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RIGHTS OF PRISONERS AND CONVICTS UNDER THE CRIMINAL JUSTICE ADMINISTRATION

by

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INTRODUCTION:

The past decade has witnessed an increasing consciousness about the desirability of prison reforms, It is now being recognized that a reformatory philosophy and a rehabilitative strategy must form a part of prison justice.

The Supreme Court of India, by interpreting Article 21 of the Constitution, has developed human rights jurisprudence for the preservation and protection of prisoners rights to maintain human dignity. Although it is clearly mentioned that deprivation of Article 21 is justifiable according to procedure established by law, this procedure cannot be arbitrary, unfair or unreasonable. In a celebrity case (Maneka Gandhi Vs. Union of India., 1978), the Apex Court opened up a new dimension and laid down that the procedure cannot be arbitrary, unfair or unreasonable. Article 21 imposed a restriction upon the state where it prescribed a procedure for depriving a person of his life or personal liberty. This was further upheld (Francis Coralie Mullin v. The Administrator, 1981) "Article 21 requires that no one shall be deprived of his life or personal liberty except by procedure established by law and this procedure must be reasonable, fair and just and not arbitrary, whimsical or fanciful".

Any violation of this right attracts the provisions of Article 14 of the Constitution, which enshrines right to equality and equal protection of law. In addition to this, the question of cruelty to prisoners is also dealt with, specifically by the Prison Act, 1894 and the Criminal Procedure Code (CRPC). Any excess committed on a prisoner by the police authorities not only attracts the attention of the legislature but also of the judiciary. The Indian judiciary, particularly the Supreme Court, in the recent past, has been very vigilant against violations of the human rights of the prisoners. Role played by the judiciary The need for prison reforms has come into focus during the last three to four decades.

The Supreme Court and the High Courts have commented upon the deplorable conditions prevailing inside the prisons, resulting in violation of prisoner rights. Prisoners' rights have become an important item in the agenda for prison reforms. The Indian Supreme Court has been active in responding to human right violations in Indian jails and has, in the process, recognised a number of rights of prisoners by interpreting Articles 21, 19, 22, 32, 37 and 39A of the Constitution in a positive and humane way. The Hon'ble Supreme Court of India by interpreting Article 21 of the Constitution has developed HR

Jurisprudence for the preservation and protection of prisoners right to human dignity. Although it is clearly mentioned that deprivation of Article 21 is justifiable according to procedure established by law, this procedure cannot be arbitrary, unfair or unreasonable.

ARE CONVICTS DENUDED OF FUNDAMENTAL RIGHTS:-

It is no more open to debate that convicts are not wholly denuded of their fundamental rights. However, prisoner's liberty is in the very nature of things circumscribed by the very fact of his confinement. His interest in the limited liberty left to him is then all the more substantial conviction for a crime does not reduce the person into a non-person whose rights are subject to the whims of the prison administration and therefore, the imposition of any major punishment within the prison system is condition upon the observance of procedural safeguards (*Sunil Batra versus Delhi Administration, AIR 1978 SC 1675*). In the said decision, Justice D.A.Desai, speaking for himself, the Hon'ble Chief Justice of India and two Hon'ble Judges observed that a convict is in prison under the order and direction of the Court and the Court has, therefore, to strike a just balance between the dehumanizing prison atmosphere and the preservation of interval order and discipline, the maintenance of institutional security against escape, and rehabilitation of the prisoners.

Article 21 guarantees protection of life and personal liberty. Though couched in the negative it confers the fundamental right to life and personal liberty. In *Maneka Gandhi versus Union of India, AIR 1978 SC 579*, Justice Bhagwati observed that if a law depriving a person of personal liberty and prescribing a procedure for that purpose within the meaning of Article 21 has to stand the test of one or more of the fundamental rights conferred under Article 19, which may be applicable in a given situation, exhyoptesis it must also be liable to be tested with reference to Article 14.

Justice V.R. Krishna Iyer in *Charles Sobraj v. Supdt., Central Jail, AIR 1978 SC 1514*, observed that imprisonment does not spell farewell to fundamental rights although, by a realistic re-appraisal, Courts will refuse to recognize the full panoply of part III enjoyed by free citizens. Further, observed that the axiom of prison justice is the Court's continuing duty and authority to ensure that the judicial warrant which deprives a person of his life or liberty is not exceeded, subverted or stultified. It is a sort of solemn covenant running with the power to sentence. Referring to the decision of Supreme Court in *Rustom Cowvasjee Cooper v. Union of India, AIR 1970 SC 1318, and Menaka Gandhi*, it was observed that Prisoner's retain all rights enjoyed by free litigants except those lost necessary as an incident of confinement, the rights enjoyed by prisoner's under Article 14, 19 and 21 though limited, are not static and will rise to human heights when challenging situation arise.

The Supreme Court in *Sunil Batra versus Delhi Administration, (1980) 3 SCC 488*, observed "Prisons are built with stones of law", and sort behoves the Court to insist that, in the eye of law, prisoners are persons, not animals and punish the deviant "guardians" of the prison system where they go berserk and defile the dignity of the human inmate. Prison houses are part of Indian earth and the Indian Constitution cannot be held at bay by Jail officials "dressed in a little, brief although when part III is invoked by a convict. For when a prisoner is traumatized, the constitution suffers a shock. The Supreme Court further held that the Court has power and responsibility to intervene and protect the prisoner against may how, crude behaviour.

DIRECTIVES ISSUED TO PRISON STAFF:-

At this stage, we may refer to the directives given to the state and prison staff (See *Sunil Batra versus Delhi Administration, (1980) 3 SCC 488*) :-

- (i) Lawyers nominated by the District Magistrate, Sessions Judge, High Court and the Supreme Court will be given all facilities for interviews, visits and confidential communication with prisoners subject to discipline and security considerations. This has roots in the

visitatorial and supervisory judicial role. The lawyers so designated shall be bound to make periodical visits and record and report to the concerned court results which have relevance to legal grievances.

