

**HUMAN RIGHTS OF PRISONERS IN INDIA:  
A STUDY OF SIKKIM**

A Thesis Submitted

To

**Sikkim University**



In Partial Fulfilment of the Requirement for the  
**Degree of Doctor of Philosophy**

By

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**January 2021**

**Date: 21/01/2021**

**DECLARATION**

I, **Roshan Gurung**, hereby declare that the research work embodied in the thesis titled "**Human Rights of Prisoners in India: A Study of Sikkim**" submitted to Sikkim University for the award degree of **Doctor of Philosophy**, is my original work and it has not been submitted earlier to this or any other University for any degree.



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# सिक्किम विश्वविद्यालय SIKKIM UNIVERSITY

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## CERTIFICATE

This is to certify that the thesis titled “**Human Rights of Prisoners in India: A Study of Sikkim**” submitted to the **Sikkim University** for partial fulfilment of the degree of **Doctor of Philosophy** in the Department of **Peace and Conflict Studies and Management**, embodies the result of bonafide research work carried out by **Roshan Gurung** under my guidance and supervision. No part of the thesis has been submitted earlier to this or any other University for any degree.

All the assistance and help received during the course of investigation have been duly acknowledged by him.

I recommend this thesis to be placed before the examiners for evaluation.

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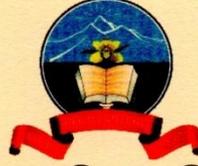
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**“Human Rights of Prisoners in India: A Study of Sikkim”**

Submitted by **Roshan Gurung** under the supervision of Prof. **Nawal K. Paswan** of the **Department of Peace and Conflict Studies and Management, School of Social Sciences, Sikkim University.**

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## **LIST OF ABBREVIATIONS**

AIDS	Acquired Immune Deficiency Syndrome
BC	Before Christ
BCE	Before the Common Era
BPRD	Bureau of Police Research and Development
COFEPOSA	Conservation of Foreign Exchange and Prevention of Smuggling Activities
CRPC	Criminal Procedure Code
FGD	Focus Group Discussion
HIV	Human Immunodeficiency Virus
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenants on Economic, Social and Cultural Rights
IPC	Indian Penal Code
NCRB	National Crime Records Bureau
NGO	Non-Governmental Organisations
NHRC	National Human Rights Commission
NICFS	National Institute of Criminology and Forensic Sciences
PHRA	Protection of Human Rights Act
POCSO	Protection of Children from Sexual Offences
SADA	Sikkim Anti Drugs Act
SHRC	State Human Rights Commission
SPSS	Statistical Package for the Social Sciences
SRL	State Reserve Lines
UDHR	Universal Declaration of Human Rights
UNDHR	United Nations Declaration of Human Rights
UN	United Nations
UT	Union Territories
UNCCPR	United Nations Covenant on Civil and Political Rights

## EXECUTIVE SUMMARY

The research entitled “*Human Rights of Prisoners in India: A Study of Sikkim*” seeks to highlight the human rights of prison inmates in general, and particularly in the state of Sikkim. It looks at the historical history of imprisonment, analyses the basic instruments and criteria for safeguarding the rights of prisoners at an international and national level, and investigates the human rights practices and conditions for the rehabilitation and reformation of the prisoners in the prisons of Sikkim.

The various governments have made considerable advancements in improving the prison system over the years, but there is still a need in the existing system for the rehabilitation and reformation of the prisoners. The fact that prisoners are a subject of human rights abuses is a sad reality even today. Every day their human rights are being abused around the world. Prisoners are treated inhumanely, they are harassed and humiliated by prison officials as well as fellow inmates, they have little access to proper health care while they are provided with inadequate food, insufficient clothing, and bedding, and further, they are held in overcrowded conditions where living conditions are unbearable. These are only a handful of examples of ideal prison management to be found all over the world. Even in some of the richest countries, prison services are no exception to this. As the situation is today, many prisoners become much more damaged and hardened criminals after having been held behind bars. The absence of a reformatory approach in the Indian prison system has not only resulted in ineffective integration with society but also has failed to provide productive engagement opportunities for prisoners after their release.

The state of prison management and the condition of the prisoners lodged in the various prisons of Sikkim are no exception to the dismal state of affairs of prison management practiced throughout the country. The prisons of Sikkim are plagued with the menace of overcrowding, inadequate sanitary facilities, lack of physical and mental activities, lack of decent health services and medical facilities, which in turn raises the risk of health issues in prisons of Sikkim. Further, the slow progress of the investigation, trial, and hearing of appeals in cases pending against them especially in the case of undertrials add to the woes of the prisoners. The disparity between rich and poor also plays a role in the delivery of justice, where the rich and well connected often get bail within a few days for even being arrested for cases pertaining to drug offences, while those who were poor or are partly educated get delayed trials and face the brunt of prolonged incarceration. Moreover, the prisoners are often subjected to the demands of illegal gratifications from the lawyers and prosecutors in order to ensure their speedy trials. Lastly, the prison officials who are entrusted with the job of managing the prison facilities as well as the prisoners housed in them, lack adequate training and orientation, which further impedes the process of rehabilitation of the prisoners.

Therefore, it becomes pertinent to undertake a thorough investigation into the various aspects, concerning the issues of human rights abuse of prisoners, improper management of prison facilities across the country and especially in the state of Sikkim, and the sheer lack of measures being implemented to facilitate the rehabilitation of prisoners lodged in various prisons across the nation and the state of Sikkim in particular. Thus, the present study seeks to examine and critically evaluate the above issues by setting out the following objectives for the study:

- To analyse and identify the historical origin of human rights and prisons.
- To identify the international and national human rights provisions available for safeguarding the rights of the prisoners.
- To examine the role of the judiciary in the protection of prisoners' rights in India.
- To investigate the issues and concerns of human rights practices in the prisons of Sikkim.

Further, in order to achieve the above objectives, the study sets out to frame a research methodology suited best at capturing the various nuances pertaining to the objectives of the study. The study is based on quantitative and qualitative designs of research and it is mainly based on primary data collected through field surveys and supplemented with the available literature. Sikkim has four revenue districts but only two prisons. The North and West districts have no separate prison and prisoners remanded to custody from these districts are being accommodated in the Central Prison at Rongyek, East Sikkim for North District and District Prison Namchi, South Sikkim for West District. In this research study, 'Prison' refers to a correctional facility for adults only.

To have a representative sample of prisoners from Central and District Prisons we have divided prisons in Sikkim State into two broad strata; Central and District Prison. To assess and compare the human rights practices of prisoners in Central and District Prison of Sikkim a total population of 307 including male and female prisoners consisting of both convicts and undertrials of Central Prison (Rongyek) have been selected. In the same way, a total population of 93 undertrials prison inmates comprising male and female from District Prison (Namchi) has been selected.

Since, there were altogether 400 prisoners in the state, 93 prisoners in District Prison, and 307 prisoners in Central Prison of Sikkim. The research will, therefore, be limited to Central Prison in (Rongyek), Gangtok, East Sikkim, and District Prison (Boomtar), Namchi, South Sikkim. Hence, the research area shall be limited to the state of Sikkim's geographical and political authority.

The study aimed to collect information concerning the human rights practices of prisoners in general and awareness of their rights among prisoners and to collect the relevant statistical data for the study. The information on the following issues has been collected;

- ***Right to an Adequate Standard of Living***

The parameters on which these are to be assessed are (a) Accommodation (b) Food and drinking water and (c) Clothing and bedding.

- ***Health Rights of Prisoners***

The parameters on which these will be assessed are (a) Right to health screening for prisoners (b) Access to health care and (c) Healthy conditions in custody.

- ***Making Prisons Safe Places***

The parameters on which these are to be assessed are (a) Security (b) Good order and control and (c) Discipline and Punishment.

- ***Making the Best Use of Prisons***

The parameters on which these are to be assessed are (a) Work (b) Education and (c) Cultural activities.

- ***Prisoners Contact with the Outside World***

The parameters on which these are to be assessed are (a) Right to communicate with family (b) Right to access news and (c) Right to kept in prison near their homes.

- ***Prisoners Complaints and Inspections***

The parameters on which these are to be assessed are (a) Right to make a complaint regarding his/her treatment (b) Right to access rules and (c) Right to bring the rejected complaints before the judiciary and other authority.

- ***Right to Non-Discrimination of Prisoners***

The parameters on which these are to be assessed are (a) Prohibition of all forms of discrimination (b) Right to enjoy equal protection of the law and (c) Right to enjoy cultural liberty.

For the collection of the primary data, the study has used techniques of questionnaire survey and interview schedules. The questionnaire is primarily based on a Likert Scale and makes use of a five-point rating scale (Very Low, Low, Average, High, and Very High) assigned with five scores 1,2,3,4, and 5 respectively. The collected data from the field entails both qualitative and quantitative analysis by using analytical software like Microsoft Excel and Statistical Package for the Social Sciences (SPSS) and data are presented and shown in descriptive statistics, Tables, charts, and bar diagrams.

The reasons for selecting Central Prison and District Prison are that it consists of a sizeable proportion of the population of both long and short terms, occasional and habitual prisoners, and also prisoners convicted for commission of different types of crimes and undergoing a different term of imprisonment. Furthermore, to complete

the present study some of the secondary information has been also used from the following sources;

- State Human Rights Commission of Sikkim (SHRC).
- Bureau of Police Research and Development (BPR&D).
- National Human Rights Commission (NHRC).
- National Crime Records Bureau, Ministry of Home Affairs, Government of India (NCRB).
- National Institute of Criminology and Forensic Sciences, Delhi (NICFS).

The study has been divided into the following six chapters undertaken in light of the contemporary relevance of the research study.

*The First Chapter: Introduction* enumerates the detailed plan or blueprint for the intended study. The chapter highlights the conceptual framework of the research, objectives, questions, hypothesis, and rationale, and scope of the study.

*The Second Chapter: Human Rights and Prison: A Conceptual Framework* enumerates the historical perspective of human rights and prisons. The chapter delves into the origin, development, and classification of human rights, while it also provides a brief historical evolution of prisons during the ancient, medieval, and modern times.

*The Third Chapter: Human Rights Provisions for Prisoners: International and National Perspective* enumerates the international and national human rights provisions available for safeguarding the rights of the prisoners. Internationally, it has become a well-accepted rule that the correctional mechanism in the criminal justice administration should comply with reformatory policies. It is also declared that all prisoners shall be treated with respect due to their inherent dignity and value as

human beings. There is a set of rights identified by the international legal system to save the human dignity and value of prisoners and thereby the reformative theme of correction. It is also strongly argued that the community can never tolerate a scheme of correction that does not maintain a connection with the evilness of the crime done. Thus punishment always maintains a subjective perspective. The rights of the imprisoned person have to be read despite this perception. It is truly meant that there can be varied punishments for the same offence, but one should not be treated badly while the sentence once declared by the court goes on. In this purview, the rights guaranteed under the international legal system are theoretically provided in India too.

India is a signatory to most of the international human rights treaties and conventions. But in India prison is a state list subject so provisions regarding prisoners' rights vary from state to state. It can be said that the prisoners are also entitled to all their fundamental rights while they are behind the prisons. Indian constitution does not expressly provide for the prisoners' rights but articles 14, 19, and 21 implicitly guarantee the prisoners' rights, and the provisions of the Prisons Act, 1894 contains the provisions for the welfare and protection of prisoners. The court has ruled that it can intervene with prison administration when constitutional rights or statutory prescriptions are transgressed to the injury of the prisoner.

***The Fourth Chapter: Protection of Prisoners Rights in India: Judicial Perspective*** enumerates judicial intervention in the protection of the human rights of prisoners in India by discussing the rights of prisoners by quoting the landmark Supreme Court judgments in the matter. Indian Judiciary regarding the protection of the Human Rights of prisoners indicates that the judiciary has been playing the role of saviour in situations where the executive and legislature have failed to address the

problems of the people. The Supreme Court has come forward to take corrective measures and provide necessary directions to the executive and legislature. From the perusal of the above contribution, it is evident that the Indian Judiciary has been very sensitive and alive to the protection of the Human Rights of the people. It has, through judicial activism forged new tools and devised new remedies to vindicate the most precious of the precious Human Right to Life and Personal Liberty.

*The Fifth Chapter: Issues and Concerns of Human Rights Practices in the Prisons of Sikkim: An Empirical Study* enumerates all the issues and concerns of the Central and the District Prison situated in Sikkim such as prisoners' rights violations, administrative efficiency, and standard of living. It also evaluated a comparative study of both Central and District Prisons of Sikkim concerning the human rights practices of prisoners. During the study in Central and District Prisons of Sikkim, a researcher verifies the living conditions of the prisoners and to determine if the human rights of the prison inmates are being duly respected and protected by the prison and other authorities in several areas including the accommodation of barracks, hygiene, medical facilities, clothing and bedding, food and water, vocational training, recreational facilities, women prisoner and health and hospital in both the Prisons of Sikkim.

The majority of prisoners are predominantly dominated by the age group of young male offenders in both the Prisons of Sikkim which primarily consists of the rural population. It can be inferred that the rural population has lesser opportunities, thus is more susceptible to commit crimes. The information regarding the educational qualification and the occupational distribution of the prisoners in Sikkim was also dominated by the illiterate and unemployed prisoners which reveal that with the

increase in the educational qualification among the prisoners the incidence of crime rate decreases and also the lack of employment opportunities lead to a higher crime rate in the contemporary society.

In the prisons of Sikkim, the class of prisoners has committed a crime not because of social and economic status but either because of their bad company or in a moment of excitement, provocation or in anger or under the influence of alcohol with no motive or gain. Those involved in theft cases seemed to be hardened ones because some of them have lodged in prison more than once and it seems that any amount of counselling shall have any effect on them. As already mentioned before barring a few, the prisoners involved in murder cases seem to be the victims of circumstances as they have committed crimes either under the influence of alcohol or in anger or sudden provocation or self defence. There are few cases in which the murders were committed for monetary or material gains.

The study has revealed that there are more problems of accommodation, food and drinking water, clothing, and bedding in Central Prison in comparison to the District Prison of Sikkim which makes it obvious that human rights practice in respect of these facilities is a little better in District Prison due to the accommodation for only undertrials prisoners. But still, the level of Human rights is not up to the desired level either in Central or the District Prison of Sikkim. In both, the prison of Sikkim prisoners had submitted to the researcher that the quality of food was very poor and mostly potatoes and rice was served as regular food even in the case of the diabetic patients. Whereas cereals and pulses are being provided at a scale much higher than the scale recommended in the Model Prison Manual formulated by the Bureau of Police Research and Development (BPR&D), the scale prescribed for green

vegetables, milk, meat, and sugar is considerably less than what has been recommended by the BPR&D.

The research reveals that women prisoners, convicts, and undertrial prisoners are kept together in two-storied buildings meant for political prisoners in the Central Prison of Sikkim. Hence, different kinds of offenders share their crime experiences and cause contamination, overcrowding, and weaken prison security. The prison does not have a separate hospital of its own but there is a dispensary within the prison premises in both the Central and District Prison of Sikkim. The doctor comes only twice a week but he/she stays for a short period and thus visiting happens on a seniority basis especially for the convicts. Undertrials prisoners have almost no access to a health facility in both the prisons of Sikkim. In almost every case, the inmates after being taken to the hospital in Gangtok, all the necessary tests are never allowed by the prison escorts. Only a few of the tests are done but reports are never considered by prison authorities. Non-availability of adequate medical facilities for prisoners is largely due to the lack of full-time doctors as well as lack of basic infrastructure, like well-equipped ambulances, stretchers, dispensaries, hospital beds, etc. sometimes, the prisoner may need expert and urgent medical attention which is not available within the prison premises.

Hygiene in the Central Prison, Rongyek was a subjective issue. The undertrials were unhygienic while the convicts were up to date. Even the bedding of the two differed significantly. The convicts used to stay neat and clean with cleaner clothes. The undertrials were like guests of the prison and they were never kept appropriately. Similarly, in the case of District Prison, Namchi due to the acute shortage of water the prison inmates are unhygienic. Prisoners are provided with all

the toiletries but bathing is not possible due to cold weather. The Central Prison, Rongyek is located at a higher altitude where winter simply means torture to the prison inmates. To overcome the problem of cold, there is the availability of extra sheets of the blanket but the main problem out here is the non-availability of the water heating system. Not all would be affected by these but several old prison inmates have a problem while bathing with chilling cold water.

