

THE MISERY OF INDIAN PRISONERS'

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Abstract

India, a country which is the world largest democracy and one of the fastest developing countries, does not have a codified and specific law that talks about the rights to which prisoners are entitled to. In the past decade there has been a spark in the country to make the rights of the prisoners more specific and give them a sense of security. It would be wrong if we do not take into consideration the utmost effort which has been put by the judiciary in uplifting the status of rights of prisoners. A prisoner is a person who has violated the law and as a punishment has been sent to prison. It is true that there are certain restrictions which are imposed on the fundamental rights of a person serving in prison but certain human rights remain intact¹. It is very important to remember that they are human beings sent to prison to serve their punishment so that when they return to society, they return as better human beings who understand the nature of things they do. Mahatma Gandhi once said that, "Crime is the outcome of a diseased mind and jail must have an environment of hospital for treatment and care." This paper basically gives a detailed study of the constitutional and legal status of the rights of the prisoners. This paper tries to elucidate the steps which have been taken with the passage of time to improve the condition of the prisoners. This paper would discuss many important judgments delivered by the Supreme Court which have affected the rights of the prisoners. There are many international organizations which have set forth the guidelines for human rights; this paper tries to give a comparative study of those international organizations with the laws prevalent in India in relation to rights of prisoners. In the concluding section the paper gives certain recommendations in order to bring in notice the steps which can be taken in order to provide a more humane atmosphere to the prisoners.

Keywords – Prisoner, Prisoner Rights, Prison, Crime, Human Rights, Custodial Torture, International Instruments, Women Prisoners, Human rights, Women prisoners

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¹ Charles shobraj v supretendent., AIR 1978 SC 1675

INTRODUCTION

“A nation should not be judged by how it treats its highest citizens but its lowest ones.”²

- **Nelson Mandela**

Prison in democracy is seen as a caregiving institution but in reality prisons are very different from what they look like. The reality of prison is that it is overcrowded with lack of basic amenities like food, water and proper sanitation³. The conditions in the prisons are way below the human level, lack of accountability, corruption in administration, prisoners are tortured and numerous cases of custodial deaths. Prisoners are put behind the bar as punishment. The punishment is not to put them behind the bars and then torture them.⁴ The society is of the opinion that the more severe the punishment, the more good governance. It is believed from hundreds of years that the idea behind the concept of prison discipline was to make the imprisonment deterrent with severe and harsh punishments which include hard punitive labor and giving no heed to human personalities. Rights of the prisoners is that nobody talks about. The worst thing is that there is no document that mentions mandatory rights of the prisoners.

² United nations.,https://www.un.org/en/events/mandeladay/mandela_rules.shtml

³ Aryeh Neier, David J. Rothman, Prison Conditions in India, 1991.

⁴ J Vagg, Prison Systems: A Comparative Study of Accountability in England, France, Germany, and the Netherlands(1994), <http://www.ncjrs.gov/App/publications/abstract.aspx?ID=173859>

The rights and punishments change depending on the mood of the ruling government.

Prisoners are entitled to basic human rights from which they can't be deprived of under any circumstances. These rights include right to food and water, right to engage in order to defend himself and protection against any kind torture and racial harassment⁵. Custodial torture has become a serious issue in our country and it is the worst from in which a person's rights can be violated as he has no one to complain⁶. The act of monstrosity by the police and jail authorities on the accused or the suspected person is escalating degree by degree.

The custodial justice which originates from article 5 of the human declaration of human rights states that *“No one shall be subject to torture or cruel, inhuman or degrading treatment of punishment”⁷*. Besides this, article 10 of the united nation's international covenant on civil and political right, which states *“All persons deprived of their liberty shall be treated with humanity and with respect to the inherent dignity of the human person”⁸* All this is reaffirmed by the honorable supreme court in many landmark judgements including D.K. Basu Vs State Of

⁵ Jayaram swathy, Rights Of Prisoners, <http://www.legalserviceindia.com/legal/article-75-rights-of-prisoners.html>

⁶ N.S. Kamboj, POLICE CUSTODIAL DEATH: A GROWING ABUSE TO HUMAN RIGHTS IN INDIA, Journal of the Indian Law Institute, Vol. 36, No. 3 (July-September 1994).

