

● THE SHADES OF LEGAL MECHANISM OF HUMAN RIGHTS AND PRISONERS WITH A SPECIAL REFERENCE TO NATIONAL HUMAN RIGHTS COMMISSION, INDIA



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Abstract

A prison is a place in which individuals are physically confined or detained and usually deprived of arrange of personal freedom. This was considered as one of the most integral part and backbone of the criminal justice system of a country. In India there are provisions of various types of prisons such as those exclusively for adults, children, female, convicted prisoners, under-trial detainees and separate facilities for mentally ill offenders but at the same time the situation is a bit different rarely we got all such prison across India in the similar manner as prescribed. In the past years the Globe seems to be many concerns over developing prison jurisprudence with a view to protect inherent rights of prisoners and for the proper administration of prisons. This is undoubted and undebatable point that existing legal structure of the prison administration needs a complete change whereas Criminal Laws required to be amended including the Jail manuals and Prison Act. In this context, the present paper examines the diverse shades of regulatory measures of Prisoners' Human Rights in India. The paper also highlights the various roles of National Human Rights Commission for the betterment of Prisoners' Human Rights in India.

Key words

Correction, Reformation and Rehabilitation, Human Rights and NHRC.

I. INTRODUCTION

“Convicts are not by mere reason of the conviction denuded of all the fundamental rights which they otherwise possess.”-

Justice V.R. Krishna Iyer

Imprisonment or incarceration is a legal punishment that may be imposed by the state for the commission of a crime or disobeying its rule. There are various different objective of imprisonment in different countries like punitive and for incapacitation, deterrence, and rehabilitative and reformative and others. In general, these objectives have evolved over time as shown in the accompanying figure. The wholesome purpose and justification of imprisonment is to give a shield to the society against crime and

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retribution. In the present approach towards the punitive methods of treatment of prisoners alone are neither considered to be relevant nor desirable to achieve the well planned objectives of reformation and rehabilitation of prison inmates. The concept of Correction, Reformation and Rehabilitation has come to the fore ground and the prison administration is now expected to function in a curative and correctional manner. Human rights approaches and human rights legislations have facilitated a change in the approaches of correctional systems, and they have evolved from being reactive to proactively safeguarding prisoners' rights. The United Nations has also provided several standards and guidelines, through minimal rules or basic principles in the treatment of prisoners.

II. PRISON REFORMATION: A DISTINCT VIEW

Central to the arguments to promote prison reforms is a human rights argument - the premise on which many UN standards and norms have been developed. However, this argument is often insufficient to encourage prison reform programs in countries with scarce human and financial resources. The detrimental impact of imprisonment, not only on individuals but on families and communities, and economic factors also need to be taken into account when considering the need for prison reforms.¹

Human Rights Considerations

A sentence of imprisonment constitutes only a deprivation of the basic right to liberty. It does not entail the restriction of other human rights, with the exception of those which are naturally restricted by the very fact of being in prison. Prison reform is necessary to ensure that this principle is respected, the human rights of prisoners protected and their prospects for social reintegration increased, in compliance with relevant international standards and norms.²

Imprisonment and Poverty

Imprisonment disproportionately affects individuals and families living in poverty. When an income generating member of the family is imprisoned the rest of the family must adjust to this loss of income. The impact can be especially severe in poor, developing countries where the state does not provide financial assistance to the indigent and where it is not unusual for one breadwinner to financially support an extended family network.³

Public Health Consequences of Imprisonment

Prisons have very serious health implications. Prisoners are likely to have existing health problems on entry to prison, as they are predominantly from poorly educated and socio-economically deprived sectors of the general population, with minimal access to adequate health services. Their health conditions deteriorate in prisons which are overcrowded, where nutrition is poor, sanitation inadequate and access to fresh air and exercise often unavailable.⁴

¹ Available at: <https://www.unodc.org/unodc/en/justice-and-prison-reform/prison-reform-and-alternatives-to-imprisonment.html> (accessed on 07.11.2016)

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*



Prisons are not isolated from the society and prison health is public health. The vast majority of people committed to prison eventually return to the wider society. Thus, it is not in vain that prisons have been referred to as reservoirs of disease in various contexts.