(ii) Within the next three months, Grievance Deposit Boxes shall be maintained by or under the orders of the District Magistrate and the Sessions Judge which will be opened as frequently as is deemed fit and suitable action taken on complaints made. Access to such boxes shall be afforded to all prisoners.

(iii) District Magistrates and Sessions Judges shall, personally or through surrogates, visit prisons in their jurisdiction and afford effective opportunities for ventilating legal grievances, shall make expeditious enquiries thereinto and take suitable remedial action. In appropriate cases reports shall be made to the High Court for the latter to initiate, if found necessary, habeas action.

(iv) It is significant to note the Tamil Nadu Prison Reforms Commission's observations :

“38. 16. *Grievance Procedure* : — This is a very important right of a prisoner which does not appear to have been properly considered. The rules regulating the appointment and duties of non-official visitors and official visitors to the prisons have been in force for a long time and their primary function is ‘to visit all parts of the jail and to see all prisoners and to hear and enquire into any complaint that any prisoner may make’. In practice, these rules have not been very effective in providing a forum for the prisoners to redress their grievances. There are a few non-official visitors who take up their duties conscientiously and listen to the grievances of the prisoners. But most of them take this appointment solely as a post of honour and are somewhat reluctant to record in the visitors' book any grievance of a prisoner, which might cause embarrassment to the prison staff. The judicial officers viz. the Sessions Judge and the Magistrates who are also ex-officio visitors do not discharge their duties effectively.”

We insist that the judicial officers referred to by us shall carry out their duties and responsibilities and serve as an effective grievance mechanism.

(v) No solitary or punitive cell, no hard labour or dietary change as painful additive, no other punishment or denial of privileges and amenities, no transfer to other prisons with penal consequences, shall be imposed without judicial appraisal of the Sessions Judge and where such intimation, on account of emergency, is difficult, such information shall be given within two days of the action.

QUASI – MANDATES:-

Further, the Supreme Court spelled out four quasi-mandates:-

(a) The State shall take early steps to prepare in Hindi, a prisoner's handbook and circulate copies to bring legal awareness home to the inmates. Periodical jail bulletins stating how improvements and rehabilitative programmes are brought into the prison may create a fellowship, which will ease tensions. A prisoners' wallpaper, which will freely ventilate grievances will also reduce stress. All these are implementary of Section 61 of the Prisons Act.

(b) The State shall take steps to keep up to the Standard Minimum Rules for Treatment of Prisoners recommended by the United Nations, especially those relating to work and wages, treatment with dignity, community contact and correctional strategies. In this latter aspect, the observations ⁵²³we have made of holistic development of personality shall be kept in view.

(c) The Prisons Act needs rehabilitation and the Prison Manual total overhaul, even the Model Manual being out of focus with healing goals. A correctional-cum-orientation course is necessitous for the prison staff inculcating the constitutional values, therapeutic approaches and tension-free management.

(d). The prisoners' rights shall be protected by the court by its writ jurisdiction plus contempt power. To make this jurisdiction viable, free legal services to the prisoner programmes shall be promoted by professional organisations recognised by the court such as for example. Free Legal Aid (Supreme Court) Society. The District Bar shall, we recommend, keep a cell for prisoner relief.

SPEEDY TRIAL:-

The primary interest of the Criminal Justice system is to entrance society's rights to sanction activities harmful to the public order and thereby punish offenders to prevent future misconducts. The Supreme Court in several decision held that the expression " procedure established by law" in Article 21 envisages an expeditious procedure. Therefore, a procedure in which the trial was unduly delayed for no fault of the petitioner was held to be an anti-thesis of an expeditious procedure, termed as a blatant dilatory procedure, shocks judicial conscience and casts a very sad reflection on the judicial system (see *Sada Shiv Manohar Parkar vs. State of Maharastra, 1998 CrL LJ 3755*). The right to speedy criminal trial is one of the most valuable fundamental rights guaranteed to a citizen under the Constitution, which right is integral part of right to life and liberty guaranteed under Article 21. In *Kartar Singh vs. State of Punjab, (1994) 3 SCC 569*, it was observed:-

The concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted. In this context, it may be noted that the constitutional guarantee of speedy trial is properly reflected in Section 309 of the Code of Criminal Procedure.

Of course, no length of time is per se too long to pass scrutiny under this principle nor the accused is called upon to show the actual prejudice by delay of disposal of cases. On the other hand, the court has to adopt a ⁶⁴⁰balancing approach by taking note of the possible prejudices and disadvantages to be suffered by the accused by avoidable delay and to determine whether the accused in a criminal proceeding has been deprived of his right of having speedy trial with unreasonable delay which could be identified by the factors — (1) length of delay, (2) the justification for the delay, (3) the accused's assertion of his right to speedy trial, and (4) prejudice caused to the accused by such delay. However, the fact of delay is dependent on the circumstances of each case because reasons for delay will vary, such as delay in investigation on account of the widespread ramification of crimes and its designed network either nationally or internationally, the deliberate absence of witness or witnesses, crowded dockets on the file of the court etc.

In *Abdul Rahman Antulay vs. R.S.Nayak*, (1992) 1 SCC 225, the Constitution Bench laid down the following propositions intended to serve as guidelines:-

(1) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any the less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

(2) Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial. That is how, this Court has understood this right and there is no reason to take a restricted view.

(3) The concerns underlying the right to speedy trial from the point of view of the accused are:

- (a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;
- (b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and
- (c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of ²⁷¹death, disappearance or non-availability of witnesses or otherwise.

