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Prisoner's Right to Access for Justice: Providing a Proper Treatment under Jail Authority

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ABSTRACT

The oldest penal institution is actually the jail which is commonly known as prison in the countries. As a democratic and socialist Nation, it is expected to protect the basic rights of prisoners. Human rights jurisprudence advocates that no crime should be punished in a cruel, degrading or inhuman manner. On the contrary, it is held that any punishment that amounts to cruel, degrading or inhuman should be treated as an offence by itself. This article talks about such good changes. This article also deals with international laws. This article includes international Human rights laws like the UN charter and the Universal Declaration of Human Rights. For making it more rational and practical, the authors added the role of the judiciary in preventing the right of prisoner's rights. This article also includes some constitutional provisions as well as some important case laws to enhance the structure and standard of the article. The right to prisoners also has been mentioned in this article.

I. INTRODUCTION

“Prisoner is a second-by-second assault on the soul, a day-to-day degradation of the self, an oppressive steel and brick umbrella that transforms seconds into hours and hours into days.”

- **Munia Abu-Jamal**

Proper jail treatment is one of the main issues in the scope of a Prisoner's right to access justice. The scope of proper treatment of prisoners is wide scope. Bad jail treatment is the main cause of unnecessary mental and physical cruelty to prisoners. Sometimes suspect prisoners get unnecessary cruelty from jail authority. Small cell rooms, improper ventilation, lack of cleanliness and mental disturbance are the root of all problems in prisoners' rights. If we talk about Asian countries or specifically south Asian countries like India, Pakistan, Bangladesh and China etc, proper treatment under jail authority is a major issue. On the one hand, Prisoners cannot get proper legal assistance, on the hand, they are also unable to get a standard behaviour of jail authority. Such dangerous conditions only create fear and an inhuman structure in society.

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II. INTERNATIONAL HUMAN RIGHTS LAWS

People are protected from racial discrimination, torture, and enforced disappearances under international human rights legislation.

UN CHARTER

The United Nations Charter was signed in San Francisco on June 26, 1945, at the end of the United Nations Conference on International Organizations, and went into effect on October 24, 1945. and declared the Basic Principles for the Treatment of Prisoners on December 14, 1990.

The following are the guidelines:

- Principle of equality should prevail.
- The responsibility of prisons for the custody of prisoners and the protection of society against crime, as well as their fundamental responsibilities for promoting the well-being and development of all members of society.
- All prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Optional Protocol, as well as any other rights set out in other United Nations covenants.
- Prisoners have the right to participate in cultural and education activities
- Abolition or restrictions on the use of solitary confinement as a punishment should be pursued or supported.
- Access to health services without discrimination based on their legal situation
- favourable conditions shall be created for prisoners to engage in meaningful remunerated employment that will facilitate their reintegration into the country's labour market and allow them to contribute to their financial support and that of their families.

INTERNATIONAL BILL OF RIGHTS:

UNIVERSAL DECLARATION OF HUMAN RIGHTS

The Universal Declaration of Human Rights, which was approved by the United Nations General Assembly in 1948, initiated a movement inside the United Nations. Human Rights Declaration is the other name for this organic text. This essential treatise lays forth some fundamental legal ideas.

- No one should be tortured or subjected to cruel, brutal, or humiliating treatment or punishment
- No one should be subjected to arbitrary arrest, imprisonment, or exile.
- Everyone accused of a criminal offence has the right to be assumed innocent until proven guilty according to the law in a public trial in which he has received all the protections required for his defence.

THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966

The ICCPR is still the most important pact for the protection of prisoners' rights. Which includes-

- No one should be subjected to cruel, inhuman, or degrading treatment or penalties.
- Everyone has the right to personal liberty and security.
- All individuals robbed of their liberty will be treated with kindness and respect for the inherent dignity of the human person.
- No one shall be imprisoned only for failing to meet a contractual commitment.

