

CHAPTER VI

CONCLUSION AND SUGGESTION

Even after the sixty years of recognition of Human rights in various International and National documents, the violations of human rights still continue throughout the country. The violations obviously affect the core of human civilization as well as human development and causing a blemish in the name of humanity. The Universal Declaration of Human Rights instrument is the first stepping stone in protecting the human rights of the accused or under trial, through its mandate, but has not been properly implemented due to lack of proper awareness and training of law enforcement officials. The Police and Prison Authorities are the violators of the principle of human rights of the accused. It is very unhealthy situation where the state agencies who are the protectors of human rights are the violators of the same. Prof. N. R. Madhava Menon, father of the modern legal education, reacting to the popular dissatisfaction with the police observed that "If police tends to become lawless, the very foundation of democracy will be in jeopardy, development will be subverted and countries integrity compromised"⁷⁸¹. To cure the malady, he suggests reform from within the police, by the govt. and the people. It is significant to note here that the Indian Constitution recognizes the rule of law against the concept of arbitrary power of the Police Raj, but in practice the police brutality exercises in routine manner. The concept of custodial dignity characterizes the dignity of a person when he or she is in the police or jail custody and being the denial of values and respect they deserve as human being.

781. N. R. Madhava Menon, A Training Manual for Police on Human Rights, Human Rights Centre 1997, NLSIU Publication Centre, Bangalore, P.172.

There should be an effort to strike a balance between the prevention of crime and protecting human rights of the accused and detenu in the society. Human right being the rights of everyone has assumed great significance at the individual, group, national and international levels. Infringement or blatant violations of human rights occurring in any part of the globe invariably reverberates and alerts the rest of the world community. Un-infringed enjoyment of human right would only remain as an illusion unless human rights are brought under the protective umbrella of the organized state and effective instrument are created for redressal of grievances relating to human rights.

As a result of the study, it has come to the conclusion that there is eminent need to bring in changes in criminal justice administration so that state should be recognized that its primary duty is not to punish, but to socialize and reform the wrong doer and above all it should be clearly understood that socialization is not identical with punishment for it comprises prevention, education, care, rehabilitation within the work of social defense⁷⁸². In working toward its goal, the respect for human values must be ensured and it must be conceded that one cannot honestly insist on irreproachable conduct if one does not use methods in conformity with the principle of our civilization. It is also most important that criminal law should ensure that human rights are respected by seeking that the law is strictly adhered to. The principle of liberty and dignity, which are results of historical development of present day society, should be considered inviolable⁷⁸³.

There should be an effort made by the judiciary to check the violations by interpreting the laws in wider connotation for protecting basic human rights

782. R Deb, *Criminal Justice*, [1st Edition, 1998], The Law Book Company (P) Ltd., Allahabad, P. 110.

783. *Ibid.*

including dignity, worth, freedom of person, otherwise it remains as a mere bookish concept, without working implementation.

A careful peep into the criminal justice system and criminal process reveals that victim of crime in India, are neither compensated comprehensively nor allowed to participate effectively in the investigatory, prosecution and sentencing process. An overview of the legal framework governing the payment of compensation to victims of crime in India unmistakably reveals that law in India is fragmentary and inadequate to compensate victims of crime. Further it leaves it to the sole discretion of court to pass compensatory orders.

The contemporary administration of criminal and penal justice in India, which ensures the protection of the rights of the accused both Constitutional and Statutory and which is dominated by the idea of reformation and rehabilitation of offenders, is not only unjust and inequitable from the points of view of victims of crime and their competitive claims of reparation but it is also the negation of the rule of law.

The Indian Rights Jurisprudence regards any form of torture, physical or mental, or any type of cruel, inhuman or degrading treatment to a person in jail as offensive to human dignity enshrined in Art 21 of the Indian constitution. Moreover, Indian Rights Jurisprudence conforms to the International Standards and this should gladden the hearts of freedom lovers all over the world. But this does not mean that our prisons are ideals, rather it is the most undeserving conditions of our prisons which have the say that it provoked the Supreme Court to develop this aspect of Rights Jurisprudence. In other words the rights on paper are at par with the International Standards but their implementation leaves a lot to be desired.

