

## **LIFE OF A PRISONER: A LEGAL STUDY SYSTEM AND ITS REFORMS IN INDIA**

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### **I. Introduction**

Prison is a place where the criminal justice system put its entire hopes. Punishing the offenders is the primary function of all civil societies. The correctional mechanism, if fails will make the whole criminal procedure in vain. The doctrine behind punishment for a crime has been changed a lot by the evolution of new human rights jurisprudence. The concept of reformation has become the watchword for prison administration. Human rights jurisprudence advocates that no crime should be punished in a cruel, degrading or in an inhuman manner.<sup>2</sup> On the contrary, it is held that any punishment that amounts to cruel, degrading or inhuman should be treated as an offence by itself.<sup>3</sup> The transition caused to the criminal justice system and its correctional mechanism has been adopted worldwide. Here the inquiry is made to know the extent of inclusion of these human rights of prisoners into Indian legislations.

Internationally, it becomes a well accepted rule that the correctional mechanism in criminal justice administration should comply with reformatory policies.<sup>4</sup> It is also declared that all prisoners shall be treated with respect due to their inherent dignity and value as human beings.<sup>5</sup> There are a set of rights identified by the international legal system so as to save the human dignity and value of prisoners and there by the reformatory theme of correction. It is also strongly argued that the community can never tolerate a scheme of correction that does not maintain a connection with the evilness of the crime done.<sup>6</sup> Thus punishment always maintains a subjective perspective. The rights of the imprisoned person have to be read despite of this perception. It is truly meant that there can be varied punishments for same offence; but one should not be treated bad while the sentence once

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<sup>2</sup> Conversion Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.

<sup>3</sup> Ibid Article 4

<sup>4</sup> International Covenant on Civil and Political Rights, 1966, Art. 10 (3) mandates that the essential feature of correctional system should be reformation and rehabilitation of Prison.

<sup>5</sup> Basic Principles for the Treatment of Prisoners, 1990. Principle 1

<sup>6</sup> Frank Pakenham, Lord Longford, "*The Idea of Punishment*", 1<sup>st</sup> Edition, Published by Geoffrey Chapman, London (1961), Pg. 55

declared by the court goes on. In this purview, the rights guaranteed under the international legal system is to be looked into and legislative concern for the same in India.

Punishing the offenders is the primary function of all civil society. Prisons are well known to have existed throughout the history. Existence of prisons can be traced back to the ancient period. It was believed that rigorous isolation and custodial measures would reform the offenders. With the development of behavioural sciences, it began to federalize that reformation of offenders was not possibly by detention alone. The prisons are not normal place to inhabit or to visit. The prisoners who have committed crime and being put behind the custody are very often deprived of freedom and personal contacts with family and friends. The utility of prison as an institution for rehabilitation of offenders and preparing them for normal life has always been a controversial issue. There are quite a large number of offenders who are otherwise well behaved and are persons of respectable class of society but they fall prey to criminality on account of momentary impulsiveness, provocation or due to situational circumstances. There is yet another class of prisoners who are otherwise innocent but have to bear the rigours of prison life due to miscarriage of justice. Obviously such persons find it difficult to adjust themselves to the prison surrounding and find life inside the prison most painful and disgusting.

In India, prison reforms did not emerge out of the social movement but were necessarily an outcome of the worst conditions of treatment faced by the political sufferers in prisons during the period of their imprisonment. They repeatedly launched protests with the prison authorities and made all possible efforts to see that the rigours of prison life are mitigated and prisoners are humanly treated.

## **II. Meaning of Prison**

The term prison has been defined by the Prisons Act, 1894 in an exhaustive manner under Sec. 3 which defines prisons as: "Prison" means any jail or place used permanently or temporarily under general or special orders of the State Government for the detention of Prisoners and include all lands and buildings appurtenant thereto, but does not include – any place for the confinement of prisoners who are exclusively in the custody of the people.<sup>7</sup> Prison can be any place by virtue of a government order being used for the detention of prisoners. Thus even a jail will come under the definition of prison according to this definition. Similar definition has been given to prison by Prisoners Act, 1900.<sup>8</sup> These two enactments still remains the basic premises by which the administration of prison has been regulated.