⁷ UNDHR Art.6

⁸ ICCPR Art.10

West Bengal⁹, Menka Gandhi's case¹⁰, *Sunil Batra v Delhi Administration 1978*.¹¹ Even after these landmark cases, there are still cases like Rudal Shah Vs State Of Bihar.¹²

Even though there are many policies on progress with respect to prisoner's rights, it is important to see the present legal framework and act on it promptly. Prison is an irreplaceable part of the criminal justice system which urges a need to reform the whole criminal justice system.

Laws provided in India are made keeping in mind the rights of the accused so that they can get a just, fair and impartial trial but those rights are availed only by the elite class of the society who can exploit these rights by using the clutches of law.¹³ On the other hand, the poor people, because of the lack of resources and references do not get justice and are exploited by the elite classes.

COMMITTEES

*"Crime is the outcome of a diseased mind and jail must have an environment of hospital for treatment and care."*¹⁴

- Mahatma Gandhi

⁹ *D.K. Basu Vs State Of West Bengal.*, 1997 (1) SCC 416

¹⁰ *Maneka Gandhi vs Union Of India.*, 1978 AIR 597

¹¹ *Sunil Batra v Delhi Administration.* (1978) 4 SCC 494

¹² *Rudal Shah Vs State Of Bihar.*, (1983) 4 SCC 141

¹³ Dr. Ashutosh, Rights of the accused, Page VII, 2nd ed. Universal Law Publishing house, 2013

¹⁴ Dr. Kiran R. Naik., prison and prisoners, IJRAR June 2019, Volume 6, Issue 2, <http://www.ijrar.org/papers/IJRAR1AXP015.pdf>

MULLA COMMITTEE:

In the year 1980, a prison reform committee was set up and its chairman was AN Mulla.¹⁵ The main goal behind the formation of this committee was to review the law, rules and regulation considering the security of society and rehabilitation of the prisoners. The recommendations made by the Mulla committee tried to smoothen the coordination between the state and union territories. The committee also recommended the establishment of the National Prison Commission in order to update the facilities of the prison from time to time. The committee suggested proper supply of clothing and food to the prisoners. This committee suggested the classification of prisoners on scientific basis, for example the juveniles should not be kept with criminals who have committed heinous crimes. The committee suggested that the rules made should help the prisoners in rehabilitation.

KRISHNA IYER COMMITTEE

In 1987, the Indian Government appointed a committee under Justice Krishna Iyer.¹⁶ This committee was formed to understand the

¹⁵ Ministry of Home Affairs Government of India, Report of All India Committee on Jail Reforms (Mulla Committee), Volume I, <https://www.mha.gov.in/MHA1/PrisonReforms/report.html>

¹⁶ ZUBAIR AHMED., JAIL REFORMS IN INDIA: A STUDY OF INDIAN JAIL REFORM COMMITTEES, VOL I, ISSUE 3(2016), [FILE:///C:/USERS/MY/DOWNLOADS/1-3-35.1%20\(1\).PDF](FILE:///C:/USERS/MY/DOWNLOADS/1-3-35.1%20(1).PDF)

condition of women prisoners in India. This committee recommended that there should be more women in the police due to their expertise in handling women and children who have committed an offence. The Krishna Iyer committee submitted its report in February, 1988.¹⁷

AMITAVA ROY COMMITTEE

A committee was formed by the Supreme Court under the chairmanship of former Supreme Court judge Justice Amitava Roy to suggest prison reforms.¹⁸ This committee reviewed the problems of overcrowding in prisons, lack of staff and issues related to remission and parole. The committee will examine the working of the Under Trial Review Committee, availability of legal help to the prisoner and will examine the issue of violence in the prisons. Due to the dire need of prison reforms this committee was formed.