Detrimental Social Impact

Imprisonment disrupts relationships and weakens social cohesion, since the maintenance of such cohesion is based on long-term relationships. When a member of a family is imprisoned, the disruption of the family structure affects relationships between spouses, as well as between parents and children, reshaping the family and community across generations. Mass imprisonment produces a deep social transformation in families and communities.⁵

The Cost of Imprisonment

Taking into account the above considerations, it is essential to note that, when considering the cost of imprisonment, account needs to be taken not only of the actual funds spent on the upkeep of each prisoner, which is usually significantly higher than what is spent on a person sentenced to non-custodial sanctions, but also of the indirect costs, such as the social, economic and healthcare related costs, which are difficult to measure, but which are immense and long-term.⁶

III. UN CONVENTION OF HUMAN RIGHTS AGAINST WRONGFUL CONFINEMENT

Wrongful confinement is an act condemnable by statutes in India. Before the Indian Constitution was promulgated to be a statute to save the citizens from the transgression of human rights, some conventions existed in the world which not only gave specific legal content to human rights in an international agreement but also provided for the establishment of machinery for their supervision and enforcement.⁷ It is very well confirmed that the main objective why the conventional protocols were formulated was to set minimum standards of life as the commission worked as court of review. However, the conventions formulated for the protection of human rights of people in custody against wrongful confinement were recognized in Art. 2 where recognition of everyone's right to life was to be protected by law, and no one was to be deprived of his life. Art. 3 protected people from being subjected to torture and inhuman or degrading treatment or punishment. When one is confined wrongly it is inhuman. Art. 5(1) is also crucial under which everyone is given a right to life and liberty and none has to be deprived of his life or liberty except through procedure established by law but since the statutes are against wrongful confinement any confinement under this category is against procedure established by law.

Art. 4 of the convention, says "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings through which the lawfulness of his detention shall be decided speedily. A legal proceeding of accused here means that one

⁵ *Ibid.*

⁶ *Ibid.*

⁷ Art. 69 of the European Convention on Human Rights, 1953.

is innocent till proved guilty. And the same proceedings must be undertaken speedily so that there is absolutely no room left for wrongful, confinement as “*justice delayed injustice denied.*”

Art. 5 in its protection of people who are wrongly confined in the prisons, protects them that, everyone who has been the victim of arrest or detention in contravention of provisions of the statutes shall have an enforceable right to compensation. Finally, under Art. 6 it is the right of everyone to have fair and public hearing within a reasonable time by an independent and impartial tribunal. This is when human right of people in prisons is protected and when justice is done and not only that justice is done but also seen to be done, when law protects its people equally and they are equal before the law⁸.

IV. PRISONER'S RIGHTS AND CONSTITUTIONAL UMBRELLA AGAINST WRONGFUL CONFINEMENT

In Indian Constitution part-III of the constitution is available to protect people in custody (wrongful confinement) because a person wrongly confined remains a person in prison. One of the most important provisions in the Constitution of India applied by the courts is Art. 14⁹ in which principle of equality is embodied. It runs: “*The state shall not deny to any person equality before the law or the equal protection of the law within the territory of India.*”

At the same time in Art. 19 of the Indian Constitution guarantees six freedoms, the most important for the research study being protection against custodial atrocities and human rights protection of those in prison against wrongful confinement followed by freedom of movement and of speech. When one is wrongly confined, he is not going to move, hence curtailing his fundamental right of freedom of movement at the same time as he is not well represented, there is no chance to be heard or time to speak hence his freedom of speech is interfered with and is a clear violation of fundamental right of the person and when fundamental rights of people in jail are violated, their human rights are also violated. Clause (1) of Art. 20 protects the person from *ex-post facto* laws. It provides: - “*no person shall be convicted of any offence except for a violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time the commission of the offence.*”

This clause of Art. 20 protects a prisoner from being subjected to any punishment including that of imprisonment which were not authorized by law at the time when he committed the alleged act and for which he was convicted. If any person falls under these circumstances i.e. imprisoned in a manner not authorized by law at the time of committing the crime, then it is wrongful confinement. Article 20 (2) embodies the principles of double jeopardy that is :

No person shall be prosecuted and punished for some offence more than once. This clause states the common law rule “*Nemo debet vis vexari*” that is, no person should be put twice in the peril for same offence. As soon as this happens it is wrongful

⁸Arts. 4, 5 and 6 of United Nation Convention of Human Rights against Wrongful Confinement.