(4) At the same time, one cannot ignore the fact that it is usually the accused who is interested in delaying the proceedings. As is often pointed out, "delay is a known defence tactic". Since the burden of proving the guilt of the accused lies upon the prosecution, delay ordinarily prejudices the prosecution. Non-availability of witnesses, disappearance of evidence by lapse of time really work against the interest of the prosecution. Of course, there may be cases where the prosecution, for whatever reason, also delays the proceedings. Therefore, in every case, where the right to speedy trial is alleged to have been infringed, the first question to be put and answered is — who is responsible for the delay? Proceedings taken by either party in good faith, to vindicate their rights and interest, as perceived by them, cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay. It goes without saying that frivolous proceedings or proceedings taken merely for delaying the day of reckoning cannot be treated as proceedings taken in good faith. The mere fact that an application/petition is admitted and an order of stay granted by a superior court is by itself no proof that the proceeding is not frivolous. Very often these stays are obtained on ex parte representation.

(5) While determining whether undue delay has occurred (resulting in violation of Right to Speedy Trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on — what is called, the systemic delays. It is true that it is the obligation of the State to ensure a speedy trial and State includes judiciary as well, but a realistic and practical approach should be adopted in such matters instead of a pedantic one.

(6) Each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. As has been observed by Powell, J. in *Barker* “it cannot be said how long a delay is too long in a system where justice is supposed to be swift but deliberate”. The same idea has been stated by White, J. in *U.S. v. Ewell*³⁸ in the following words:

‘... the Sixth Amendment right to a speedy trial is necessarily relative, is consistent with delays, and has orderly expedition, rather than mere speed, as its essential ingredients; and whether delay in completing a prosecution amounts to an unconstitutional deprivation of rights depends upon all the circumstances.’

However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of ²⁷²accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case.

(7) We cannot recognize or give effect to, what is called the ‘demand’ rule. An accused cannot try himself; he is tried by the court at the behest of the prosecution. Hence, an accused’s plea of denial of speedy trial cannot be defeated by saying that the accused did at no time demand a speedy trial. If in a given case, he did make such a demand and yet he was not tried speedily, it would be a plus point in his favour, but the mere non-asking for a speedy trial cannot be put against the accused. Even in USA, the relevance of demand rule has been substantially watered down in *Barker*²² and other succeeding cases.

(8) Ultimately, the court has to balance and weigh the several relevant factors — ‘balancing test’ or ‘balancing process’ — and determine in each case whether the right to speedy trial has been denied in a given case.

(9) Ordinarily speaking, where the court comes to the conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order — including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded — as may be deemed just and equitable in the circumstances of the case.

(10) It is neither advisable nor practicable to fix any time-limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint. The Supreme Court of USA too has repeatedly refused to fix any such outer time-limit in spite of the Sixth Amendment. Nor do we think that not fixing any such outer limit ineffectuates the guarantee of right to speedy trial.

(11) An objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and ²⁷³exceptional nature. Such proceedings in High Court must, however, be disposed of on a priority basis.

The Judgment in *Abdul Rahman Antulay* case, along with two other cases in common case and R.C.Deo Sharma was examined by a Constitution Bench and it was observed that the opinion in *Abdul Rahman Antulay* case:-

(i) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily (ii) right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial. (iii) who is responsible for the delay and what facts have been contributed towards delay are relevant factors. Attendant circumstances, including nature of the offence, number of accused and witnesses, the work-load of the court concerned, prevailing local conditions and so on what is called systemic delays must be kept in view; (iv) each and every delay does not necessarily prejudice the accused as some delays indeed work to his advantage.”

Thereafter guidelines 8, 9, 10 and 11 have been quoted. Then different types of trials have been noticed. After detailed discussion, the opinions expressed in the cases of Common Cause and R.C.Deo Sharma were overruled for the added reason that those ran contrary to A.R.Antulay’s decision and further that “Prescribing periods of limitation at the end of which the trial court would be obliged to terminate the proceedings and necessarily acquit or discharge the accused, and further, making such directions applicable to all the cases in the present and for the future amounts to legislation, which, in our opinion, cannot be done by judicial directives and within the arena of the judicial law making, power available to constitutional courts, howsoever liberally we may interpret Articles 32, 21, 141 and 142 of the Constitution. The dividing line is fine but perceptible. Courts can declare the law, they can interpret the law, and they can remove obvious lacunae and fill the gaps but they cannot entrench upon in the field of legislation properly meant for the Legislature.....”

The directions regarding grant of bail made in Common Cause and R.C.Deo Sharma have not been commented upon “because different considerations arise before Criminal Courts while dealing with termination of trial or proceedings and while dealing with right of accused to be enlarged on bail..... We are deleting the directions made respectively by two and three Judges Bench of this Court, we should not even for a moment, be considered as having made a departure from the law as to speedy trial and speedy conclusion of criminal proceedings of whatever nature and at whichever stage before any authority or Court.....”

COMPENSATION/DAMAGES:-

The Supreme Court in *State of Andhra Pradesh vs. Challa Ramkrishna Reddy (2000) 5 SCC 712*, and other series of decisions observed that fundamental rights, also includes basic human rights, which continue to be available to a prisoner and those rights cannot be defeated by pleading old and archaic defence of immunity in respect of sovereign acts which have been rejected by the Supreme Court. IN this case the Supreme Court upheld the order of the High Court which awarded damages to the state for failing to establish and maintain jails. The State was claiming immunity under sovereign function which was rejected by Supreme Court.

