

THE CRUSADER OF PRISONERS' RIGHTS- INDIAN JUDICIARY AND ARTICLE 21

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INTRODUCTION

15th August 1947 was the day India became free from the bounds of British Empire; the people living under the geographical confines of the country were no more the prisoners of a despotic rule, they were free now. Then came 26th January 1950 the date on which “The Constitution of India” came into picture. This book came to be regarded as the ‘Supreme law of the land’, which means no law can be in contravention of the Rights conferred by this book. It was through the Articles laid down in the Constitution that certain basic Rights were conferred upon the people residing in India. These Rights are looked upon as inherent and inalienable rights of the human beings. Out of these rights few are specific (conferred only on citizens) and few are general (conferred on any person residing in India). One such article happens to be the ‘Right to Life and Personal Liberty’ which is considered to be *sanctum sanctorum* of Indian Constitution¹⁰⁸.

Despite of this new found freedom, independence and rule of democracy where every person was guaranteed a “Right to Life and Personal Liberty” through Article 21 of the Indian Constitution, a certain group of people still saw the barbarity of the state as they were not even considered to be ‘persons’. These special categories of people are called ‘Prisoners’ and the place where such barbarity takes place are known as ‘Prisons’. Convention on Civil and Political rights, to which India is a signatory, lays down in Article 10(1) that all persons deprived of their liberty should be treated with humanity. In spite of such gross Human Rights infringement there is no such provision in the part-III of the Indian constitution that reduces the plight of prisoners as well as secures their rights. No concrete step was taken by the executive in improving the conditions of the inmates prior to the intervention of the Judiciary.

Lately India has been seeing a change in the approach of Judiciary towards Prisoners. The judiciary has started to take a ‘rehabilitative and reformative’ approach instead of the ‘retributive’ approach. It is through the judicial interpretations of Article 21 that the rights of these people are safeguarded. This activist approach has specifically

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¹⁰⁸ DESHTA, SUNIL AND KIRAN, Fundamental Human Rights the Right to Life and Personal Liberty 122 (ed. 2007).

gained momentum in the post emergency era. It is through various judicial pronouncements that people came to realize that even prisoners are human beings and humanity does not end at the doorsteps of a prison facility.

The question that now arises is who exactly is a *prisoner* and what are *prisoners' rights* and what is the role of Article 21 in protecting them. To a layman, a prisoner is a person who is denied his freedom and detained in a penal institution because he committed some offence or is about to commit an offence. The term *Prisoners' Right*, means the basic rights guaranteed to any prisoner on account of them being human beings, these rights cannot be taken away even if that person commits a heinous crime which is against the public good.

In the primitive societies there was no concept of Human Rights but with the passage of time people understood the importance of these Rights and started supporting them. Philosophers like Thomas Hobbes, John Lock and JJ Rousseau said that man by birth is endowed with certain inalienable rights, of which right to life; liberty and property were of utmost importance.¹⁰⁹ Article 21 was inserted in the constitution of India upholding the view of inherent and inalienable Rights and considered Article 21 i.e. 'Right to Life and Personal Liberty' to be the life and soul of Indian Constitution. It confers on every human being the right to be treated with humanity and respect. The prisoners do not fall out of the ambit of the word human and their Right to Life and Personal Liberty cannot be infringed no matter how heinous their crime may be. In fact when a person is convicted and brought in to police custody, it becomes the duty of state (including the police officials) to see that the prisoners' right to life is not threatened. The police officials are also not allowed to waive away these basic rights of prisoners and they are not supposed to treat prisoners as anything other than a human being whether it is a petty thief or a terrorist at hand.