⁹Art. 14 of the Constitution of India.



confinement hence ultra virus to the law of the land i.e. violation of the fundamental rights of persons, violation human rights and ultra virus to Criminal Procedure Code, Civil Procedure Code and jail manuals. The simple rule that a person shall not be deprived of his life or personal liberty except according to procedure established by law is worded with utmost precision. These provisions have in *Prabhakar's*¹⁰ case earlier and *Kishore Singh*¹¹ recently been used by Supreme Court to protect certain important rights of people in custody as there is no formal guarantee of the their rights in the constitution. After the *Maneka Gandhi*¹² case these provision not only protected the arbitrary actions on the part of the executive but also from legislative blows which cannot eliminate malice of an unreasonable or unjust law. There must be fair and reasonable procedure for deprivation of the life and personal liberty of the individual. A fair and reasonable procedure includes right to process of law, right to counsel, right to speedy trial, right to religion, right to separation of prisoners, good accommodation and finally good diet.

Without all these the confinement will be wrongful. The basic aim of the Art. 21 is not to impose a limitation on the authority of the legislature but just to protect the arbitrary and unreasonable blows on part of the executive or legislature. Art. 22 (4) to (7) provide special safeguards for detenués under prevention and detention laws. The article provides maximum time for which detenué can be detained before being produced before advisory board. Within this period, usually (2 month) detention is legal but beyond that it is wrongful confinement as some are detained without being told the grounds of detention and never produced before the magistrate meaning thereby that they are not represented by legal practitioner of own choice. Under Clause 5 of Art. 22 it is the duty of the detaining authority, to furnish the grounds of his detention and particulars required by the detenué to prepare his defence. Insufficient facts or particulars and ground may render the detention invalid as shown in *Ramkrishna's*¹³ Case. Insufficient facts or particular is when arrested person is not produced before the magistrate within 24 hours of his arrest and this includes time for travel from place of arrest to court : the authority concerned must furnish information to accused that he needed to be represented by legal practitioner of his own choice.

V. PRISONER'S RIGHTS AND PROCEDURAL ASPECTS OF CRIMINAL PROCEDURE CODE AS AGAINST WRONGFUL CONFINEMENT

The Government of India while protecting human rights violation formulated statutes, the first being Constitution of India, which was followed by judicial system, various police manuals and Criminal Procedure Code, 1973 : which in its protection has given guidelines which have later on been used by judiciary in passing judgement which have come to be known as landmark judgements. However the guidelines are as follows:

Section 49 of Criminal Procedure Code, 1973 has established important guidelines in the protection of human rights of those in prison (wrongful confinement). It states that the

¹⁰*State of Maharashtra v. PrabhakarPanduran*, AIR 1966 SC 424.

¹¹*Kishore Singh v. State of Rajasthan*, AIR 1981 SC 625.

¹²*Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

¹³*Ram Krishna v. State of Delhi*, AIR 1953 SC 318, *Pushkar Mukherjee v. State of West Bengal* 1969 2 SCR 635.

person arrested shall not be subjected to more restraint than is necessary. In other words there is restraint on the authority with regard to the powers of arrest not to detain a person for a single hour more than necessary except upon reasonable grounds justified by all circumstances of the case. However if they have to detain a person for longer time they must have the permission of magistrate, otherwise detaining will be illegal. As soon as a person has been arrested, he is still a person, Section 50 of Criminal Procedure Code, 1973 swings into function and provides safeguard to the accused that, person arrested has to be informed of grounds of arrest and of right to bail. Every person arrested, is the duty by law of the authority doing the arresting to inform the accused full particular of the offence and grounds of arrest and that the offence is bailable or non-bailable. Section 54, when a person is arrested and feels that a police authority has done any wrong with his body under will request magistrate for medical examination and it is his right. The magistrate will direct the examination of the body of such person by a registered medical practitioner unless the magistrate considers that request made to delay or defeat the ends of justice. More often than never arrested persons are not aware of this right and on account of their ignorance they are unable to exercise this right, even though they may have been tortured or maltreated by the police. It is because of ignorance of victims that magistrates should inform the arrested persons of the right of medical examination, in case he has any complaint of torture or maltreatment in police custody as observed in *Sheela Barse's*¹⁴ case.