CRIMINAL LAW IN INDIA:-

Human Rights are universal. This means that human rights are so important that the international community has deemed that everyone has their, regardless of where they live, or their economic, social or political situation. The criminal law in India is contained in a number of sources. The Indian Penal Code of 1860, together with other Local and Special Laws such as the Dowry Prohibition Act 1961, the Protection of Civil Rights Act 1955, the Prevention of Food Adulteration Act 1954 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989, the Pre-Conception and Pre-Natal Diagnostic

Techniques Act 1994, Protection of Women from Domestic Violence Act 2005, and others outline what constitute criminal offences under Indian Law. The India Evidence Act sets forth the rules under which evidence is admissible in Indian Courts. And the Code of Criminal Procedure of 1973 (CrPC), outlines the procedural mechanisms for prosecuting criminal acts, providing for the constitution of criminal courts, the procedure for conducting police investigations and arrests, and the procedure for holding criminal trials and inquiries.

The application of the CrPC generally extends to all criminal offences, and to the entire territory of India, excluding the State of Jammu and Kashmir, and some tribal areas (S.1 CrPC).

One of the cardinal principles which has always to be kept in mind in our system of administration of criminal justice is that a person arraigned as an accused is presumed to be innocent unless that presumption is rebutted by the prosecution by production of evidence as may show him to be guilty of the offence with which he is charged. The burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of the burden, the Court cannot record a finding of guilt of the accused. If two views are possible one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused has to be accepted.

D.K.BASU – DIRECTIONS:-

While we are on the subject it is important to note directions issued by the Supreme Court in *D.K.Basu vs. State of W.B.* AIR 1997 SC 619, wherein the Supreme Court laid down the requirements to be followed in all cases of arrest or detention till legal provisions are made in that behave as preventive measures:-

We, therefore, consider it appropriate to issue the following *requirements* to be followed in all cases of arrest or detention till legal provisions are made in that behalf as *preventive measures*:

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the  family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

MENTAL HEALTH:-

The National Human Rights Commission (NHRC) has evolved certain guidelines with regard to mentally ill persons, who have been detained in prison and the recommendations of the NHRC are to the following effect:-

- In order to prevent or to ensure early detection of mental illness, all prisoners should be provided psychiatric and psychological counselling.
- For this purpose, collaborations should be made with local psychiatric, medical institutions and non-governmental organisations.
- All jails should be formally affiliated to a mental hospital.
- Central and district jails should have facilities for preliminary treatment of mental disorder. Sub-jails should take inmates with mental illness to psychiatric facilities.
- Every central and district jail should have services of a qualified psychiatrist who would be assisted by a psychologist and a social worker trained in psychiatry.
- Mentally ill persons, who are not accused of a criminal offence, should not be kept or sent to prison. They should be taken for observation to the nearest psychiatric centre, or if that is not available to the Primary Health Centre.

- All those kept in prison with mental illness and under observation of psychiatrist should be kept in one barrack.
- Preventive legal aid is required to check the abuse of law and dumping of the mentally ill in prisons. It is necessary to ensure that no mentally ill person is unrepresented in court.

Prevention of Mental Illness within Prisons

- The state has a responsibility for the mental and physical health of the incarcerated. To prevent people from becoming mentally ill after being sent to prison, each jail and detention centre should ensure that it provides the following facilities:
 - An open environment, lawns, kitchen gardens and flower gardens.
 - Daily programmes for prisoners that reduce stress and depression including organised sport and meditation.
 - A humane staff that is not harsh:
 - Officers of the institution should not use force except in selfdefence or attempted escape,
 - Force if used, should not be more than is strictly necessary. The concerned officers must report the incident immediately to the director of the institution,
 - Prison officers should be given special physical training to enable them to restrain aggressive prisoners, and
 - Prison staff in direct contact with prisoners should not be armed (except in special circumstances).
- ❖ There should be effective grievance redressal mechanisms.
- ❖ At the time of admission, every prisoner should be provided with written information (orally if the prisoner is illiterate) about the:
 - regulations governing the treatment of prisoners in his category,
 - disciplinary requirements of the institution,
 - authorised methods of seeking information and making complaints, and
 - all other matters to enable him understand both his rights and his obligations.
- Visitors and correspondence with family and friends should be encouraged.
- There must be oversight bodies including members of the civil society to ensure the absence of corruption and abuse of power.

Under-trials/Convicts who become Mentally Ill in Prison

- The state has an affirmative responsibility towards an under-trial or a convict who becomes mentally ill while in prison.
- The state must provide adequate medical support.

- Appropriate facilities should be provided in state assisted hospitals for under-trials who become mentally ill in prison.
- In case such places are not available, the state must pay for the same medical care in a private hospital.
- Care should be provided until the recovery of the under-trial/convict.
- On completion of the period of sentence for a convict prisoner admitted to hospital for psychiatric care, his status in all records of prison and hospital should be recorded as a free person. He shall continue to receive treatment as a free person.

Mentally Ill Under-trials

- Mentally ill under-trials should be sent to the nearest prison having services of a psychiatric attached to a hospital.
- Each under-trial should be attended to by a psychiatrist who will send a periodic report to the judge/magistrate through the
- superintendent of the prisons regarding the condition of the individual and his fitness to stand trial.
- When the under-trial recovers from mental illness, the psychiatrist should certify him as 'fit to stand trial'.
- If the trial is suspended even for one day due to mental illness, a report should be sent to the relevant district and sessions judge as well as the magistrate on a quarterly basis i.e. every 3 months.
- As soon as it comes to the notice of the trial court that an under-trial is mentally ill and cannot understand the proceedings against him, the court must follow the procedure under Chapter XXV of the Cr.P.C.

READING MATERIAL TO PRISONERS:-

Further, the NHRC have also prepared certain guidelines pertaining to the reading material which have to be provided to prisoners and the guidelines/recommendations are as follows:-

- ❖ Any restrictions imposed on a prisoner with respect to reading materials must be reasonable.
- ❖ All prisoners should have access to such reading materials as are essential for their recreation or the nurturing of their skills and personality, including their capacity to pursue their education while in prison.
- ❖ Every prison should have a library for use by all categories of prisoners.
- ❖ The library should be adequately stocked with both recreational and instructional books and prisoners should be encouraged to make use of them.
- ❖ The materials in the library should be commensurate with the size and nature of the prison population.
- ❖ Diversified programmes should be organised by prison authorities for different group of inmates. The educational and cultural background should be kept in mind when developing such programmes.
- ❖ Special attention should be paid to the development of suitable recreational and educational materials for women prisoners or for those who may be young or illiterate.

