

# THE STRUGGLE LIFE OF THE PRISONERS IN INDIAN JAIL

Written by *Mohd Waquar Iqbal\** & *Vasudha\*\**

\* (LLM student, Galgotias University, Greater Noida)

\*\* (B.A.LL.B completed at Law College Dehradun, Dehradun)

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## Abstract

Prison is a place where the criminal justice system put its entire hopes. 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. Imprisonment is the one of the oldest forms of sanction which is widely practiced in every country. According to Oxford Dictionary, a prison is “a place properly arranged and equipped for the reception of persons who by legal process are committed to it for safe custody while awaiting trial or for punishment.”<sup>1</sup> So primary objective of jail was ‘safe custody’ of prisoners, within four walls of prison, but the recent trends show that prisoners, a marginalized group languish in jail and their basic human rights are violated blatantly. Here researcher focused basic human rights of prisoners and what are the situations whose effects of those rights.

## 1.1 Introduction

*“If you want total security, go to prison. There you’re fed, clothed, given medical care and so on. The only thing lacking... is Freedom”<sup>2</sup>*

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<sup>1</sup> Lecturer in Laws, Rajiv Gandhi National University of Laws (Punjab), Pataila.

<sup>2</sup> Prison quote by Dwight D. Eisenhower, available at [http://www.brainyquote.com/quotes/quotes/d/dwightdei107094.html?src=t\\_prison](http://www.brainyquote.com/quotes/quotes/d/dwightdei107094.html?src=t_prison) (visited on 18/07/2016).

Every human being has the privilege of being born free and equal by nature as also being clothed with certain basic rights. Yet society demand that all those who do not conform to the social norms ought to be deprived of these rights by appropriate punishment. Imprisonment is the one of the oldest forms of sanction which is widely practiced in every country. According to Oxford Dictionary, a prison is “a place properly arranged and equipped for the reception of persons who by legal process are committed to it for safe custody while awaiting trial or for punishment.”<sup>3</sup> So essential target of prison was 'protected care' of detainees, inside four dividers of jail, however the late patterns demonstrate that detainees, a minimized gathering mull in prison and their basic human rights are disregarded blatantly. Prisoner's rights have turned into an imperative thing in the motivation for jail change. This is expected basically to the acknowledgment of two essential standards. Firstly, the detainee is no more viewed as an article, a ward, or a 'slave of the state', who the law would leave at the jail passageway and who might be sentenced to 'civil death'.<sup>4</sup> The Supreme Court made it clear in different judgment that expect for the way that the impulse to live in a jail involves by its own particular power hardship of specific rights, similar to one side to move openly or to rehearse a calling of once decision, a detainee is generally qualified for the fundamental opportunities ensured by the constitution.<sup>5</sup> Besides, the indicted individuals go to jail as punishment not for punishment.<sup>6</sup> Here the creator is giving some rude awakening about the life in jail. We've seen detainee's life depicted on TV and in movies, yet is it that much closes what truly goes on? The detainees are isolated by sexual introduction, wrongdoing and race, among different variables. To get by in jail, one needs to join a pack. One can get anything he/she needs in jail; in the event that it's sufficiently little. How do the medications come in? Consider it. Detainees get preferable medicinal treatment over basic men. Life in jail is not that simple despite the fact that the families may see every one of them grins when they come to visit. The inclination that they are being separated from their families is an awesome trial for them, in addition to the way that occasionally they will be subjected to jail wars. A prisoner's jail position is figured by

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<sup>3</sup>Lecturer in Laws, Rajiv Gandhi national University of Laws (Punjab), Patiala.

<sup>4</sup> Fitzgerald, P.J., *Criminal and Punishment*, 23 (1962).

<sup>5</sup> Charles Shobraj v. Superintendent, Tihar Jail, AIR 1978 SC 1514.

<sup>6</sup> Jon Vagg, *Prison System-A Comparative study of Accountability in England, France, Germany and the Netherlands*, 1994.

their characterization. Arrangement is controlled by measuring their advancement, modification, conduct, and programming all through their detainment.