From the above description, it becomes clear that ever since the establishment of National Human Rights Commissions in India, has played a significant part in combating the practice of torture, it has been

successful in persuading the successive governments to honor the various international commitments relating to promotion and protection of human rights and especially to ratify the UN conventions against torture to take suo motto notice of gross human rights violation across the country and recommending stern action and compensation to be given to victims of police highhandedness and torture. The NHRC has covered a long journey. There is however, no denying the fact that it has indeed been acting as the custodian of human rights and civil liberties of the citizens of this country and is also expected to continue move vigorously in the future, too. Nevertheless, one of the most prominent arguments usually advanced against the NHRC is that it is merely a recommendatory body to any State Government or even the National Government.

To meet up the challenges, the future criminal justice researches in India needs to concentrate on scientific and objective analysis of the salient issues in criminal justice in the context of our own social and administrative realities. Issues such as exploitation and sufferings of weaker sections in our criminal justice process, impact of judicial activism on the administration of criminal justice, fair trial, detention security vis-à-vis Constitutional Rights of the prisoners, Prison and Juvenile justice, operational problem of law enforcement agencies, problems of intra-organizational relationship and inter organizational people oriented criminal justice system should receive top priority the criminal justice research and study. In recognition of the head of theoretical knowledge building and the development of alternatives to cope with practical problems, serious research - theoretical as well as empirical- are necessary in basic and applied areas.

The Report of the Mallimath Committee has given us the detailed outlined of the future prospect of Criminal justice system by reforming the role of the different functionaries of criminal justice system

and by adopting inquisitorial trial in place of adversarial system of trial to protect the human rights of the accused, but its implementation is still in question due to infrastructural lacuna in our country. It is obvious that the threat to the erosion of the human rights contained within the Criminal justice system is clearly manifested in the Mallimath Committee Report. The Report has been criticized saying it contradicts legal standards established by conventional and customary law, and displays a surprising lack of comprehension of both the mechanism of inquisitorial system and the impact that such a transformation would have on Indian Criminal justice system. Yet there exists every possibility that the recommendations of the committee may be adopted in near future. The contribution of the Report of the Mallimath Committee cannot be undermined in criminal justice system.

Though there are considerable number of laws present in International and Municipal law regarding both civil and economic rights, coupled with the consistently large number of violations that go unpunished, there are clearly serious problem that need to be addressed. The problem, of course, is multifaceted and cannot be distilled to one issue. The potential solutions offered below though could assist with the enforcement of laws that are already in place.

I. Public Awareness: Alertness for enforcement of laws will be strong if the common people have better understanding of their rights. The civil and political rights are relevant in this respect. It is the duty of the government to make the people aware of their rights and legal obligations and laws can be implemented.

II. Accountability of the Police: In order to prevent the illegal activities of some government officials, the provisions for accountability should be made stronger. The Supreme Court in **D.K.**

Basu's⁷⁸⁴ case named lack of accountability as one of the major problems with the enforceability of anti-torture laws in India. Moreover, the police officials and government officials do not feel the weight of responsibility for enforcing the laws. According to Article 2, of International Covenant on Civil and Political Rights, the victims have a method of redressal if their rights are violated. This remedial process is a welcome as it restrains the people to violate human rights, ensuring that punishment may be negligible.

In order to act properly the police should have independence and accountability. The police should be provided with independence the other professionals the officers may submit to manipulation and abuse of law. Similarly, the police have to be accountable to the public. It is suggested to make the police procedures open to debate, so that people can understand the reasons police activities.

III. Prosecution as a deterrent: Various incidents of abuse can be prevented through the actions of the victims. The government can provide redress by prosecuting and punishing the perpetrators to the fullest extent. An officer is to be employed to take the notion of punishment for convictions. Generally, officers are not daunted by the possibility of prosecution at the present time since most trials end with an acquittal that is usually the result of insufficient evidence, a phenomenon which occurs because the accused officers are in charge of the record that serves as evidence. Thus, the evidence can easily be manipulated or lost. In order to help victims, there needs to be a stronger witness protection programme. In order for a successful, the welfare of these victims must be protected to the great extent possible.