In the prisons of Sikkim, there is an inadequate facility of the washroom inside the prison cell. There are no separate washroom cubicles inside their cells and all the prison inmates had to manage within the small toilet inside their barracks. Only one toilet each is available inside 21/20 bedded wards/barracks. The prisoners are supplied with one lifebuoy soap for bathing and two washing soaps for washing their clothes. No footwear is supplied to the prisoners; most are wearing slippers and shoes arranged privately by them. Similarly, no bath towel has been supplied to any of them. There is a case for providing at least one pair of footwear annually to the prisoners in the interest of their overall hygiene as per the prison manuals.

The vocational training was not up to the mark. Several vocational units like Carpentry, Tailoring, Knitting, Dairy, Piggery, Orchids and Floriculture, Mushrooms, and Vegetable Cultivation, have been set up inside the prison, utilizing funds allocated under the modernization scheme. The convicts were provided with training in traditional carpentry and bamboo works. Few people were working on these two platforms and as per the State Government under the Home Department; they were supposed to receive ₹ 30 for unskilled workers and ₹ 40 for skilled workers. However, in prison, those involved in carpentry are given ₹ 40 per day while the bamboo workers and the rest are given ₹ 30 per day. Considering the cost of living in

Sikkim, these rates appear to be inadequate. Any amount that the inmates are entitled to be directly put into their bank accounts by the prison administration. In addition to this prison inmates were not provided with sufficient raw materials to engage themselves in vocations, which were assigned to them. The women were not provided with any kind of vocational training nor were they involved in any kind of activity in both the Prisons of Sikkim.

Education is the very base of the modern correctional process. It not only brings about sublimation of the anti-social instinct in a criminal but also helps him in his ultimate resettlement in society. An ideal scheme of prison education should include diversified programs for both general and vocational education with an emphasis on the needs of different inmate groups. Elementary education apart, the general education programs in prison should also include moral and spiritual education, cultural and creative activities. Correction and change in the prisoners' mentality can be brought about if certain other facilities are extended to the deserving inmates, such as the supply of books, periodicals, and newspapers and facilities for the continuation of studies during incarceration. Given practical difficulties for ex-offenders to secure stable and suitable jobs after release, the prisoners should be given such vocational training as would enable them to establish themselves through self-employment. No literacy missions are working in the Prisons of Sikkim. All those illiterate inmates go as they come. Not all prisoners are however interested in taking such instructions. Some of them find it profitable to work in the various vocational units to earn wages.

The study reveals that there is a disparity between rich and poor in the cases of undertrials prisoners rich and well connected often get bail within a few days for

being arrested for drug offences and robbery while those who were poor or partly educated get delayed trials, incarceration, etc. However, the majority of the prison population is illiterate, lacking an understanding of their rights, the poor do not always get the benefit of the provisions of the law in this regard.

The study argues that the sanctioned and existing strength of staff to run the prison administration is inadequate in both the Prisons of Sikkim. In the prison administration of Sikkim those who were earlier working in the police department, and were summarily dismissed for their indiscipline conduct. On reinstatement, they have been posted to the prison as Head warders against vacancies in the rank of warders. Similarly, the political victimization of police officers by the state government is also practiced like the police officers from the State Reserve Lines (SRL) are transferred in the prisons of Sikkim. Posting officers and men with such adverse service records to the prisons may not be desirable. No regular institute for induction training of prison staff is available in the state. Those of them who have been inducted from the police department had received routine police training at the beginning of their career, which does not adequately equip them for discharging their duty in correctional institutions.

***The Sixth Chapter:*** summarizes the findings of the study and formulates some broad strategies for preventing the violation of prisoners' rights to facilitate their rehabilitation, after being released from prison. This chapter will also recommend some strategies for capacity building for all institutions which handle and coordinate the cases of the rights of prisoners.

The research recommends that there is an urgent need to construct new barracks to address the problem of overcrowding until the new prisons come up in

other districts of Sikkim. The Central Prison, Rongyek needs to be upgraded since the number of convict prisoners is increasing due to the rise in the Protection of Children from Sexual Offences (POCSO) Act, 2012, and Sikkim Anti Drugs Act, 2006 (SADA) cases.

The Prisons in Sikkim lag in the matter of the awareness and training of officials regarding the prisoners' rights and there is a need to take special efforts to provide awareness in the officials regarding prisoners' rights. A prisoner despite his deeds and wrongs is a human being, the prison staff is required to be sensitized and adequately trained that they have to deal with human beings. Some adequate training programs to awaken a response in them must be made to feel that they are in the care of fellow humans.

The overcrowding, inadequate sanitary facilities, lack of physical and mental activities, lack of decent health services, all raise the risk of health issues in prisons. The healthcare system of prison should be improved. There should be a medical examination of the prisoners at the time of their entry to the prison in the prescribed format. Thereafter, regular medical check-ups should be ensured and provisions should be made for mentally ill prisoners and high-risk prisoners. The records of the prisoners should be maintained properly. Better sanitation facilities, hygiene, and potable drinking water should be provided. The Prison should be provided with mechanical cleaning, treatment, and maintenance of sewage plants so that the septic tanks do not have to be manually cleaned by the prisoners.

Proper sanitation facilities and construction of new toilets inside the prison cell may be taken up at the earliest. A counsellor should be available to help inmates

face this difficult phase of their lives. Different ethnic or religious festivals may be celebrated in the prison too.

A committee devoted solely to monitoring these detainees' rights should be created immediately. The committee should consist of a local judge, a prosecutor, a police officer, and two other law enforcement officials. The committee's sole charge would consist of overseeing the prisoners' well-being and facilitating their cases through the criminal justice process.

Complaint boxes and prison manuals should be provided to the inmates in every prison so that they are made aware of their rights, duties, and rules. Orientation and refresher courses for prison staff- short duration and regular courses are needed for prison staff to keep them informed and motivated regarding human rights and work culture to maintain the right perspective in them.

Most convicts are illiterate with no vocational skills and suffer from anxiety and depression. They can be educated, imparted vocational training. Regular meditation and yoga may be conducted regularly for the benefit of all prisoners. Assistance may be sought from Non-Governmental Organisations (NGOs) in this regard. It was also found that there were virtually no raw materials reported due to a paucity of funds. Due to the lack of vocational training, the prison inmates try on their own to keep themselves busy. The prisoners not being trained, not being given any work complained of mental and psychological problems, the research mentions.

The objective of prison management should be to make prisons a safe place by maintaining security and discipline and to provide basic minimum facilities to prisoners to maintain human dignity. The prisons should act as a Reform Centre

where the prisoners should learn good lessons and build themselves as useful and civilized persons after going back to society.

The energies of the prisoners (male and female) need to be enhanced by introducing educational programs for which the permission to appear in exams should be readily allowed to the student prisoners. Similarly, the training programs should be arranged for imparting computer skills for the educated prisoners, and for illiterate prisoners, the agriculture/ horticulture skills should be started.

Besides suffering from physical ailments, the prisoner also undergoes considerable stress and trauma during his stay in prison. Imprisonment is often accompanied by depression and a feeling of isolation and neglect. It was; therefore felt that active counselling must be made available to the prisoners to overcome these problems. Counselling should aim not merely at providing a temporary relief by pulling them out of their depression, but at instilling hope and a sense of purpose in them and by equipping them with skills that may prove useful upon release.

In India, prison is a state list subject so provisions regarding prisoners' rights vary from state to state. Legislations, if made by the states, will always lack the unique standards for the protection of prisoner's rights. There should be a national policy framework that substitutes the varying state legislations. To have a satisfactory human rights regime in states there is a need to enact national legislations duly incorporating the international provisions of prisoners which in turn will serve as a model for state legislation of human rights. The basic problem with prisons is that they are closed institutions that breed corruption and malpractices. This can be changed by involving non-governmental organizations, academicians, and media in various ways including as visitors. This will usher in accountability and openness.

Lastly, the management and administration of Prisons fall exclusively in the domain of the respective State Governments. Thus, States have the primary role, responsibility, and authority to change the current prison laws, rules, and regulations. But the majority of Indian prisons are still governed by a 126-year-old Prisons Act, of 1894 which focuses primarily on enforcement of discipline with no regard for the reformation and rehabilitation of prisoners. Some prison manuals still mention barbaric practices such as flogging, the use of fetters, shackles, and handcuffs. To date, handfuls of states have taken the lead in framing a new act that emphasizes the “correctional” aspects of the prison administration in India.

The Prisons of Sikkim look very beautiful from the outside world. Even the documentation was done properly by the prison administration, everything looks fine but the invisible side of the issue is the gross violation of the basic human rights of the prisoners. So, efforts should be made to organize periodical refresher courses for the existing staff to sensitize them to the rights of prisoners, their psychological and emotional needs. If a favourable atmosphere is provided, any prisoner can rise to a normal standard of living. Every prisoner has an ardent desire to lead a better life in society. But society is not prepared to accept a prisoner, and the prisoner is not equipped to face the challenges of society. Even though prisoners are deprived of their liberty, they should value their basic human rights and freedoms to rehabilitate and reintegrate them after going back to society.

# CHAPTER - 1

## INTRODUCTION

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### 1.1 Background

Human rights are those rights that are essential for every human being either a normal human being or a prisoner. It can be said that human rights rest upon the idea i.e., every human being is entitled to enjoy his or her rights without distinction or discrimination of any kind like discrimination based on caste, religion, race, nationality, etc. Human rights are essential for the complete development of human personality, and human happiness. Human rights are regarded as “Fundamental Rights” when they are protected by a written constitution since the fundamental law of the state is a written constitution. The human rights of people have been protected by various international and national instruments including the Constitution of India.

It is important to remember that the human rights definition is related to the idea of human dignity. Human rights are a special sort of inalienable moral entitlement. They attach to all persons equally, by virtue of their humanity, irrespective of race, nationality, or membership of any particular social group. Human rights belong to an individual as a consequence of being human. Human rights are indivisible and interdependent and therefore precisely there cannot be different kinds of human rights. All human rights are equal in importance and are inherent in all human beings (Agarwal, 2014).

A very detailed concept of Human Rights is provided in the protection of the Human Rights Act, 1993 enacted by our Parliament under section 2(1)(d), Human Rights means the rights relating to life, liberty, equality, and dignity of the person guaranteed by the constitution or embodied in the international covenants and enforceable by courts in India. Human Rights, as such, are those rights to which a person is entitled and which are acknowledged and implemented in a civilized society. The central feature of these rights is fundamental, which requires democracy, equality, and liberty.

Universal human rights, in the forms of treaties, customary international law, universal principles, and other examples of international law are also articulated and guaranteed by statute. International human rights law stipulates Government responsibilities to act in certain ways to refrain from such activities, to promote and protect individuals or group's human rights and fundamental freedoms. The idea that human rights are fundamental is the foundation of international human rights law. The concept has been repeated in several international human rights conferences, treaties, and resolutions, as first stressed in the 1948 Universal Declaration on Human Rights. The 1993 Vienna World Conference on Human Rights noted that Governments, irrespective of their political, economic, and cultural structures, must uphold and protect all human rights and fundamental freedoms.

Human rights have evolved through numerous revolutions and generations in a dialectical phase. It started with the democratic revolutions against absolutism, feudalism, and the Roman Catholic Church's influence, legitimized by the ideals of the Enlightenment, natural rationalism, social contract, constitutionalism, and liberalism in Europe and North America. These resulted in defining civil and political

rights to life, independence, wealth, and democratic participation in the 18<sup>th</sup> and 19<sup>th</sup> century nation-state constitutions. The defence of human rights had begun to grow in the twentieth century as a matter of concern for the international community. Following the First World War, the League of Nations was established and efforts were made to establish an international legal system to protect minorities, along with international monitoring mechanisms. The massacres committed during World War II inspired the international community to ensure that these crimes would never be replicated and provide the catalyst for the new movement to create an international framework of universal protection of human rights. It brought about the development of a universal defence of human rights. The 1215 Magna Carta is the most important constitutional text in the history of humanity. The main theme of this was defence from the king's arbitrary actions. The Charter's 63 provisions granted residents basic civil and legal rights and shielded the barons from oppressive taxes. The Church of England has gained independence from royal intervention. On 15<sup>th</sup> June 1215, King John of England granted the Magna Carta to the barons of England. The King was compelled to issue the Charter because the barons refused to pay heavy taxes unless the Charter was signed by the King.

The American and French Revolution brought added impetus to the human rights movement. The English Bill of Rights, passed by the British Parliament on 16<sup>th</sup> December 1689, is the next source and avenue for the growth of the concept of human rights. The British Parliament had simply proclaimed its dominance over the Monarchy. The English Bill of Rights placed no absolute authority on the monarch. The Bill of Rights codified the customary laws and explained people's privileges and freedoms. The thirteen American states were the first colonies to rebel against Britain. On 4<sup>th</sup> July 1776, the American Declaration of Independence, 1776, these states

proclaimed their independence from their mother country. The Statement changed the colonies of the king. The declaration of independence has great significance in human history, as it justified the right to rebel against a government that no longer protected the inherent and inalienable rights of the individual. Then, the U.S. Bill of Rights became effective in 1791. On 17<sup>th</sup> September 1787, the Constitution was promulgated. The most influential flaw of the original constitution was the lack of the Bill of Rights covering privacy and personal freedoms. Therefore Madison proposed as many as twelve amendments in the form of the Bill of Rights. The State legislators approved ten of these. Those ten changes to the Constitution came to be known as the Bill of Rights. The Bill of Rights general theme is that the individual is protected from the misuse of power by state officials. The 1789 French Declaration of Citizens Rights, the fall of Bastille, and the abolition by the National Assembly of feudalism, serfdom, and class privileges led France into a new age. The National Assembly on 4<sup>th</sup> August 1789 declared the rights of man and the people. Rights were formulated in seventeen journals. The Declaration of the Rights of Man and the Individual is of far-reaching significance not just in France's history but also in the history of Europe and humanity. The declaration acted as the death warrant for the old regime and instituted a new social and political order based on the noble and impressive ideals.

The International Protection of Human Rights is regulated by the International Bill of Human Rights, which consists of the United Nations Declaration of Human Rights (UNDHR, 1948), which describes basic rights and their limits, the International Covenants on Economic, Social and Cultural Rights (1966) and the International Covenant on Civil and Political Rights (1966), which specifies the terms of the United Nations Covenant on Civil and Political Rights. The Covenants are legally binding on the States which have ratified them. The United Nations

Declaration of Human Rights, which is the main text, is formulated as a shared level of achievement for all cultures and nations: over time it has become a benchmark for assessing the degree of conformity with and respect for international human rights standards. This is a crucial source of motivation for national and international efforts to foster and protect individual freedoms and human rights. This has set the path for all subsequent human rights work. Over the centuries traditions or laws in various parts of the world have discussed the rights of persons as members of society. While a few hundred years earlier in the West the fusion of the universal commitment to human rights and equality with the legal concept of the rule of law emerged, it was only with the adoption of the United Nations Declaration of Human Rights in 1948 that it was strengthened. The Universal Declaration of Human Rights (UDHR), 1948, describes human rights as “rights derived from the fundamental dignity of the human being.” Human rights are defined as “Fundamental Rights” when secured by a written constitution since a written constitution is the basic law of the state (Bhansali, 2008).

While all human beings have human rights because they are inalienable, the protection granted to human beings is curtailed under some circumstances. The rule of law governs this. Within a given culture, society’s attitude towards prisoners may differ according to the object of punishment and social reaction to crime. If the prisons are meant for punishment or deterrence, the environment within them is punitive, causing more misery, distress, and placing extreme limitations on the inmates. But the issues are different when viewed in a modern democratic view. If a crime is treated as a psychological disorder and encourages the treatment of offenders by non-penal procedures, the problem of securing prisoners’ human rights can take a drastic turn. The laws on the safety of the prisoners have already been implemented in India, but in the age of globalization, when crimes are increasing and the judiciary has

provided the penalties so that prisoners are also increasing proportionally in jail. Anything they have done or are accused of doing, these prisoners remain human beings like the rest of us, caring for their families and children, and finding their love and comfort. In every aspect of life, empathy and compassion are of utmost importance, whether it includes inmates, prison guards, or crime victims. While it is pointless to harbour hatred and ill will, cultivating harmony, trust, and consideration are far more positive. This is why the prisoners have been given great care and the protection of their human rights.