RIGHTS OF PRISONERS UNDER ARTICLE 21

Few Rights guaranteed to prisoners through the wide interpretation of Article 21 of Indian Constitution are as follows:

RIGHT TO BE TREATED WITH HUMANITY

“Human dignity is the quintessence of human rights and this is the express constitutional guarantee in India under Article 21”¹¹⁰. This right aims at safeguarding the right of persons behind the bars to be treated at par with the

¹⁰⁹PROF. DAS HRUDAYA BALLAV, *Law is clear: A person in custody is not a nonperson*, The Pioneer (India), April 27, 2014, at htsyndication@hindustantimes.com

¹¹⁰J.S VERMA, *THE NEW UNIVERSE OF HUMAN RIGHTS* 132(2006)

persons outside the four walls of prisons. Time and again judges have taken up the stand to ensure that, persons who reside behind the wall are not denied their basic right to be treated with humanity. For example Justice Krishna Iyer while vehemently supporting the idea of a prisoners' right presented his view that 'a prisoner does not shed his basic constitutional rights at the prison gate'

In the case of *Mohammad Giasuddin v. State of Andhra Pradesh*¹¹¹ the court directed to the state not to provide prisoners with work that fell into the category of manual labour rather they should focus on the development of the mental faculties of the prisoners. The court while intervening gave the reason that it is the responsibility of courts to look after the well-being of the prisoners as it is on the decision of the court that they are sent to prison in first place.

In the case of *Charles Sobhraj v. Superintendent of Jail*¹¹² the petitioner claimed that intentional discrimination was done with him, the court regarded to it as infringement of Article 21 and held that right to life means more than mere animal existence. Even prisoners who have committed heinous crimes do not cease to be a human being and hence their dignity should be maintained. These rights of a person in cannot be taken away except in cases where the law requires it. In *Sunil Batra V. Delhi Administration*¹¹³ the apex court held that solitary confinements where putting an end to the liberty of a person to move around and talk to anyone. This harm, to a person's liberty violates Article 21 until this confinement has been backed by some law. Relying on this decision Justice Krishna Iyer in *Prem Shankar Shukla v. Delhi Administration*¹¹⁴ declared handcuffing rule of Punjab Police, which basically discriminated on the basis of economic condition of a person while handcuffing him as harsh, unreasonable and arbitrary¹¹⁵. *State of Gujarat v. Hon'ble High Court of Gujarat*¹¹⁶ held that no prisoner was supposed to work free of wages, it is both legally as well as ethically wrong.

“Justice Chandrachud in the case of *D.B.M. Patnaik v. State of Andhra Pradesh*¹¹⁷ stated that “Convicts are not by mere reason of conviction, denuded to all Fundamental Rights which they otherwise possess... A convict is entitled to the precious right guaranteed by Article 21 of the

¹¹¹ 1974AIR 1926,1978 SCR (1)153

¹¹²1978AIR 1514,1979 SCR(1)512

¹¹³1980 AIR 1579,1980 SCR(2) 557

¹¹⁴ 1980 AIR 1535,1980 SCR (3) 855

¹¹⁵ *Ibid*

¹¹⁶ PEOPLE'S UNION OF CIVIL LIBERTIES, *infra* 25.

¹¹⁷ 1974 AIR 2092, 1975 SCR (2) 24

constitution that he shall not be deprived of his life and personal liberty except according to the procedure established by law”¹¹⁸.

After a long period of struggle coupled with massive sacrifices Indian people were identified as human beings. These sacrifices and protests would be an activity in vain if these human beings are once again treated as animals, even if it happens to be behind the confines of prison walls in the name of punishment or on the name of nation’s safety. A person is born with certain inherent right, these rights give a claim to an individual over himself and no one else should be able to take away from them. Hence, it is apt to say that NO person should be a subject or slave of another person, to do away with as he desires, just because he has committed a crime. If these activities take place behind the bars then it would not be long, when these things become widely prevalent as people who are dissatisfied with law would start behave with people in the same manner as the police or state does. The problem of Maoists is a glimpse in the future. Moreover if this type of treatment is meted out to the convicts, people convicted for petty offences would come out as hardened criminals because inhuman treatment has the capacity to transform a person from human to a monster. This kind of treatment seems more like revenge than a step towards reformation and if this is the case than the whole foundation of punishment stands defeated. It would be advisable to treat prisoners with respect so that they get a chance to reform themselves.