784. D. K. Basu v. West Bengal AIR 1997 SC 610.

IV. Better Implementation of Legislations: India is not lagging behind in term of the forwarding the Constitutional mandate and case law, and it has acquired commendable position in international treaties. At the legislative level, however, the implementation has not started yet. The Code of Criminal Procedure has given wide discretionary power to police, the police power in criminal justice system should be restricted and another impartial agency should be employed to supervise the police work. The Parliament should enact legislation on the lines given in the directions of the Apex Court in **D.K. Basu**⁷⁸⁵ and **Delhi Judicial Service**⁷⁸⁶ in order to ensure governance according to the rule of law and for the sake of keeping the dignity on the judiciary unimpaired. The outdated provisions of in Cr. P. C. need to be amended.

Parliament should amend the Indian Evidence Act so as to insert in it the recommendation of the Law Commission in its 113th Report to the effect that in prosecution of a police officer's of having caused bodily injury to a person if there was evidence that the injury was caused during the period when the person was in the custody of the police, the court may presume that the injury was caused by the police officer having custody of that person during that period.

V. Change in Culture and Attitude: It has been observed several times that only by changing the law, the police protection cannot be restricted or reversed. At the grass root level, culture and behavioral change is required. Those who are the practitioner of law and concerned human rights, their own cultural development should be proper and legal. The culture of violence is detrimental to Human Rights Jurisprudence.

785. D. K. Basu v. West Bengal AIR 1997 SC 610.

786. Delhi Judicial Service Association (Regd.) v. Union of India, (1998) 2 SCC 369.

VI. Techniques of Scientific investigation: Scientific investigations play significant role in the process of interrogation and investigation under criminal justice system. The police should be well equipped with the Lie-detectors and other gadgets which are effective crime detection devices. The policemen must be familiar with various techniques of interrogation and not the commonly known "Third Degree" alone. Trained professional investigators may be helpful in this respect.

VII. Females in custody: Lock ups for females must be situated in good localities and female constable should be employed there. Female suspects should be conducted in the presence of female police officers. The magistrate has to ensure that while prosecuting the female suspects before him for interrogation, the detainee should be spared violence by police. Women police officers must be present when a female person is arrested or searched. The arrest or search should not occur at night. There should be separate arrangement for keeping the female suspects and independent mechanisms are required. Any arresting women relative of the suspect against whom there is no charge, who is only arrested to force the suspects to surrender should be clearly identified as illegal and the offence as wrongful confinement. Reports of such incidents must be investigated properly with responsibility⁷⁸⁷.

VIII. Implementations of Commissions or Committees Report: The contemporary governments often set up some commissions or committees to observe deferent cases of custodial crimes. This is a matter of concern that in most of cases neither the reports of these commissions get released nor their recommendations have been

787. Dr. Deepa Singh, Human Rights and Police Predicament, [1st Edition 2002] Delhi, R.C.Bangia Publication, P.232

implemented. Therefore, reviewing the reports, and taking actions property laws should be implemented.

IX. Revamping of criminal Justice system: The proper review of criminal justice system is necessary to make it effective. Although the ultimate satisfaction of the victim of a crime is that the criminal has been tried by a court of law and has been punished, the criminal is subjected to in human torture in the name of investigation and interrogation. Human rights emphasize that if the law is made more punitive and punishment more stringent, the number of custodial offence will decrease. Eventually the incidents of police violence will come to an end.

X. Monitoring Mechanism: Monitoring Mechanism to keep constant vigil on the police and security force behavior should be implemented by the government. The mechanism should include persons of integrity, respected in the local community and capable of independent judgment and political impartiality. They have to be aware international human rights standards, national law, new forms of legal judgment that provide safety to the arrested or detained.

XI. Code of Conduct of Police: The police must act according to the spirit of the Constitution. The Police Act, The Code of Criminal Procedure 1973, and various police Manuals give the directions to the police to fulfill their duty with responsibility and continue with the work culture. Adding to this, there is internationally accepted code of conduct for law enforcement officials, well echoed in the endorsement of the code of conduct adopted by the conference of the heads of the police organizations of various states in the country which was supported by the Third National Police Commission. But most importantly a clause was modified instructing the police to act as the servant of the law and not as a servant to the government in power.

Accepting the clause changes were suggested in 12th code of conduct for especially in the context of obedience to superiors.

XII. Speedy Trial: Speedy enquiry and Trial measures must be implemented in the Criminal Justice System. Mostly in the cases of custodial torture resulting in death speedier enquiry is required for justice delayed is justice denied. Similarly, another point is that there should be some fixed code of conduct for the police determining their role and duty, so that the police and public relation may strengthen itself assuring fair and just implementation of law.