The prison is seen as a facility for handling the prisoner as deviant; within the facility, there will be fewer constraints and power over him. Nevertheless, the contemporary progressive views crime as a social disorder and supports the care of offenders by non-penal measures such as probation, parole, open jail, etc. Whatever society's reaction to crime, the lodging of criminals in prison gives rise to many problems of correction, recovery, and reformation which are critical aspects of the prison administration. Punishment in India during the Hindu and Mughal era was to prevent criminals from committing the crime. The accepted forms of punishment were the death penalty, imprisonment, and mutilation, kicking, driving, branding, or death-hungry. Especially during the Indian Mughal rule, the state of prisons was awe-inspiringly draconian. The inmates were treated poorly, tortured, and subjected to the most inhumane treatment. They were kept under close monitoring and surveillance. Therefore the prisons were places of fear and brutality and prison officials were required to be strict and thorough in the execution of sentences. Indian prisons reflect shifts from time to time in society's reaction to crime. The penal system reflects a complex mix of various penalty goals. Thus incarceration can serve to discourage the offender, or it can be used as a means of punishment or revenge by making the

offender's life miserable and difficult. The solitary life in prison and prisoners' incapacity to commit a crime while in jail fulfills the purpose of punishment for prevention. This also helps to keep crime under check by eliminating criminals from society. Aside from this, the prison can also act as a facility for reforming and rehabilitating criminals (Chand, 1985).

The prison system began in the first quarter of the 19<sup>th</sup> century. Based on his recommendations, Lord Macaulay attracted the attention of the Indian government for the first time in India to select a committee in 1836 to inquire into jail conditions and administration of the jail. After investigating the current conditions in prisons, the committee submitted its report, but the committee's recommendations were dismissed due to all social factors such as moral and religious instruction, education, or some scheme of incentives for good behaviour. In the Jail Inquiry Committee formed in 1862 to examine health conditions in Indian jails, the committee stated that the inmates required adequate food and clothes, as well as medical care for the ailing inmates. Later, in 1877, the Third Jail Committee appointed, this committee gave suggestions based on the suggestions of this committee The Prison Act, 1894, which came into being in India. The Indian Jails Reform Committee, formed in 1919-20 by the British for the conditions of the prisoner.

Prisons were originally used as places of detention for under-trials. Persons who were guilty of any political offense or a war crime or who refused to pay their debts or fines were imprisoned in jail cells to obtain a confession or receive payment of debts or fines from them. Subsequently, the conditions of prisons have changed considerably with the progress of science and civilization. The reformative followed in 1949, after Independence to India, the recommendations of the Pakwasa Committee

to recognize the prisoners should be used for work and pay them fair wages. In 1957, the Government of India formed an All Indian Jail Manual committee, and this committee recommendation played a significant role in the Indian Jail system. The prisons switched from the national list to the state list, using rehabilitation strategies such as parole and probation for prisoners with a reduced punishment. Since being selected as chairman in 1980, the All India Jail Reforms Committee, Justice A.N. Mulla selected. The committee's recommendation to set up separate homes for minors, mentally ill prisoners was to move to hospitals, set up a National Prison Commission, allow the public and media to enter jails, separate trials from convicted prisoners, etc. Justice V.R. Krishna Iyer was appointed by the Government of India to the National Expert Committee on Women in Custodial Justice.

Today's penology is based on incarceration as a means of inmate redemption; the prisons are no longer pure holding houses for criminals but aim to prepare inmates for their future lives. Modern disciplinary methods put greater focus on or improvement, rectification, and rehabilitation of criminals. The delivery system of criminal justice in India has seen more than 0.2 million inmates under trial being ignored in jail for many years, in many cases; it exceeded the statutory penalty for the crime they had committed. More and more, they had none to stand as guarantors or properties to supply as bail bonds, the poor kept suffering in jails. There have been cases where bail amounts are overwhelmingly high. Another such case has come before the Supreme Court. In India, Part III of the Constitution (Articles 12 to 35) is enshrined the judicially enforceable fundamental rights which encompass all civil and political rights and some minority rights. They include the right to equality, the right to liberty, the right to oppression, the right to religious freedom, cultural and educational freedoms, and the right to constitutional remedies. Article 21 of the

Constitution guarantees the right to life and the right to personal freedom and thus prohibits inhuman, cruel, or degrading treatment of any citizen, whether a national or a foreigner. Through Article 21 of the Constitution, the Supreme Court of India has established jurisprudence on human rights for the preservation and protection of the right of prisoners to human dignity. In the Constitution, there is no clear clause dealing with the rights of the prisoners. Accordingly, the Supreme Court had a significant role to play in implementing and interpreting Article 14, 19, 20, 21, and 22 of Part III and Article 38, 39, 39A, and 42 of Part IV in pointing out the specific constitutional rights applicable to the prisoners. An inmate does not cease to be a human being. They do have all the rights that a free man does but with some restrictions. Only being in prison doesn't rob them of their human freedoms. They continue to enjoy all of their civil rights even while locked in prison.

### **1.1.1 Human Rights: Definition**

Human rights are essential and basic to the well-being of the individuals and their development, in the absence of these rights, men would be enslaved and subjected to torture at the hands of the State. Human rights may be categorized as those fundamental rights to which every man or woman living in any part of the world is entitled by having been born as a human being. In other words, human rights are the genus of which humanitarian law is a species. Below are given some of the definitions of human rights:

According to the Encyclopaedia of Human Rights, “human rights are the universally accepted principles and rules that support morality and that make it possible for each member of the human family to realize his or her full potential and to live life in an atmosphere of freedom, justice, and peace” (Lawson,1978).

Raphael (1967) has stated that human rights constitute those very rights that one has precisely because of being a human being.

Cranston (1973) asserts that human rights by definition are universal moral rights, something, which all people, everywhere at all times ought to have, and something of which no one may be deprived without grave affront to justice, something which owes every human being simply because one is human.

Macham (1976) defines human rights as universal and irrevocable elements in a scheme of justice. Accordingly, justice is the primary moral virtue within human society and all rights are fundamental to justice.

According to Section 2(d) of the Protection of Human Rights Act (PHRA), 1993, human rights are defined as human rights means the rights relating to life, liberty, equality, and dignity of the individual guaranteed by the Constitution or embodied in the International covenants and enforcement by courts in India.

The words “International Covenants” occurring in this definition mean, as per Section 2(f) of the Act, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the UN General Assembly on 16<sup>th</sup> December 1963. It is well known that these two Covenants were adopted by the UN General Assembly to provide legal enforceability to various rights embodied in the Universal Declaration on Human Rights adopted by the UN General Assembly on 10<sup>th</sup> December 1948. It is therefore apparent that the Parliament while enacting the Act, wanted to protect not only fundamental rights enshrined in the Constitution but also civil, political, economic, social, and cultural rights embodied in the two covenants to the extent that they were enforceable through

law courts and hence treats all of them as ‘Human Rights’. This may indicate that the definition is comprehensive and would include all rights that may be necessary to make life meaningful, complete, and worth living. It also indicates that liberty, equality, and dignity are basic human rights necessary to make life meaningful and complete (Gupta, 2001).

From the above definition and statement, it can be concluded that human rights are available to all persons because they are human beings. It is derived from the worth, dignity, and sanctity of the human person. In simple terms, whatever adds to the dignified and free existence of a human being should be regarded as human rights (Chitnis, 1997).

### **1.1.2 Prison: Definition**

A prison is a place for the detention of undertrials and convicted people who have committed one or another crime or have acted against the prevalent laws of the country. The word ‘prison’ has been traditionally defined as a place in which persons are kept in custody pending trial or in which they are confined as convicts undergoing imprisonment.

The English word prison came from the old French ‘prison’ and is a place in which people are physically confined and deprived of a range of personal freedoms (Crighton and Towl, 2008).

Janna (1967) the word ‘Prison’ has been derived from the Latin language which means to ‘seize’.

Paranjpe (1996) Prison is used as an institution to treat the criminals as a deviant so that there should be lesser restrictions and control over them inside the prison.

Section 3: of the Prison Act, 1894 define as a police lock-up or any place which has been declared by the state government by general or special order to be a subsidiary jail (Prison Act, 1894).

The term jail is a generic term that applies to a penal institution housing both prisoners awaiting trial and prisoners who have been sentenced by judicial authorities. Consequently, the jail performs the function of remand institutions and prisons.

‘Prison’ also means any jail place used permanently or temporarily under the general or special orders of a local government for the detention of prisoners and includes all buildings and lands appurtenant thereto, but does not include.

- a. Any place for the confinement of prisoners who are exclusively in custody of the police (Definition prescribed in the Prisons Act, 1894, section 3 Act IX 1894).
- b. Any place specially appointed by the local government under section 541 of the code of criminal procedure 1878 (See Prisons Act V, 1898).
- c. Any place which has been declared by the local government by general or special order, to be a subsidiary jail.

Other terms used for prison are penitentiary, correctional facility, and jail. For most of the history in the western world imprisoning has not been a punishment in itself but rather a way to confine criminals until corporal or capital punishment was administered (Crighton and Towl, 2008).

It is on record that Brashpati laid great stress on the imprisonment of convicts. Kautilya in his Arthashastra has stated that rules in ancient India made frequent use of fortresses to lodge their prisoners. It was a common practice to keep the prisoners in solitary confinement to offer them the opportunity of self-introspection (Paranjpe, 1996).

In Encyclopedia of Social Sciences (1826) in an article on prison architecture, it has been emphasized that the prison offers an effective method of exciting the imagination to a most desirable point of abhorrence. The persons in general, refer their horror of prisons to an instinctive feeling rather than to any accurate knowledge of the privations or inflictions. The exterior of the prison should, therefore, be farmed in the heavy and somber style which most frequently impresses the spectator with gloom and terror (Fitzgired, 1983).

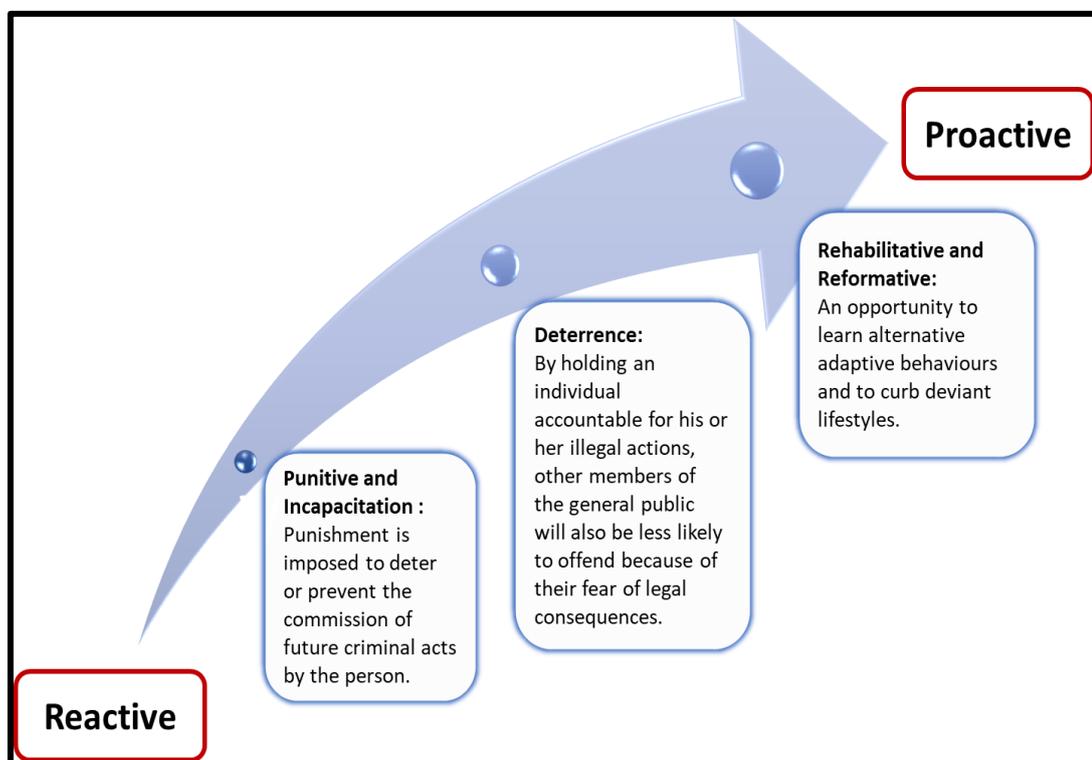
Thus prisons were designed to be a place where an anti-social individual could be reformed into a useful member of society (Mohanty and Hazary, 1990).

### **1.1.3 Evolution of Prison Framework**

Imprisonment or incarceration is a legal punishment that may be enforced by the state for the commission of a crime or disobeying its rule. The objective of imprisonment varies in different countries (a). Punitive and Incapacitation (b). Deterrence and (c). Rehabilitative and Reformative. In general, these objectives have evolved as shown in the accompanying figure 1.1. The primary purpose and justification of imprisonment are to protect society against crime and retribution. In current thinking, punitive methods of treatment of prisoners alone are neither relevant nor desirable to achieve the goal of reformation and rehabilitation of prison inmates.

The concept of Correction, Reformation, and Rehabilitation has come to the foreground and the prison administration is now expected to function in a curative and correctional manner. Human rights approaches and human rights legislations have facilitated a change in the approaches of correctional systems, and they have evolved from being reactive to proactively safeguarding prisoners' rights (Scott and Gerbasi, 2005).

**Figure 1.1: Evolution in the Objectives of the Prison System**



Source: Math *et al.* (2011)

#### 1.1.4 Purposes of Imprisonment

Prisons have existed in most societies for many centuries. Usually, they have been places where individuals were detained until they underwent some legal process. They might be waiting to go on trial, or for execution or exile, or until a ransom, a fine, or a debt is paid. Occasionally, individuals who posed a particular threat to the local ruler or state might be deprived of their liberty for a long period. The use of

imprisonment as a direct punishment of the court was introduced to Western Europe and North America in the 18th century. It has spread gradually to most countries, often as a result of colonial oppression. In some countries, the concept of imprisoning human beings does not fit easily with the local culture.

Over the years there has been a lively debate, which is still going on, about the purposes of imprisonment. Some commentators argue that it should be used only to punish criminals. Others insist that its main purpose is to deter individuals who are in prison from committing further crimes after they are released, as well as to deter those who might be inclined to commit a crime. Another perspective is that people are sent to prison to be reformed or rehabilitated. That is to say, during the time they are in prison they will come to realize that committing a crime is wrong and will learn skills that will help them to lead a law-abiding life when they are released. Sometimes it is argued that personal rehabilitation comes about through work. In some instances, people may be sent to prison because the crime they have committed shows that they present a grave threat to public safety.

In practical terms, the purposes of imprisonment will be interpreted as a combination of some or all of these reasons. The relative importance of each one will vary according to the circumstances of individual prisoners. However, a more and more widely held opinion is that prison is an expensive last resort, which should be used only when it is clear to the court that a non-custodial sentence would not be appropriate.

The detention of individuals who are awaiting trial is a matter of special concern. Their situation is quite distinct from that of people who have been convicted of an offence. They have yet to be found guilty of any offence and are therefore

innocent in the eyes of the law. The reality is that they are often held in the most restricted conditions, conditions that in some cases are an affront to human dignity. In a number of countries, the majority of people who are in prison are awaiting trial. The proportion sometimes is as high as 60 percent. There are particular problems with the way pre-trial prisoners are treated and when the access that they have to lawyers and their families is determined not by the prison authorities, but by another authority, such as the prosecutor (Human Rights and Prisons Manual on Human Rights Training For Prison Officials, 2005).

## **1.2 Review of Literature**

The research will depend primarily upon the approach to human rights. This will also be on textual material; laws, decisions, law commission report, national and international conventions, and their reports, journals, newspapers, encyclopedia, etc. Some of the relevant books and articles below have been reviewed.

Tiwari (2013) addressed how prisons are a vital human rights environment. The imprisonment sentence does not only mean deprivation of liberty, which is the most basic of all human rights but also imposes limitations on the individual's life and personal freedom. When a person is imprisoned and the state controls his/her life, he/she is in danger of enduring human rights violations. Besides the stigma associated with incarceration, there is a general mentality towards inmates who are not deemed eligible for the same security as other members of society. Given that the poor and people from disadvantaged parts of society are still over-represented in the prison population, with little intervention to protect their human rights, they are especially vulnerable to violence. The research also addressed the human rights system in the prison environment for the enforcement of human rights and analyzed objectively the

problems and difficulties faced by the prison authorities in the successful application of the prison management approach to human rights.

Gupta and Singh (2016) addressed the right to a speedy trial in their book *Human Rights of Prisoners in India* as a right to life and personal freedom of a prisoner guaranteed under Article 21 of the Constitution, which guarantees fair and equitable trials. India's Supreme Court has been very cautious against infringements of prisoners' human rights by giving life and personal freedom a liberal and detailed sense. Under-trial prisoners are those people who face trial in any case, are unable to provide defence, and have no access to legal assistance, and are held together in jail for years, which is a serious breach of their human rights.