RIGHT AGAINST CUSTODIAL VIOLENCE

Through the case of *D.K. Basu v. State of West Bengal*¹¹⁹, the apex court heavily criticized custodial deaths. The bench presided by Justice Kuldeep Singh and Justice A.S. Anand stated that “Custodial death is perhaps one of the worst crimes in a civilized society governed by the Rule of Law”. The court pointed out that in cases of custodial death situations would arise wherein the police officials would pick up people on the basis of suspicion, torture him in the name of interrogation and if during the investigation procedure anyone died their bodies would be disposed of discreetly. There would be an absence of evidence because police officials would not step up against the other officers as they would be stopped by a feeling of brotherhood, other inmates would also not report against such activities as their own safety would be at stake. One such incidence happened in the case of *State of Madhya Pradesh vs. Shyamsunder Trivedi & Ors.*¹²⁰ In this case the deceased was brought in for interrogation where due to the use of severe torture method he died, the trial court acquitted all the respondents saying that there was an absence of proof. According to Justice A.S. Anand Custodial violence including torture,

¹¹⁸ *Ibid*

¹¹⁹ AIR 1997 SC 610

¹²⁰ Air 1995 SCW 2793

interrogation, death in lock ups etc. are a great matter of concern. Custodial violence is a naked violation of Article 21 and is against the basic human rights of a person by the protectors of the Law. If these protectors violate such basic human rights then every person would take it upon themselves the task to achieve justice which would in the end lead to anachronism. No developed and civilized society can afford such a situation. Justice Kuldeep Singh further proceeded to lay down the guidelines to be followed by the officers in future cases¹²¹. In the case of *Nilabati Behara vs. State of Orissa*¹²² the Court provided compensation to the mother of a young boy who died due to police atrocities, while he under police custody. To curb such incidences The Law commission in its 113th report made recommendations to insert Section 114B in the Indian Evidence Act.¹²³ The Supreme Court, in the case of *Kishore Singh vs. State of Rajasthan* declared Third degree torture as against the spirit of Article 21.

The duty of law is not just to protect people outside the prison gates, from the hands of offenders but also to protect them when they are behind the bars from the hands of police officials. Judiciary has time and again shown through various judgements that the life and liberty of a person is of utmost importance to them, unfortunately in spite of the express warning from judiciary the police officers keep tormenting the prisoners so much so that in some cases this happens to be the cause of their death.

RIGHT TO SPEEDY TRIAL

One of the most unfortunate things that can happen to an accused today is delay in the disposal of his cases. Courts are now overburdened with cases and more cases are getting piled up every day. Commonwealth Human Rights Initiative (CHRI) in its report presented that out of the whole population of India on 1.1.97, 1, 63, 092 were under trials meaning 72% of population was not even convicted. Apart from this, the report also pointed out that most of these prisoners were first timers and from underprivileged sections of the society. This problem was observed by the court in *Hussainara Khatoon v. State of Bihar*¹²⁴ and an emphasis on speedy trials was made.

“No procedure which does ensure reasonably a quick trial can be regarded as reasonable, fair or just and it would be a fail foul of Article 21. There can, therefore be no doubt that speedy trial, and by speedy trial I mean reasonably expeditious trial, in an integral an essential part of fundamental right to life, liberty enshrined in Article 21.”¹²⁵

¹²¹ *Supra* 17

¹²² 1993 AIR 1960, 1993 SCR(2)581

¹²³ *Supra* 17

¹²⁴ 1979 AIR 1369, 1979 SCR (3)532

¹²⁵ DESHTA, *Supra* 6 ,at 127(2007)

Just one year before this case “The Indian Express” through a series of newspaper articles brought to the notice of the court the condition of the prisoners especially under trial prisoner, who were never even produced in front of the courts, some had already gone through more suffering than the prescribed punishment. The bench in *Maneka Gandhi vs. Union of India*¹²⁶ observed that this was a rather dishonoring practice, which resulted in waiver of trust that a person has on the present judicial system as these lost souls were denied trial for a long time and were kept in prison without even hearing their side of the story. These prisoners languished in prisons not because they were guilty but because they were economically not able to afford a bail.¹²⁷

In the case of *Mantoo Majumdar v. State of Bihar*¹²⁸ where two petitioners spent seven years of their life in prisons, Justice Krishna Iyer pointed out the inefficiency of State and police in promptly investigating the case. What made the condition of petitioners even more pitiful was that the government of Bihar was unwilling to furnish facts even after the court has asked them.