XIII. Role of Media: In this present century the role of media in criminal justice has grown quite crucial and hence cannot be overlooked. Media can expose the abuse of power and thus can protect the functional and fundamental aspects of rule of law and democracy. The Media should be realistic, unbiased and prompt in putting up the picture of criminal activities as well as police atrocities upon the arrested and detained.

XIV. Commitment of the State-Police and the Public to the Human Rights Values: There should be serious investigations regarding the torture of any individual inflicted by the law keepers. The NHRC has been established by the government to resolve the issues on the Human Rights. However, the public commitment of the state and the police organization is crucial in putting an end to the misuse and abuse of law. The official response should emerge out as a permanent resolve in upholding the demands of human dignity and individual rights. The police administration must weave in its system the internal human rights performance with iron hands.

XV. Prompt investigation into Allegations of Torture: In many cases, the unnecessary delay in investigating the crime makes the criminal justice system incredible. People fail to retain their faith upon

the investigating procedure. Therefore, investigators should start their job promptly and effectively having necessary resources and powers. The investigating members should not include public officials who are suspected to be involved in some torture or ill-treatment. At the same times, any police official who has harassed the victim or witness should be punished.

XVI. Witness Protection: To make the investigation fruitful it is essential to protect the witness at any cost. The witness who always has a risk from intimidation and reprisal can be saved through witness protection programme that has to be established in every state of country. Police and other officials found disobeying orders of judicial and other investigating officers should be under immediate disciplinary proceedings. All the findings and methods have to be made public and victim's family must be allowed to access to the complete records of the enquiry. The medical professionals carrying out post mortem and medical examinations should be protected from public pressure.

XVII. Redefine the role of Police: The police role continues to be a legacy of the colonial culture in the form of Police Act of 1861. The Role of the police has to be redefined emphasizing that the duties of police include 'guarding the rights of the people'. The government should take significant steps so that the police department can work properly saving the rights of the arrested, practicing in a humanitarian way so that peace and justice may prevail throughout the nation. There has been almost 30 years of debate on policing and reform in India, with commission submitting Reports and recommendation to government. Each report has gone unimplemented. At the end of 2006, there was a shift in the reform process, with a Supreme Court decision that required Indian Governments to ensure police accountability and the release of a draft Model Police Act, by a National

Police Act Drafting Committee. On 22nd September, 2006, The Supreme Court of India delivered a historic judgment in **Prakash Singh v. Union of India**,⁷⁸⁸ instructing central and state governments to comply the directives that lay down the practical mechanism to kick-start Police Reform.

XVIII. Political Interference: The police activities are often disrupted by political interference. The police have been used by some politicians just to avenge against their oppositions. They create unnecessary pressure upon the police and make them bound to disobey the law. Fearing the consequences like transferring them into some inconvenient places most police officials stoop to undesirable options. Therefore, the politicians should keep themselves away from interfering into police department and it is possible through developing a proper sense of justice.

XIX. Exercise of Contempt power by Judiciary: The judiciary has made a great contribution by its various pronouncements in the direction of protecting the Fundamental Rights (particularly Article-21) from the arbitrary, unwarranted and naked and barbarous atrocities at the hands of the errant police officials. It will be better if the judiciary exercises its Contempt power *Suo moto* in case of contravention of the norms laid down by it in the various cases.

XX. Judge's Accountability: The accountability of judge's need to be modified in order to protect the human rights and to execute law properly. The Judges (Declaration of Assets and Liabilities) Bill, 2009 includes clause vi that requires judges to declare their assets to their superiors but spares them from being made public. The accountability to the judiciary is desired to deal with unlimited corruptions in the sector. The bill instructs the high court judges to furnish in detail their

788. *Prakash Singh v. Union of India*, Decided in the year 2006.

assets and liabilities, and those of their dependents to their respective chief justices. The state chief justices and Supreme Court judges will submit their details to the Chief Justice of India, who will furnish his own details to the President of India. A law is to be made to protect judges from several extraneous pressures. The accountability of judges is also required to secure fair judgment.