## 1.2 Definition of prison

The term prison has been defined by the Prisons Act, 1894 in an exhaustive manner.<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 remain the basic premises by which the administration of prison has been regulated. 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.

## 1.3 Human Rights of Prisoners: Constitutional Perspective

The fundamental rights guaranteed under the Constitution are not absolute and many restrictions have been imposed on their enjoyment. Right to freedom of person is one of the most important rights among the fundamental rights. At the point when a man is indicted or put in jail his status is unique in relation to that of an ordinary person. A detainee can't guarantee all the principal rights that are accessible to a customary individual. The Supreme Court of India and different High Courts in India have examined the extension in different choices. There is no assurance of detainee's perfectly fine in the Constitution of India. Be that as it may, certain rights which have been specified in Part III of the Constitution are accessible to the detainees likewise on the grounds that a detainee remains a "person" inside the prison.<sup>10</sup> The privilege to individual freedom has now

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<sup>7</sup>The Prisons Act, 1894, s. 3 (1).

<sup>8</sup> See section 2(b).

<sup>9</sup> See Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, 1988.

<sup>10</sup> Sunil Batra v. Delhi Administration, A.I.R. 1980, S.C. 1579.

been given wide understanding by the Supreme Court. This privilege is accessible to free individuals as well as even to those in the slammer. The privilege to expedient trial, free lawful guides, right against torment, right against inhuman, and debasing treatment go with a man into the jail moreover. The Supreme Court has made it clear in numerous judgements that with the exception of the way that the impulse to live in a jail involves by its own power the hardship of specific rights, similar to one side to move openly or to hone a calling of one's decision, a detainee is generally qualified for the essential opportunities ensured by the Constitution.<sup>11</sup>

The role of the Supreme Court in the previous five years in presenting correctional facility changes has been exemplary. Its journey for jail equity is likely a consequence of its endeavor to restore freedom in the wake of dousing it in the Habeas Corpus case. Truth be told, the Supreme Court had remarked all things considered amid the crisis that the treatment dispensed to the prisoners was just about mater-nil. The Supreme Court conveyed the proportion of the habeas Corpus case (ADM Jabalpur Vs. Shiv Kant Shukla<sup>12</sup>) that Article 21 is the sole vault of life and freedom and amid the crisis when freedom is suspended, because of the Presidential decree suspending Article 21, to the Prison conditions, and held for Bhanudas' situation that a prisoner amid crisis couldn't upset for better Jail Conditions and offices. For another situation of "*Prem Shankar Shukla v. Delhi Administration*," the Supreme Court struck down the procurements of the Panjab Police rules which discriminated between the rich and the poor detainee in hinder mining who was to be bound. The Court additionally held that without the escorting power re-cording why the detainee is being put under binds, the technique of cuffing is an infringement of Article 21.<sup>13</sup> In *RE - INHUMAN CONDITIONS IN 1382 PRISONS*, the Supreme Court of India held that

*“Prison reforms have been the subject matter of discussion and decisions rendered by this Court from time to time over the last 35 years. Unfortunately, even though Article 21 of the Constitution requires a life of dignity for all persons, little appears to have changed on the ground as far*

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<sup>11</sup> Charles Shobraj vs. Superintendent, Tihar Jail, AIR 1978, SC 1514.

<sup>12</sup> ADM Jabalpur Vs. Shiv Kant Shukla, AIR (1976) SC 1207.

<sup>13</sup> Prem Shankar Shukla Vs. Delhi Administration, AIR 1535, 1980 SCR (3) 855.