One of the most shameful and shocking case that came in front of India was *Veena Sethi v. State of Bihar*¹²⁹ wherein Free Legal Aid Committee, Hazaribagh wrote a letter to Justice Bhagwati stating the pathetic conditions of 16 prisoners who were of unsound mind at the time of arrest. Several of them regained their sanity but spent their days in the prison for decades whereas six of them who did not regain their sanity were forced to live in prisons. Defense taken by the respondents was that mental hospitals of Bihar were overcrowded. Court heavily criticized and disapproved the practice of treating prisoners in prisons instead of mental hospitals.

An interesting view was given in the case of *Abdul Rehman Antulay v. R.S. Naik*¹³⁰ the petitioners here argued that right to speedy trial should be made meaningful, enforceable and effective; there should be a stipulated time beyond which the continuance of a proceeding would be considered as violative of Article 21.

The objective of law is to punish those, who are guilty of a crime and not the innocent but in reality this is the trend now. A person is arrested on the ground of suspicion and locked away, the prisoner then keeps waiting for the time when he would be allowed to say his side of the story, unfortunately he has to wait a long time before he gets this chance and in some cases the person may not even get the chance. The condition worsens if the person happens to be economically weak. Sometimes it so happens that people are not even guilty of the crime that he is

¹²⁶ 1978 AIR 597, 1978 SCR(2)621

¹²⁷ People’s Union of Civil Liberties, *Prisoners’ Rights: Some Landmark Judgements*, available at, <http://www.pucl.org/from-archives/81nov/prisoner-rights.htm>, last seen 20/09/15 at 12:15pm

¹²⁸ 1980 AIR 847,1980 SCR(2) 1105

¹²⁹ AIR 1983 SC 339

¹³⁰ 1992 AIR 1701, 1991SCR(3) 325

accused of but he still suffers the pain, the humiliation because of the delay in conducting a trial and the one who should be behind the bars, the mastermind is not even caught. Situations like this are a mockery of the Indian Legal System, the Constitution and the rights affirmed therein, it should be rectified as soon as possible or else in the end people will end up withdrawing their trust from the whole judicial system, anarchy will prevail.

RIGHT TO FAIR TRIAL

In the earlier western societies deviants, thieves, and so called witches were executed without any trial.¹³¹ The practice was widely used by the kings in India for any kind of deviant behaviors. Right to Fair Trial is one the most fundamental right of a person especially when his life and liberty happens to be at stake. It is written down in the Article 14 of ICCPR that “Everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law”. The Apex Court of India in the case of *Zahira Habibullah Sheikh & Anr vs State Of Gujarat*¹³² propounded that,

“The principle of fair trial now informs and energizes many areas of the law. It is reflected in numerous rules and practices.... fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated.”¹³³

This same right has been safeguarded under Code of Criminal Procedure 1973. Article 21 propounds that the procedure established by law must be just, reasonable and fair but a hearing without a fair trials infringes this Article. The court in the famous case of *Naresh Sridhar v. State of Maharastra*¹³⁴ held that a public trial in open court is important for the fair administration of Justice because the public gaze imposes a check and balance mechanism on the judiciary and controls the arbitrary functioning of the judges. When the question about the importance of in Camera trial came up, the court held the view that even though open trials are important, the primary requirement of a court proceeding is to impart justice, so if the judge, who is presiding over the case stands to be convinced that there arises a chance where the facts or evidence could be distorted, it would be upon his discretion to hold the whole or part proceeding in camera.¹³⁵

¹³¹ CHIRANJIVI J. NIRMAL, HUMAN RIGHTS IN INDIA, HISTORICAL, SOCIAL AND POLITICAL PERSPECTIVE 161.