UN CORE CONVENTIONS AND SPECIFIC INSTRUMENTS

Standard Minimum Guidelines for the Treatment of Prisoners: In 1955, Amnesty International published a set of standard minimum rules for the treatment of prisoners. The following are some major applicable rules:

- The principle of equality should prevail
- Men and women should be incarcerated in different institutions to the extent practicable;
- Complete separation between civil prisoners and those imprisoned for criminal offences; child prisoners and adult inmates should be kept apart.
- All types of brutal inhuman humiliating punishments will be entirely outlawed.
- At least one trained medical officer with psychiatric expertise is available.
- International Convention Against Torture And Other Cruel, Inhuman, Or Degrading Treatment Or Punishment:
- No state party shall expel, return, or extradite a person who is at risk of being tortured;

III. ENACTMENT DEALING WITH PRISONER'S RIGHT

The Supreme Court of India has been deliberating with the Central Government to improve the

conditions of prisoners because of the bad conditions of the prison's infrastructure and other facilities and to maintain their Rights of Constitutional Safeguard. Such Rights are explained as follows:

- **Fundamental Rights:** - Fundamental Rights are the basic rights of every citizen of India which cannot be taken away under any circumstances. Under Art.21, Art. 19(5) and Art. 14 from any reasonable restriction to arbitrary discrimination between prisoners.

In the case of **State of Andhra Pradesh v. Challa Ramkrishna Reddy**², the Hon'ble Court held that a prisoner is entitled to all the fundamental rights unless curtailed by the Constitution.

In **Charles Sobaraj v. Supdt Central Jail Tihar**³, it was ruled that all the rights available to the Prisoners under Art. 14, 19, and 21 are limited but cannot be static.

There are some other Fundamental Rights which are in the favor of convicts and prisoners: -

- ✓ Right to Privacy
- ✓ Right to Life and Personal Liberty
- ✓ Right to Live with Human Dignity
- ✓ Right to Health and Medical Treatment
- ✓ Right to Legal Aid
- ✓ Right to Education

- **Right against Solitary Confinement and bar fetters:** - Solitary Confinement is a Confinement in which a convict is kept in a separate cell with no contact for a different time duration in the manner of monitoring the behaviour of the convict.

In **Sunil Batra V. Delhi Administration**⁴, the Court observed that keeping prisoners in bar fetters day and night reduces them to the worst and reduces their mental capability. And in this case, the Supreme Court also held such confinement to be against the spirit of the Constitution of India.

- **Right to Speedy Trial:** - every prisoner has the right to have a speedy trial which is also considered an integral part of Criminal Justice. The right to a speedy trial is an is also a recognized universal Human Right. Under Section 309 of the code of Criminal Procedure.

² Criminal no-18/1997.

³ AIR1978 SC1514.

⁴ 1980 AIR 1579, 1980 SCR (2).

In **AR Antulay v. RS Nayak**⁵ Supreme Court finally comes to the point in the inert of natural justice that when the right to speedy trial of a convict has been violated the charges of the conviction shall be quashed.

- **Right against inhuman treatment:** -it's the general right of the prisoner to be treated as a human being and to protect them from any inhuman cruel treatment. In India, we read about several cases regarding the inhuman treatment of the convicts where the Hon'ble Supreme Court has also prohibited the use of such instruments which are used against the prisoners during their accusation time. the patterns of use of restraint activities shall be decided by the central prison administration which shall not be applied for longer sense. But these grounds are used in several circumstances. Where the medical officer permits the same on certain medical grounds, in case if prisoner harms himself then the administration may put him into the restatement.

In **KedraPehadiya v. The State of Bihar**⁶ the court held by seeing four petitioners who were merely undertrial prisoners awaiting their trial chained in leg irons. And the guideline was settled against the gross violation of all prison regulations in the case of Sunil Batra.

IV. RIGHTS OF PRISONERS

The Supreme court of India made many rights of prisoners. For this "All India Committee on jail reforms(1980-83) & model prison manual (2003)" had also suggested which are

1. Right to human dignity-

We, all know that every person has a right to live with dignity, and in the case of prisoners, it is also available to them. Under this right, all persons are treated as a human beings, so regarding the prisoners, they are also treated as human beings, which means all persons behave politely toward them.

2. Right to basic minimum needs-

They all have also the right to fulfilment of basic minimum needs like health, medical care and treatment, access to clean drinking water and also maintenance of hygienic conditions of living accommodation and fulfilling all required essential needs.

3. Right to communication-

⁵ 1988 AIR 1531,1988 SCR.

⁶ CrI. 5943 of 1980.