VI. PRISONERS AND HUMAN RIGHTS: JUDICIAL INTERVENTION

The enactment of the Constitution meant that India was born. The Constitution which was established conceived that, the state is existing for the citizens not the citizens for the state. In a written Constitution, judiciary has special role of safeguarding the supremacy of the Constitution by interpreting and applying its provisions. Supreme Court established at the apex of judicial system is the final arbiter, interpreter and guardian of the constitution; it is the final court of appeal in civil, criminal and constitutional matters. Art. 131 of Constitution of India confer powers on court to enforce fundamental rights. The court has powers to move proceedings or issue orders and writ in nature *habeas, corpus, certiorari, mandamus, prohibition, quo warranto*.

The judiciary has the power to protect personal liberty against arbitrary encroachment by the state and it has duty to check on exercise of governmental powers in violation of fundamental rights. The judiciary has stood to the need and has proved true to the aspirations of people. It is through judiciary that law which makes a society is maintained as by the order. It is very significant in the governance of the nation because it not only maintains law but also does the work of interpretation and application of the statutes, and coordinates the machinery that applies the law on the ground. The statutes will have no meaning without proper functions of judiciary which interprets the constitution, the very heart of the nation on which the country is built up and continues to exist.

The judiciary being the heart and supreme body of the nation it comprises of, the Chief Justice of India who heads the apex court or supreme court which is the top most court in the country, supreme court judges, magistrates and other officers. It comprises also the



High Courts of India with chief justice, judges and high court magistrates and finally the lower courts and its magistrates. The police, para – military, army which does the work of ground application of the statutes is implementation, Constitution of India as the supreme statute or holy laws of the country, Criminal Procedure Code, 1973, the Indian Penal code, 1860, Penology Act, all Acts related to consumer forums, Indian Contract Act, Indian Companies Act, 2013, Labour Laws, economic legislations Tax Laws, Railway Act and all Acts dealing with cyber laws, functions under operates under judiciary.

The Indian judicial system has played a prominent and unique role in upholding the human rights of the citizens enshrined in the Constitution. It has always shed rights to dispel the darkness of in human and brutal attacks on the dignity of the individual (women), so that every citizen of the country can congratulate the justice, magistrates and learned judges and the police because their efforts at attempting statutes at their disposal.

Role of Judiciary Against Death in Custody

The role of judiciary in preventing any custodial death is very much practical in all the states. The judiciary includes magistrate and judges working in courts and the entire administrative set up helping them in working out legal procedures¹⁵ i.e. the police, para-military (army, air force and navy). The apex court which had read all the provisions contained in the various statutes made the following order that about every state there are allegations of custodial deaths and this allegations are now increasing infrequency, described generally in papers. In case of lock up deaths at present there does not seem any machinery to effectively deal with such allegations.

VI. PRISONERS AND HUMAN RIGHTS: VARIOUS ROLES OF NATIONAL HUMAN RIGHTS COMMISSION

Role of National Human Rights Commission in Protecting Women in Custody

The effectiveness of the commission depends upon the range of functions it performs, the powers, conferred upon it to accomplish them and ultimately the fate of its recommendations. This effectiveness in turn, will provide for the future growth and survival of the commission.

Besides its objectivity will make it more accountable and accessible to the public. Objectivity being the basis of the commission, any deviance could be a major shortcoming in it. On the other hand, the complex process of achieving its objectives depends upon its effect on the public through various other institutions. This will provide to the acceptance and credibility to the commission. The National Human Rights Commission came into existence with certain well-identified objectives.

¹⁵ *State v. Ram Avter Chaudry* (1955), Cr. LJ 600, *Rajani Kanta Mehta v. State of Orissa* 1975 Cr. LJ 83, *Tarcem Kumar v. State* 1975 Cr.LJ 1303 Delhi.