¹⁷ Dr. Ashutosh, Rights of the accused, Page VII, 2nd ed. Universal Law Publishing house, 2013

¹⁸ Krishnadas Rajagopal., common bane, supreme court panel recommends several prison reforms (2020), [https://www.thehindu.com/news/national/supreme-court-panel-recommends-several-prison-reforms/article30746675.ece#:~:text=The%20Justice%20Amitava%20Roy%20\(retd.,disproportionate%20to%20those%20of%20convicts.&text=The%20Prison%20Department%20has%20a,years%2C%E2%80%9D%20the%20report%20said.\)](https://www.thehindu.com/news/national/supreme-court-panel-recommends-several-prison-reforms/article30746675.ece#:~:text=The%20Justice%20Amitava%20Roy%20(retd.,disproportionate%20to%20those%20of%20convicts.&text=The%20Prison%20Department%20has%20a,years%2C%E2%80%9D%20the%20report%20said.))

ROLE OF JUDICIARY

“Every society has the criminals that it deserves.”¹⁹

— HAVELOCK ELLIS

The judiciary plays a vital role in the working of a country which is the reason each and every country has it. The judicial structure of a country is responsible for delivering justice on time and ensuring that the rights of the people are not infringed. It has contributed to a great extent towards the rights of prisoners. The Supreme Court of India in reference to article 21²⁰ of the Indian constitution has said that even the prisoners have the right to live with dignity. If any authority is found violating the rights of prisoners then that authority shall be held liable for violation of article 14 of the constitution which talks about the, “right to equality and equal protection of law.” The Indian judiciary through its judicial interpretation has tried to safeguard the rights of a prisoner in every possible way.

In the landmark judgement delivered in *Wadanrao Hoskot v State of Maharashtra*²¹ the Supreme Court observed, “the right to legal aid is one of the components of fair procedure, i.e. the Supreme Court reading articles 21 and 39-A²², read with article 14²³ and section 304

¹⁹ G. S. Bajpai., Decoding Conversations and Restating Criminology in India, [https://nludelhi.ac.in/download/centre/ccv/Kumara ppa-Reckless%20Award%20Oration.pdf](https://nludelhi.ac.in/download/centre/ccv/Kumara%20ppa-Reckless%20Award%20Oration.pdf)

²⁰ Indian const. art. 21

²¹ *Wadanrao Hoskot v State of Maharashtra.*, (1978) 3 SCC 544

²² Indian const. art. 39 cl.(a)

of CrPC²⁴ together acknowledged that the government was under the duty to provide legal services to the accused person.”

In Dharmbir v State of U.P.²⁵ the court stated, “That the state government should allow the family members to visit the prisoners under the guarded conditions and the prisoners to visit their families at least once a year.”

In Kharak Singh v. State of U.P.²⁶, the apex judicial body described the scope of word “life” under article 21 in a much broader way, “Something more than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed.”

In India we have the concept of minimum wages as per which there is a minimum set which needs to be paid for the work done. The remuneration which needs to be paid to a person is not affected by the scenario whether the person is a prisoner or a freeman. In the case of Mohammad Giassudin v state of A.P.²⁷ the concept of minimum wages was decided. “The court ordered the state to take into account the reasonable rate of payment of wages. It should not be less than the minimum salary.”

²³ Indian const. art. 142

²⁴ CrPC § 340(1)(1898)

²⁵ Dharmbir v State of U.P., 1979 (3) SCC 645

²⁶ Kharak Singh v. State of U.P., 1963 AIR 1295

²⁷ Mohammad Giassudin v State of A.P., 1977 (3) SCC 287

As it is well said that, “justice delayed is justice denied.” So, to make the process of justice fast and to discover who is innocent and who guilty, article 21 of the constitution includes the right to speedy trial under the ambit of fundamental right.

Section 309 in The Code of Criminal Procedure²⁸, 1973 deals with, “Power to postpone or adjourn proceedings”. It explicitly mentions that the proceedings shall be held as expeditiously as possible and reads that if there is enough evidence or witnesses that prove that the accused is guilty and there is a scope of finding more evidence against the accused by remand then it is a reasonable cause for a remand.

INTERNATIONAL INSTRUMENTS

“For people who have committed crimes that have landed them in jail, there needs to be a path back from prison. The federal system of parole needs to be reinstated. We need real education and real skills training for the incarcerated.”