Prisoners have also fundamental rights related to the right to information under part III of the constitution. it means communication with the outside world or periodic interviews also. all information gets from the outside world.

4. Right to access to law-

Prisoners have also statutory and legal rights from apprehension to awarded final punishment

- Regarding detention, they all have information and legal provisions.
- They have also the choice to consult with legal prisoners for defending.
- They have the right to take help from state legal Aid boards or also those organizations related to legal services.
- They all have also knowledge regarding the right to appeal, revision, review and conviction or sentence.
- They have the right to receive all important documents related to Appeal, Revision, Review
- Right to the effective presentation of individual complaints and grievances during confinement in prison to the appropriate authorities;
- Right to communicate with the prison administration, appropriate Government and judicial authorities, as the case may be, for redressal of violation of any or all of prisoners' rights and redressal of grievances.

5. Right against Arbitrary Prison Punishment –

They have the right to precise information related to the nature of the violation of the Prisons Act and Rules. They have the right to be heard in defence. They have communicated the decision of disciplinary proceedings.

6. Right to Meaningful and Gainful Employment-

The right to meaningful and gainful employment is a right as per the fundamental rights and duty of the state. No prisoner shall be required to perform 'begar' and other similar forms of forced labour which is prohibited as a fundamental right against exploitation under Art.23 of the Constitution. Undertrial prisoners volunteering to do work may be given suitable work wherever practicable. Such prisoners should be paid wages as per rule.

7. Right to be released on the due date –

No prisoner shall be detained in the prison for a longer duration. Once he completes his sentence he has a right to be released. It is the duty of the Prison authorities and State government to find out the tenure and release him in time.

8. Right to reformation

Parole is a part of the penal and prison system for humanizing prison administration. These are emerged and are accepted as correctional devices in modern penology. Sec. 59 of the Prisons Act, 1894 empowers the State to make rules for the release of prisoners on parole and furlough. Parole is not a matter of right based on valid grounds and the competent authority is satisfied prisoner can be released on parole. The Supreme Court in its judgment in **Ramamurthy v. State of Karnataka**⁷ (1997), has observed that overcrowding in prisons can be considerably reduced by the release of prisoners on parole, which is a conditional release of an individual from prison who has served a part of the sentence imposed upon him.

V. ROLE OF THE JUDICIARY IN PRESERVING THE RIGHT OF PRISONERS

Judiciary plays a very important role to preserve the right of prisoners through different case laws on various rights. In India, the higher judicial authorities Supreme Court and High Court try to protect and preserve human rights. Judiciary not only protects the right of law abider but also protects the rights of the lawbreaker. The scope of Article 21 of the constitution of India is very wider and its covers that every person has a right to live with human dignity. If any other right is violated then it attracts the provisions of Article 14 of the Constitution of India, which talk about equality before the law and equal protection of the law. In recent past years, the judiciary is more attentive to the violation of the human rights of prisoners because recently many cases come in front of court related to prisoner right violation by police authorities. There had been cases registered related to the inhuman treatment of prisoners in jail. To say the current situation and development in society, the Supreme Court and High Court passed various judgments related to the protection of prisoners' rights.

- **Prisoner's Right against Solitary Confinement and Bar Fetter**

In solitary confinement, the prisoner is placed into a different cell and is not allowed to meet with other prisoners. Solitary confinement was provided for various heinous crimes due to this punishment we provide some time for prisoners to think about their actions and feel guilty about them. In **Sunil Batra v. Delhi Administration**⁸, Supreme Court held the validity of Solitary confinement and bar fetter. The punishment of solitary confinement is provided in exceptional

⁷ JT 2002 (8) SC 314

⁸ AIR 1978 SC 1675

cases where it was difficult to separate the prisoner from another prisoner because of their criminal behaviour or nature. The court also observes in this case if we fetter the prisoner all day and night then it deteriorates the mental health of the prisoner and the fetter treats a human just like an animal. So, the punishment of solitary confinement and bar fetter is against the spirit of the constitution of India.

- **Prisoner's Right against Inhuman Treatment**

To protect the rights of prisoner's Supreme Court passed various guidelines related to the inhuman treatment of prisoners in jail. Supreme Court also issue directions to police authority related to the custodial death of prisoners in jail. In *Raghubir Singh v State of Bihar*⁹, Supreme Court awarded a life sentence to the police officer who is responsible for the death of a suspect in a police lock-up and also shows anger in this type of incident.