XXI. Compensatory Remedy: The new trend starting from *Rudal Shah*⁷⁸⁹, providing for the monetary compensation to the victim by the judiciary in case of infraction of Fundamental Rights (by the police or public authorities) is a good signal heralding the new era in the public law remedies and giving death blow to the archaic and feudalistic common law rule of sovereign Immunity. Here it is humbly submitted that if the judiciary goes step further and also gives directions for ensuring the departmental enquires, Prosecutions and punishment of the guilty police officials in case of police atrocities, custodial violence and custodial death, it would have a great deterrent effect and would go a great deal to cure the misuse of police power.

XXII. To strengthened Human Rights Commission: The problem of arbitrary arrest and custodial violence are prevalent throughout the nation and the cases of police atrocities are making the justice system a failure. According to the Protection of Human Rights Act.1993 protection and safeguards that were provided but due to the barbaric treatment in the custody this law cannot be implemented properly. Different measures have been taken by the Supreme Court of India, the human rights observant, the National Human Rights Commission to put an end to the continuing custodial atrocities by the police. The Supreme Court declares all types of police brutalities go against human dignity. However, the National Human Rights Commission is

789. *Rudal Shah v. State of Bihar*, AIR 1983 SC 1086.

facing the problem of custodial justice system since its beginning. It has suggested immediate reformations or rectification in the system of police department especially in the character and methods of functioning of the police.

In order to furnish an adequate and efficient system for the police activities the commission should have to empower itself with adjudicating powers. The government must ponder over the efficiency and significant of the law commission and National Human Rights Commission in curbing the custodial crimes and give them absolute power to remove the justice system from the curse of police atrocities and brutalities in the custody.

XXIII. Role of the Non Governmental organizations: The movement for upholding human rights has been strengthened by a number of international and national organizations. The Indian Society for Human Rights to All and Equal Justice to Criminal and Victims is such a nongovernmental organization which aims to make common people aware of the inhuman activities or barbarous deeds that disregard the dignity of a human being. This NGO is also striving for providing all fundamental freedoms (such as freedom of speech, freedom from fear etc.) fulfilling the aspiration of a common man. At the same time it emphasizes the equal justice for both crime-doer and victims who equally deserve to protect their rights as human being. There are many NGOs which are to take constant effort to advocate the commitment of the justice system providing human rights.

XXIV. Desired relationship between police and public: In India people often react against the police activities demanding transparency and accountability. They expect prevention, protection provision and participation from the police in solving a criminal case. But police can proceed with its actions accumulating sufficient

evidence. It has become evident that police may win support and co-operation from the people maintaining human rights friendly approaches. It is a matter of great concern that there are many loopholes in the way the police are trained. They are not equally aware of their duties and responsibilities or there is still dearth of mechanized learning system which prepares a police person facing every situation with courage and legal knowledge. They should not be allowed to arrest arbitrarily that produces public wrath and violates the norms of human rights. In the present century police department often faces challenges from the media and a number of NGOs. Through them the common people are able to access the activities of police and gradually they are becoming aware of their rights. The police department can not continue criminal investigation procedure ignoring tremendous influence of media and NGOs over the common mass. Therefore the department needs to rearrange its system of actions and mode of behavior in order to carry on with the human rights friendly activities and in this purpose it should incorporate the fair and just involvement of media and NGOs.

XXV. Prison Reforms: The prison administration is one area which is the most neglected one by the state authorities on one pretext or the other. It has been observed by the Mulla Committee⁷⁹⁰ that the deplorable prison condition in India has been of and on, a subject of criticism in the Press, the Parliament and the Judiciary. Over-crowded prisons, prolonged detention of under-trial prisoners, unsatisfactory living conditions, lack of treatment programmes and allegation of an indifferent and even inhuman approach of prison staff have repeatedly attracted the attention of critics over year. The Law Commission of

790. Report of the All India Committee of Jail Reforms, 1980-83, Under the Chairmanship of Justice, A.N.Mulla, P.365-402.

India's 78th Report on the congestion of under-trials prisoners in jail, submitted in 1979, also has a topical feel about it.