Hannan (2003) dealt extensively with the human rights and constitutional protections of the accused, the rights of the arrested and detained person, the right to lawful interrogation, questioning, searching, and confiscation, the right to a fair trial, and the right of prisoners in Bangladesh, under the provisions of the Universal Declaration of Human Rights (UDHR).

Kamalakar (2009) addressed extensively human rights, the right to a fair trial, the right to double punishment, the right to self-incrimination, the right to life and freedom, the right to freedom from arbitrary detention, the right to bail, the right to torture, the right to speedy justice, the right to plea bargaining, the right to legal assistance, the right to compensation, the right of prisoners and also the Defence of Human Rights Act, 1993. He has mentioned vividly that the prisoner's rights originated in the Prabhakar Pandurang case as an offshoot of judicial activism in 1960, and it became multidimensional in the Sunil Batra cases in 1978 & 1980.

Nirmal (2002) discusses the complex issue of human rights from a number of viewpoints and discusses such diverse topics as prisoner and refugee rights, the constitutional history of human rights, the organizational basis of human rights, and the NHRC. The discussion in this book is not limited to a structured legal study, but it involves a discussion of emerging prisoner rights jurisprudence. It provides an approach to socio-legal rather than simply black letters and reflects on the incarceration experience. It draws upon experiences from a number of backgrounds to illustrate how the rights of prisoners work in reality. The text also contributes to discussions on incarceration and citizenship, treating women offenders, and social exclusion.

Ramakrishnan (2013) explores the professed and real dedication on the part of six South Asian countries to custodial justice. The geopolitics of colonialism have influenced India, Pakistan, Bangladesh, Nepal, Sri Lanka, and Afghanistan. Europe in the 19th century is frequently perceived simplistically as the political root of the South Asian right-discourse.

Doak (2008) addressed the essence and scope of crime victims' rights against the backdrop of an emerging international consensus about how victims should be handled and what role they should play. The nature of these rights is defined not only by reviewing the wealth of international principles dealing explicitly with victims of crime but also by recognizing the possible cross-applicability of laws relating to victims of abuse of power, with whom they share much in common. The author considers the definitions of certain main rights to which the victims should be entitled as indicated by international standards. He then continues to question if victims can

rely on these protections within a system of domestic criminal justice marked by fundamentally exclusionary, adversarial, and punitive systems, processes, and values.

Vadackumchery (2012) is part of social justice in his work on human rights, and all civil rights abuses are a breach of criminal justice. The scholar, being an internationally recognized criminologist, attempts to reform the UDHR-1948 from the viewpoint of criminal justice. The author discusses several human rights cases of abuse worldwide and many are seen to take a cautious approach to human rights violations in criminal justice administration.

Amatrudo and William Blake (2014) provide extensive analysis of human rights as it applies to the current criminal justice system in their book *Human Rights and the Criminal Justice System*. In addition to being a vital component of international governance and social justice, Amatrudo and Blake contend here that human rights have also overshadowed the language of religion in contemporary moral discourse. Their book discusses issues such as extremism, race, and prisoner rights, as well as current legal systems, court procedures, and the development of literature in Criminology, Law, and Political Science to examine critically the relationship between the emerging body of human rights theory and practice, and the criminal justice system.

Barman *et al.* (2013) research “Human Rights in India: Issues and Perspectives,” deals with the volume highlighting the security of human rights at all levels. Violation of human rights in society is a crime and the volume focuses on the role of the UN which in December 1948 adopted the Universal Declaration of the Rights of Man to protect human rights.

Palmer (2014) addressed important details on all facets of prison law, including details on conviction and appeal, conditions of solitary imprisonment, access to the courts, parole, and the right to medical assistance and liability of prison officials. Highlighted issues include the extension of the Americans with Disabilities Act to jails; protection is extended to HIV-positive prisoners, and decisions of the Supreme Court and Congress to curb the tide of prison litigation.

Brown and Wilkie (2002) give voice to several views emerging in the Australian context from this discussion, while the concerns presented would have powerful echoes elsewhere. Ultimately the book makes a compelling argument those prisoners in any society that professes to be a democracy do and should have rights, bringing to the fore a topic that culture would sometimes like to ignore.

Pollard (2012) analyzes prisoners' rights to be in contact with the world beyond the location where they are being held. It reviews sources of international human rights and humanitarian law relating to the protection of prisoners being detained and segregated from the outside world. The thesis explores the problems of isolated detention and secret detention, particularly through the lenses of the right to freedom, the prohibition of torture and other barbaric, inhuman, and degrading treatment, the right to fair care and respect for human dignity, and the prohibition of enforced disappearance.

In its much-awaited fourth edition, the work of Boston and Manville (2010) deals with Prisoners' Self-Help Litigation Manual is an invaluable guide for prisoners and prisoner advocates trying to recognize the rights granted by statute to prisoners and how to secure those rights. Clear, thorough, realistic guidance teaches inmates what they need to learn about conditions of incarceration, civil rights in jail,

procedural due process and the legal system, how to litigate, perform a successful legal study, and write legal documents.

Through the viewpoint of both prisoners and prison personnel, Ross (2013) has addressed the numerous health and medical problems that occur or are brought into prisons. Prison health and safety promotion brings crucial problems in prison treatment into a historical context and explores the drivers of current policy. This also discusses critical legal concerns relating to wellbeing in prison environments, as well as the civil rights ramifications and problems that occur. The book provides a valuable framework for in-prison health education and a guide for implementing systemic, policy and health-related reform based on the UN Health in Prisons program, as well as a special chapter on mental health issues. Here is an invaluable guide for all those interested in prison healthcare offering a detailed and thought-provoking summary of health promotion problems with correctional environments.

Through his study, Murdoch (2006) addressed the European mechanism for the security of individuals deprived of their rights, and how it has developed over the past 50 years. This addresses the numerous steps the Council of Europe has taken in this region, the most important of which is the European Convention on Human Rights and the Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

Nakalembe (2010) emphasized that the state must provide for prisoners' conjugal rights to safeguard the marital rights of each inmate, as well as the rights of the law-abiding partner and the children who are not incarcerated. In addition, the book explores the benefits that are profoundly rooted in the provision of conjugal rights to prisoners, such as the prevention of abuse, institutional homosexuality, and

the dissemination of Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS) in prisons, the reduction of recurrence rates and the safeguarding of prisoners ' dignity and, most significantly, the security of the family, which is the most important entity in society that cannot be overcome.

Jewkes, Crewe, and Bennett's (2016) *Handbook on Jails* offers a comprehensively revised and modified collection of articles on a broad variety of topics related to jails. It includes chapters written not only by those who have founded and conducted prison research but also features contributions from ex-prisoners, prison administrators and ex-governors, jail inspectors, and others who have worked with prisoners in a wide variety of professional capacities.

Karamalidou (2017) offers a comparative study of the human rights of prisoners in England, Wales, and the Netherlands. The sharp contrasting disparities that were once typical of the English and Dutch prison systems have been smoothed to some degree over the years by changes in the Dutch penal policy. In this context, the study examines the effect of the penal policies of the two countries on the human rights of the prisoners and presents the opinions of the prisoners on the relation of human rights to prison life and care. English and Dutch prisoners view the acknowledgment and preservation of human rights as the yardstick of the integrity of the jail in modern democracies. Based on their respective perspectives, the author outlines important insights about what strategies to follow and what termination strategies to enshrine human rights in prison.

In his research, Cronkhite (2008) offers a detailed description of the dominant institutions of criminal justice in law enforcement, courts, and correctional systems. Using a theory-to-application approach, this text discusses the processes, problems,

and procedures that these criminal justice managers face today. The text is divided into three parts, and part one discusses the historical history and significance of conventional administration theories. Part two extends such ideas to the current administration of criminal justice. Part three discusses the potential of the 21<sup>st</sup> century administration of criminal justice.

In his book, Sirohi (1988) explored specifics of the crime, the causes of crime, multiple causative crime theory, crime prevention, punishment theory, the Foreign and Indian penal system, probation and parole, juvenile delinquency and juvenile justice, etc. This book retains the basic features of criminology and penology theoretical aspects. It includes significant High Court and Supreme Court judgments applicable where appropriate to the subject matter.

Batra (1989) made a comparative study of the Indian criminal justice system, based on a common law system with the Soviet criminal justice system, based on communist law, in the book entitled Defence of Human Rights in Criminal Justice Administration. She has addressed procedural protections under Indian and Soviet legal systems given to the accused. The author has concentrated on the accuser's pre-trial stage rights, i.e. the right to freedom from unreasonable arrest; the right to rational inquiry; interrogation; search and seizure; the right to legal protection, and fair pre-trial detention, and finally the right to a proper and timely court.

Huq (2001) made a comprehensive discussion in the book Criminal Justice System Administration on the Police, Judiciary, and Trial and Correctional system. He has stressed the collaboration of foreign police to deter transborder human trafficking. The author has focused on prison conditions, the involvement of common

citizens in crime prevention, public perception of corruption, the role of police in the defence of human rights, and the role of Bangladesh police in the international arena.

Gross *et al.* (1934) concentrated on the inevitability of specialists as clue-finders in the interests of justice. This book is intended to illustrate the way various types of crime are treated and to describe the motives. This book was planned as a working manual for all those involved in the criminal investigation without interrupting any citizens' rights. This also offers guidance on the victim and accused tests and locality inspection.

Albanese (2008) explored crime and justice topics to expose their extensive context, real evidence, and current developments, tracing them from the past to the present and into the future. This productive introductory text aims to concentrate on critical thinking and the impact of the media on criminal justice and understanding of criminal justice by the general public. Albanese has given new attention to up-to-date legislation and policies related to crime, law, search and seizure, and criminal justice system operations, as well as coverage of technology issues, including Internet-friendly crimes, identity theft, and foreign issues.

Devi (2012) addressed fundamental rights enshrined in the Indian Constitution to protect Indian people from State misuse of powers. Nevertheless, the state authorities still ignore essential constitutional requirements for the preservation of law and order and commit violations of human rights. The book looks critically at the criminal justice system in India, drawing on the Supreme Court of India's interpretations. It also analyzes new arrest and detention rules, as well as the constitutional validity of disciplinary steps. Important problem areas have also been discussed, such as low conviction rates, neglect of prosecution authorities, an outdated

justice system, and indiscriminate application of laws on arrest and detention. The volume addresses the importance of procedural protections against the state's arbitrary actions, in the light of constitutional provisions.

Vali (2003) talked extensively about the right to self-incrimination, questioning, criminal identification, and capture. On major points, sufficient comparisons have been made to the international Constitution in particular to those of the United Kingdom and the United States of America to provide a comparative perspective of the Indian Constitution. Relevant details of important cases and a description of the law set out therein were provided in the body of the text to allow readers and researchers like me to understand the topic better without constantly having to resort to the papers. The accused right to self-incrimination is a basic Constitutional right. The author has tried his best to put the judicial definition in on this point.

Shivanna (2003) has summarized all of the freedoms, privileges, and protections of the accused under different headings, such as the civil rights of the accused, the procedural rights of the accused under the Code of Criminal Procedure, and the rights of the accused under the Penal Code, the rights of the accused under the Law of Proof, the rights of the accused to bail, the right to acquittal, etc. The author has also taken a great deal of pain and, with the assistance of judicial precedent, more especially those of the Apex Court which comprises many landmark cases, he has discussed the crucial issue of the subject matter eruditely. He has brought to the fore the nuanced complexities of the subject matter, including some of the accused negative including civil rights, succinctly and enumerative.

Ashuthosh (2009) emphasized the rights of the accused in all respects, in particular about the Code of Criminal Procedure, the Constitution of India, and the rights of the accused in prison. He has outlined in detail the rights of the accused as provided for in the Code of Criminal Procedure, 1973 such as unlawful or unconstitutional detention, coercion of evidence, search, produce before a Magistrate, bail and anticipatory bail, consulting counsel, and free legal aid, open court, right to interview and cross-examine both the prosecution and defence witnesses, double harm, appeal, etc.

Sirajudeen (2008) observed that the prison occupies the most important position in any society. An unchanged issue in India was the law governing the prisoners from the moment of their arrest until the release either from the police or from the prisons. Although there are several legal decisions available on detention, remand, parole, punishment, etc., there was no clear legal opinion on prisoners' rights and the issue related to incarceration, prisoner treatment, release, and aftercare. With this in mind, in his excellent writing, the writer has gone through the law concerning prisoners from the moment they were charged before they were released either from police custody or from jail, i.e. detention, remand, bail, punishment, execution of sentences like set-off, amnesty, parole, clemency, pardon, and jail rights. In the correct locations, the author has incorporated judgments not only of the High Courts of various States and the Supreme Court in India but also of international courts with approximately 1400 case laws in all.

Thakur (2013) book "Human Rights of Prisoners and Justice in Prison," deals with the rights of prisoners and the administration of jail in India. Easton (2011) deals with the rights of inmates from a socio-legal and ethical viewpoint and assesses the

benefits and disadvantages of a right-based approach to jail. Singh's (1997) book "Right to Speedy Justice for Under Trial Prisoners" deals with the right of under-trial prisoners to the speedy trial of their trials, the fundamental guarantee of their rights being exercised.

Kleinig (2014) collects a list of the most important recent research papers from the current discussion on prisoner's moral rights. His papers explore the philosophical underpinnings of the dispute and provide foundations for a prisoner rights philosophy as well as many international documents describing prisoner rights, including women prisoners. Finally, a thorough review of the moral basis for individual rights related to prison conditions covers areas such as safety, solitary confinement, rehabilitation, education, religious observance and access to libraries, the use of prisoners in the study, and the disenfranchising of prisoners.

Sharma (1983) discussed the practical aims and theoretical concepts of criminal justice administration in his book "Police and Criminal Justice Administration in India" Although describing the inhuman conditions in Indian Prisons, the author expresses the view that prison administrators job is of heavy responsibility as they are required to strike a becoming between their conventional custody-oriented position and modern correction and social rehabilitation tasks. The author supports the development of new feral jails, updating of prison manuals, jail administration, and the ingenuity of the Juvenile Bureau of Police.

The book "An Introduction to Corrections" by Duffe and Fitch (1976) deals in-depth with penal systems and the history of modern prisons and also sheds light on future prisons. However, inmates' normal working and everyday life have been manipulated in an evaluative way to explain the criminal justice system's

expectations. Yet the simple phenomena like food, clothes, drinking water, and speedy justice, which are central to human rights, are lacking. The effect of pre-convention operations on correctional policies has been emphasized a great deal. Within the correctional systems, the interests of indigent dependents have been discussed in depth.

Roy (2003) gave information on the structure and management of prison administration in India in his paper 'Jail Reforms in India: A Review.' The article sheds light on the issue of overcrowding, maltreatment, lack of basic facilities, mismanagement of rehabilitation, and inhuman actions of prison officials based on various case studies and the NHRC report. The writer addressed measures taken in India to improve prison administration and referred to case studies of Tihar Jail, Madhya Pradesh, Uttar Pradesh, West Bengal, Tamil Nadu, and Karnataka following the Delhi Prisons Act, 2000.

Prathapan (2015) has challenged India's correctional system in his book, 'Mahatma Gandhi on Prison Reforms.' That is still based on the Prisons Act, 1894. Issues concerning human rights abuses were explored in this book. Mahatma Gandhi's philosophy on prison reforms has been endorsed by improving the culture of prisons positively to transform prisoners and to protect human rights in prison authors.

### **1.3 Research Objectives**

- To analyse and identify the historical origin of human rights and prisons.
- To identify the international and national human rights provisions available for safeguarding the rights of the prisoners.

- To examine the role of the judiciary in the protection of prisoners' rights in India.
- To investigate the issues and concerns of human rights practices in the prisons of Sikkim.

#### **1.4 Research Questions**

- How did the historical origin of human rights and prisons evolve?
- What are the various provisions available for safeguarding the rights of the prisoners at the international and national levels?
- How judicial responses towards protecting the rights of the prisoners in India?
- What are the issues and concerns of human rights practices in the prisons of Sikkim?

#### **1.5 Hypotheses**

- Lack of adequate training programs of prison officials to sensitize the prisoners resulted in a gross violation of human rights abuses in the Prisons of Sikkim.
- There is no significant difference between human rights practices in the Central and District Prison of Sikkim.