Role of NHRC regarding Inquiry into Complaints

Immediately after the commission was set up, it issued directives to all the state governments to ensure that incidents of custodial deaths, rape, cruel inhuman degrading punishment by police judicial or any other detaining authorities authorized to arrest and interrogate must be reported to the commission within 24 hours by the district magistrate / superintendent of police, failing which the commission will presume that there was an attempt to suppress the incidents. Following these instructions numbers of reports have been received from different states in respect of deaths which have occurred in police or judicial custody. These reports were studied by the commission and accordingly action was recommended against officers found *prima facie* guilty. One very significance development in this connection has been a higher level of awareness among authorities in the government to initiate action against officials along with reports to the commission on incidents of custodial deaths.

Over the past few years of its existence the NHRC has received many complaints and in most of them action had already been taken or initiated. These complaints covered almost all the aspects of violations of human rights including custodial deaths, rape, torture, child Labour and bonded labour, disappearance, dowry deaths, indignity to women, the rights of the disadvantaged sections of society especially of scheduled castes and scheduled tribes, special problems of minority communities.

However, in the following cases is a clear example where the police, Judiciary, or other detaining authorities have committed atrocities and observations recommendations were communicated to the government and the government has acted as per the order of the commission.

Commenting on Amnesty International's concern that the criminal justice system in Gujarat failed many victims, the Central government stated that "there exists a sound constitutional and independent and effective judicial system to safeguard the rights of people in the country.

The impartially and effectiveness of the Indian judiciary is well-known and has been appreciated the world over. The judiciary does not function in a vacuum but acts on the basis of evidence and facts before it. Therefore the comments on the Judiciary are uncalled for". Amnesty International has throughout its report appreciated the active and valuable role of the Supreme Court and statutory bodies like the NHRC in safeguarding human rights in India.

Role of NHRC regarding Improving Custodial Conditions

Having seen clearly from the past incidents overcrowding i.e. insufficient accommodation, indiscriminate handling of offenders unhygienic conditions, sub-standard food, insufficient water supply, use of drugs and narcotic, atrocities on children and women, maltreatment of prisoners and corruption also the detinue are living a life of torture, rape, assault, teasing, harassment, cruel or inhuman degrading or punishment in custody.

Being thus empowered action of NHRC is twofold, i.e. first to study the factors responsible for over-crowding and other worsening jail conditions and steps needed to reduce the atrocities and secondly to encourage such measures as may be necessary to develop or improve the skills of inmates with a view to enabling their re-orientation and



to facilitate their reintegration into society upon release from jail. The members of the commission visited jails and studied conditions in them and the jail manuals and discuss them with officials like Inspector General of Prisons and they noted the number of prisoners, the capacity required and capacity the concerned jails had and noted down.

Reviewing Dimensions of Existing Laws, Implementation of Treaties, and other International Instruments on Human Rights Protection of People in Custody

There has been growing concern in the country about issues pertaining to human right violations. Having referred to this and to changing social realities and emerging trends in the nature of crime and violence it has been considered one of the vital purpose of the protection of Human Rights Act, 1993 to review the existing laws and proceedings and the system of administration with a view to bringing about great efficiency and transparency.

Sub-section (d) of Section 12 has empowered the Commission to act in implementation of safeguards provided by or under the Constitution of India, Cr.PC. 1973, IPC, 1860 and other social statutes for the time being in force for the protection of human rights of people (women) in custody of police, judiciary or any other detaining authority against torture, rape, death, cruel, inhuman or degrading punishment inflicted on them, and recommend measures for remedial action whenever felt to be necessary.

Another area of study by the commission is a legislation affecting the rights of women. Thus the National Commission for women which represents NHRC (1948) has done tremendous job for them. The NHRC remains close with its sister commission on this matter with a view to examining the issues on which it can led best of support and encouragement. India submits periodic reports on implementation of the provisions of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW).

Protecting the Human Rights Literacy and Awareness Among Various Sections of the Society.

Sub-section of Section 12 of the Protection of Human Rights Act. 1993 sets before the Commission the responsibility to "Spread human rights literacy among various sections of the society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means and to create culture of human rights across the entire country and amongst all its people.

Human rights education plays a very important part as reasonable percentage of the population is illiterate and where the concept of human rights is to be understood. Human Rights Commission has set as its goal dissemination of knowledge concerning the rights embodied in the constitution, in international covenants of 1966, i.e. covenant on civil and political rights (ICCPR) as well as other human rights instruments adopted under the United Nations. For awareness creation and literacy the commission, meets and solicits support of all political parties both national and regional. Then they hold meetings with chief ministers of various states. To sensitize heir civil servants, they hold dialogues with the Human Resource Development Ministry (NCERT) and competent educational authorities at the state level. Learning to respect human rights is very important for police, military and para - military forces despite the fact that they face provocative circumstances. In this regard the commission calls the Director Generals of

Police of various districts to prepare model training syllabi for all levels of police force. The members of the commission visit all police training institutes in various districts as well as the police academy to see the type of training being imparted.