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<sup>7</sup> The Prison Act, 1894, Sec. 3 (1)

<sup>8</sup> Ibid Sec. 2 (b)

The Prisons Act excludes police custody and subsidiary jails from the meaning of the word prison. International human rights law also developed its own conception for the term prison. According to them prison can be only a place for the treatment of convicted persons. According to the human rights law for the protection of imprisoned person, imprisoned person means a person deprived of personal liberty as a result of his conviction on any offence and imprisonment means such condition of an imprisoned person.<sup>9</sup> This will help to give clearer picture with regard to the issues faced by a prisoner in general, an under trial prisoner and a detained person.

The modern idea about prison has been envisaged by judges through the decision making process. Even the concept of open jails has been evolved by time. No longer can prisons be called as an institution delivering bad experiences. Krishna Iyer, J opined prison as:

*A reformatory philosophy, rehabilitative strategy, therapeutic prison treatment and enlivening of prisoner's personality through a technology of fostering the fullness of being such a creative art of social defense and correctional process activating fundamental guarantees of prisoner's rights is the hopeful note of national prison policy struck by the constitution and the court.*<sup>10</sup>

Thus now all the dignity that human holds can also be availed inside the four walls of prison. The traditional definition and concept about the prison is unfit for the time. The human rights jurisprudence contributed much for the penal reforms and the same had its impact in India.

### **III. Problem Faced in Prison**

#### *i) Overcrowding*

It is known fact that prison in most parts of India is overcrowded. Congestion in jails, particularly among under trials has been a source of concern. The Law Enforcement Assistance Administration National Jail Census of 1970 revealed that 52% of the jail inmates were awaiting trial.<sup>11</sup>

Obviously, if prison overcrowding has to be brought down, the under-trial population has to be reduced drastically. This, of course, cannot happen without the courts and the police working in tandem. The three wings of the criminal justice system would have to act in harmony.

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<sup>9</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Adopted by General Assembly resolution 43/173 of 9 December 1988

<sup>10</sup> Shankardass, Rani Dhavan, "Punishment and the prison: Indian and international perspectives", Sage Publications, New Delhi, 2000, Pg 58

<sup>11</sup> Law Commission of India Report 1979

Speedy trials are frustrated by a heavy court workload, police inability to produce witnesses promptly and a recalcitrant defence lawyer who is bent upon seeking adjournments, even if such tactics harm his/her client. Fast track courts have helped to an extent, but have not made a measurable difference to the problem of pendency. Increasing the number of courts cannot bring about a desired difference as long as the current 'adjournments culture' continues.<sup>12</sup>

The juvenile offender who are kept in jails because of inadequacy of alternative places where they can be confined, come into contact with hard criminals and are likely to become professional offenders. And after release from the jail they might cause the harm in the society. The law commission in its 78th report made some recommendations for easing congestion to the prisons. These suggestions include liberalization of conditions of release on bail, particularly release of certain categories of under trial on bail.<sup>13</sup>

#### *ii) Abuse of Prisoners*

Death of an inmate is a matter of serious concern for prison administration. Sometimes, public takes to street in protest against such deaths. It invites flak from media, Non Governmental Organization's concerned with civil liberties and Human Rights Commission. Deaths in jails have been broadly classified into two categories i.e. Natural Deaths and Unnatural Deaths. Unnatural deaths include Suicides, Execution, Murder by inmates, Due to firing, Due to negligence or excess by jail personnel etc. One of the most striking and positive features of these prisons, however, is that they do have ambulances for use in emergencies.

Physical abuse of prisoners by guards is another chronic problem. The prisoners are subjected to untold suffering in the prisons. There are many cases in which the Prisoners are beaten to death by the prison authorities. Still worse the officials were able to obtain false certificates from doctors to prove that the deceased had committed suicide.