#### **1.6 Rationale and Scope of the Study**

The various governments have made considerable advancements in improving the prison system over the years, but there is still a need in the existing system for the rehabilitation and reformation of the prisoners. The fact that prisoners are a subject of human rights abuses is a sad reality even today. Every day their human rights are

being abused around the world. Prisoners are treated inhumanely, they are harassed and humiliated by prison officials as well as fellow inmates, they have little access to proper health care while they are provided with inadequate food, insufficient clothing, and bedding, and further, they are held in overcrowded conditions where living conditions are unbearable. These are only a handful of examples of ideal prison management to be found all over the world. Even in some of the richest countries, prison services are no exception to this. As the situation is today, many prisoners become much more damaged and hardened criminals after having been held behind bars. The absence of a reformatory approach in the Indian prison system has not only resulted in ineffective integration with society but also has failed to provide productive engagement opportunities for prisoners after their release.

The state of prison management and the condition of the prisoners lodged in the various prisons of Sikkim are no exception to the dismal state of affairs of prison management practiced throughout the country. The prisons of Sikkim are plagued with the menace of overcrowding, inadequate sanitary facilities, lack of physical and mental activities, lack of decent health services and medical facilities, which in turn raises the risk of health issues in prisons of Sikkim. Further, the slow progress of the investigation, trial, and hearing of appeals in cases pending against them especially in the case of undertrials add to the woes of the prisoners. The disparity between rich and poor also plays a role in the delivery of justice, where the rich and well connected often get bail within a few days for even being arrested for cases pertaining to drug offences, while those who were poor or are partly educated get delayed trials and face the brunt of prolonged incarceration. Moreover, the prisoners are often subjected to the demands of illegal gratifications from the lawyers and prosecutors in order to ensure their speedy trials. Lastly, the prison officials who are entrusted with the job of

managing the prison facilities as well as the prisoners housed in them, lack adequate training and orientation, which further impedes the process of rehabilitation of the prisoners.

Therefore, it becomes pertinent to undertake a thorough investigation into the various aspects, concerning the issues of human rights abuse of prisoners, improper management of prison facilities across the country and especially in the state of Sikkim, and the sheer lack of measures being implemented to facilitate the rehabilitation of prisoners lodged in various prisons across the nation and the state in particular. The research area shall be limited to the state of Sikkim's geographical and political authority. The research will, therefore, be limited to Central Prison in (Rongyek), Gangtok, East Sikkim, and District Prison (Boomtar), Namchi, South Sikkim.

## **1.7 Research Methodology**

The study is based on quantitative and qualitative designs of research and it is mainly based on primary data collected through field surveys and supplemented with the available literature. Besides the collection of field data, relevant literature is being consulted particularly, through literature surveys in various libraries, seminar proceedings, periodicals, journals, monographs, government records, newspapers, and also Government reports and documents.

### **1.7.1 Sources of Data**

Primary data have been collected through questionnaires, which was framed in an English language and it was translated into local language while collecting data for the convenience of respondents to understand easily. In Sikkim, there are only two

Prisons, Central Prison, and District Prison to date. Central Prison is situated at Rongyek, Gangtok in East District and District Prison is at Namchi in the South District of the state. Since there were altogether 400 prisoners, 93 prisoners in District Prison, and 307 prisoners in Central Prison of the state, therefore, all populations of prisoners were interviewed to obtain the required information. To extract the information from the prisoners, first of all, questionnaires were distributed to the prisoners personally and were collected from them by giving sufficient time to fill up the questionnaire.

Furthermore, to complete the present study some of the secondary information has been also used from the following sources;

- State Human Rights Commission (SHRC) of Sikkim
- Bureau of Police Research and Development (BPR&D)
- National Human Rights Commission (NHRC)
- National Crime Records Bureau, Ministry of Home Affairs, Government of India (NCRB)
- National Institute of Criminology and Forensic Sciences, Delhi

### **1.7.2 Nature of Data**

The present study aimed to collect information concerning the human rights practices of prisoners in general and awareness of their rights among prisoners and to collect the relevant statistical data for the study. The information on the following issues has been collected;

- Right to an Adequate Standard of Living

The parameters on which these are to be assessed are (a) Accommodation (b) Food and drinking water and (c) Clothing and bedding.

- Health Rights of Prisoners

The parameters on which these will be assessed are (a) Right to health screening for prisoners (b) Access to health care and (c) Healthy conditions in custody.

- Making Prisons Safe Places

The parameters on which these are to be assessed are (a) Security (b) Good order and control and (c) Discipline and Punishment.

- Making the Best Use of Prisons

The parameters on which these are to be assessed are (a) Work (b) Education and (c) Cultural activities.

- Prisoners Contact with the Outside World

The parameters on which these are to be assessed are (a) Right to communicate with family (b) Right to access news and (c) Right to kept in prison near their homes.

- Prisoners Complaints and Inspections

The parameters on which these are to be assessed are (a) Right to make a complaint regarding his/her treatment (b) Right to access rules and (c) Right to bring the rejected complaints before the judiciary and other authority.

- Right to Non-Discrimination of Prisoners

The parameters on which these are to be assessed are (a) Prohibition of all forms of discrimination (b) Right to enjoy equal protection of the law and (c) Right to enjoy cultural liberty.

### **1.7.3 Sampling Design**

The present study is aimed to collect information through both primary and secondary sources about the rights of the prisoners. Hence, the area of the study is the Central Prison (Rongyek) Gangtok, East Sikkim, and District Prison (Boomtar) Namchi, South Sikkim. The study is concerned with convicts and undertrials prisoners' of Central and District Prison of Sikkim whose cases are decided by the court and who are sentenced to undergo a term of imprisonment. In this research study, 'Prison' refers to a correctional facility for adults only.

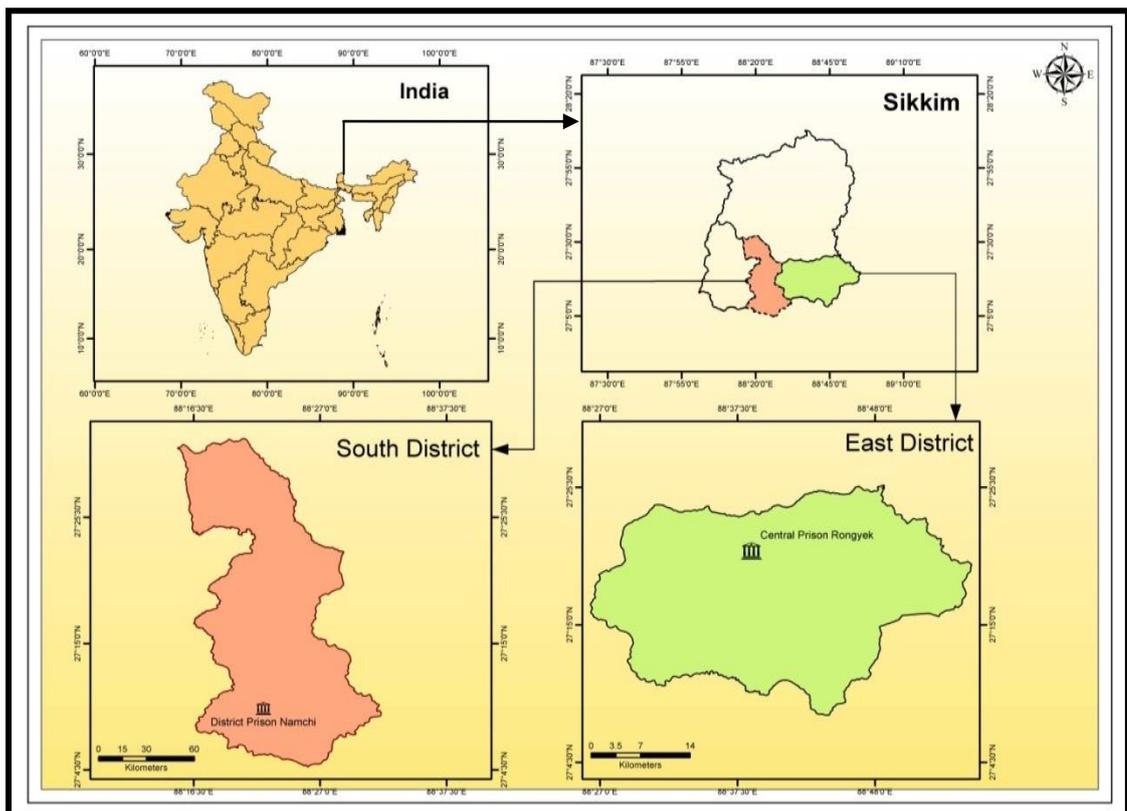
To have a representative sample of prisoners from both the Central and District Prisons we have divided prisons in Sikkim State into two broad strata; Central and District Prison, and our sample incorporates the total number of prisoners in the state of Sikkim, which makes it a population study. To assess and compare the human rights practices of prisoners in Central and District Prison of Sikkim is selected. A total population of 307 including male and female prisoners consisting of both convicts and undertrials of Central Prison Rongyek have been selected. In the same way, a total population of 93 undertrials prison inmates comprising male and female from District Prison Namchi has been selected.

The reasons for selecting Central Prison and District Prison are that it consists of a sizeable proportion of the population of both long and short terms, occasional and habitual prisoners, and also prisoners convicted for commission of different types of crimes and undergoing a different term of imprisonment.

### 1.7.4 Study Area

Sikkim has four revenue districts but only two prisons. The North and West districts have no separate prison and prisoners remanded to custody from these districts are being accommodated in the Central Prison at Rongyek (Gangtok) for North District and District Prison at Boomtar (Namchi), for West District as can be seen in figure 1.2. Therefore, the area of the study shall be limited to Sikkim's geographical and political authority i.e. Central Prison at Rongyek (Gangtok), East Sikkim, and District Prison at Boomtar (Namchi), South Sikkim.

**Figure 1.2: Location Map of Central and District Prisons of Sikkim**



**Source:** Digitized from Google Earth Pro

Generated on ArcMap 10.2.0

### **1.7.5 Tools and Techniques for Data Analysis**

For the collection of the primary data, the study has used techniques of questionnaire survey and interview schedules. The questionnaire is primarily based on a Likert Scale and makes use of a five-point rating scale (Very Low, Low, Average, High, and Very High) assigned with five scores 1,2,3,4, and 5 respectively. During the field survey focus group discussion was also conducted amongst respondents. This discussion group was limited to between the range of 10 to 15 prisoners which consists of both male and female inmates separately. This was crucial because it allowed the full participation of the interviewees in the discussion as well as provided a diversity of perceptions and opinions on targeted issues. The collected data from the field entails both qualitative and quantitative analysis by using analytical software like Microsoft Excel and Statistical Package for the Social Sciences (SPSS) and data are presented and shown in descriptive statistics, Tables, charts, and bar diagrams.

The data analysis has been designed in such a way that all possible errors during data processing are excluded. The entire interview schedules were edited and checked for ambiguities and inconsistencies.

## **1.8 Organisation of the Study**

### **Chapter- 1: Introduction**

The First Chapter enumerates the detailed plan or blueprint for the intended study. The chapter highlights the conceptual framework of the research, objectives, questions, hypothesis, and rationale, and scope of the study.

## **Chapter- 2: Human Rights and Prison: A Conceptual Framework**

The Second Chapter enumerates the historical perspective of human rights and prisons. The chapter delves into the origin, development, and classification of human rights, while it also provides a brief historical evolution of prisons during the ancient, medieval, and modern times.

## **Chapter- 3: Human Rights Provisions for Prisoners: International and National Perspective**

The Third Chapter deals with the international and national human rights provisions available for safeguarding the rights of the prisoners. The chapter lists out and critically evaluates the various international provisions for protecting the rights of the prisoners such as Basic Principles for the Treatment of Prisoners, 1990, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1987, Standard Minimum Rules for the Treatment of Prisoners, 1955. In the context of national provisions and acts enacted in India pertaining to the management of the prisons and the prisoners such as The Prisons Act, 1894, The Transfer of Prisoners Act, 1950, The Prisoners Act, 1990, etc.

## **Chapter- 4: Protection of Prisoners Rights in India: Judicial Perspective**

The Fourth Chapter enumerates judicial intervention in the protection of the human rights of prisoners in India by discussing the rights of prisoners by quoting the landmark Supreme Court judgments in the matter.

## **Chapter- 5: Issues and Concerns of Human Rights Practices in the Prisons of Sikkim: An Empirical Study**

The Fifth Chapter enumerates all the issues and concerns of the Central and the District Prison situated in Sikkim such as prisoners' rights violations, administrative efficiency, and standard of living. It also evaluated a comparative study of both Central and District Prisons of Sikkim concerning the human rights practices of prisoners.

## **Chapter- 6: Conclusion**

The Sixth Chapter summarizes the findings of the study and formulates some broad strategies for preventing the violation of prisoners' rights to facilitate their rehabilitation, after being released from prison. This chapter will also recommend some strategies for capacity building for all institutions which handle and coordinate the cases of the rights of prisoners.

## **CHAPTER - 2**

### **HUMAN RIGHTS AND PRISON: A CONCEPTUAL FRAMEWORK**

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The concept of human rights arises from the inherent dignity and work of the individual and invokes all such inalienable rights and freedoms that he/she is entitled to as a member of society. During incarceration, these rights may be restricted or curtailed but cannot be denied or taken away. The ideology propounded by the Universal Declaration of Human Rights (UDHR), adopted by the United Nations in 1948, serves as a springboard for a global action to uphold human rights in different spheres. The ideology propounded by the UDHR has been well concretized in the International Covenants on Civil and Political Rights and Economic, Social, and Cultural Rights. Among the provisions which have a direct bearing on criminal justice, of which prison administration is a major organ, are those relating to the right to life, liberty and security of person, the right to equality before and equal protection of the law, right to be presumed innocent until proven guilty, right of not to be subjected to any cruel, inhuman or degrading treatment or punishment, and right to an effective remedy for any unlawful violation.

Philosophers and reformers started in the seventeenth century to condemn the cruelty and barbarity in the prisons. Throughout the eighteenth century, the incarceration of criminals as their punishment was a trend emerging. In the modern age, as we become more civilized and more educated, the focus was placed on human

rights, and prisons become correctional facilities that began to introduce the idea of rehabilitation and prison reform.

## **2.1 Human Rights: Meaning**

Human rights, as the term is most commonly used, are the rights that every human being is entitled to enjoy and to have protected. Under the provisions of Civil and Political Rights, all governments are to protect the life, liberty, and security of their citizens. They should guarantee that no-one is enslaved and that no-one is subjected to arbitrary arrest and detention or torture. Everyone is entitled to a fair trial. The rights to freedom of thought, conscience, religion, and freedom of expression are to be protected (Radhakrishnan, 2009). The underlying idea of such rights is fundamental principles that should be respected in the treatment of all men, women, and children that exist in some form in all cultures and societies. The contemporary international statement of those rights is the Universal Declaration of Human Rights (Patel, 2007).

Human rights may be regarded as the fundamental and inalienable rights that are essential for life as a human being. Human rights are the rights possessed by every human being, irrespective of nationality, race, religion, and sex, simply because of a human being. Human rights are thus those rights that are inherent and without which cannot live as a human being. Human rights are fundamental freedoms to fully develop and use human qualities, intelligence, talents, and conscience and to satisfy physical, spiritual, and other needs. Human rights are called fundamental rights or basic rights or natural rights (Dhiman, 2011).

Human rights include the right to freedom from torture, the rights to life, inhuman treatment, freedom from slavery and forced labour, the right to liberty and security, freedom of movement and choice of residence, right to a fair trial, right to privacy, freedom of thought, conscience and religion, freedom of opinion and expression, the right to marry and form freely elected representatives, the right to nationality and equality before the law (Mou, 2016). These rights cannot be compromised universally. These rights are natural because they were derived from nature and could not be legally alienated by the ruler. Human Rights are inalienable rights or natural rights or basic rights. Part III of the Indian Constitution provides fundamental rights nothing but human rights which are to every citizen in India. Human rights are two types one natural and the other one created and protected by legislation. Human Rights are protected by Judiciary by enforcing Constitutional Provisions in India (Singh, 2014).

## **2.2 Origin of Human Rights**

The concept of human rights is the old concept of “Natural Rights” based on natural law. Various theories have been advanced by jurists about the origin and nature of human rights and fundamental freedoms. The earliest of these can be regarded as the Roman doctrine of ‘Jus Naturale’.

‘Jus Naturale’ has been defined as “the law imposed on mankind by common human nature that is by reason in response to human need and instinct” (Zulueta, 1940). It is also said to be the law that nature herself established. God is the source of this law. The doctrine implies that every human right is inherent in man. It existed even before the existence of the state and the state is not competent to violate it, rather the state should recognize and protect it (Gajendragadkar, 1969).