- SEN. BERNIE SANDERS

UNIVERSAL DECLARATION OF HUMAN RIGHTS

On December 10, 1948, the United Nations General assembly adopted a document that would promote human rights at an international level. The document adopted was a universal declaration of human rights. Article 1 of the UDHR states, “All human

²⁸ CrPC § 309(1973)

beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”²⁹

Article 2 of the UDHR states, “ Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”³⁰

Article 3 of the UDHR mentions, “Every person has the right to life, freedom and personal security.”³¹ Lastly the article 5 of the UDHR states that, “No one shall be subjected to torture or cruel, inhuman or humiliating treatment or punishment.”³²

THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

The International Covenant on Civil and Political rights was adopted by the United Nations general assembly on December 16, 1966 but came into effect on March 23, 1976. The ICCPR is an international national and it makes provisions for the treatment of the prisoners. Article 6(1) of the ICCPR states, “that every human being whether a freeman or a prisoner has an inherent right to life which is protected by law.”³³ Article 7 of the ICCPR

²⁹ UDHR., art.1

³⁰ UDHR., art. 2

³¹ UDHR., art. 3

³² UDHR., art. 5

³³ ICCPR., art. 6 cl.1

states, “No person shall be subject to torture, cruel, inhuman treatment or punishment.”³⁴

Article 10 which is the core article or the most significant one that talks about the rights of the prisoners. It says that any person whose liberty has been curtailed must be treated with dignity and must be given humane treatment. A clear distinction should be made between the convicted person and an accused one. An accused person shall be treated like a free man. With respect to the juveniles, it says that they should be segregated and kept with juveniles only and there should be speedy trials for them so that they can be sent to rehabilitation as soon as possible.³⁵

THE EUROPEAN CONVENTION FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

This convention came into existence on March 1, 2002.³⁶ This convention forms a European committee which works to protect people from torture or inhuman treatment. This committee has the authority to visit all the detention places. A detention place is defined under this convention as, “Any place within its

³⁴ ICCPR., art. 7

³⁵ Cosette D. Creamer & Beth A. Simmons, The Proof Is in the Process: Self-Reporting Under International Human Rights Treaties, 114 AMERICAN JOURNAL OF INTERNATIONAL LAW , 1–50 (2020)

³⁶ Council of Europe (2002), "European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, European Treaty Series - No. 126, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007a67f>

jurisdiction where persons are deprived of their liberty by a public authority.” Once the committee has notified its intention to visit the place, the state government has to allow it. The committee has the authority to gain full knowledge of the facility and move freely there without any kind of restriction. It can interview any person whomsoever it likes to gain information. The state government can disallow the visit if any kind of unexpected circumstances arise which can affect national security, public interest, etc.³⁷

UNITED NATIONS CONVENTION AGAINST TORTURE (UNCAT)

This Convention was adopted by the U.N. General Assembly in 1984 to specify the word „torture“ in a broader and clear way. The objective of this convention was to keep a check on the increasing custodial torture and the kind of inhuman treatment that has been provided to the prisoners.

According to UNCAT, it is the state's responsibility to ensure that the prisoners should not be tortured and be subject to inhuman treatment and if it happens then strict action should be taken against it.³⁸ Article 2(2)³⁹ of the convention clearly states that

³⁷

Vol. 84, Nigel S.Rodley, The United Nations Convention against Torture: A Handbook on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Pp. xii, (J. Herman Burgers and Hans Danelius. Dordrecht, Boston, London: Martinus Nijhoff Publishers, 1988)

³⁸ Id. Article 2(1)

³⁹ Id. Article 2(2)

torturing on the ground of any war or threat of war cannot be justified and prohibition against torture must be absolute. Convention further says that every state must include the “prohibition against torture” in the rules and instructions issued. Through this the law enforcement personnel will be well informed.⁴⁰ The convention states that if any states receives any complaint of torture allegedly by any individual in the states“ territory. It is the duty of the state to take the complaint into account and set up an impartial examination committee. “The state has to take necessary actions and protect the complainant and other witnesses against all the, ill-treatment, coercion and intimidation as a consequence of his complaint or any evidence given.”⁴¹

Article 10 of the covenant provides that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. The accused persons shall, save in exceptional circumstances, be segregated from Convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons”.