Women prisoners are particularly vulnerable to custodial sexual abuse. The problem was widespread in the United States, where male guards outnumbered women guards in many women's prisons. In some countries, Haiti being a conspicuous example, female prisoners were even held together with male inmates, a situation that exposed them to rampant sexual abuse and violence.<sup>14</sup>

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<sup>12</sup> R.K. Raghavan, "The hell that is prison", Volume 21, Issue 26, The Hindu, 2004

<sup>13</sup> V.N.Paranjape, "Criminology Penology", 12<sup>th</sup> Edition, Central Law Publication, 2005, Pg 586

<sup>14</sup> Suresh Bada Math, Pratima Murthy, Rajani Parthasarathy, C Naveen Kumar, S Madhusudhan, "Mental Health and Substance Use Problems in Prisons. The

Interestingly, the prisons in Karnataka have recorded consistently less deaths compared to other states.

*iii) Poor spending on healthcare and welfare*

In India, an average of Rs.17725.90 per inmate per year was spent by prison authorities during the year 2009, distributed under the heads of food, clothing, medical expenses, vocational/educational, welfare activities and others. This is in contrast to the US, where the average annual operating cost per state inmate in 2001 was \$ 22,650 (the latter presumably also includes salaries of prison staff). The maximum expenditure in Indian prisons is on food. West Bengal, Punjab, Madhya Pradesh, Uttar Pradesh, Bihar and Delhi reported relatively higher spending on medical expenses during that year, while Bihar, Karnataka and West Bengal reported relatively higher spending on vocational and educational activities. Tamil Nadu, Orissa and Chhattisgarh reported relatively higher spending on welfare activities. The International principles on Prisoners' Health Rights are recognised as follows: Article 12 of the International Covenant on Economic, Social and Cultural Rights establishes "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health". Those who are imprisoned retain this fundamental right and their entitlement to a standard of medical care that is at least the equivalent of that provided in the wider community.<sup>15</sup> When a state deprives people of their liberty, it assumes responsibility for their healthcare. Ensuring that prisoners maintain good health is essential for success of public health policies, as disease in prisons is easily transferred to the public via staff and visitors, with almost all prisoners eventually returning to the community and potentially transmitting infections to others.

For a person entering a prison for the first time, the experience can be horrifying. The closed walls, the cramped living space, the unpleasant memories of ill-treatment at the hands of the police, the ostracizing glances from bystanders, and anxieties about leaving home haunt every prisoner for the first few days. Nowhere are trained psychiatric counselors more in demand than in the closed settings of a prison. It is not possible to appoint psychiatrists in all the prisons of the state; at least all the seven central prisons should be prioritized. The absolute dearth of trained counselors speaks volumes of the negligent attitude towards the mental health of prisoners. The general lack of nutrition or physical exercise, the excessive lock-up hours due to lack of staff, heavy smoking and widespread anxiety among the prisoners, illegal cooking inside the barracks, and unhygienic

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*Bangalore Prison Mental Health Study: Local Lessons for National Action.*"  
Published by National Institute of Mental Health and Neuro Sciences, Bangalore,  
2011, p.45. Available at [http://www.nimhans.kar.nic.in/prison/chapter\\_2.pdf](http://www.nimhans.kar.nic.in/prison/chapter_2.pdf)

<sup>15</sup> Principle 9 of Basic Principles for the Treatment of Prisoners, 1990 UNHRC.

living conditions in general, all take a heavy toll on the physical and psychological health of the prisoners.

*iv) Shortage of staff and poor training*

Prisons in India have a sanctioned strength of 49030 of prison staff at various ranks, of which, the present staff strength is around 40000. The ratio between the prison staff and the prison population is approximately 1:7. It means only one prison officer is available for 7 prisoners, while in the UK, 2 prison officers are available for every 3 prisoners. Lack of sufficient medical staff is one of most important issues facing the state's prisons. The government formally sanctioned 83 posts for medical staff to cater to the needs of more than 12,000 prisoners. This would amount to one medical personnel for every 144 inmates, but only 42 per cent of the total sanctioned force is currently working with the rest of the posts remaining unfilled. The lack of timely health care was one of the most common concerns recorded from prisoners across the state. The Department of Medical Health deputed medical staff to prisons for three-year periods. The allocation of doctors to prisons is again low on their priority list and for doctors, like the vast majority of the public in general, prisons are not preferred places of work. In fact, being stationed in a particular region is more a matter of personal interest rather than a professional decision. Compounding an already lackadaisical attitude towards offenders, doctors and medical staff do not receive any encouragement or incentives from the government to choose this job. In addition, lack of professional independence given to the doctors in a prison set up, especially when they are working under prison officials, contributes to their disinterest in their work.