- ❖ Prisoners should generally be permitted to receive reading material from outside. Such material should be reasonable in quantity and not prohibited for reasons of being obscene or tending to create a security risk.
- ❖ Quotas should not be set arbitrarily for reading materials.
- ❖ The quantity and nature of reading material provided to a prisoner should take into account his individual needs.
- ❖ In assessing the content of reading material, the superintendent of the jail should be guided by law, and not exercise his discretion in an arbitrary manner.

RIGHTS OF ACCUSED PERSONS:-

Though the topic is with regard to rights of prisoners and convicts, it would be necessary to also look into the rights of accused persons. The expression “accused person” connotes a person against whom evidence is sought to be led in a criminal proceeding. Against whom an allegation has been made that he has committed an offence or who is charged with an offence. In terms of Section 24 of the Evidence Act, the expression “accused person” includes a person who subsequently becomes an accused and that he need not have been accused of an offence when he made the confession in question (see *State of Uttarpradesh vs. Deoman Upadhyaya*, AIR 1960 SC 1125). The protection of Article 20 (3) of the Constitution becomes available to a person as soon as he is named as an accused either in a first information report made under Section 154 CrPC or in a complaint instituted against him in Court (see *Narayanlal Bansilal vs. Maneck Phiroz Mistry*, AIR 1961 SC 29). An accused person shall have the following rights, namely

- (i) Right to be informed of the grounds immediately after the arrest.
- (ii) Right for medical examination
- (iii) Right to be produced before a Magistrate within 24 hours of his arrest
- (iv) Right to consult a lawyer of his choice
- (v) Right to be tried
- (vi) Duty of the investigating authority to complete investigation and submit report under Section 173 CrPC
- (vii) Right to get copies of the documents and statements of witnesses relied on by the prosecution
- (viii) Right to have notice of the charges
- (ix) Right to insist that evidence be recorded in his presence except in special circumstances
- (x) Right for his request for exemption of personal attendance to be considered on its own merits
- (xi) Right to test the evidence by cross examination
- (xii) Right to produce defence witnesses
- (xiii) Right to not to be compelled to be a witness against himself
- (xiv) Right to be given an opportunity to explain circumstances appearing in evidence against him
- (xv) Right to be heard about his sentence upon conviction protection against double jeopardy
- (xvi) Right to get copy of the judgment when sentenced to imprisonment
- (xvii) Right to appeal in case of conviction

- (xviii) Right not to be imprisoned upon conviction in certain circumstances (Probation of Offenders Act)
- (xix) Right to education

As noticed above, a prisoner, be he a convict or under-trial or a detenu does not cease to be a human being. Even when lodged in jail his rights to life guarantee under the Constitution is protected. On being convicted and deprived of his liberty in accordance with procedure established by law, the prisoner still retained the residue of constitutional rights.

OVER CROWDING IN PRISONS:-

The Supreme Court was concerned about over crowding of prisons, it was noticed that release on bail of certain categories of under-trial prisoners, who constitute the bulk of prison population, has to result in lessening the over capacity. In fact, the Law Commission of India in its 78th report has made recommendations, acceptance of which, would relieve congestion in jails and the suggestion includes liberalization of conditions of release on bail.

SOLITARY CONFINEMENT/BAR FETTERS:-

The Supreme Court in *Sunil Batra vs. Delhi Administration, (1978) 4 SCC 494*, held that Solitary confinement was violative of the right to personal liberty. The Supreme Court again in a separate writ petition filed by Sunil Batra and Charles Sobharaj, two prisoners in Delhi's Tihar jail, made an effort to humanize jail conditions. The question before the Court was: "Does a prison setting, ipso facto, outlaw the rule of law, lock out the judicial process from the jail gates and declare a long holiday for human rights of convicts in confinement? And if there is no total eclipse what luminous segment is open for judicial justice? Sunil Batra, sentenced to death had challenged his incarceration in solitary confinement and Charles Sobharaj had challenged his confinement with bar-fetters.

The Supreme Court held that there is no total deprivation of a prisoner's rights of life and liberty. The "safe keeping" in jail custody is the limited jurisdiction of the jailer. "To desert safe-keeping into a hidden opportunity to care the ward and to traumatize him is to betray the custodian of law, safe custody does not mean deprivations, violation, banishment from the lantern barguet of prison life and infliction's of tra-vails as if guardianship were best fulfilled by making the ward suffer near insanity."

The court held that Sunil Batra's mercy petition to the President/Governor had not been disposed off and Batra was not "under sentence of death." His solitary confinement was quashed. In the case of Charles Sobharaj, it was held that there was no arbitrary power to put an undertrial under bar-fetters. The discretion to impose "irons" is a quasi-judicial decision and a previous hearing is essential before putting a prisoners in fetters. The grounds for imposing fetters would be given to each victim in his language. It was further laid down that no "fetters" shall continue beyond day time and a prolonged continuance of bar-fetters shall be with the approval of the Chief Judicial Magistrate or a Sessions Judge.

In the case of *Danial H. Walcott v. Superintendent, Nagpur Central Prison*, the petitioner was punished with solitary confinement by the prison authorities for the commission of a prison offence. The Bombay High Court interpreted Section 46 of the Prisons Act 1894 and observed that the principles of natural justice are to be adhered to by the Superintendent in such cases. The Superintendent must "examine" the prisoner himself/herself and not rely on a readymade statement. The enquiry is quasi-judicial in nature and includes the right of the prisoner to be heard, to be fully informed and to cross-examine. The Superintendent must pass a reasoned order after following this quasi-judicial process.