¹³² Appeal (crl.) 446-449 of 2004

¹³³ The Hoot, *Fair Trial*, available at <http://www.thehoot.org/resources/press-laws-guide/fair-trial-6286> last seen 20/09/15, 14:04 pm

¹³⁴ 1976 AIR,1 1996 SCR (3)744

¹³⁵ DESHTA, *Supra* 6 137-138(2007)

It goes without saying that a person's right to fair trial should never be taken away. The trial should be presided over by an impartial judge in a setting which is open to public gaze. If this right is taken away many would be convicted for the crimes they never even committed because then the procedure would become arbitrary and the whimsical. Sometimes it may happen that, an innocent would be punished as there would be no proper mechanism to determine his guilt. The Indian Judiciary has always laid emphasis on providing fair trial to the accused even if the evidence prima facie suggests that the accused is guilty. In the case of Ajmal Kasab, where the misdeeds of the accused was seen on television the judiciary still gave him the opportunity to defend himself.

RIGHT TO LEGAL AID

Now the question is whether Right to Free Legal Aid would fall under the ambit of Fair trial? The answer is yes, it is necessary that a person has a fair trial before he goes to jail but this would only be possible if he gets a chance to represent himself through a lawyer in the court of law. It has been seen as a trend that a majority of people who commit offences generally belong to the economically weaker section of the society who are forced to languish in jails for such offences just because they are unable to afford a lawyer, this results in infringement of a person's Right to Life and Personal Liberty. A person should not be punished just because he was born in a family with lower economic status, this would infringe their right to be treated equally in the eyes of law. The courts came to realize this dilemma and for the first time in *M.H. Hoskot v. State of Maharashtra*¹³⁶ where the court said that in case economic inability or incommunicado situation, if the gravity of the case is such that the life and liberty of a person is at risk, the state requires to appoint a counsel for the accused provided he does not refuse it. This would also stand true in the case of an appeal or revision^{137 138}

In the case of *Ramchandra Nivrutti Mulak vs. the State of Maharashtra*¹³⁹ the question came that if the lawyer of the accused files for a withdrawal from the case and that request stands denied then is it the duty of the trial court to ask the accused to make some other arrangement so that the lawyer is present in court or should the court themselves appoint a lawyer for them? The court answered that as it was held in *Suk Das and another vs. Union Territory of Arunachal Pradesh*, and *Khatri and Others vs. State of Bihar and Others* the conviction of a person who did not have a lawyer to represent him stands to against his fundamental right of Right to Free Trial¹⁴⁰

¹³⁶ 1978 AIR 158, 1979 SCR (1) 192

¹³⁷ *Ibid*

¹³⁸ MEGHA MAJI *infra* 38

¹³⁹ AIR 1978 SC 1548

¹⁴⁰ MEGHA MAJI., *Free Trial Under Section 304 of Cr PC*, Available at <http://www.legalservicesindia.com/article.print.php?artid=1759>, last seen 20/09/2015, 14:22

If any law is made it should be made with an objective and steps should be taken to ensure that these laws are implemented properly similarly just giving right to a fair trial does not solve all the problems because even if the courts desire to give a fair trial to the accused, the accused will not be able to avail this right until and unless he is monetarily able to do that. The right to free legal aid is one of the most well thought of and noble rights set forth by the Indian judiciary as it not only confers rights on a person but also helps them in enforcing them. The judiciary by this step has increased the level of trustworthiness that the public has in the workings of the judiciary.

RIGHT TO BAIL

Article 21 provides that no person shall be deprived of his life and liberty except in accordance with the law. When a person is arrested for the purpose of investigation of an offence, he is detained into confinement which results in hampering his liberty but is necessary and cannot be avoided because there always lies a chance that the accused would manipulate the evidence or abscond. In such a condition bail acts as a relief for the accused. Bail is the surety that the accused would be present during trial and on the basis of this guarantee the accused is provided temporary release. Besides, there is a basic understanding in the field of law that a person is innocent until proven otherwise, so until and unless a trial is conducted and the guilt of a person is established he should not be forced to live in jail where his liberty is infringed and hence they should be provided bail.