THE PLIGHT OF WOMEN PRISONERS’ IN INDIA

“Life means not only physical existence. It means the use of every limb or faculty through which life is enjoyed. The right to life includes the right to a healthier environment”.

⁴⁰ Id. Article 10(2)

⁴¹Id Article 13

-JUSTICE P.N. BHAGWATI

The human rights and basic needs of women prisoners have not been given due importance in the Indian Prison System. The count of women prisoners is less as compared to the male prisoners. Male prisoners make up 97.73% of the prisoners while women represent 4.27% of the prisoner population.⁴² Most of the women inmates are from poor social and economical backgrounds with a very little literacy. Majority of them are behind the bars because they tried to escape from the very dominating and despotic background of their marital homes or they are a part of a criminal gang where they were abused and harassed pathetically. As such, they do not have knowledge and awareness about section 437 of CrPC⁴³ which deals with the granting of bail of a convict in its first provision of a convict especially for women.

The Bhopal workshop report on prisons and human rights Commonwealth human rights initiative⁴⁴ highlighted the life of the individual prisoners. The CHRI threw light on the women prisoners and showed that there were violations and failure of the Mulla committee report which suggested proper supply of clothing and food to the prisoners and stressed on the availability of lady doctors for the women inmates. The report also showcased how the women inmates are abused

⁴² Prison statistics India, 2018, National Crime Records Bureau.

⁴³ CrPC § 437(1973)

⁴⁴ E. Sreekumar, workshop on prison reforms in Madhya Pradesh, 2002

and harassed by the male officers in the name of custody. Number of cases was highlighted on custodial torture of women inmates by the male officers mentally as well as physically. A book named "It"s which she beautifully showcased how the rights of women inmates were exploited and the treatment given to them. It was further found from the CHRI report that colonial provisions like Police Act 1861 and Prisons Act 1894 are still followed by the prison administration of India under which the police can torture the convicts and the same provision is not valid and neither carries any legal sanction in present days. After following the CHRI and other committees' reports and guidelines many provisions were changed in CrPC under section 51(2)⁴⁵ and section 100(3)⁴⁶. Changes were also made under section 376 of the IPC⁴⁷ which talks about custodial rape.

Custodial rights were framed under 5 rights viz., "Right To Health And Nutrition, Right To Proper Wage, Right Against Physical And Emotional Violence, Right To Legal Aid And Right To Privacy." Many studies and committees recommended ways to follow the protocols and suggestions to safeguard the given rights in which many of them were implemented and many were violated gravely. A report by Times of India highlighted the issue of some ex-women inmates in Tamil Nadu from various jails whose custodial rights

⁴⁵CrPC § 51 cl. 2 (1973)

⁴⁶ CrPC § 100 cl. 3 (1973)

⁴⁷Indian Penal Code § 376, 1860

were abused both in the prison and in transit custody. It was further highlighted that there is brutal treatment given to the women inmates and the problem of overcrowding, lack of basic amenities is still prevalent.

Landmark cases like “Hussainara Khaton & Ors vs. Home Secretary, State Of Bihar”⁴⁸, emphasized on the right to life and liberty under Article 21 of the Indian constitution. The respective case established the “Right To Free Legal Aid” and “Right To Speedy Trial” and also touched the issue of overcrowded jails. Further, in the case of “Smt. Nilabati Behera Alias Lalit vs State Of Orissa And Ors 1993”⁴⁹ mother of accused sought the court’s interference through article 32 of the Indian constitution and appealed to look into the matter of the accused death in custodial torture. In the case of “Mrs. Veena Sethi vs. State Of Bihar And Ors.”⁵⁰, 1982 Supreme court touched the issue of right to health of the prisoners, especially mental health of the prisoners. This case made the right to speedy and fair trial a broader question. This was one of the cases which widened the wings of article 21 of the Indian constitution. Another landmark case “Sunil Batra v. Delhi Administration”⁵¹ discussed with the, “right to freedom of speech and equality before law”

⁴⁸Hussainara Khaton & Ors vs Home Secretary., 1979 AIR 1369

⁴⁹ Smt. Nilabati Behera Alias Lalit vs State Of Orissa And Ors., 1993 AIR 1960

⁵⁰Mrs. Veena Sethi vs State Of Bihar And Ors AIR 1983 SC 339

⁵¹ Sunil Batra v. Delhi Administration., (1978) 4 SCC 409

for the convicts behind the bars for death penalty.