The Supreme Court also declared that the use of the third degree is a violation of Article 21 of the Constitution of India mentioned in *Kishore Singh Ravindra Dev v. the State of Rajasthan*¹⁰. In *D.K Basu v. the State of W.B*¹¹, under this case, Supreme Court issued guidelines related to custodial torture and tries to protect the rights of prisoners.

- **Prisoner's Right to Meet Friends, Relatives, and Interviewed by Lawyer**

In jail, prisoners have a right to meet with their friends and relative just to maintain their mental health. The right to life and personal liberty is not limited to physical health only but the right of prisoners to meet with their friends and relatives is also embodied under Article 21 of the constitution of India. Article 22(1) of the constitution of India provides that an arrested person can consult a lawyer of his own choice. In *Dharambir v. the State of U.P*¹², the court directed the state government to allow the visit of a prisoner's family member to meet the prisoner and also give permission that once a year prisoners allowed to meet their family with the granted condition. In the Supreme Court case, *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi & others*¹³, the court held that the right to life and personal liberty includes the right to live with dignity and allowed the prisoners to meet with their friends, family member and lawyer without any severe restrictions.

- **Prisoner's Right to Speedy Trial**

⁹ (1986) 4 SCC 481

¹⁰ 1981 AIR 625

¹¹ AIR 1997 SC 619

¹² 1979 AIR 1595

¹³ 1981 AIR 746

A speedy trial is one of the main objectives of the criminal justice system. It was important because after taking cognizance of the offence court takes a lot of time to decide the case until the accused had to live in jail. Until the court does not decide the case person is considered innocent. Not to punish the innocent so that the concept of speedy trial is developed because if justice is delayed it was denied. In *A.R Antulay v. R.S Nayak*¹⁴, the court held various propositions related to the Human rights of the prisoner and consider that the right to a speedy trial is flowing under Article 21 of the constitution of India. The right of speedy trial is on the accused at every stage of investigation, inquiry, trial, appeal and retrial etc.

- **Prisoner's Right to Legal Aid**

Under the Constitution of India, there is no express provision related to free legal aid provided to prisoners. For those prisoners who are financially unable to hire a lawyer for their case, the judiciary passed a judgment for them that there should be a proper representation on both sides of the parties. The 42nd amendment of the constitution added Article 39 A of the constitution of India under Part IV of the constitution related to directive principles of state policy. This Article clearly stated to provide free legal aid to the prisoner but these rights are not enforceable if it was for the governance of the country. In *M.H Hoskot v. the State of Maharashtra*¹⁵, Supreme Court held that to provide free legal aid to the accused who is not in a position to engage a lawyer of his own choice then the court for fair, just and reasonable trial provide legal aid to the prisoners. Three judge Bench of the Supreme Court Justice V.R Krishna Iyer, Justice D.A Desai and O. Chinnappa Reddy held that we have to read Article 21 and Article 39 A along with Article 142 and Section 304 of Crpc together then we concluded that it was the duty of government to provide free legal aid to the accused persons.

- **Prisoner's Right against Hand Cuffing**

Hand cuffing of an accused person or a prisoner is inhuman treatment with them. It was a kind of mental torture to bring the accused or prisoner who is under trial or proceeding with chain cuffed both hand legs. To present an accused with cuffed hand affect the dignity of an accused person. It violated the right of freedom mentioned under Article 19 of the constitution of India. In *Prem Shankar v. Delhi Administration*¹⁶, the main question arises before the Supreme Court is that whether handcuffing is constitutionally valid or not. The court discussed this question in depth with the reference to Article 21 of the constitution of India. Court divided the classes of prisoners as obsolete. Handcuffing is inhuman treatment or it was arbitrary and mental torture.

¹⁴ 1988 AIR 1531

¹⁵ 1978 AIR 1548

¹⁶ AIR 1980 SC 1535

The handcuffing must be done in exceptional cases only when there is a chance of absconding of the prisoner.