In the case of *Hussainara Khatoon v. State of Bihar*¹⁴¹ it was stated that person on pre-trials should be released on the basis of bails. The question that arose in the course of this case is that the grants of bails were basically dependent upon the discretion of the judges; these judges mostly provided bails on the basis of financial stability of the people which made bail, a luxury item, available only for the rich. The court suggested an alternative for the grant of bail which was based on roots in the community, job security and family ties.^{142 143}

When the case of *Hitendra Vishnu Thakur v. State of Maharashtra*¹⁴⁴ came in front of the court, the court held that in case, an investigation is not completed within a stipulated time and the status of the accused is not determined, the accused will then acquire a right to ask for bail and while deciding the about the grant of bail the court will not look into the merits or the gravity of a case.¹⁴⁵

¹⁴¹ 1979 AIR 1369, 1979 SCR (3) 532

¹⁴² DESHTA, *Supra* 6 142-143(2007)

¹⁴³ Anonymous, *Right to Bail Constitutional Aspect*, available at <http://www.legalera.in/events-2/item/8318-right-to-bail-constitutional-aspects.html>, last seen 20/09/15, 22:42 pm

¹⁴⁴ 1994 AIR 2623, 1994 SCC(4) 602

¹⁴⁵ *Supra* 29 169

Bail is an important necessity in today's society. As mentioned earlier in the paper most of the people who waste away their life in jail awaiting their trials belong to the economically backward section of a society, in such a scenario imagine in a family of four there happens to be one single bread earner, the husband. He has a wife and two kids. He is taken up by the police on grounds of suspicion, after that he languishes in jail as he has no money, he suffers, his family suffers and this is even before his guilt is determined. Suppose, he happens to be an innocent soul than he and his family goes through all this suffering for nothing. The ultimate motive of law is to punish those who are guilty in accordance with the intensity of their crime. No innocent person should be punished and as the quote goes not guilty until proven one should be allowed to ask for bail after a reasonable passage of time.

INFRINGEMENT OF ARTICLE 21 IN JAILS:

India is a country which is suffering from extreme poverty, corruption, abuse of power, inefficiency of legislature and to top it off the people of India are ignorant about their rights. In such a scenario the activist approach taken up by the judiciary in safeguarding them who cannot protect themselves is commendable. In spite of such zealous approach of the judiciary there are still few areas which need more work.

Here is a list on which the researcher thinks in present scenario utmost attention of judiciary is required:

1. **Overcrowding:** Overcrowded prisons affect the right of a person to live with dignity. As per the Prison Statistics Report In the year 2012 the population in the Indian Jails was 3, 85,135 whereas the authorized capacity was 3, 43,169. Delhi's central jail, Tihar on 28, February, 2014 showed an authorized capacity of 6,250 inmates whereas in reality there were 13,836 prisoners within the prison facility.¹⁴⁶ According to National Human Rights Commission, the major cause of overcrowded prisons is the unnecessary arrests made by the police official, which results in creating congestion.¹⁴⁷ Other causes of contributing to this factor are shortage of adequate accommodation, increasing number of under trial prisoners and lack of uniform and adequate policy of probation, parole, remission and commutation of sentence. Consequences of overcrowded prisons shows a bizarre effect on the mentality of the person, he becomes more aggressive as he lives in continues competitive state where due to the scarcity of resources he feels that his survival is threatened. Sometimes this overcrowded status leads to riots in the prison for example the riots in Jalalandhar Jail in January 2008.¹⁴⁸ It has adverse effect on the health of the citizens as due to large population the quality of food decreases, there is an absence of proper sanitation facilities, these people

¹⁴⁶LEILA SETH, TALKING OF JUSTICE PEOPLE'S RIGHT IN MODERN INDIA 139 (2003)

¹⁴⁷ Anonymous, *Prison Overcrowding and Human Right*, http://shodhganga.inflibnet.ac.in/bitstream/10603/20871/8/08_chapter-03-overcrowding.pdf, last seen 21/09/15 at 00:42 am