*v) Lack of Legal Aid and Overstays*

Access to justice for all is unimaginable without access to free legal aid by the weaker sections of society. The fundamental source of the legal aid concept, Article 39-A was inserted in the Constitution of India through the 42nd Amendment. The article mandates the state to promote justice on the grounds of equal opportunity and provide free legal aid to "ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities". In *Hussainara Khatoon v. State of Bihar*,<sup>16</sup> the apex court read the right to legal aid as implicit in Article 21 of the Constitution of India. The Court, shocked by the fact that under trials were languishing in the prisons of Bihar for years without legal representation, declared: "There can be no doubt that speedy trial, and by speedy trial, we mean reasonably expeditious trial is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21". The court pointed out that Article 39-A, emphasised that free legal service was an

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<sup>16</sup> (1980) 1 SCC 81

inalienable element of “reasonable, fair and just” procedure and that therefore the right to free legal services was implicit in the guarantee of Article 21. It described legal aid as “the delivery system of social justice”. It also expressed the hope that every state government would provide legal aid to avoid derailment of the spirit of Article 21. In another case,<sup>17</sup> the court stated that free legal aid at the cost of the state is a fundamental right of the accused and “implicit in the requirement of reasonable, fair and just procedure prescribed by Article 21”. Justice Krishna Iyer, in another case<sup>18</sup> declared that if a prisoner is unable to exercise his constitutional and statutory right for want of legal assistance, the Court, under Articles 142, 21 and 39-A of the Constitution has the power to assign counsel for rendering complete justice. While explaining the rationale for legal aid he said: “The spiritual essence of a legal aid movement consists of investing law with a human soul. Its constitutional core is the provision of equal legal service as much to the weak as to the strong and affluent, and the dispensation of social justice through the legal order. The political thrust of the movement is that if legality lets down the masses and protects, in actual working, only the upper bracket, anti-law will become a way of life of the numerous poor, the people being prone to seek justice in the streets in preference to the law in the courts.”

*vi) Corruption and extortion*

Extortion by prison staff, and its less aggressive corollary, guard corruption, is common in prisons around the world. Given the substantial power that guards exercised over inmates, these problems are predictable, but the low salaries that guards are generally paid severely aggravate them. In exchange for contraband or special treatment, inmates supplement guards' salaries with bribes.

The rights that must be purchased can include receiving daily necessities, gaining access to a doctor, to a lawyer, obtaining a transfer to another cell or establishment, among many others. In low-income countries, where staff salaries are delayed or not paid, these may be paid by wealthy prisoners in return for privileges. In some administrations, corruption may be systemised, constituting a chain starting from the lowest rank prison staff and extending to very high levels. If corruption is institutionalised, then the humane and fair administration of prisons is severely undermined. Stronger prisoners will enjoy better living conditions and special privileges, while the rights of the weak will be neglected. Corrupt practices among prisoners themselves are also common, with prisoners having to pay leader prisoners for anything from access to particular areas in prison, to food and even to be allocated a bed. Prisoners who are unable to pay and who are not protected

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<sup>17</sup> *Suk Das v. Union Territory of Arunachal Pradesh* (1986) 2 SCC 401

<sup>18</sup> *M.H.Hoskot v. State of Maharashtra* (1978) 3 SCC 544.

by a stronger prisoner, may be subjected to physical violence, including sexual abuse.<sup>19</sup>

*vii) Inequalities and Distinction*

Though prisons are supposed to be leveling institutions in which the variables that affect the conditions of confinement are the criminal records of their inmates and their behaviour in prison, other factors play an important part in many countries. This report by the Human Rights Watch, specifically cite countries like India and Pakistan, where a rigid class system exists in the prisons. It states that under this system, special privileges are accorded to the minority of prisoners who come from the upper and middle classes irrespective of the crimes they have committed or the way they comport themselves in prison.