*as prisoners are concerned and we are once again required to deal with issues relating to prisons in the country and their reform.”<sup>14</sup>*

*“As far back as in 1980, this Court had occasion to deal with the rights of prisoners in Sunil Batra (II) v. Delhi Administration.[1] In that decision, this Court gave a very obvious answer to the question whether prisoners are persons and whether they are entitled to fundamental rights while in custody, although there may be a shrinkage in the fundamental rights.”<sup>15</sup> This is what this Court had to say in this regard: “Are prisoners persons? Yes, of course.*

*“Prisoners are peculiarly and doubly handicapped. For one thing, most prisoners belong to the weaker segment, in poverty, literacy, social station and the like. Secondly, the prison house is a walled-off world which is incommunicado for the human world, with the result that the bonded inmates are invisible, their voices inaudible, their injustices unheeded. So it is imperative, as implicit in Article 21, that life or liberty shall not be kept in suspended animation or congealed into animal existence without the freshening flow of fair procedure.”<sup>16</sup>*

A review of the Indian Judiciary's decisions regarding the protection of Human Rights of prisoners indicates towards the fact that judiciary has been playing a role of savior in those situations where the executive and legislature have failed in addressing the problems of the people. The Supreme Court is taking corrective measures and providing necessary directions to the executive and legislature. From the perusal of the above contribution it shows that the Indian Judiciary has been very sensitive and alive to the protection of the Human Rights of the people. The judicial activism is that tool which forged new tools and devised new remedies to vindicate the most precious of the precious Human Right to Life and Personal Liberty.

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<sup>14</sup> RE - Inhuman Conditions IN 1382 Prisons V. State, SC 2016.

<sup>15</sup> RE - Inhuman Conditions IN 1382 Prisons V. State, SC 2016.

<sup>16</sup> *Ibid*

### 1.3.1 Freedom of Speech and Expression

Prisoners alike others can access many human rights made in Universal Declaration of Human Rights and international covenants. Indian judiciary had also recognized the right of a prisoner to enjoy the right to freedom of speech and expression.<sup>17</sup> It is interesting to note that the judiciary took such a view before the Kesavanada Bharathi judgment<sup>18</sup> came and evolution of the concept of justice as fairness. Alongside with this, it is worthwhile in discussing the judicial declaration of the right of press to interview prisoners. This judgment has certain implications over the right of prisoners in exercising their right to freedom of speech and expression. In a landmark judgement of the case *Maneka Gandhi v. Union of India*, the Supreme Court held that the freedom of speech and expression has no geographical limitation and it carries with it the right of a citizen to gather information and to exchange thought with others not only in India but abroad also.<sup>19</sup>

### 1.3.2 Right to have healthy atmosphere in prison

The Supreme Court identified nine major problems afflicted upon the prison system, namely, overcrowding, delay in trial, torture and ill-treatment, neglect of health and hygiene, insubstantial food and inadequate clothing, prison vices, deficiency in communication, streamlining of jail visits and management of open-air prisons. Among this, an unhealthy living premise inside the jail was identified by the Court as a severe problem.<sup>20</sup> The court herein also pointed out the need for providing adequate amenities by the state for the prisoners in advancement of their living conditions inside the prison. A decade after this judgment situation remained the same and the same was revealed before the court by another judgment.<sup>21</sup> The maximum overcrowding is in the jails of the Union Territory of Dadra & Nagar Haveli (331.7%) followed by Chhattisgarh (258.9%) and then Delhi (221.6%). Nothing has been changed on the ground? As on 31st December, 2014, the prison statistics from the website of the NCRB indicate that as far as overcrowding is concerned, there is not much change and in fact the problem has been accentuated with the passage of time.

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<sup>17</sup> The State of Maharashtra v. Prabhakar Prandurang Sanzgiuri and another, A.I.R. 1966 S.C. 424.

<sup>18</sup> Kesavananda Bharati vs State Of Kerala And Anr AIR (1973) 4 SCC 225.

<sup>19</sup> Maneka Gandhi v. Union of India, AIR (1978) SC 597.

<sup>20</sup> Ramamurthy v. State of Karnataka, (1997) S.C.C. (Cri) 386.

<sup>21</sup> Ramamurthy v. State of Karnataka, (1997) S.C.C.(Cri) 386.