Locke who advocated putting a limitation on the power of kings proclaimed that “the natural rights such as life liberty and property, which rulers, bound by natural law, must recognize” (Luard, 1967). Going further he elaborates that “Man is born with a title to perfect freedom and uncontrolled enjoyment of all the rights of the law of Nature, has by nature a power not only to preserve the property that he has in his life, liberty, and estate against the injuries and attempts of other men but to judge of and punish the breaches of that law in others, as he is persuaded the offence deserves, even with death itself, in crimes where the heinousness of the fact, in his opinion requires it. Learned Justice H.R. Khanna pointed out that, “the doctrine of natural law was a direct progenitor of the concept of human rights. Natural Law created an awareness of natural rights. Various thinkers discerned the inherent and sacred rights of men in the divine law applying to human beings. Natural rights, thus, led to the formulation of human rights. Although the concept of human rights developed mainly because of the doctrine of natural rights under natural law, it has originally evolved in the field of domestic legislation as in Magna Carta (1215), Petition of Rights (1628), the Habeas Corpus Act (1679), Bill of Rights (1689) and the Act of Settlement in England (1701) which may be regarded as landmarks in the path of liberty. The Bill of Rights in the United States (US) Constitution and the declaration of the Rights of Man in France worked as an instrument of revolt against tyrannical and authoritarian Governments. French Revolution and the American Declaration of Independence were the products of the struggle for liberty. ‘Rights of Man’ became a slogan in struggling against the injustices power of kingly rulers. It did not affect only indignities committed by such Governments. The notion of the natural rights continued to attract men’s mind, and constitutions of practically all the

countries today include or at least give formal recognition to the rights of man and the citizens” (Cranston,1973).

The expression “Human Rights” is of recent origin emerging from International Conventions and Charters. The expression “Human Rights” is to be found in the Charters of United Nations adopted at San Francisco on 25 June 1945. The preamble of this charter declared that the United Nations shall have for its object, inter alia, “to reaffirm faith in fundamental human rights.” Article 1 state that the purposes of the United Nations shall be, among others, “to achieve international cooperation in promoting and encouraging respect for human rights and fundamental freedom for all without distinction as to race, sex, language or religion” (Luard, 1967)

### **2.3 Development of Human Rights**

The effect of the Second World War compelled the international community to codify rules to protect human rights and the charter of the United Nations which came into force on 24<sup>th</sup> October 1945 recognized that human rights have an international dimension and they no longer solely matter falling within the exclusive jurisdiction of a State. This charter gave legal authority to the United Nations to embark upon codification of human rights and the world’s first International Human Rights documents viz., Universal Declaration of Human Rights, 1948 came to be adopted on 10<sup>th</sup> December 1948 in the form of a resolution passed by the United Nations General Assembly. Besides the preamble, it consists of 30 Articles (Jain, 2015).

It was during the second half of the 20<sup>th</sup> century that human rights jurisprudence began to develop very fast. A number of International Conventions

came into existence covering the economic, social, and cultural rights of the people living in this world. In the United Kingdom, there is no written constitution and consequently, there is no constitutional guarantee for human rights but scholars like Dicey have maintained that human rights are protected in the U.K. by representative parliament and by judges having profound regard for principles of liberty which have been evolved from case to case by the courts themselves.

The Universal Declaration of Human Rights (1948) had greatly influenced the framers of the Constitution of Independent India and its imprints are reflected in the fundamental rights incorporated in Part III and Directive Principles incorporated in Part IV of our Constitution. The Universal Declaration of Human Rights being not a legally binding instrument, still, it has a great persuasive value. With time, human rights came to be interpreted having regard to the International Bill of Rights which refer to (i) Universal Declaration of Human Rights (1948), (ii) International Covenant on Civil and Political Rights (1976), and (iii) International Covenant on Economic and Socio-Cultural Rights (1976). These three bills of rights form the touchstone for implementing human rights provisions.

#### **2.4 Universality of Human Rights**

The conventional wisdom has been that human rights are indivisible; meaning that respect for civil and political rights cannot be divorced from the enjoyment of economic, social, and cultural rights. Expressed the other way round, authentic economic and social development cannot exist without the political freedom to participate in that process, including the freedom to dissent (Reoch, 1994)

Vienna Declaration, 1993 reaffirmed the universality of human rights. “*The universal nature of these rights is beyond question,*” says the final Declaration. The entire spectrum of human rights was endorsed without division. ‘*All human rights are universal, indivisible, and interdependent and interrelated*’ the Declaration says. Human rights were reaffirmed as including both civil and political rights and the broader range of economic, social, and cultural rights, as well as the right to development. This full conception recognizes, in the words of the Final Declaration, that ‘*the human person is the centre subject of development.*’

The universality of human rights is the ideological basis of the development perspective. Recognizing the primacy of individual rights and entitlements, it maintains that the State has the ultimate responsibility to build a social, economic, and political environment in which all human beings, irrespective of their age, class, gender, caste, race, ethnicity, legal and political status, can fully enjoy their rights. Hence, it demands an interventionist state and an active civil society willing to intervene in situations of injustice and violation of rights. The market and the private sector have a responsibility in defending and honouring the rights of the people. Grassroots organizations, peoples' movements, and human rights activists lead its current thinking and practice (Mander and Asif, 2004).

## **2.5 Classification of Human Rights**

Human rights can be classified and organized in several different ways; at an international level, the most common categorization of human rights has been to split them into civil and political rights, and economic, social, and cultural rights.

Article 2 to 21 of the Universal Declaration of Human Rights (1948) relate to civil and political rights which includes freedom from slavery, freedom from torture and cruel, inhuman, or degrading treatment or punishment, freedom from arbitrary arrest, detention, the right to fair and public trial, freedom of opinion and expression, right to own property, freedom of thought, freedom of movement and residence (Adiele, 2012).

Throwing light on the importance of the fundamental rights enshrined in Part III of the Constitution of India, Justice P.N. Bhagwati, in *Maneka Gandhi vs. Union of India* remarked that: “The fundamental rights represent the basic values cherished by the people of this country since Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent (1978 AIR 597). They weave a pattern of guarantees on the basic structure of human rights and impose negative obligations on the state not to encroach on individual liberty in the various dimensions” (Jaswal, 1996)

All constitutions are said to be the heir to the past as well as a testament of the future equally applies to India’s Constitution (Jain, 2015). Indian Constitution in (Part III) provided not only for fundamental rights but also made provision for its enforcement. Thus, India’s Constitution not only recognizes human rights (civil and political rights) in principle but also ensures remedy in case of their violation translating into reality the maxim: Ubi jus ibi remedium that is where there is a right there is a remedy (MacNaughton and Connell, 2009)

Article 22 to 27 of the Universal Declaration of Human Rights relating to economic, social, and cultural rights such as to Social Security, Right to work and

Protection against Unemployment, Right to Rest and Leisure, Right to a standard of living adequate for the health and well being of the self and family and Right to education (Jennings,1953).

Finally, Article 28-30 are of general application and form the third generation of rights i.e. Right to Peace, Right to a Healthy and Balanced Environment, Right to Humanitarian Disaster Relief, Right to Participate in and benefit from the common heritage of mankind, Right to Political, Economic Social and Cultural Self determination, and ten Right to Economic and Social Development, all these rights commonly called collective rights or social solidarity rights came to be recognized in the latter half of 20<sup>th</sup> Century.

Individuals besides being individuals are also members of units, groups, and communities and therefore, international law recognizes certain collective rights exercised jointly by individuals who are grouped into larger communities including people and nations. These solidarity and collective rights draw upon, interlinked, and reconceptualize value demands associated with the two earlier generations of rights. They are at best understood as a product, although still information on both the rise and decline of nation-state in the last half of the 20<sup>th</sup> Century (Buergenthal and Shelton, 1995).

The most striking characteristic of the human rights definition is that they can be hard to describe but difficult to disregard. The philosophies and ideologies, politicians or statesmen, the struggle over policy forms or policy values, but they cannot repudiate the indefensibility of violence, brutality, inhuman and degrading treatment, starvation, genocide, arbitrary arrests and detentions, and so on.

In the broadest context, the term right means it's something we are entitled to. This term means not just a Lawful Right but a Mere Right in ordinary English usage. This right is due to various factors like law, traditions, and morality. Laws and values make an individual enjoy rights. As the meaning of human rights is complex and inconsistent, it is important to go through some of the common concepts that are provided from time to time by various scholars.

Human Rights can be generally separated into two distinct viewpoints. Firstly, they are lawful or legal from the perspective of various aspects of human life-social, cultural, political, moral, and civil; and secondly, from the perspective of the methods of maintaining them on the basis. A study down the human rights memory lane reveals two parallel trends that have developed over the years, particularly in the European context. First and foremost is the liberalistic tradition that thinkers like Locke and Bentham argue for. Magna Carta, The American Declaration, the French Declaration, the Russian Bolshevik Revolution, may be cited as significant milestones in the development of the human rights principle.

The global perspective on human rights in Europe, human rights, emerged mainly under the umbrella of political and legal philosophical values which gained ground from the Renaissance onwards. In this context, the growth of Protestantism was first, the views of Locke and Montesquieu were second, and the belief in popular sovereignty and democracy was third.

The concept of human rights played a significant role in stoic philosophy during the Greco-Roman period. The core notion of stoic philosophy was the universality of the concepts of natural law. Cicero acknowledged 'Ultimate Consent is the Voice of God' in this regard. Human Rights during the Middle Ages, this time was

the Theory of Human Rights to take root as a general societal necessity and practice and this time saw the Renaissance and feudalism declined.

Within the area of human rights, the United Nations has played a significant role. In January 1946, the United Nations established the Commission on Human Rights. On 10<sup>th</sup> December 1948, the United Nations adopted the world's first Declaration called the Universal Declaration of Human Rights.

On Human Rights under the United Nations Charter, it was conveyed by many delegates at the San Francisco Conference that an International Bill of Rights would be created by the UN. As a result, the Charter includes provisions for the promotion and protection of human rights and fundamental freedoms, opening up a new dimension to the democratic development of international law. The Charter is committed to the promotion and observance of the world's human rights and lasting peace and stability.

All human rights arise from the intrinsic dignity and value of the human being, and that the human being is the central focus of human rights and fundamental freedoms. Simply put, something that contributes to a human being's dignified and free life should be called Human Rights. It took a long time for the idea to develop and crystallize. Originally there was ambiguity between the Natural Rights of the bygone ages promoted by political thinkers and the definition of human rights. The latter one is universal (Subramanian, 2007).

## **2.6 History of Prisons in the World**

Prisons were in practice as places of detention for lawbreakers thousands of years ago. Yet, during the eighteenth century, the modern definition of prisons arose,

i.e. using such places as correctional facilities. Prisons were historically used to hold prisoners before sentencing convicts to death or the life of slavery. But with the creation of our culture prisons transmuted to rehabilitate and transform prisoners into correctional institutions. Prisons in the form of dungeons had existed from time immemorial in all the old countries of the world.

Human beings have invented ingenious methods throughout recorded history to “punish” their kind for real or alleged transgressions. This punishment may include torture, beating, branding, mutilation, starvation, suffocation, executions, and banishment among tribal groups and even in more advanced cultures which in remote areas amounted to a death sentence. The severity of the penalty also depended on the wealth of the offended party and the accused and their rank. Those who were convicted or found guilty and who were wealthier were always able to make amends by punishing the victim or his or her relatives, while those who were poorer and of lower rank were likely to suffer some form of corporal punishment. But whatever method, and for whatever reason, there was always a need for some form of retribution as a way of balancing the scales of justice, whether to please a god or later lady justice.

The penal method was also invested by ancient societies and primitive social classes with entirely religious significance such that punishment was interpreted as a necessary sacrifice to an aggrieved deity "(Garland, 1990). However, as urbanization took hold and transgressions by increasingly diverse citizens were less accepted, the ancients and their governing bodies were more likely to create a framework that would be suitable for holding people. These buildings or other ways of confining people were often used for the most part to ensure that the accused was held over for

‘trial’ or even for punishment. Fines, mutilation, carving, quartering, and the death penalty were common methods of dealing with those suspected or convicted of crimes (Stohr and Walsh, 2016).

Thus, correctional methods were developed to tackle the criminal elements of society and to discourage these individuals from using violent and arbitrary punishment. Prison usage can be traced as a formal entity with the root of the institution. The idea of prisons has been used by almost every major civilization since the beginning of a modern society in the 3<sup>rd</sup> millennium B.C as a way of detaining and protecting the personal freedoms of imprisoned citizens. This process may be recognized as a brief stoppage in the history of jails, before sentencing prisoners to death or life in slavery. But as prisons evolved in our society, they started transmuting into correctional facilities.

Records of prisons beginning from the 1<sup>st</sup> millennia B.C are found in the regions of Mesopotamia and Egypt's mighty ancient civilizations. Prisons were located in subterranean catacombs during this time. Where the prisoners were held guilty or accused of awaiting their death penalty or orders to become slaves. There are records of the Middle Kingdom Period in Egypt (2000 BCE), where the pharaohs incarcerated non-offenders in granaries and other accessible areas at hard labour.

In ancient Greece there were prisons. Yet offenders have had to faceless regular imprisonment than fines, prison, stoning, crucifixion, and precipitation (Kurian, 2006). Throughout Greece, the prisoners were housed in poorly segregated buildings where their friends and relatives could not visit them. Nevertheless, the Ancient Roman Empire tended to use harsher practices. They built their prisons mainly underground, with narrow and claustrophobic passages and cells. Prisoners

were imprisoned for a lifetime or a short duration, either in plain cells or bound to the walls. As slavery was a recognized practice in those days, most of the prisoners who were exempted from death sentences were sold as slaves, or they were used by the Roman government as labour. Some of the Roman Empire's most popular uses of the slaves were as 'gladiators.'

## **2.7 History of Prisons in India**

### **2.7.1 Prisons in Ancient India**

A provision for punishment in ancient Indian culture is based upon concepts enunciated by Manu and explained by Yajnavalkya, Kautilya, and others. In ancient Indian penology among different forms of hanging, mutilation, and death-branding punishments, imprisonment was the mildest kind of penalty (Mohanty, 1990). Within his compendium 'The Manva Dharmashastra,' Manu cites four forms of punishment- Danda (admonition), Dik danda (censure), Dhan danda (fine), and Bada danda (physical punishment) (Lahiri, 1986). Here bada danda or physical punishment means prison. The key role of incarceration for ancient Indians was to dissuade to drive the wrongdoers away. According to Mahabharata's illustrations, retribution fears that it was through the example of suffering criminals that prevented people from committing a crime. Manu recommended that the prisons be built near main roads, where it will be easy to see the suffering and disfigured prisoners, serving all functions deterrence and punitive (Gupta and Prasad, 2007). The Dharmashastras do not spell out specific crimes that require imprisonment, nor do the Dharmashastras state how long a prisoner should be held. It was left to the imprisoned king and for how long (Doongaji, 1986).

The scholars considered Hindu Dharmashastras, Arthashastras, and other legal treatises tremendously. Which concluded that it was 'Dharma' that governed the duties of rulers, judges, subjects, and legal procedures. This means 'Dharma' acted as a guiding force for the preservation of the social order and structure. 'Dharma' is the basis of the punitive provisions (Iyer, 1999).

In ancient times the Rule of Dharma was central to jurisprudence. The Indian definition of 'Dharma' was broader than England's 'Rule of Law' definition, and narrower than the requirement of American 'Due Process.' As it not only stresses fairness and legality, it also includes what according to 'Nitishastra' is moral and natural. That suggests that punishment laws in India were more just and equitable than those of other ancient societies. Arrests had been of different kinds in ancient India. Community detention, temporary detention, and prison reports amounting to travel restriction and imprisonment linked to the function of the arrester. It seems the humanistic approach has been adopted in this sense as those particular groups have been removed from incarceration. Brihaspati referred to some as (a). studied, (b). married, (c). ill, (d). sorrow-affected, (e). insane, (f). child, (g). drunk, (h). very old, (i). woman, etc. (Chhajta, 2014).

Even Narda stated that the following people should not be arrested: (a). about marriage, (b). disease-tormented, (c). about offering sacrifice, (d). disaster-affected, and (e). minor. Yet on several occasions, police officers have been very brutal when dealing with criminals. Yet there was also a trend of humanistic attitude towards criminals, as examples of police officers being disciplined for breaching their duties remain. Police officers took crimes and abuse very seriously and they were given strict penalties.

Kautilya, who had universal knowledge of imprisonment and punishment, said that prison officers who misbehaved in some way with prisoners were liable to different kinds of punishment. Restricting inmates in their everyday activities such as sleeping, sitting, eating, or excreting has been punishable with penalties ranging from three panas upwards. Even bullying prisoners in lock-ups by repeatedly removing him from one room to another without telling the appropriate authority has been fined twenty-four panas and for unjustly torturing forty-eight panas. Depriving him of ninety-six panas of food and water and one thousand panas for death caused by torture. In prison homes, Kautilya also recommended fines for misbehaving with women. The fine was recommended depending on the molested lady's status (Verma, 2014).