*viii) Inadequate Prison Programmes*

Despite the problems of overcrowding, manpower shortage and other administrative difficulties, innovative initiatives have been undertaken in some prisons. For e.g. the Art of Living has been carrying out a SMART programme in Tihar Jail. This includes two courses per month and follow up sessions every weekend. Two courses are annually conducted for prison staff. But these are more by way of exceptions and experiments. A Srijan project there is aimed at providing social rehabilitation. However, such programmes are few and far between. Many prisons have vocational training activities, but these are often outdated. Hardly any of the prisons have well planned prison programmes providing structured daily activities, vocational training, pre-discharge guidance and post-prison monitoring.<sup>20</sup>

#### **IV. Rights of Prisoners**

The Indian socio legal system is based on non- violence, mutual respect and human dignity of the individual. If a person commits a crime, it does not mean that by committing a crime, he ceases to be a human being and that he can be deprived of those aspects of life which constitutes human dignity. Prisoners are also entitled to rights to some extent as a normal human being when they are behind the prison. These rights are provided under the Constitution of India, the Prisons Act, 1894 etc. Prisoners are persons and have some rights and do not lose their basic constitutional rights. In the case of *State of A.P. v. Challa Ramkrishna Reddy*,<sup>21</sup> it was held

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<sup>19</sup> United Nations Office on Drugs and Crime (UNODC), “*Custodial And Non-Custodial Measures- The Prison System Criminal Justice Assessment Toolkit*,” Vienna. Page 38. Available at [http://www.unodc.org/documents/justice-and-prisonreform/cjat\\_eng/1\\_Prison\\_%20System.pdf](http://www.unodc.org/documents/justice-and-prisonreform/cjat_eng/1_Prison_%20System.pdf).

<sup>20</sup> Available in <https://www.artofliving.org/iq-en/prison-smart-tihar-jail>.

<sup>21</sup> (2000) 5 SCC 712

that a prisoner is entitled to all his fundamental rights unless his liberty has been constitutionally curtailed. The Supreme Court has emphasized that a prisoner, whether a convict, under-trial or detenu, does not cease to be a human being and, while lodged in jail, he enjoys all his fundamental rights guaranteed by the Constitution of India including the right to life guaranteed by the Constitution. Even a person is convicted and deprived of his liberty in accordance with the procedure established by law; a prisoner still retains the residue of constitutional rights.<sup>22</sup>

### ***Prisoner's Rights under the Constitution of India***

Constitution of India does not expressly provide the provisions related to the prisoners' rights but in the case of *T.V. Vatheeswaran v. State of Tamil Nadu*,<sup>23</sup> it was held that the Articles 14, 19 and 21 are available to the prisoners as well as freemen. Prison walls do not keep out fundamental rights.

Article 14 of the Constitution of India says that the State shall not deny to any person equality before law or the equal protection of laws within the territory of India. Thus Article 14 contemplated that like should be treated alike, and also provided the concept of reasonable classification. This article is very useful guide and basis for the prison authorities to determine various categories of prisoners and their classifications with the object of reformation.<sup>24</sup>

Article 19 of the Constitution of India guarantees six freedoms to the all citizens of India. Among these freedoms certain freedoms cannot enjoyed by the prisoners because of the very nature of these freedoms. But the "freedom of speech and expression"<sup>25</sup> and "freedom to become member of an association"<sup>26</sup>

Article 21 of the Constitution of India says that No person shall be deprived of his life or personal liberty except according to procedure established by law. This Article stipulates two concepts i.e., right to life and principle of liberty. By Article 21 of the Indian Constitution it is clear that it is available not only for free people but also to those people behind the prison. Following are the rights of prisoners which are implicitly provided under the Article 21 of the Constitution of India:-

- Right of inmates of protective homes,

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<sup>22</sup> M.P. Jain, "*Indian Constitutional Law*", 5<sup>th</sup> Edition, Vol. 1, Wadhwa and Company, Nagpur, 2003, Pg.1295

<sup>23</sup> AIR 1983 SC 361

<sup>24</sup> Nitai Roy Chowdhury, "*Indian Prison Laws and Correction of Prisoners*", Deep and Deep Publications, New Delhi, 2002, Pg.75.

<sup>25</sup> Article 19(1)(a) of the Constitution of India.