The commission has sharpened to propagate its message through the media and one such type is TV advertisement taking up causes of human rights.

Role Regarding Undertaking Promoting Research on Human Rights in Custody

Commission is interested, among other things with the statutory responsibilities to undertake and promote research in the field of human rights violation of people in custody. As research is one of the most important functions of the NHRC its chairperson desires to allot budget and specific amount from the ministry of home affairs and ministry of finance to organize research on and socio-legal aspects concerning women's rights. Accordingly, the commission is undertaking research studies in the following areas :

- (a) Research on elimination of all forms of discrimination against women.
- (b) Improving jail conditions and rehabilitation of women after the sentence.
- (c) Research on elimination of all types of cruelty, (Rape, torture, teasing, harassment) inhuman degrading / punishment directed to women prisoners.
- (d) Abolition of women trafficking for prostitution
- (e) Prevention of female infanticides and foeticide.
- (f) Terrorism and violation of human rights of women in Jammu.
- (g) The problem of the aged women.

The aforesaid role of the NHRC on the normative plane cannot adequately express the overall assessment of the commission. Hence it is imperative here to analyse the efficiency/effectiveness of the commission towards achieving its goal side by side to make it to be more independent, accessible and accountable to the public.

VII. PRISONERS AND HUMAN RIGHTS: ISSUES

Curbing the Menace of Hand-cuffing

Before the formulation of the Indian Constitution which later became the supreme article carrying the law of the land, United Nations had already established reaffirmed their faith in fundamental human rights in the dignity and worth of human persons and in the equal right of men and women to promote social progress and better standards of life in larger freedom in 1948. The very important fundamental human rights established in the United Nations covenants against handcuffing were: - Art. (1) which included that all humans are born free and are equal in dignity and rights hence no human being should punish another by handcuffing him/her. Art. 3 also came down heavily against hand cuffing by saying that; *everyone has right to life, liberty and security as person*. Art. 5 says that *no one should be subjected to torture or cruel in human or degrading treatment or punishment like hand-cuffing*. Art. 6 says that *everyone must be recognized everywhere as a person before the law hence when one is handcuffed one is reduced from a human person to an animal*. Finally, Art. 11 says that one who is charged with penal offence has the rights to be presumed innocent until proved guilty according



to law. All these were later incorporated in the constitutional statutes of India. They ensured safety, security and protection of human person from handcuffing while under any custody i.e. police, judiciary,¹⁶ jail or any other detaining authority authorized by law to arrest, detain and interrogate a person for any offence.

The Court while performing its role in human rights protections of those in custody has passed landmark judgements, the best being that of *Sunil*¹⁷ and *Sukla's*¹⁸ case through which court has given guidelines regarding handcuffing of prisoners and the same guidelines have been incorporated in the police manuals of different states and have this become the law of the land.

The judiciary has a very important role in ensuring the safety and security of the society and the people at large. Another landmark judgement is *Khat Masdoor Chetna Singh*¹⁹ passed June 4, 1998 where some workers who were agitating were rounded up and handcuffed in prisons. When they were produced before the magistrate it was held by the court to be a lapse on the part of judicial officer in the discharge of his duties as judicial officer is expected to ensure that the basic human rights of the citizens are not violated. The court also in its protection of violation of human rights decided that judicial officers should be made aware from time to time, of the law laid down by courts in India more especially in connection with the protection of basic human rights of the people and for that purpose short refresher's courses may be conducted at regular intervals so that judicial officers are made aware of the development in the field of law and if the order is followed we will have a society free from fear as the greatest thing to fear is fear itself.