¹⁴⁸ *Ibid*

do not even get enough place to sleep which a human being requires. The availability of doctors are also constrained which leads to inefficient healthcare facilities hence infringing the Right to Health which Article 21 guarantees.¹⁴⁹

2. Prisoner Rape: “Rape”, the crime for which people go to jail, the crime which is so heinous that places like prisons are created in the first place. The objective is to stop this crime but how is it going to stop if it takes place behind the bars too? Prison rape is a well-accepted norm in the jails of India where inmates take pride when they commit this act; it’s a sign of authority, power and masculinity. The most shocking thing is that it is not only the inmates who commit this act but also the prison staff, most of the time they are not even stopped as people are scared of the position the other party holds. This act rather than acting as a reforming a person transforms him into a more hardened criminal as people convicted for petty offences would be subjected to such torture. The judiciary should take necessary steps to do away with prison rape as it creates a scenario of gross human rights violation and infringes Right to life and liberty of human being behind the bar.¹⁵⁰

SOLUTION

Here are some suggestions, upon the application of which the researcher thinks a more just and fair justice system would be created.

1. The first and foremost step of judiciary should be to think carefully and exercise all possible ways to reform the person rather than sending him to jail
2. The courts should treat minor offences differently than the major ones.
3. Approach like warnings, psychiatric help, imposition of fine, house arrest should be used before sending a person to jail.
4. Court should order the jail authorities to keep a close watch, physically and technologically in the prison facilities.
5. Courts should appoint psychiatrists who can have one on one interaction with the prisoners and if any news of such activity comes to them they should immediately tell the concerned authorities.
6. The cases should be dealt in a speedy manner so the number of under trials would be decreased.
7. Develop certain guidelines necessary for the safety of prisoners.

¹⁴⁹ SETH, *Supra* 44 141

¹⁵⁰ Udisha Ghosh, *Prison Rape: Yet Another Story of Human Rights Violation*, <http://alexis.co.in/preshti/prison-rape-yet-another-story-of-human-rights-violation/>, last seen 31/10/15 at 16:23

CONCLUSION

From the plethora of judgements to the various guidelines in different cases and the various interpretation of Article 21, one can see the judiciary has played a very important role in safeguarding human rights. Judiciary has taken a step forward and has added one more role to its function. Apart from being an interpreter of law judiciary have rather started talking about the inherent rights of people. In this new India Judiciary has become the protector of rights and is widely trusted by the public at large. This can be seen through the activist approach taken by the judiciary in the field of prisoners' rights. Even though the courts have declared prisoners' rights as a part of Article 21 the enforcement of these rights are a challenge in itself. For example the judiciary laid down guidelines against custodial violence, in spite of that evil practices do not cease. It clearly indicates that the judiciary makes laws in good faith and with an aim to protect the marginalized but there is some discrepancy in the enforcement of these rights, this is why the noble goal of the judiciary cannot be met. The judiciary has tried to fill up the cracks to a certain extent but it would be silly to think that everything is fine and dandy; there is still a long way to go before the goals set forth i.e. ensuring the rights of an individual, by the constitution under Article 21 can be achieved in its true sense. Judiciary has through its continuous effort tried to create a climate of transparency and accountability, it is now the duty of executives to ensure that such transparency and accountability is maintained.

Apart from the fact that judiciary has worked itself tirelessly; there are few problems in the working of the judiciary which needs to be rectified. They need to understand the true nature of punishment and also the ways in which one can be punished without going to jail. Judges should also understand the nature of the offence and the mentality of the accused. The biggest mistake committed by the judiciary is that while giving punishment the after effects are not taken into consideration. Judges think as soon as an accused comes for trial and he is held guilty of the offence, no matter how huge or small the offence be, he should be sent to jail. "No innovativeness" is the stand taken by judges on matters of punishment. This attitude of the court coupled with the present condition of prisons, destroys people more rather than reforming them. The aim and outcome of a judiciary while granting punishment must be to reform a person rather than scarring him for life.

Judiciary has done a tremendous work during the past decade to improve the life of a person behind the bars but if it takes steps further and does away with these loopholes, India would be known as a country in which every person is equally treated.