<sup>26</sup> Article 19(1)(c) of the Constitution of India.

- Right to free legal aid,
- Right to speedy trial,
- Right against cruel and unusual punishment,
- Right to fair trial,
- Right against custodial violence and death in police lock-ups or encounters,
- Right to live with human dignity,

Apart from these rights of prisoners Constitution of India also provides following rights to the prisoners:-

- Right to meet friends and consult lawyer,
- Rights against solitary confinement, handcuffing & bar fetters and protection from torture,
- Right to reasonable wages in prison.

***Prisoner's Rights under the Prisons Act, 1894***

Prisons Act, of 1894 is the first legislation regarding prison regulation in India. This Act mainly focus on reformation of prisoners in connection with the rights of prisoners. Following Sections of the Prisons Act, 1894 are related with the reformation of prisoners:-

- Accommodation and sanitary conditions for prisoners,<sup>27</sup>
- Provision for the shelter and safe custody of the excess number of prisoners who cannot be safely kept in any prison,<sup>28</sup>
- Provisions relating to the examination of prisoners by qualified Medical Officer,<sup>29</sup>
- Provisions relating to separation of prisoners, containing female and male prisoners, civil and criminal prisoners and convicted and undertrial prisoners,<sup>30</sup>
- Provisions relating to treatment of undertrials, civil prisoners, parole and temporary release of prisoners.<sup>31</sup>

In the year of 2016 the Parliament has been passed the Prisons (Amendment) Bill, 2016 to amend the Prisons Act, 1894 with a view to provide protection and welfare of the prisoners.

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<sup>27</sup> Section 4 of the Prisons Act, 1894

<sup>28</sup> Section 7 of the Prisons Act, 1894.

<sup>29</sup> Section 24(2) of the Prisons Act, 1894.

<sup>30</sup> Section 27 of the Prisons Act, 1894.

<sup>31</sup> Sections 31 and 35 of the Prisons Act, 1894.

## V. Lacunae in Legislation

Normally the recommendations by the state secretaries were the premise from which the prison reforms were introduced. This was changed by the introduction of *Mulla Committee on Jail Reforms*.<sup>32</sup> The committee headed by Mulla made a National Policy on Prisons. It also advocated for the constitution of a national commission on prison.<sup>33</sup> It took more than a decade for the Indian legal system to draft some law on the Mulla recommendations.<sup>34</sup> The bill so prepared was well supported by the draft bill made by the National Human Rights Commission. The Commission made follow up over the 1996 bill and developed another model bill within a period of two years.<sup>35</sup> This bill made by Commission attempted to consolidate the entire developments made in India after Mulla recommendations. Stepping with NHRC; Government of India drafted a new bill in the same year.<sup>36</sup> This bill was identified as a consolidated version of Indian laws on prison.<sup>37</sup> But still it remains as a dream as it is keep away from parliament.

## VI. Conclusion

It can be said that the prisoners are also entitled to all his fundamental rights while they are behind the prisons. Indian Constitution does not expressly provides for the prisoners' rights but Articles 14, 19 and 21 implicitly guaranteed the prisoners' rights and the provisions of the Prisons Act, 1894 contains the provisions for the welfare and protection of prisoners. The Court has ruled that it can intervene with prison administration when constitutional rights or statutory prescriptions are transgressed to the injury of the prisoner. Supreme Court in many cases held that prisoner is a human being, a natural person and also a legal person. Being a prisoner he does not cease to be a human being, natural person or legal person. Conviction for a crime does not reduce the person into a non person, whose rights are subject to the whim of the prison administration and therefore, the imposition of any major punishment within the prison system is conditional upon the absence of procedural safeguards.

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<sup>32</sup> Jayasree Lakkaraju, "*Women Prisoners in Custody*", Kaveri Books, New Delhi, 2008, Pg. 138.

<sup>33</sup> *Ibid* Pg. 117

<sup>34</sup> The Indian Prisons Bill, 1996

<sup>35</sup> The Prison Administration and Treatment of Prisoners Bill, 1998.

<sup>36</sup> The Prison Management Bill, 1998

<sup>37</sup> Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, 1988.