Keeping in view the prison condition and the laws are now archaic and that Prison Act 1894 was drafted during the British rule, experts and committees have been demanding the enactment of new law. The All India Committee on Jail Reforms (1980-1983) more popularly known as Mullah Committee in fact drafted a model prison bill on the lines of the U. N. Standard Minimum Rules for Treatment of Prisoners, 1955. Then the National Human Rights Commission of India proposed two Prison bills for consideration by state governments and re-enactment of the prison legislations in their states in accordance with the standards prescribed by the commission to ensure the human rights as well as human dignity of the prisoners. These bills were the Prison Bill 1996 and the Prisons (Administration and Treatment of Prisoners) Bill of 1998 respectively. Some of the important recommendations made in this regard are enumerated as under, which require immediate implementation:

The Model Prison Bill⁷⁹¹ suggested by the Mullah Committee made several recommendations which have been stated at different places in the report. To avoid repetition, we have not reproduced the recommendations from the above text. However, to provide a bird's eye view of the ground covered by the workshop, a summary of the recommendations in a capsule form is provided under different heads:

A. Overcrowding

- Optimum capacity of prisons needs to be assessed. Central Jails should not house more than 750 inmates and district jails not more than 400.

791. Report of the All India Committee of Jail Reforms, 1980-83, Under the Chairmanship of Justice, A.N.Mulla, P.365-402.

- Certain offences should be decriminalized and alternatives to imprisonment should be designed to deal with such cases.
- Some more offences should be added to the list of compoundable offences prescribed in law.
- Unnecessary and indiscriminate arrests should be avoided by police personnel.
- Some Armed Police should be raised exclusively for the Prison department and kept at their disposal.
- Alternative care homes for non criminal mentally ill persons should be built.

B. Under trials and Legal Aid

- An Amendment should be made in the Cr. P. C. to enable an under trial prisoner to plead guilty at any stage of the trial.
- Lok Adalats should deal not only with compoundable cases but also with cases where the accused pleads guilty. The scope of work of Lok Adalats in criminal cases should be increased.
- The plea bargaining system may be considered for introduction after adopting necessary safeguards.
- Legal aid workers should make greater use of the judgment of the Supreme Court in **Common Cause v. Union of India**⁷⁹² and approach the courts to get more persons released from jails.
- Legal literacy drives should be launched with the aim not only of sensitizing the prison administration but also of spreading awareness amongst prisoners about their rights and obligations.
- It is necessary to keep identifying those who need and deserve legal aid. Legal aid workers must identify such prisoners and educate them about their right to legal aid.

792. (1996) 4 SCC 33.

- Legal aid workers must help in getting the under trials released on bail and on personal recognizance.
- Para legal staff should be utilized to work in prisons and provide the required legal aid to prisoners.
- Legal aid workers must constantly monitor prison conditions and suggest changes in law to bring about the desired reforms.

C. Health Care and Medical Facilities

- It is necessary to review the strength of doctors sanctioned for prisons and ensure the availability of adequate medical facilities for prisoners and prison staff.
- Arrangements must be made to look after the special requirements of women prisoners. At least one woman medical officer must be available at times to attend to women prisoners.
- The first medical examination of the prisoner, done at the time of his entry into the prison, must be thorough. Detailed information about various ailments, including past medical history, must be collected and faithfully recorded.
- Adequate infrastructural health care facilities, like well equipped ambulances, stretchers, dispensaries, hospital beds etc. should be made available to the prison administration.
- Suitable arrangements should be made to provide psychiatric counseling to those suffering from chronic depression, particularly to women prisoners.
- There should be a clearly defined system of responsibilities of the prison staff in case of a medical emergency, which should be made known to prisoners through a chart or pamphlet.
- NGOs' help should be enlisted in dealing with drug addicts and in establishing drug de-addiction centers.

D. Women Prisoners

- Programmes should be implemented to sensitize the prison administration on gender issues and the special needs of women prisoners.
- Besides special facilities for pregnant women, arrangements should be made to allow women to go back to their families for post natal care.
- It is necessary to take special care to rehabilitate women prisoners, as it is harder for them to find acceptance in civil society upon release than men. Thus women should be specially equipped with vocational skills to empower them on their return to society.
- Arrangements should be made for women to reside in special homes if they find it difficult to get accepted in society after release.

E. Classification of Prisoners

- Classification of prisoners on the lines of education, income tax status or socio-economic background should be abolished and it should be done on the lines suggested in the Justice Santosh Duggal Committee Report.