- **Prisoner's Right against Narco Analysis, Polygraph and Brain Mapping**

In *Selvi v. the State of Karnataka*¹⁷, Supreme Court held that Narco Analysis, Polygraph and Brain Mapping are unconstitutional and a violation of human rights. Although this judgment was against the agency of investigation it was in the favor of prisoners. So, no one can compel the prisoner for Narco analysis and all because it was against their consent.

VI. CONSTITUTIONAL PROVISIONS AND OTHER LAWS RELATED TO PRISONER'S RIGHT

“Prisoner is no longer considered as an object or a slave of the Nation, who the law would leave at prison door and who would be convicted to ‘Civil death.’ In **Charles Shobraj v. Superintendent**, Tihar Jail, Apex Court made it clear the compulsion to Live in a prison required by its force the lack of Certain rights, like the right to move freely or to practice a profession of one's choice, a Prisoner is otherwise eligible to the basic freedoms guaranteed by the Constitution.”¹⁸ And the convicted persons go to prison as punishment and not for punishment. When a person is convicted and put behind bars, his condition is different from that of a free person and the Prisoner can't demand all Constitutional rights like fundamental rights, which are available to a free man.

Statutory provisions:-

In the case of *Sunil Batra vs Delhi Administration*,¹⁹ it is held that Part 3 of the Indian Constitution offers Certain rights to the Prisoners because Prisoner remains a ‘person’ inside the prison. Now the right to personal Liberty has been given in a Vey video explanation by the Apex court this fundamental right is not only given to a common man but also to those who are conflicted with the law like the right to a speedy trial, free legal aid service, the right to against torture, the right to against inhuman, and humiliating treatment provided to a person into the prison also.

- **Right to equality**- in which the principle of equality is expressed. It talks about the concept of ‘equal should be treated equally and also the concept of reasonable classification is

¹⁷ 2010(7) SCC 263

¹⁸ Charles Shobraj vs. Superintendent, Tihar Jail, A. I. R. 1978 S.C.1514.

¹⁹ 1980 AIR 1579, 1980 SCR(2)

mentioned in Article 14 which is a very useful weapon for the courts to examine the category of Prisoners and their basis of classification in different. (Article 14(6))

- The Constitution provides **freedoms to the citizens** of our country. Among this freedom like the freedom to reside and settle, freedom of profession, occupation, trade or business ‘these can't be enjoyed by Prisoners because these have some conflicts for Prisoners and also Authorities have some power to put reasonable restrictions. (Article 19(7))

Also, there are some fundamental rights like ‘freedom of speech and expression, becoming a member of an association etc. Can be accessed for an offence. But these will be considered the limitations of prison law.

- The Constitution protects the Prisoners from the **ex post facto laws** article 20(1) (8).

- **Principle of personal liberty**-the Constitution provides life for the prisoners. It includes the *principle of Liberty*. After the **Menaka Gandhi case**, the supreme court gave A wide interpretation and provides A right that has been used against any action taken arbitrarily by the Executive Authorities including the police and prison Authority. Article 21

In the **A. K. Gopalan case**, the court stated “ the ambit of personal Liberty by Article 21 of the Constitution is wide and complete. It includes both substantive rights to personal liberty and the procedure prescribed for their Deprivation. “²⁰

- **Right against solitary confinement and bar fetters**-Solitary confinement is a type of confinement in which the convict or prisoner is kept in an isolated cell with little or no contact with other prisoners. The legality of solitary confinement was considered by the Supreme Court in the famous case of **Sunil Batra v. Administration of Delhi**, in which the Hon'ble Court had highlighted that solitary confinement is to be imposed only in exceptional cases where the prisoner has committed such violent or dangerous of nature that its isolation becomes an absolute necessity. The court also observed that by keeping prisoners in fetters day and night, they reduce to the level of an animal and their mental health deteriorates.

- Articles 22(4) to (7) provide for certain safeguards for ‘**detainees**’ detained under preventive detention laws. Clause (4) of Article 22 provides for a maximum period of 2 months for detention for which a detainee may be apprehended without seeking the opinion of an advisor Article 22(4) guarantees a ‘captive’ two rights.

²⁰ A. K. Gopalan vs. U. O. I. A. I. R. 1950 S. C. 27.

