishments alone. They are not to be worried about the treatment that was meted out to the prisoners in the jails. This view emanated from the feeling that the prisoners constituted a lot who did not deserve any right.

Most of the rights available to citizens except those which they cannot enjoy due to the conditions of incarceration have also been granted to prisoners. A number of rights like right to counsel, right to speedy trial, right to communication, freedom of religion and right against cruel and unusual punishments are now recognised rights of prisoners there.

In India the judiciary has come forward to protect the rights of the prisoners. It can be seen that initially here also the courts were reluctant to adopt the liberal attitude towards prisoner's claims of various demands concomitant to the fundamental rights concepts. But later the attitude changed and the courts started recognising the human rights concepts in favour of prisoners in letter and spirit. Through various decisions the judiciary have recognised the right to counsel, right to speedy trial, right to physical protection, right to expression, right to meet family members, and right against cruel and unusual or oppressive jail practices. Maneka Gandhi is a turning point in prisoner's rights. In that case the Supreme Court gave a wide interpretation to the word 'law' in Article 21 where it has established that law means fair and reasonable law. In the light of this interpretation much of the law regarding prisoner's rights have developed. Read with the doctrine of fair procedure expounded in Maneka Gandhi, the pronouncements in Sunil Batra and Charles Shobraj, evolved a new prison jurisprudence striking a balance between "the dignity of the human beings ruled within the walls and the powers of the jail authorities that rule them.

A prisoner is also entitled to get reasonable wages for the work done while undergoing the imprisonment. Prison is not only a place of confinement and deterrence also an abode of rehabilitation and refinement. As already pointed out modern trend is to eradicate the causes of crime rather than the criminals by educative, corrective and reformative methods. 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 improvements in prison justice administration is possible if the judiciary has a say in the treatment of offenders in jail. Courts must be clothed with the power to go beyond individual cases and issue affirmative directions of a wider nature. The High Courts and the Supreme Court of India have been gradually exercising jurisdiction assuming prison justice, including improving the quality of food and amenities, payment of wages and appropriate standards of medical care. Access to courts must be made easier to the aggrieved prisoners.

In India prisoners and prisons today are governed by the old central legislations like Prisons Act 1894 Prisoners Act 1900 and the Transfer of Prisoners Act 1950. Each State has in time enacted separate Prison Rules and Jail Manuals on the lines of the central legislation.

The Supreme Court of India has on several occasions, ordered the states to reform the Prisons Act 1894, to completely overhaul the various State Prison Manuals and to incorporate the recent case law regarding prisoner's rights. However, few have completed this task.

The difference between regular bail and anticipatory bail can be summed up by stating that while the former is a post arrest bail, the latter is a pre arrest bail. The regular bail is applied in order to be released from the custody of the police after the arrest has been made whereas the former is made in anticipation of arrest. However, both the bails are granted to the applicant upon the discretion of the Courts.

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