F. Implementation

- A mechanism should be evolved to monitor and ensure the implementation of various recommendations made by different expert committees, courts and workshops from time to time. The NHRC and the State Human Rights Commissions could take up this work and ensure that follow-up action is taken to implement the recommendations.
- Existing laws and arrangements should be reviewed so that prisoners could exercise their right to vote.

G. Prison Staff

- The recommendations made earlier by many expert groups that there should be an All India Prison and Correctional Service should be considered by the Central Government.
- Most prisons suffer from shortage of manpower. The State Governments should periodically review the requirements of different types of staff required, including medical, and take steps to remove the shortage.
- There is considerable stagnation amongst different ranks in the prison department due to lack of promotion opportunities. The governments should carry out a cadre review and create additional opportunities for promotion for different ranks based on a work study.
- The posts of convict warders should be abolished and an equivalent number of regular posts should be created to meet the requirements of manpower.
- A conscious policy towards the induction of more women in the prison administration is necessary to bring about gender balance and sensitivity within the system.
- The pay-scales of lower ranks in the prison department need to be reviewed. The State Governments should not downgrade the posts of the prison department by prescribing lower pay scales for them as compared to the posts of the other departments, particularly when the recruitment to these posts is done by the State Public Service Commission on the basis of a combined recruitment test.
- The State Government may consider establishing parity in the pay scales of lower ranks in the prison department with those in the police department after doing an analysis of job responsibilities of the selected ranks in the two departments.

H. Training

- It is necessary to organize periodic training programmes and refresher courses for all levels in the prison administration.
- All State Governments should establish training institutions exclusively for the basic as well as in-service training of the prison staff.
- The NHRC and the State Human Rights Commissions should ensure that the human rights component is made central to all training modules adopted and implemented by the prison training institutions.
- The training of prison staff must be made the responsibility of those who are professionally competent and who have the required aptitude to bring about reforms.

I. Accountability

- A Manual, explaining to the prisoners their rights and obligations, procedure for lodging complaints, the conduct that is expected of jail administration etc., should be prepared in simple language for prisoners' benefit. The Manual should be supplemented by the efforts of the NGOs to do legal literacy work amongst prisoners.
- The system of visitors should be made viable to function as an effective monitoring mechanism. The visitors should be chosen from amongst those who have an interest in prisons and knowledge of how they should be run.
- Appointment of visitors should be done on the advice of the State Human Rights Commission. The criteria for selection should be made known to the public.
- An effective complaint system should be established which would encourage the prisoners to lodge complaints without fear of retribution. The complaints should be enquired into fully and impartially and strict action should be taken against the persons found

guilty. No attempt should be made to suppress wrong doing by any member of the prison staff.

- Prisons should be opened to civil society organizations as this would help in ensuring transparency and accountability in the prison administration.

J. New Prisons Bill

- The new Prisons Bill drafted by the NHRC must incorporate effective safeguards against violations of prisoners' rights and establish mechanisms to ensure accountability of the prison staff for violations.
- The new Bill does not set out the duties and mandate of the prison visitors. The visitors should be mandated to examine all aspects of prison life and not restricted to some defined issues, as the new Bill does.
- The National and State Human Rights Commissions should be given the mandate to appoint prison visitors who should then report back to the Commissions, heads of the prison department and make their report public through effective use of mass media.
- The Bills fails to provide for an impartial body independent of the prison administration to hear prisoners' complaints. This lacuna should be removed and the new law must institutionalize arrangements for outside oversight of investigations into prisoners' complaints.

The NHRC should invite a wider public debate on the Bill and also call representatives from the State Prison Departments to give their views so that the new law reflects the practical wisdom of the custodial dignity of the detinue or under-trials prisoners.

Despite the plethora of enforceable laws, the ground reality in India is quite different. From civil rights to economic rights, citizens do not have the opportunity to assert their fundamental rights that are

guaranteed in the country's Constitution. Perhaps the most influential legal voice is the Supreme Court, which, through judicial activism, has brought attention to the ongoing dilemma of right to life issues.

Although the Supreme Court decisions are widely known as the "law of the land," in practice, they are largely paper tigers. The government, for example, continues to act without regard for the so-called landmark cases that are considered revolutionary. Until the culture of the national government, as well as state government, change, the Supreme Court's judgments will cease to continue to live solely in text books and in the academia. Right to custodial dignity will not have a real, tangible effect on the common citizen in India unless India adopts a culture devoid of violence.