Besides the changes and reforms made by the judiciary to safeguard the women prisoners’ interests and rights there were still many rights which are supposed to be looked after. **Right Against Custodial Torture Especially Rape, Right To Privacy**⁵², **Right To Health**⁵³, **Right To Free Legal Aid And Speedy Trial And Right To Bail.**⁵⁴ However, in Nilabati Beher case⁵⁵ the right against custodial torture was discussed and right to life and liberty was questioned in the broader sense but still cases like Mathura rape case⁵⁶ shown the harsh reality behind the bars where a woman was raped by the custodial officer. The Supreme Court acquitted the accused and reversed the earlier judgment by the Bombay high court where it was held that because the victim does not alarm anyone about the incident, it will be assumed that the intercourse was consensual. The Supreme Court in its judgment struck down the Bombay high court’s judgment and several amendments were made in the criminal law.

It is an unfortunate truth that when a women is in custody it is natural that she gets scared and

⁵² Ratlam vs Shri Vardhichand & Ors., 1980 AIR 1622

⁵³ Pt. Parmanand Katara vs Union Of India & Ors., 1989 AIR 2039

⁵⁴ Madhav Hayawadanrao Hoskot vs State Of Maharashtra.,1978 AIR 1548

⁵⁵ Nilabati Behera Alias Lalit vs State Of Orissa And Ors., 1993 AIR 1960

⁵⁶ Tuka Ram And Anr vs State Of Maharashtra., 1979 AIR 185

is submissive when she is harassed and she has a fear of future torture from the higher authorities and as a result she may not complain immediately of whatever happened to her. This was a very big concern for the law makers and that is why several amendments were made in Indian penal code, criminal procedure code and also Indian evidence act to make the laws minimal and sympathetic for the women victims against rape and sexual harassment.

Even though many amendments are made in Indian penal code, criminal procedure code, there are still many loopholes which exist and violate the rights of the women detainees. Main attention must be drawn towards the women from poor economic backgrounds who have a low literacy level, because they are still not aware about their rights and are exploited.

LOOPHOLES IN THE INDIAN LEGAL FRAMEWORK

"We must demilitarize police departments and end minimum sentencing. These are real issues that need to be dealt with."

-SEN. BERNIE SANDERS

India has more than 4,66,000 prisoners⁵⁷ but there is no specific legislature for their rights. India comes under those few countries which still have not ratified the universal conventions which are specifically created to look into the problem of prisoners⁵⁸ all around the world. Universal instruments like UDHR, ICCPR,

UNCAT are still not ratified by India is a serious concern and shame. The Indian constitution does not have any specific law or legislation for torture. However, the Supreme Court of India while considering the scope of part III of the Indian constitution asserted that "each and every individual has the right to life and he should live it with human dignity". It can be interpreted by the assertion that torturing an individual is violating his, "right to life" guaranteed under article 21 of the Indian constitution. In the same way, prisoners⁵⁸ in India does not have any separate legislation which guarantees right to complaint to prisoners⁵⁸ as compared to article 13 of UNCAT⁵⁸ which deals with the right to complaint as discussed earlier. But, under habeas corpus, the prisoner can reach to the court if he is being ill-treated behind the bars. Therefore, the interpretations and ruling judgements are used as precedents to solve cases but interpretations can differ from case to case.

In Indian legislations, "Indian penal code 1890", under "Sections 330 & 348", determines the act under the ambit of torture with a punishment of 7 and 3 years of punishment, but these sections are not applied if a police officer on duty do such an act. Many times the police do not file complaints against their police officers and staff. Therefore, all these provisions run short to fulfill the objectives of the conventions and legislations. There are no instructions provided

⁵⁷ Prison statistics India, 2018, National Crime Records Bureau.

⁵⁸ UNCAT art. 13

to the police and staff of prisons against prohibition of torture as discussed in UNCAT and other universal instruments.