Hammering the Issues of Wrongful Confinement

Wrongful confinement is to detain a person without following the procedure established by law statute, and any person detained or arrested and continue to be under custody on bailable offences, person detained after completing sentence or term of detention, arrest without informing grounds of arrest, arrest without producing arrested person before the magistrate within 24 hours of arrest, arrest without informing relatives or friends of the accused and refusing him / her representation by counsel of own choice, arresting women without the presence of women police constable and male family member and finally arresting women after sunset and before sunrise and putting them under the security of police constable. All these are summed up to be wrongful confinements which are *ultra-vires* to the law of the land.

Societal Dimension of a Woman after Sentence

After the sentence a women is released from the jail. The problems like discrimination are waiting for her, so much so that a free victim starts thinking that in jail life was good. Some of the problems which normally are faced are social cultural problems, like not being accepted back in the society as a part of it and if again not accepted by parents

¹⁶ Arts. 1,3,5,6,11 of Universal Declaration of Human Rights, 1948.

¹⁷ *Sunil Batra (ii) v. Delhi Administration* 1980 3 S.C.C. 488.

¹⁸ *Mrs. Veena Sethi v. State of Bihar and others*, AIR 1983 S.C.C. 339, *Prem Shankar Shukla v. Delhi Administration* 1980 Cr. LJ 930, *Kishore Singh v. State of Rajasthan* AIR 1981 SC 625.

¹⁹ *Khedat Masdoor Chetna Singh v. State of Madhya Pradesh* JT 1994 6 SC 60.

automatically, a woman becomes street prostitute. So before a female is released her relatives should be informed and where no relative exist or show up the released prisoner should be sent to her destination with a female escort. An appropriate assistance should be rendered to every female prisoner on release whether during or after completion of sentence. For the purpose a centre for assisting released prisoners should be set up to service a cluster of prisoners and custodial institutions on an area wise basis. Even without the centre the prison authorities should take necessary steps to arrange the rehabilitation of the released prisoners either through the family relief or voluntary organizations.

Released prisoners aid societies should operate in every district to provide a single – window assistance towards rehabilitation and mainstreaming of the released women prisoners. Aftercare and short – stay homes for women prisoners neglected by the husbands, family members and society should be established in every state to serve those prisoners who are homeless or rejected by their families. Women released from jail may be rejected because of many reasons, following the traditional belief in the society that will never deter the government judiciary, care homes, committee for jails reforms, NGO's, social organizations and even international bodies to reject, ignore or neglect and abandon an already reformed clean citizen of the land. It is certain that she will be able to survive on the expertise she has. The preamble to the constitution of India promises “to secure to all its citizens justice – social, economic and political liberty – of thought, expression belief, faith and worship equality of status and of opportunity, and promote among them all, fraternity assuring the dignity of the individual and the unity of the state upto here positive right are guaranteed in the statutes in the form of the constitution. In my opinion now work has been made easier for the judicial system for released women's rehabilitation as its work is only to interpret the statutes and define this verses to the government and tell the government that it is duty bound by the constitution to rehabilitate the released women.

Family members or relatives are also duty bound to show up to receive their newly released relative from jail and observe the same person as a part and of a very important member in the family. Being in custody or in jail does not detach the person from the family. She is still a human being and has been reformed to be observed by the parents, husband if married, children and finally society. If she is not so observed as the case may be then the NGOs have a very big role to play. It is their duty to try and convince the family members by any language and any means to welcome the released person. Still if is not possible they will try to rehabilitate her socially and economically by taking her into any care homes till the society changes its minds to take her back.

VIII. CONCLUSION

It may be noted that Indian Judiciary must continue to play its constructive and active role in prison justice, A review of the decisions of the Indian Judiciary regarding the protection of Human Rights indicates that the judiciary has been playing a role of saviour in situations where the executive and legislature have failed to address the

²⁰ S.K. Pachavri, *Women & Human Rights*, 1999, S.B. Nangia A.P. Publishing Corporation, New Delhi, at 70.



problems of the people. The Supreme Court has come forward to take corrective measures and provide necessary directions to the executive and legislature, however while taking note of the contributions of judiciary one must not forget that the judicial pronouncements cannot be a protective umbrella for inefficiency and laxity of executive and legislature. It is the foremost duty of the society and all its organs to provide justice and correct institutional and human errors affecting basic needs, dignity and liberty of human beings. Fortunately India has pro-active judiciary. It can thus be aspired that in the times ahead, people's right to live, as a true human beings will further be strengthened.