ACCESS TO INFORMATION AND INTERVIEW:-

The prisoners are entitled to access to information and interview with family members. In a recent landmark judgement in the case of "Francies Corale Mullin vs. the Administrator, Union Territory of Delhi & others", the Supreme Court explained the ingredients of personal liberty under Article 21. The case arose out of the rights of a detainee under COFEPOSA to have an interview with his family members and lawyers. The meeting with family members was restricted to one a month and the lawyer could be met only in the presence of an officer of the customs department. The Supreme Court ruled that the right to life and liberty included his right to live with human dignity and therefore a detainee would be entitled to have interviews with family members, friends and lawyers without these severe restrictions.

EQUITABLE WAGES:-

It is imperative that the prisoners should be paid equitable wages for the work done by them. Remuneration, which is not less than the minimum wages, has to be paid to anyone who has been asked to provide labour or service by the state. The payment has to be equivalent to the services rendered, otherwise it would be forced labour within the meaning of Article 23 of the Constitution. There is no difference between a prisoner serving a sentence inside the prison walls and a freeman in society.

The Supreme Court in *State of Gujarat vs. High Court of Gujarat, (1998) 7 SCC 392*, directed the State concerned to make law for setting a part a portion of the wages earned by the prisoners to be paid as compensation to the deserving victims of the offence. A life convict does not acquire a right to be released pre-maturely, but if the Government had framed a rule or made a scheme for early release of such convicts, then those rules or Schemes will have to be treated as guidelines for exercising its power under Article 161 of the Constitution. When an authority is called upon to exercise its power under Article 161 that shall be done consistent with the legal position and the Government policy/instructions prevalent at that time. It would be useful to take note of the directions issued by the Supreme Court in *Common Cause vs. Union of India, (1996) 4 SCC 33*, with regard to the release of under-trial prisoners.

PAROLE:-

The next right for a prisoner is to seek for parole. Parole is not a suspension of sentence and the convict continues to be serving the sentence despite grant of parole under the statute, rules, jail manual or the Government orders.

REMISSION:-

The State Governments power to grant remission or circumscribed under the Criminal Procedure Code or the provisions of the Prisons Act and the Rules made thereunder. It has to be noted that completion of the minimum period does not confer a right on the convict to claim remission.

HAND CUFFING:-

In another case of "Prem Shankar Shukla Vs. Delhi Administration," the Supreme Court struck down the provisions of the Panjab Police rules which discriminated between the rich and the poor prisoner in determining who was to be handcuffed. The Court also held that in the absence of the escorting authority recording why the prisoner is being put under handcuffs, the procedure of handcuffing is a violation of Article 21.

CONJUGAL RIGHTS:-

In another recent decision by the Punjab and Haryana High Court while dealing with the plea for conjugal rights by a couple in prison has asked the Punjab government to clarify whether prisoners can have the right to use artificial insemination? The husband and wife both convicted of kidnapping and murder (the

husband having being granted death sentence and the wife ordered life imprisonment) have demanded conjugal rights so that they can give their family an heir.

The basic contention here lies that till the petitioners were alive and the husband not executed in line with the court's orders, they had a right to life, which included the right to propagate species and sex life was part of this right.

Interesting concept this, especially in light of the gambit of change which the 'traditional' Indian judiciary is undergoing and when decided is sure to have wide ramifications. But it is surely going to be a long way before the society is open to hang a 'do not disturb' sign outside prison cells.

The Court system in India is based on the English model, enforcement of Criminal Law is exclusively a state function.

LEGAL AID:-

Effective access to Justice requires that there is a systematized mechanism of legal aid in place Article 22 (1) of the Constitution entitles arrested persons to be represented by a legal practitioner. Consequently, the Police and the Magistrate before whom a detenu is produced must inform them of the right to legal representation. The provision of legal aid is enshrined in Article 39A and comes within the broad interpretation of Article 21. Courts have held that right to legal aid to be an essential ingredient of reasonable, fair and just procedure (see *Hussainara Khatoon vs. Home Secretary, State of Bihar, AIR 1979 SC 1369*). Pursuant to the directive under Article 39A of the Constitution, the Legal Services Authorities Act, has been enacted to provide free and competent legal service to the weaker sections of society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

WOMEN PRISONERS:-

The Supreme Court in *Sheela Barse vs. State of Maharashtra, (1983) 2 SCC 96*, devised number of guidelines to ensure protection of woman prisoners:-

(i) We would direct that four or five police lock-ups should be selected in reasonably good localities where only female suspects should be kept and they should be guarded by female constables. Female suspects should not be kept in a police lock-up in which male suspects are detained. The State of Maharashtra has intimated to us that there are already three cells where female suspects are kept and are guarded by female constables and has assured the Court that two more cells with similar arrangements will be provided exclusively for female suspects.

103(ii) We would further direct that interrogation of females should be carried out only in the presence of female police officers/constables.

(iii) Whenever a person is arrested by the police without warrant, he must be immediately informed of the grounds of his arrest and in case of every arrest it must immediately be made known to the arrested person that he is entitled to apply for bail. The Maharashtra State Board of Legal Aid and Advice will forthwith get a pamphlet prepared setting out the legal rights of an arrested person and the State of Maharashtra will bring out sufficient number of printed copies of the pamphlet in Marathi which is the language of the people in the State of Maharashtra as also in Hindi and English and printed copies of the pamphlet in all the three languages shall be affixed in each cell in every police lock-up and shall be read out to the arrested person in any of the three languages which he understands as soon as he is brought to the police station.