- Article 22(6) provides that officers may **refuse to disclose certain facts** of detention in the public interest. Article 22(7) provides for the constitution of an advisory board.

- Article 39A of the Constitution of India entitles prisoners to **free legal aid**. 'Just because a person has been sentenced to imprisonment does not mean that his rights will be violated.'

In the case, the court observed that "Legal aid to a poor or accused, arresting and endangering his life or personal liberty, is a constitutional requirement not only by Article 39A but also by Article 14 and 21 of the Constitution."

- Articles 72 and 161 of the Indian Constitution confer special powers on the President and the Governors of the states to **grant pardon or mercy to prisoners** by judicial process.

Prisoner's Rights under the Prisons Act, 1894:-

The prisons Act is the First law regarding prison Regulation in India and it mainly focused on the reformation of Prisoners concerning the rights of Prisoners the following sections are:-

- Housing and sanitary conditions for prisoners,²¹
- Provision of shelter and safe custody for a large number of prisoners who cannot be kept safely in any prison²²
- Provisions relating to the examination of prisoners by a qualified medical officer²³
- Provisions relating to the separation of female and male prisoners, civil and criminal prisoners and convicted and under trial prisoners²⁴
- Provisions relating to under trials, treatment of civil prisoners, parole and temporary release of prisoners.²⁵

In 2016 Parliament passed the prisons Amendment bill to Amend the prisons Act, of 1894 to provide protection and welfare for Prisoners.

VII. CONCLUSION

So, from the above content, we can conclude that earlier the prisoners were punished brutally and in a barbaric manner. They were not treated as human beings. Their rights as human beings were accepted after a long struggle. The Indian legal system believes in mutual respect, non-violence and also in human dignity. It believes that if any person has committed some crime

²¹Section 4 of the Prisons Act, 1894

²²Section 7 of the Prisons Act, 1894

²³Section 24(2) of the Prisons Act, 1894

²⁴Section 27 of the Prisons Act, 1894

²⁵Sections 31 and 35 of the Prisons Act, 1894.

that does not mean that his rights as a human being will be ceased due to committing such a crime. Therefore, prisoner rights are enforceable rights, although restricted by the fact of imprisonment.

Human rights are those basic rights which are important for the existence of any human being. There are various human rights which are provided under different laws such as UN CHARTER, UDHR, ICCPR, UN Core Conventions and Specific Instrument. United Nations Charter was signed at the end of the UN Conference on International Organization which has given the basic principles for prisoner treatment like the principle of equality, the right to participate in educational and cultural activities, and many more. Another law, the Universal Declaration of Human Rights is a sort of milestone document about human rights because it is the first of its kind to sets out basic human rights as universally protected rights. It is not only widely recognized but also paved way for the adoption of various human rights treaties. ICCPR is one of the most important pacts in the case of protection of prisoners' rights. Amnesty International released a set of standard minimum rules for prisoners' treatment.

Also, there are many enactments in India related to prisoners' rights some of them are Article- 14, Article – 21, Article- 19 and Article- 22. Like Part 3 of the Constitution of India which offers certain rights to prisoners, there are other statutory provisions also which provide rights to prisoners some of them are Article- 39 A, Article- 72 and Article- 161; Prisoner's Rights under the Prisons Act, 1894 are rights related to housing and sanitary conditions for prisoners, provision of shelter and safe custody for a large number of prisoners who cannot be kept safely in any prison, etc.

The Supreme Court of India has also held in their various judgments, rights related to prisoners such as prisoners' right against handcuffing, prisoners' right against Narco Analysis, polygraph and Brain Mapping; Prisoners' right to legal aid; Prisoners' right to a speedy trial; Prisoners' right to meet friends, relatives and interviewed by Lawyer; Prisoners' right against inhuman treatment; Prisoners' right against solitary. So, from all these cases, it could be said that the judiciary of the country has played a crucial role in safeguarding the rights of prisoners.

“All India Committee on jail reforms (1980 to 1983) and model prison manual (2003)”, has also suggested the Right to human dignity, the Right to basic minimum needs, the Right to communication, the Right to access to law, and the Right against arbitrary prison and punishment, Right to meaningful and gainful employment and many more.

Still, there is a need to make reforms for the improvement of policies and prison authorities require some training for understanding the importance of the rights of prisoners.