#### 1.4 Judicial Intervention in Protection of Human Rights of Prisoners

With justice VR Krishna Iyer's judgement in Sunil Batra's case<sup>22</sup> came the era of judicial activism which brought forth major changes in the way prisons are run and the importance given to reformation process in prison. Judicial pronouncement related to prison administration have mainly been related to the need of keeping the human dignity of the persons in mind and dealing with whole array of issue such as need for speedy justice for under trials, free legal aid to prisoners, right to communication, protection against torture, wages to prisoners etc.

##### 1.4.1 Speedy trial

Right to speedy trial is understood in Article 21 of the Constitution. Be that as it may, long pretrial imprisonment of a blamed individual in India is one for the terrible viewpoint in our criminal justice system. In this setting, the Supreme Court of India on account of *Sunil Batra v Union of India* and *Hussainara Khatoon v State of Bihar* watched that the rate trial is an indispensable and key part of the key right to life and freedom under Article 21 of the constitution.<sup>23</sup> In *Hussainara Khatoon* case, a writ request was recorded under the watchful eye of the Supreme Court that countless and ladies, including youngsters, were behind the bars for quite a long time anticipating trial in courtrooms. Court watched that, it is a crying disgrace upon our adjudicatory framework which keeps men in prison for a considerable length of time and end without a trial.<sup>24</sup> The State can't maintain a strategic distance from its protected commitment to give expedient trial to the blamed by arguing monetary or authoritative powerlessness. The State is under an established command to guarantee fast trial and whatever is vital for this reason must be finished by the State.<sup>25</sup> It was proclaimed that privilege to fast trial is a vital piece of central right to life and freedom.<sup>26</sup> For the situation *Abdul Rahman Antulay v. R.S. Nayak*, the seat pronounced certain viewpoints and rules with respect to the rapid trial and subduing of cases ought to rely on nature of the case.<sup>27</sup> Equity Krishna Iyer while managing the safeguard request in *Babu Singh v. State of UP*, commented, "Our equity framework even in grave cases, experiences moderate movement

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<sup>22</sup> AIR 1978 SC 1514.

<sup>23</sup> *Hussainara Khatoon & Ors vs Home Secretary, State Of Bihar*, 1979 AIR 1369 1979.

<sup>24</sup> *Kadrapahadiya v. State of Bihar*, AIR 1981 SC 939.

<sup>25</sup> *Abdul Rehman Antulay & Ors vs R.S. Nayak & Anr*, (1984) 2 SCR 914.

<sup>26</sup> *Katar Singh v. State of Punjab*, 1994 SCC (3) 569.

<sup>27</sup> *Abdul Rahman Antulay v. R.S. Nayak*, 1988 AIR 1531.

disorder which is deadly to 'reasonable trial' whatever a definitive choice. Expedient equity is a segment of social equity since the group, all in all, is worried in the criminal being condignly lastly rebuffed inside a sensible time and the guiltless being exculpated from the excessive experience of criminal procedures."<sup>28</sup>

#### **1.4.2 Torture**

In *Kishore Singh v. State of Rajasthan*, the Supreme Court has held that, the Third degree method being used by the police in custody and prison is violation of Article 21 of Constitution.<sup>29</sup> Custodial death and violence is one of the worst crimes in civilized society governed by law. It is violation of human rights of all prisoners who are suffering torture in custody and crying to shame of our adjudicatory system.

#### **1.4.3 Right to legal Aid**

Right against self-incrimination also bring in focus the larger right of "right to legal aid". The court held that Art. 22(1) that provides that a right of the accused to consult and be defended by a legal practitioner of his choice extending to proceedings even before a panchayat where a maximum sentence that can imposed is fine.<sup>30</sup> In the case of *M.H. Wadanrao Hoskot v. State of Maharashtra*, the Court held that the right to legal aid is one of the ingredients of fair procedure.<sup>31</sup>

##### **1.4.3.1 Accused right be defended by a pleader of his choice**

Section 303 provides that Right of person against whom proceedings are instituted to be defended. Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code, may of right be defended by a pleader of his choice.<sup>32</sup> Prior to the Constitution come into power, this was most likely the main procurement from which the privilege of the denounced to have interview between him and his lawful guides seems to have been determined and supported. In *Ram Sarup v. Union of India*<sup>33</sup> the fact was: Ram Sarup, solicitor

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<sup>28</sup> Babu Singh v. State of UP, 1978 AIR 527.