Amnesty international in its report of 2017-18 stated “894 deaths in judicial custody and 74 deaths in police custody were recorded”⁵⁹. It further released that Uma Bharti, an Indian politician, asserted that she has given the permission to police to torture the rape suspects while she was serving as the Chief Minister of the state of Madhya Pradesh. This shows that the state itself is ordering and allowing for custodial torture. This can be seen as a pitfall in the definition of “torture” under the “UN Convention against torture”.

Custodial torture is so common in India that it is used as an element of daily interrogations and this matter is not looked upon until there is some grievous cases reported with public outcry, appeals and media coverage. And when this happens, the government is compelled to look into the issue and at the maximum the guilty officer is suspended for the time and when the incident fades out of the memory of the public, the guilty officer resumes their charge.⁶⁰ The National Human Rights Commission (NHRC), was created specially to keep an eye on the human rights violations. Indian courts and NHRC are

⁵⁹ Supra note. 39

⁶⁰R S Saini, „Custodial Torture in law and practice with reference to India“ (1994) 36 Journal of the Indian Law Institute
<https://www.jstor.org/stable/43951530?seq=1#metadata_info_tab_contents> accessed 29 March 2019.

dealing with custodial torture, deaths and cases of human rights violation from indefinitely long periods.⁶¹

NHRC in its Report of 2016-17, stated that “Custodial violence and torture is so rampant in this country that it has become almost a routine”.⁶² The commission in its report also revealed that it dealt with 4851 cases of custodial death in the year 2016-17, from which most of the people who died were under trial prisoners. The police were so brutal and abused their power and tortured the people to such an extent that they died.

CONCLUSION

*“It is easy to break down and destroy. The heroes are those who make peace and build.”*⁶³

- NELSON MANDELA

It can be observed that there are no specific laws for the rights of prisoners in India. The rights of prisoners to a great extent are curtailed but it should be remembered that they still have basic rights guaranteed by the constitution of India. The judiciary has understood this sensitive issue and has been continuously trying to give recognition to the “rights of prisoners” through its judgements.

⁶¹ Nirman Arora, „Custodial Torture in Police Station in India: A Radical Assessment“ (1999) 41 Journal of the Indian Law Institute 513-529, <<https://www.jstor.org/stable/43953348>>

⁶² . National Human Rights Commission, India „Annual Report 2016-17“
<<http://nhrc.nic.in/publications/annual-reports>

⁶³ United nations.,https://www.un.org/en/events/mandeladay/mandela_rules.shtml

The police and the prison administration do not take this issue seriously and the reason behind this kind of behaviour is the lack of proper laws. The legislation has failed to make specific laws on this sensitive issue. Even if prisoner complains of torture then to whom he would complain, obviously a police officer, therefore there are very few chances that the grievances of the prisoners would be heard.

It is high time for the people to realize that one of the main objectives of prison is rehabilitation; therefore it is necessary to create a positive atmosphere. If the prisoners are tortured and their rights are taken then there is a big possibility that when they return to society, they can pose a bigger threat. India should try to follow the standards set by various international organizations working for human rights. With this it can be concluded that there are many loopholes in our Indian legal system regarding the rights of the prisoners which need to be filled as soon as possible. Hence, it can be drawn from the research that the null hypothesis is correct that "the legislations to support the rights of prisoners" are not enough in India.

RECOMMENDATIONS

- There should be one or more committees set up which would audit the prison resources and can interrogate the prisoners about the kind of treatment they are receiving on a random basis. An annual report should be submitted by the prison

management to these committees in order to keep a check on them.

- There should be speedy trials of all the persons between the age of 18-24 years of age as they are the young generation and the future of the country. Faster the trial, less time they would serve in prison.
- There should be a clear segregation of criminals. People who committed heinous crimes should be kept together and must be separated from the criminals engaged in petty crimes.
- The problem of overcrowding in the prisons needs to be addressed, there should be more prisons built in the country with modern infrastructure that would make prison management easier.
- There needs to be a change in the mentality of the prison management. It should be more rehabilitation oriented instead of punishment oriented.

There are a lot of prisoners who are under trial which is mainly due to the huge backlog of cases as there are not an adequate number of judges. Therefore our judiciary should try to increase the number of the judges.