(iv) We would also direct that whenever a person is arrested by the police and taken to the police lock-up, the police will immediately give intimation of the fact of such arrest to the nearest Legal Aid Committee and such Legal Aid Committee will take immediate steps for the purpose of providing legal assistance to the arrested person at State cost provided he is willing to accept such legal assistance.

The State Government will provide necessary funds to the concerned Legal Aid Committee for carrying out this direction.

(v) We would direct that in the City of Bombay, a City Sessions Judge, to be nominated by the principal Judge of the City civil court, preferably a lady Judge, if there is one, shall make surprise visits to police lock-ups in the city periodically with a view to providing the arrested persons an opportunity to air their grievances and ascertaining what are the conditions in the police lock-ups and whether the requisite facilities are being provided and the provisions of law are being observed and the directions given by us are being carried out. If it is found as a result of inspection that there are any lapses on the part of the police authorities, the City Sessions Judge shall bring them to the notice of the Commissioner of Police and if necessary to the notice of the Home Department and if even this approach fails, the City Sessions Judge may draw the attention of the Chief Justice of the High Court of Maharashtra to such lapses. This direction in regard to police lock-ups at the district headquarters shall be carried out by the Sessions Judge of the district concerned.

(vi) We would direct that as soon as a person is arrested, the police must immediately obtain from him the name of any relative or friend whom he would like to be informed about his arrest and 104 the police should get in touch with such relative or friend and inform him about the arrest; and lastly

(vii) We would direct that the Magistrate before whom an arrested person is produced shall enquire from the arrested person whether he has any complaint of torture or maltreatment in police custody and inform him that he has right under Section 54 of the Code of Criminal Procedure, 1973 to be medically examined. We are aware that Section 54 of the Code of Criminal Procedure, 1973 undoubtedly provides for examination of an arrested person by a medical practitioner at the request of the arrested person and it is a right conferred on the arrested person. But, very often the arrested person is not aware of this right and on account of his ignorance, he is unable to exercise this right even though he may have been tortured or maltreated by the police in police lock-up. It is for this reason that we are giving a specific direction requiring the Magistrate to inform the arrested person about this right of medical examination in case he has any complaint of torture or maltreatment in police custody.

Cr.P.C- INBUILT SAFEGUARDS:-

The Criminal Procedure Code contains inbuilt provisions to safeguard the rights of accused. In this connection the attention of the Magistrates is drawn to Sections 41, 50, 54, 167, 304 and 437 (6) of the Criminal Procedure Code. The question of effectively enforcing these provisions even in respect of indigent and poor persons has been considered in several cases by the Supreme Court. Attention is also drawn to the amendment in Sec. 176 Cr.P.C. wherein provision has been made that in the case of death or disappearance of a person, or rape of a woman while in the custody of the police, there shall be a mandatory judicial inquiry and in case of death, examination of the dead body shall be conducted within twenty-four hours.

CHILDREN OF WOMEN CONVICTS:-

In R.D.Upadhyay vs. State of A.P, AIR 2006 SC 1946, Supreme Court considered the plight of children of woman convicts or under-trial who are forced to live in jails. Confirming that children of woman prisoners should not be treated as under-trial or convicts, the Supreme Court issued the following guidelines:-

A jail must have adequate facilities for prenatal and post-natal care for female prisoners as well as their children; pregnant women in jails should be able to give birth outside the prison facility (except in some extreme cases), so as to ensure that the newborn is given proper care. Within the prisons, children should be able to have access to food, shelter medical assistance when required, education and a recreational space. Women can keep their children with them until the children reach the age of six. Then they should be handed over to welfare institutions maintained by the Social Welfare Department, preferably within the same

city or town. The child can remain in such an institution until the mother is released or the child is capable of earning a livelihood.

JUVENILES IN CONFLICT WITH LAW:-

The Supreme Court played an active role in laying down guidelines for the proper treatment of juveniles in conflict with law. Reference may be made to the observations of the Supreme Court in *Hiralal Mallick vs. State of Bihar*, AIR 1977 SCC 2236. The Supreme Court in *Sheela Barse vs. Union of India*, AIR 1986 SC 1773, expressly held that on no account should children accused of offences be detained in jails. It observed :-

It is an elementary requirement of any civilized society and it had been so provided in various statutes concerning children that children should not be confined to jail because incarceration in jail has a dehumanizing effect and it is harmful to the growth and development of children.

The judgment of the Supreme Court prompted the enactment of the Juvenile Justice Act.

IMPORTANT ENACTMENTS:-

While on the subject it would be necessary to acquaint ourselves with certain enactments concerning prisoners and their rights, namely,

- (i) The Prisoners Act, 1900
- (ii) The Prisons Act, 1894
- (iii) The Prisoners (Attendance in Courts) Act, 1955
- (iv) The Transfer of Prisoners Act, 1950
- (v) The Repatriation of Prisoners Act, 2003
- (vi) The Repatriation of Prisoners Rules, 2004.

INTERNATIONAL COVENANTS:-

India is a party to the International covenant on civil and political rights and the International covenant on economic, social and cultural rights adopted by the General Assembly of the United Nation on 16.12.1966. Though the Human Rights embodied in the covenants were substantially protected by the Constitution there was growing concern in the country and abroad about issues relating to human rights. Therefore, the Government reviewed the existing laws, procedures, system of administration etc., and enacted the Protection of Human Rights Act, 1993 as an act to provide for the Constitution of a National Human Rights Commission, State Human Rights Commissions in States and Human Rights Courts for better protection of Human Rights and for matters connected therewith and incidental thereto. Under Section 30 of the Act, the Human Rights Courts are established for providing speedy trial of offences arising out of violation of human rights. Section 2(d) defines "Human Rights" to mean the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Court in India.

The General Assembly of the United Nations proclaimed the universal declaration of Human Rights as a common standard of achievement for all people and all nations to promote the rights and freedoms and by progressive measures.