<sup>29</sup> AIR 1981, SC 625.

<sup>30</sup> State of M.P. v. Shobharam, AIR 1966 SC 2193.

<sup>31</sup> M.H. Wadanrao Hoskot v. State of Maharashtra, 1978 AIR 1548.

<sup>32</sup> Code of criminal procedure Article 303 reads "Right of person against whom proceedings are instituted to be defended. Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code, may of right be defended by a pleader of his choice."

<sup>33</sup> A.I.R. 1965 S.C. 247.



was a sepoy and subject to the Army Act. He shot dead two sepoys. He was charged on three tallies under S. 69 of the Army Act read with S. 302 of I.P.C. what's more, was attempted by the General Court-Martial. He was discovered blameworthy of the three charges and sentenced to death. One of the disputes raised by the candidate was that he was not permitted to be guarded at the General Court-martial by a legitimate professional of his decision and along these lines; there had been an infringement of the procurements of Article 22 (1) of the Constitution. Candidate claimed that he had communicated his yearning, on numerous events, for authorization to draw in a rehearsing common legal counselor to speak to him at the trial however the powers turned down those solicitations and let him know that it was not reasonable under the Military guidelines to permit the administrations of a non-military personnel legal counselor and that he would have to shield his case with the direction he would be given by the Military Powers. In answer it was expressed that this claim about the candidate's solicitations and their being turned down was not right, that it was not made in the appeal yet was made in the answer after the State had recorded its counter affidavits in which it was expressed that no such demand for his representation by a lawful expert had been made and that there had been no disavowal of his basic rights. The Supreme Court was of the sentiment that the applicant made no solicitation for his being spoken to at the Court-Martial by an advice of his decision, that subsequently no such demand was denied and that he can't be said to have been prevented his central right from claiming being safeguarded by guidance of his decision. The Court called attention to that the candidate did not state in his appeal to that he had made a solicitation for his being spoken to by an insight of his decision. He had just expressed that sure of his relatives who looked for meeting with him consequent to his capture were denied consent to see him and that this methodology which brought about foreswearing of chance to him to safeguard himself legitimately by connecting with an equipped regular citizen legal advisor through the assets and help of his relatives had encroached his crucial directly under Article 22 of the Constitution. On the off chance that the applicant had made any express demand for being protected by a guidance of his decision, he ought to have expressed so direct in his request. His included dialect must be that he couldn't contact his relations for their organizing a non-military personnel legal counselor for his safeguard. This negative any proposal of a solicitation to the Military Authorities for authorization to permit him representation by a honing legal advisor and its refusal. The Court hung on the certainties that there had been no infringement of the central

right of the applicant to be shielded by an insight of his decision presented under Article 22 (1) of the Constitution. For this situation as well, the Court took a specialized perspective of the matter by watching that the candidate did not state in his request of that he had made a demand for his being spoken to by a guidance of his decision. The Court was very little awed by the announcement of the solicitor, that he proved unable contact his relations for their organizing a non-military personnel legal counselor for his barrier. After each of the man who is captured and kept needs to take the assistance of some person else like relatives to make procurement for drawing in a legal advisor. In any case, the Court was slanted to take hyper-specialized way to deal with hold that Article 22(1) is definitely not abused.