Kautilya writes that prison is to be built in the capital and provide men and women with different quarters. At celebrations and special occasions like the birth of a prince or the coronation of a royal successor or the king's birthday, he supports amnesty to certain offenders. He also elaborates upon a prisoners' duties. Some ancient accounts shed light on prisoners' harsh treatment. We knew the officers as 'Bandhanagardhyaksa' and 'karaka.' Criminals were imprisoned in fortresses during medieval times awaiting trial and judgment (Mohanty and Hazary, 1990).

Old world jails have vanished. Some of it has been destroyed in ancient and medieval Europe, recycled for other uses, or retained as museums; their diverse past is generally clarified only in terms of the current definition of penology (Morris and Rothman, 1995). In India, the first period of ancient civilization when Dharma was Supreme, the perpetrator displayed full tolerance, but it was eventually removed in the middle ages by the King's political party (Chowdhury, 2002). The ancient era refers to

four forms of punishment (Danda), namely by gentle admonition, extreme reproof, fine, and corporal punishment, and states that these punishments can be enforced separately or together, depending on the nature of the crime (Khan, 2014).

During Kalidasa's time, the chief police officer was Nagaraka. Constables (Raksinah) were usually supported by a Nagaraka. Kautilya has described in detail the duties of the Nagarakas, who later came to be known as Kotwal. According to contemporary municipal rules, housemasters were to announce the arrival or departure of strangers and wayfarers and seize people of questionable character and those with destructive weapons. Arrest and prosecution of suspected persons and people throwing garbage into the street would have been disciplined. The Nagarakas were required to maintain law and order, and take care of jail administration, and daily test the city's security. He has had to take the missing property into custody. Elaborate fire safety plans were made (Shah and Giriraj, 1999).

There was an unreformed prison in the early years of Ashoka in which much of the traditional punishment system torture was administered and no prisoner came out alive from it. But it appears from his moral edicts that belong to his later rule - when he was influenced by Buddhism - that several reformatory steps have been taken. Ashoka was acquainted with the Arthashastra as Ashoka talks of twenty-five jail deliveries made by him in twenty-six years after his throne appointment (Dikshitar, 1993).

The Jatakas give an image of the society in the post-Ashokan era and provide information about crime and imprisonment. Seyya Jataka (No. 283) tells the King fettered and the officer put him in jail. Yet the King was released from prison when he was told of his guiltless behavior. The other Jataka (No. 201) narrates about the

prisoner while another Jataka (No. 427) explains the release at the time of the war of the political prisoners and recruits them in the army. In ancient India, the release of prisoners was a common characteristic.

From Harshacharita it seems the prisoners 'situation has been far from satisfactory. Hiuen-Tsang's history shows that prisoners have usually received harsh treatment. They'd not been allowed to shave. They had matted beards and rugged ears. However, there were times when individuals were released from prison. Kalidasa records when the star on which a King was born in an evil dimension had been told by astrologers to free all prisoners. All inmates were released at Royal Coronation time. The Brhat-Samhita adds that even when the king took the pushya snana (as an auspicious bath) they may order the release of prisoners. Archaeological sources corroborate the ancient historical narrative.

The description of Bimbisara's jail has been given in a pamphlet called Rajgir, published by the Department of Archeology, India as: proceeding south along the main road and traveling about three-quarters of a mile from Maniya Math, the visitor will find a place, about 200 square feet enclosed by a stone wall, around 6 feet thick with circular bastions at the corners. The system has been compared with the prison where his son Ajatasatru had confined Bimbisara. It's said Bimbisara has been able to see Buddha on the Gridhakuta from this jail. Partial clearance of the site brought to light stone cells, in one of which iron rings were found with a loop at one of the extremities that may have served the purpose of manipulating prisoners. Prison officers were identified as adhyaksa Bandhanagar and Karaka. The former was Jail's Superintendent and the latter was one of his aides. The prison department was under

the responsibility of sannidhata, who selected sites for their location and designed the requisite buildings (Bhushan, 1970).

### **2.7.2 Prisons in Medieval India**

The Muslim Law prevailing in India during the medieval era shows that incarceration was not accepted as a form of punishment. During the Akbar era, Badayunm records that at Prince Salim's birth, the Emperor set out on Agra with all the expeditions and, above his happiness, ordered the release of all prisoners. The Christian Church had given refuge and sanctuary to fugitives and criminals during the late medieval period. Traditionally, these canon courts were forbidden from bloodshed.

Criminals were held in fortresses during medieval times, awaiting trial and judgment. The 'quazis' were expected to visit the prisons according to Muslim law and ask about the conditions there and release those who showed signs of repentance. Even on special occasions, inmates have been released.

Throughout the Mughal era, the Quranic remained the origin of law and its character. Crimes were classified into three groups: (a). crimes against God, (b). offences against the government, (c). offences against private persons. There were four grades of punishment for such offences namely, (1). Hadd (2). Tazir (3). Quisas and (4). Tasir. In the case of common offenders, incarceration did not resort as a means of punishment. It was also only used as a form of detention. In a different part of the world, there was a fortress where the criminals were held awaiting trial and judgment (Mohanty & Hazary, 1990). In Mughal India, it used to be three 'Noble Prisons or Castles.' Another was in Gwalior, the other in Ranthambore, and the last at

Rohtas. The prisoners only redeeming attribute was that orders were given on special occasions for their release. On the occasion of the favourite Princes Begum Sahib's celebrations of recovery from sickness, Shahjahan requested that prisoners be released in 1638 AD. Some rooms were reserved for prisoners in forts popularly known as the Bhandhikahanas or Adab - Khanas, and culprits who had committed serious crimes were sent from different places to these. Also, prison as a form of punishment wasn't very common during the Maratha period. The common forms of punishment were death, mutilation, and fine. As in the Ancient and Mughal era, the type of punishment continued even in the Maratha era (Sanger, 1998).

The main features of the prison system prevailed in Pre- British period may be summarized as below:

- a. There were no prisons in the Modern sense.
- b. There was no description of the internal administration of prisons.
- c. No separate prison service existed and courts were not feeding centers for prisons.
- d. There were no rules for the maintenance of prisons.

Under the Mughal's legal system, Quranic law was the only law accepted in the country that offered harsh criminal punishment. A penalty by imprisonment was not as unusual during the Mughal rule in India as it was in ancient India. It has not, however, been used as commonly as in British India. It was Abul Fazal, one of Akbar's learned ministers, who gave an understanding that Muslim rulers could grant offenders incarceration. There were two types of prisons, one for high-ranking inmates and the other for common criminals. Besides regular prisoners, they were even held in jail under courts. Therefore, in Muslim India, the purpose of prison

administration was not only to hold the accused under safe custody but also to administer prisons as a means of punishing convicted criminals, since prisons were used for both detention and punishment of offenders (Sinha, 2013).

### **2.7.3 Prisons in Modern India**

Prison administration is an important component of the criminal justice system. Prison institutions are known by different names in different countries like 'Correctional Facilities', 'Detention Centre', 'Jails', 'Remand Centre' etc. There is a paradigm shift in the social viewpoint towards prisoners in the last century. The earlier system of prison with a punitive attitude wherein inmates were forcibly confined and deprived of a variety of freedom as a form of punishment has changed with a change in social perception towards prison and prisoners. It is now treated as a correction or improvement facility which itself indicates that there is more emphasis on the reformation of prisoners than to punish them.

Prisons in India, and their administration, are a state subject under the State List in the Seventh Schedule of the Constitution of India. The management and administration of prisons fall exclusively in the domain of the State Governments and are governed by the Prisons Act, 1894, and the Prison Manuals of the respective State Governments. Thus, states have the primary role, responsibility, and authority to change the current prison laws, rules, and regulations. Day-to-day administration of prisoners rests on principles incorporated in the Prisons Act of 1894, the Prisoners Act of 1900, and the Transfer of Prisoners Act of 1950.

The Supreme Court of India, in its judgments on various aspects of prison administration, has laid down three broad principles regarding imprisonment and

custody. Firstly, a person in prison does not become a non-person. Secondly, a person in prison is entitled to all human rights within the limitations of imprisonment. Lastly, there is no justification for aggravating the suffering already inherent in the process of incarceration.

Prison establishments in India comprise 8 categories of jails (See Table 2.1). The most common and standard jail institutions are Central Jails, District Jails, and Sub Jails. The other types of jail establishments are Women Jails, Borstal Schools, Open Jails, and Special Jails.

**Table 2.1: Occupancy Rate of Various Types of Prisons in India**

SL.No	Type of Jail	No. of Jails	Capacity	Population of Inmates	Occupancy Rate
1.	Central Jail	144	177618	220021	123.87
2.	District Jail	410	158986	206217	129.71
3.	Sub-Jail	617	45071	38030	84.38
4.	Special Jail	41	7262	5612	77.28
5.	Open Jail	86	6113	4320	70.67
6.	Women Jail	31	6511	3652	56.09
7.	Borstal School	19	1615	597	36.97
8.	Others	2	563	151	266.82
	<b>Total</b>	<b>1350</b>	<b>403739</b>	<b>478600</b>	<b>118.54</b>

**Source:** National Crime Records Bureau, India (31<sup>st</sup> December 2019)

#### **a. Central Jail**

The criteria for a jail to be categorised as a central jail differs from State to State. However, the common feature observed in all the States/UTs is that the prisoners sentenced to imprisonment for a longer period (more than 2 years) are confined in the Central Jails, which have a larger capacity (more than

1,000 inmates) in comparison to other jails. These jails also have rehabilitation capacities. Delhi had the highest number of 14 central jails followed by Madhya Pradesh (11), Maharashtra, Punjab, Rajasthan & Tamil Nadu (9 each), and Bihar, Karnataka, West Bengal (8 each). Arunachal Pradesh, Meghalaya, A & N Island, D & N Haveli, Daman & Diu, and Lakshadweep have no central Jail (Prison Statistics, 2019).

#### **b. District Jail**

District jails (capacity for around 500 inmates) serve as the main prisons in some of the States/UTs. The state of Uttar Pradesh has the highest number of district jails (62) followed by Madhya Pradesh (41), Bihar (31), and Maharashtra (28) Goa, Chandigarh, D & N Haveli, Daman & Diu, Delhi, Lakshadweep, and Puducherry have no District Jail as of 31<sup>st</sup> December 2019 (Prison Statistics, 2019).

#### **c. Sub Jail**

Eight States have reported a comparatively higher number of sub-jails (capacity for around 200 inmates) revealing a well-organized prison set-up even at lower formation. These states are Tamil Nadu (96), Andhra Pradesh (91), Madhya Pradesh (73), Odisha (73), Karnataka (72), Rajasthan (60), West Bengal (31), and Telangana (20) while 9 States/UTs have no sub-jails (namely Arunachal Pradesh, Goa, Haryana, Meghalaya, Mizoram, Nagaland, Sikkim, Chandigarh, and Delhi) (Prison Statistics, 2019).

#### **d. Open Jail**

Open jails are special Jails that exclusively confined only convicted prisoners. Convict Prisoners with good behaviour, satisfying certain norms prescribed in the prison rules are lodged in open prisons. Minimum security is kept in such prisons and prisoners are engaged in agricultural activities. Only 17 States have reported about the functioning of open jails in their jurisdiction. Amongst these States, Rajasthan has reported the highest number of 39 open jails followed by Maharashtra (19), Madhya Pradesh(6), Gujarat, Kerala, Tamil Nadu and West Bengal (3 each) The remaining 10 States - Andhra Pradesh, Assam, Bihar, Himachal Pradesh, Jharkhand, Karnataka, Odisha, Punjab, Telangana, and Uttarakhand have one open jail each. The States Arunachal Pradesh, Chhattisgarh, Goa, Haryana, Jammu & Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura & Uttar Pradesh, and all the UTs do not have any Open Jail in their State/UT (Prison Statistics, 2019).

#### **e. Special Jail**

Special jail means any prison provided for the confinement of a particular class or particular classes of prisoners & provides limited access with the permission of higher authorities. Offenders may include prisoners involved in terrorist and extremist activities, inmates who have committed serious violations of prison discipline, inmates showing tendencies towards violence and aggression, habitual offenders, drug peddlers, etc. Out of the 13 States/UTs having Special jail, Kerala has the highest number of special jails (15) followed by West Bengal (5), Telangana (4), Tamil Nadu (3), Gujarat, Odisha, Rajasthan, Uttar Pradesh, and Puducherry (2 jails each) and Assam,

Jammu & Kashmir, Karnataka and Maharashtra (1 jail each) (Prison Statistics, 2019).

**f. Women Jail**

Women jails are special Jails that exclusively confined only female prisoners & these Jails are called Women Jail. Women jail may exist at sub-divisional, district & central (Zone/Range) levels. Women jails exclusively for women prisoners exist only in 15 States/UT. Rajasthan (7), having the highest number of Women Jails followed by Tamil Nadu (5), Kerala (3), Andhra Pradesh, Bihar, Gujarat, and Delhi (2 each). Karnataka, Maharashtra, Mizoram, Odisha, Punjab, Telangana, Uttar Pradesh, and West Bengal have one woman jail each (Prison Statistics, 2019).

**g. Borstal School**

The primary objective of borstal schools is to ensure the care, welfare, and rehabilitation of young offenders in a different environment suitable for children and keep them away from the contaminating atmosphere of the prison. The young offenders in conflict with law detained in borstal schools are provided various vocational training. They are also given education with the help of trained teachers. Tamil Nadu has 12 borstal schools and 7 States namely, Himachal Pradesh, Jharkhand, Kerala, Maharashtra, Punjab, Rajasthan & Telangana (1 each) have reported borstal schools in their respective jurisdiction (Prison Statistics, 2019).

## **h. Other Jails**

To cover all the jails across the country, Jails that are not covered under the known Jail types (Central jail, District Jail, Sub-jail, Women jail, Borstal school, Open jail, Special jail) are covered under the Type “Other Jails”. Only two states namely Kerala and Maharashtra (1 each) have other jails in their jurisdiction (Prison Statistics, 2019).

## **2.8 Prisoners - Types and Demography in India**

As can be seen from Table 2.2 that a total of 18,86,092 inmates were admitted to various jails of the country during the year 2019 (NCRB, 2019). A total of 4,78,600 prisoners as of 31st December 2019 were confined in various jails across the country. The number of Convicts, Undertrials inmates, and Detenue was reported as 1,44,125, 3,30,487, and 3,223 respectively accounting for 30.11%, 69.05%, and 0.67% at the end of 2019. Other prisoners accounted for 0.2% (765 prisoners) of total prisoners (Prison Statistics, 2019).

**Table 2.2: Prisoners- Types and Demography**

<b>SL.No</b>	<b>Year</b>	<b>Convicts</b>	<b>Undertrials</b>	<b>Detenue</b>	<b>Others</b>	<b>Total</b>
<b>1.</b>	2017	1,39,149	3,08,178	2,136	693	4,50,696
<b>2.</b>	2018	1,39,488	3,23,537	2,384	675	4,66,084
<b>3.</b>	2019	1,44,125	3,30,487	3,223	765	4,78,600

**Source:** National Crime Records Bureau, India (31<sup>st</sup> December 2019)

**a. Convicted Prisoners**

- The number of convicted prisoners has increased from 1,39,488 in 2018 to 1,44,125 in 2019 (as of 31st December of each year), having increased by 3.32% during the period.
- Out of a total of 1,44,125 convicts, the highest number of convicted prisoners were lodged in Central Jails (66.2%, 95,470 convicts) followed by District Jails (27.0%, 38,846 convicts) and Open Jails (3.0%, 4,288 convicts) as of 31st December 2019.
- Uttar Pradesh has reported the maximum number of convicts (19.2%, 27,612 convicts) in the country followed by Madhya Pradesh (14.1%, 20,253 convicts) and Maharashtra (6.3%, 9,096 convicts) at the end of 2019.
- Among the 1,44,125 convicts, 325 were civil convicts (Prison Statistics, 2019).

**b. Undertrials Prisoners**

- The number of undertrials prisoners has increased from 3,23,537 in 2018 to 3,30,487 in 2019 (as of 31st December of each year), having increased by 2.15% during this period.
- Among the 3,30,487 undertrials prisoners, the highest number of undertrials prisoners was lodged in District Jails(50.5%, 1,66,917 undertrials) followed by Central Jails (36.7%, 1,21,342 undertrials) and Sub Jails(10.6%, 35,059 undertrials) as on 31st December, 2019.