UNIVERSAL DECLARATION OF HUMAN RIGHTS:-

The following Articles of the Universal Declaration of Human Rights would be relevant:-

(a) Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

(b) Article 9

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

(c) Article 11

1. Everyone 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.
2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS:-

International Covenant on Civil and Political Rights 1966, agreed upon certain Articles and the following would be relevant for the present day topic:-

Article 9

- 1 Everyone has the right to liberty and security of person. No one shall be subject to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
- 2 Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
- 3 Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.
- 4 Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
- 5 Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

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- a. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;
 - b. Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
- 3 The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 14

1. All persons shall be equal before the Courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit of law, everyone shall be entitled to a fair and public hearing of a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or where the interest of the private lives of the parties so requires, or the extent strictly necessary in the opinion of the Court in special circumstances where publicity would prejudice the interests of justice; but, any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
 - (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.
 - (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - (c) To be tried without undue delay;
 - (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in Court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person, who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

PLEA BARGAINING IN INDIA:-

Chapter XXIA on 'Plea Bargaining', has been introduced in the Criminal Procedure Code through Criminal Law (Amendment) Act, 2005. This was intended to reduce the delay in disposing criminal cases, the 154th Report of the Law Commission first recommended the introduction of 'plea bargaining' as an alternative method to deal with huge arrears of criminal cases. This recommendation of the Law Committee finally found a support in Malimath Committee Report. The Government had formed a committee, headed by the former Chief Justice of the Karnataka and Kerala High Courts, Justice V.S. Malimath to come up with some suggestions to tackle the ever-growing number of criminal cases. In its report, the Malimath Committee recommended that a system of plea bargaining be introduced in the Indian Criminal Justice System to facilitate the earlier disposal of criminal cases and to reduce the burden of the courts. To strengthen its case, the Malimath Committee also pointed out the success of plea bargaining system in USA. Accordingly, the draft Criminal Law (Amendment) Bill, 2003 was introduced in the parliament. The statement of objects and reasons, inter alia, mentions that, The disposal of criminal trials in the courts takes considerable time and that in many cases trial do not commence for as long as 3 to 5 years after the accused was remitted to judicial custody.. though not recognized by the criminal jurisprudence, it is seen as an alternative method to deal with the huge arrears of criminal cases. The bill attracted enormous public debate. Critics said it is not recognized and against public policy under our criminal justice system. The Supreme Court has also time and again blasted the concept of plea bargaining saying that negotiation in criminal cases is not permissible. More recently in State of Uttar Pradesh V. Chandrika 2000 Cr.L.J. 384(386), The Apex Court held that It is settled law that on the basis of plea bargaining court cannot dispose of the criminal cases. The court has to decide it on merits. If the accused confesses its guilt, appropriate sentence is required to be implemented. The court further held in the same case that, Mere acceptance or admission of the guilt should not be a ground for reduction of sentence. Nor can the accused bargain with the court that as he is pleading guilty the sentence be reduced. Despite this huge hue and cry, the government found it acceptable and finally section 265-A TO 265-L have added in the Code of Criminal Procedure so as to provide for raising the plea bargaining in certain types of criminal cases. While commenting on this aspect, the division bench of the Gujarat High Court observed in State of Gujarat V. Natwar Harchanji Thakor (2005) Cr. L.J. 2957 that, The very object of law is to provide easy, cheap and expeditious justice by resolution of disputes, including the trial of criminal cases and considering the present realistic profile of the pendency and delay in disposal in the administration of law and justice, fundamental reforms are inevitable. There should not be anything static. It can thus be said that it is really a measure and redressal and it shall add a new dimension in the realm of judicial reforms.

NARCOANALYSIS/POLYGRAPH/BRAIN MAPPING:-

In *Selvi Vs State of Karnataka*, (2010) 7 SCC 263, the Supreme Court has declared Narcoanalysis, Polygraph test and Brain Mapping unconstitutional and violative of human rights .. This decision is quite unfavourable to various investigation authorities as it will be a hindrance to furtherance of investigation and many alleged criminals will escape conviction with this new position. But the apex court further said that a person can only be subjected to such tests when he/she assents to them. The result of tests will not be admissible as evidence in the court but can only be used for furtherance of investigation.

With advancement in technology coupled with neurology, Narcoanalysis, Polygraph test and Brain mapping emerged as favourite tools of investigation agencies around the world for eliciting truth from the accused. But eventually voices of dissent were heard from human rights organizations and people subjected to such tests. They were labelled as atrocity to human mind and breach of right to privacy of an individual. The Supreme Court accepted that the tests in question are violative of Article 20 (3), which lays down that a person cannot be forced to give evidence against himself. Court also directed the investigation agencies that the directives by National Human Rights Commission should be adhered to strictly while conducting the tests.

These tests were put to use in many cases previously, Arushi Talwar murder Case, Nithari killings Case, Abdul Telagi Case, Abu Salem Case, Pragya Thakur (Bomb blast Case) etc being ones which generated lot of public interest.

RIGHT TO PUBLIC EMPLOYMENT AFTER RELEASE:-

The question for debate would be whether a convicted person, after release on serving the prescribed sentence has a right to be considered for public employment, right not to be regarded as a convict and a right to be treated equally with other citizens when there is an open selection for Government / private jobs and a right to have the stigma of a "convict" removed. In every application form for public employment, there is a column "Whether convicted for any offence previously?" Equally is another debatable issue as to whether, after serving the sentence imposed by Court, the issue of conviction can be held against an individual perpetually?

CONCLUSION:-

Thus we see that there is no doubt that it is the democratic legitimacy which characterizes our era. Liberty and freedom are the elements of prisoner's human right and democracy. In so far as developing countries are concerned it has to be observed that must believe in democracy and human rights of prisoners.

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