#### **1.4.3.2 Legal aid to accused at State expense in certain cases**

Section 304 of cr.p.c provides Legal aid to accused at State expense in certain cases.<sup>34</sup> The Court in *Ranjan Dwivedi's* case referred to *M.H. Hoskot's* case and *Hussainara Khatoon's* case and also observed that primarily the mandate in Article 39 A is addressed to the Legislature and the Executive but insofar as the Courts of Justice can indulge in some judicial law-making within the interstices of the Constitution, the Courts too are bound by this mandate. Even then the Court expressed its inability to grant remedy to the petitioner on the ground that he sought writ of mandamus for the enforcement of the Directive Principle enshrined in Article 39 A. The Court directed the petitioner to approach the Additional Sessions Judge under sub-section (1) of Section 304 of the code of Criminal Procedure. It cannot be understood why the Court expressed its

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<sup>34</sup> Code of criminal procedure Article 304 reads “Legal aid to accused at State expense in certain cases.

(1) Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State.

(2) The High Court may, with the previous approval of the State Government, make rules providing for-

(a) the mode of selecting pleaders for defence under sub- section (1);

(b) the facilities to be allowed to such pleaders by the Courts;

(c) the fees payable to such pleaders by the Government, and generally, for carrying out the purposes of sub- section (1).

(3) The State Government may, by notification, direct that, as from such date as may be specified in the notification, the provisions of sub- sections (1) and (2) shall apply in relation to any class of trials before other Courts in the State as they apply in relation to trials before Courts of Session.”

<sup>34</sup> Universal Declaration of Human Right, Article 10 reads, “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him”.

inability or helplessness to grant relief to the accused petitioner in the face of *M.H. Hoskot* and *Hussainara Khatoon* decisions of which it took cognizance which clearly had held that right to counsel in case of indigent accused is a fundamental right under Article 22 (1) and 21. The Supreme Court could have easily brushed aside the technicality of petition being for the enforcement of a Directive Principle of State Policy under Article 39 A and given relief under Article 22 (1) and 21 which were enforceable fundamental rights.

### 1.5 Conclusion & Suggestion

We cannot forget that the International Covenant on Civil and Political Rights, to which India is a signatory, provides in Article 10 that: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."<sup>35</sup> Similarly, Article 5 of the Universal Declaration of Human Rights (UDHR) provides: "No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment."<sup>36</sup> In a similar vein, it has been said, with a view to transform prisons and prison culture: "Treating prisoners not as objects, but as the human beings they are, no matter how despicable their prior actions, will demonstrate an unflagging commitment to human dignity. It is that commitment to human dignity that will, in the end, be the essential underpinning of any endeavor to transform prison cultures." Law has a critical part to play towards accomplishing the honorable objective of keeping up the Human Rights standard in Indian correctional facility. Notwithstanding, even 66 years of autonomy the state of jail and detainees in India show up not to have enhanced much. All in all, I can say that what is occurring inside the four dividers of jail remain a riddle for outside the world, as free collaboration and visit inside the jail is not allowed because of different reasons, but rather, does that imply that this strata of the general public ought to be left to themselves as it were? Genuine changes is not noticeable anyplace. Much should be done and that can be successfully done if there is a political will to do as such and that legal, police and jail staff work hand in glove to control the infringement of human rights of prisoners. Following suggestion may be made:

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<sup>35</sup> Universal Declaration of Human Right, Article 10 reads, "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him".

<sup>36</sup> Universal Declaration of Human Right, Article 5 reads, "No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment".

- An appropriate monitoring system ought to be set up to guarantee that rules and legal choices identifying with detainees are executed.
- Access and communication with the family the criteria for giving parole ought to be casual. Quick strides ought to be started to lessen the deferrals in conveying detainees to trial.
- Comprehensive measures should be adopted to reduce overcrowding in jail.
- The right of a prisoner as given in the code of criminal procedure to see and meet a lawyer of his/her choice should be ensured.
- Human Right education should be compulsory for the prison personnel.
- Whenever any principle or law concerning detainees is to be made the jail authorities must be included in the law making process since they know not functional issues in regards to appropriateness of any law with respect to jail. Their association in basic leadership will help in better execution of principles.
- Instances of torture and custodial violence should be dealt strictly and heavy fines should be imposed on the person responsible.