- Uttar Pradesh has reported the maximum number of undertrials (22.2%, 73,418 undertrials) in the country followed by Bihar (9.5%, 31,275 undertrials) and Maharashtra (8.3%, 27,557 undertrials) at the end of 2019.
- Among the 3,30,487 undertrial prisoners, only 91 were civil inmates (Prison Statistics, 2019).

#### **c. Detenues**

- The number of detenues has increased from 2,384 in 2018 to 3,223 in 2019 (as of 31st December of each year), has increased by 35.19% during this period.
- Among the 3,223 detenues, the highest number of detenues were lodged in Central Jails (81.4%, 2,622 detenues) followed by District Jails (9.9%, 318 detenues) and Special Jails (6.1%, 196 detenues) as of 31st December 2019.
- Tamil Nadu has reported the maximum number of detenues (38.5%, 1,240) in the country followed by Gujarat (21.7%, 698) and Jammu & Kashmir (12.5%, 404) at the end of 2019 (Prison Statistics, 2019).

#### **d. Women Prisoners with Children**

- There were 1,543 women prisoners with 1,779 children as of 31<sup>st</sup> December 2019.
- Among these women prisoners, 1,212 women prisoners were undertrial prisoners who were accompanied by 1,409 children and 325 convicted prisoners who were accompanied by 363 children (Prison Statistics, 2019).

**e. Age-group of the Prisoners**

- As of 31st December 2019, the maximum number of inmates (2,07,942 inmates, 43.4%) were belonging to the age group 18- 30 years followed by the age group 30- 50 years (2,07,104 inmates, 43.3%).
- 63,336 inmates (13.2%) were belonging to the age group above 50 years.
- 218 inmates belonged to the age group of 16-18 years (Prison Statistics, 2019).

**f. Education**

- Among the 4,78,600 prisoners, literacy profile of 1,98,872 (41.6%) prisoners was Below Class X, 1,03,036 (21.5%) prisoners were Class X & above but below Graduation, 30,201 (6.3%) prisoners were having a Degree, 8,085 (1.7%) prisoners were Post Graduates and 5,677 (1.2%) prisoners were Technical Diploma/Degree holders.
- A total of 1,32,729 (27.7%) prisoners were Illiterate (Prison Statistics, 2019).

**g. Domicile of Origin of Prisoners**

- Among the 4,78,600 prisoners as of 31st December 2019, around 90.8% (4,34,564 inmates) of prisoners belonged to the State followed by prisoners belonging to the Other States (8.0%, 38,428 inmates) and prisoners belonging to the Other Country (1.2%, 5,608 inmates).
- Among the 1,44,125 convicts, 92.4% of convicts (1,33,228 inmates) belonged to the State while 6.1% (8,726 inmates) and 1.5% (2,171 inmates) belonged to the Other States and Other Countries respectively.

- Haryana has reported the most number of other State domicile convicts (15.5%, 1,353 convicts) followed by Delhi (9.8%, 855 convicts) and Maharashtra (9.2%, 800 convicts) as of 31st December 2019.
- Among the 3,30,487 undertrial prisoners, 90.2% (2,98,208 inmates) belonged to the State while 8.9% (29,300 inmates) and 0.9% (2,979 inmates) belonged to the Other States and Other Countries respectively.
- Maharashtra has reported the highest number of undertrial prisoners of other states (16.0%, 4,675 inmates) followed by Uttar Pradesh (11.8%, 3,470 inmates) and Delhi (11.8%, 3,453 inmates) at the end of 2019 (Prison Statistics, 2019).

It can be seen from Table 2.3 that there were 1,350 Jails in the country. The state of Rajasthan has the highest number (144 out of 1,350) of jails among the States/UTs followed by Tamil Nadu (141), Madhya Pradesh (131), Andhra Pradesh (106) Karnataka (104), and Odisha (91). These six States together cover 53.11 % of total jails in the country.

Similarly, the total available capacity of all the prisons in the country is 4,03,734. Uttar Pradesh has reported the highest capacity of prisons (60,340) followed by Bihar (42,222), Madhya Pradesh (28,718), Maharashtra (24,095), Punjab (23,488), Tamil Nadu (23,392), and Rajasthan (22,952). These seven States together have 55.78% of the total capacity of all prisons in the country as of 31<sup>st</sup> December 2019 (NCRB, 2019).

**Table 2.3: State/UT wise Number of Prisons, Capacity, and Population**

SL.No	State	Number of Prisons	Capacity of Prisons	Population of Prisons
1.	Rajasthan	144	22952	21599
2.	Tamil Nadu	141	23392	14707
3.	Madhya Pradesh	131	28718	44603
4.	Andhra Pradesh	106	8789	7579
5.	Karnataka	104	14315	14515
6.	Odisha	91	19291	17563
7.	Uttar Pradesh	72	60340	101297
8.	Maharashtra	64	24095	36798
9.	West Bengal	59	21772	23092
10.	Bihar	59	42222	39814
11.	Kerala	55	6841	7499
12.	Telangana	37	7785	6717
13.	Chhattisgarh	33	12063	18112
14.	Assam	31	8888	9226
15.	Jharkhand	30	16795	18654
16.	Gujarat	30	13762	15089
17.	Punjab	24	23488	24174
18.	Haryana	19	19306	20423
19.	Delhi	16	10026	17534
20.	Jammu & Kashmir	15	2910	3689
21.	Himachal Pradesh	14	2146	2373
22.	Tripura	13	2174	1103
23.	Uttarakhand	11	3540	5629
24.	Nagaland	11	1450	446
25.	Mizoram	10	1601	1698
26.	Meghalaya	5	650	1023
27.	Manipur	5	1272	876
28.	Puducherry	4	416	263
29.	Lakshadweep	4	64	4
30.	A & N Island	4	309	244
31.	Sikkim	2	255	400
32.	Arunachal Pradesh	2	233	247
33.	Daman & Diu	1	60	62
34.	D & N Haveli	1	70	46
35.	Chandigarh	1	1120	984
36.	Goa	1	624	518
	<b>Total</b>	<b>1,350</b>	<b>4,03,734</b>	<b>4,78,600</b>

Source: National Crime Records Bureau, India (31<sup>st</sup> December 2019)

A total of 4, 78,600 prisoners were confined in various jails across the country.

Uttar Pradesh has lodged the highest number of Inmates (1, 01,297) followed by

Madhya Pradesh (44,603), Bihar (39,814), Maharashtra (36,798), Punjab (24,174), and West Bengal (23,092). These six States together contribute 56.37% (2, 69,778 inmates) of total inmates lodged in various Jails as of 31st December 2019 (Prison Statistics, 2019).

Human Rights are those rights that every human being possesses by virtue of his birth. They are inherent and inalienable. In a country like India, we come across various instances in which the individual is threatened with the possibility of violation of his human rights in every walk of life. They are based on mankind's demand for a life in which the inherent dignity of human beings will receive respect and consideration. The Universal Declaration of Human Rights clearly states that respect for human rights and human dignity is “the foundation of freedom, peace, and justice in the world”. After the two world wars, the UN concern for Human Rights has also become a major issue of the International agenda. This evoked response for International law and the concept of “International Human Rights Law” has also developed. Human rights not only stand for individuals’ rights rather they are a backbone for providing social justice in a country. India is a signatory to the Universal Declaration of Human Rights and thus, has adopted similar provisions and framework to protect human rights. The extent to which human rights are respected and protected within the context of criminal proceedings is an important measure of society’s civilization.

The role and functioning of prisons in the country have been a matter of intense debate and scrutiny at various official and non-official forums for several decades now. Though imprisonment has been the oldest and most universal mode of dealing with offenders who endanger peace and tranquillity in society, never before in

its history, the prison administration has been subjected to such questioning and critically as at present. This is because prisons were envisioned as instruments when penology suggested it simply hold inmates in a place, to protect society from them. Today, penology principles have grown to a different level. Now, it is felt it is neither thought to be effective in achieving its proclaimed goal of reformation and rehabilitation of offenders nor capable to cope with the newly-emerging forms of criminality which are much more disruptive than traditionally known crimes. What is much more disturbing is that the prison, today, is increasingly perceived as a potential source of corruption, dehumanization, and hardening of criminal tendencies among persons coming within its jurisdiction.

## **CHAPTER - 3**

### **HUMAN RIGHTS PROVISIONS FOR PRISONERS: INTERNATIONAL AND NATIONAL PERSPECTIVE**

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The human rights provisions relating to the rights and treatment of the prisoners are contained in various international instruments like the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the United Nations Standard Minimum Rules for the Treatment of Prisoners, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the United Nations Basic Principles for Treatment of Prisoners, etc.

Similarly, in the context of India prisoners are entitled to almost all the human rights as normal human beings in India but these rights are subject to reasonable restrictions as prescribed by law. The Indian state is a signatory to various international instruments of human rights, like the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights, etc. And these international instruments guaranteed human rights to everyone including prisoners. So the Indian state is obliged to uphold and ensure the observances of the basic human rights of the prisoners.

#### **3.1 International Standards for Prisoners' Rights**

Prisoners have the right to be treated as human beings and as persons; this right has been stressed and recommended by various international conventions and

treaties on human rights. Now, we shall discuss the provisions of these conventions and treaties under various human rights categories at the international level.

### **3.1.1 Right to Physical and Moral Integrity**

Prisoner's right to be treated as a human being is based on the principle that all human beings are born free and they are equal in dignity and rights. Human rights have evolved from the concept that every human being has inherent dignity. All persons deprived of their liberty shall be treated at all times with humanity and with respect for the inherent dignity of the human person. Prisoners have the right to the integrity of the body, immunity from the use of repression and personal abuse, whether by custodial staff or by prisoners. They have the right to the integrity of the mind and immunity from aggression whether by staff or by prisoners. They cannot be deprived of their fundamental rights except following law prescribing conditions of confinement (All India Committee on Jail Reforms, 2003).

Provisions of following international laws and treaties are worth to be mentioned here-

The preambles to the *Universal Declaration of Human Rights* and the two *International Covenants on Human Rights* emphasize that: **recognition of the inherent dignity and equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world** (Universal Declaration of Human Rights, 1948).

Principle 1 of the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* provides that: **All persons under any form of detention or imprisonment shall be treated humanely and with respect**

**for the inherent dignity of the human person** (Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, 1988).

This principle is confirmed in the *Basic Principles for the Treatment of Prisoners* and *Standard Minimum Rules for the Treatment of Prisoners*, adopted by the United Nations in 1955, which deal with the essential features of daily life in prison (Human Rights and Prisons Manual on Human Rights Training for Prison Officials, 2005).

We shall discuss the right to physical and moral integrity in two categories i.e. prohibition of torture & ill-treatment and admission & release. A detailed description is given below-

### **3.1.2 Prohibition of Torture and Ill-Treatment**

The international instruments are unequivocal. Under no circumstances is there ever any justification for torture or cruel, inhuman, or degrading treatment or punishment. The definition of torture is comprehensive. It includes any form of pain or suffering, whether physical or mental, other than that which is inherent in the fact of detention or imprisonment. This means that:

- a. Prisoners must never be beaten or subjected to corporal punishment;
- b. Corporal punishment may not be inflicted for disciplinary offences;
- c. Force may be used only when it is essential to restrain a prisoner;
- d. Staff should be trained in non-violent methods of dealing with intransigent prisoners;
- e. Staff, when carrying out their duties, must always act within the law;

- f. Staff found guilty of torturing or inflicting unjustified violence on prisoners should be prosecuted and sanctioned by the law;
- g. Prisoners should be able to complain to independent persons about any ill-treatment without fear of future discrimination;

Officials, such as judges, should be able to visit prisons to ensure that torture or inhuman treatment or punishment is not taking place (Human Rights and Prisons Manual on Human Rights Training for Prison Officials, 2005).

Provisions of following international laws and treaties are worth to be mentioned here-

No one shall be subjected to torture or cruel, inhuman, or degrading treatment or punishment. There are no exceptions Article 5 of the *Universal Declaration of Human Rights* provides that: **No one shall be subjected to torture or cruel, inhuman, or degrading treatment or punishment** (Universal Declaration of Human Rights, 1948).

Torture is defined as any act by which severe physical or mental pain or suffering is intentionally inflicted on a person, other than that which is inherent in or incidental to lawful sanctions. Article 1, paragraph 1, of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* defines torture as **any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with**

**the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions** (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1987). Article 1, paragraph 1). Ill-treatment is defined as other acts of cruel, inhuman, or degrading treatment or punishment which do not amount to torture. Article 16, paragraph 1, of the Convention, defines other cruel, inhuman, or degrading treatment or punishment as **other acts of cruel, inhuman, or degrading treatment or punishment which do not amount to torture as defined in article 1 when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity** (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1987).

No prisoner shall be subjected, even with his or her consent, to any medical or scientific experimentation which may be detrimental to health. Article 7 of the *International Covenant on Civil and Political Rights* and Principle 22 of the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* confirms this right of prisoners (International Covenant on Civil and Political Rights. (23 March 1976). Article 7: Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988).

The *Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines)* confirms that orders from a superior officer may not be invoked as a justification for torture (The Guidelines and Measures for the Prohibition and

Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines, 2002).

Article 3 of the *Code of Conduct for Law Enforcement Officials* confers that Law enforcement officials may use force only when it is strictly necessary (Code of Conduct for Law Enforcement Officials, 1979).

Principle 34 of the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* provides that all deaths in custody, incidents of torture and ill-treatment, and disappearances of prisoners shall be properly investigated (The Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, 1988).

### **3.1.3 Admission and Release**

Prisoners can be admitted to prison only after fulfilling the requisite conditions. Prisoners should be held in a recognized prison, they should be presented before the judiciary, prisoners and their family members or their representatives should be informed about all facts of their arrest and they should be medically examined before admission to any type of prison. Provisions of following international laws and treaties are worth to be mentioned here-

- i. Persons deprived of their liberty should be held in places that are officially recognized as places of custody. Principle 6 of the *Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions* states that: *Governments shall ensure that persons deprived of their liberty are held in officially recognized places of custody, and that accurate information on their*

*custody and whereabouts, including transfers, is made promptly available to their relatives and lawyer or other persons of confidence*

(Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions, 1989).

- ii. A detailed register shall be kept of every person deprived of liberty. Article 10, paragraph 3, of the *Declaration on the Protection of All Persons from Enforced Disappearance* requires that in any place where a person is deprived of liberty an up-to-date register shall be kept (Declaration on the Protection of All Persons from Enforced Disappearance, 1992). This requirement is confirmed in rule 7 of the *Standard Minimum Rules for the Treatment of Prisoners* (Standard Minimum Rules for the Treatment of Prisoners, 1955).
- iii. All prisoners shall be provided promptly with written information about the regulations which apply to their treatment and about their rights and obligations. Rule 35 of the *Standard Minimum Rules provides:*
  - a. **Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution.**

- b. If a prisoner is illiterate, the aforesaid information shall be conveyed to him orally** (Standard Minimum Rules for the Treatment of Prisoners, 1955).
- iv. The families, legal representatives and, if appropriate, diplomatic missions, of prisoners are to receive full information about the fact of their detention and where they are held. This requirement is confirmed in principle 13 of the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988*.
- v. All prisoners shall be offered a proper medical examination and treatment as soon as possible after admission. The requirement for medical examination and treatment as soon as possible after admission is confirmed by rule 24 of the **Standard Minimum Rules for the Treatment of Prisoners, 1955**.

### **3.2 Right to an Adequate Standard of Living**

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. All persons deprived of their liberty have the right to an adequate standard of living, including adequate food, drinking water, accommodation, clothing, and bedding. Prisoners have the right to fulfillment of basic minimum needs such as adequate diet, health, medical care and treatment, access to clean and adequate drinking water, access to clean and hygienic conditions of living accommodation, sanitation, and personal hygiene, adequate clothing, bedding, and other equipment. Provisions of following international laws and treaties are worth to be mentioned here-

- i. Article 25 of the *Universal Declaration of Human Rights* provides:  
**Everyone has the right to a standard of living adequate for [his] health and well-being including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of lack of livelihood in circumstances beyond his control** (Universal Declaration of Human Rights, December 1948).
- ii. Article 10 of the *International Covenant on Civil and Political Rights* provides: **All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person** (International Covenant on Civil and Political Rights, 1976).

The deprivation of adequate food, water, clothing, and proper accommodation can often result in the ill-treatment of prisoners which may amount to torture in severe cases. It is important to realize that physical infliction of torture or other cruel, inhuman or degrading treatment is not the only manner of violating the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. We shall discuss the right to an adequate standard of living in three categories i.e. accommodation, right to adequate food & drinking water, and right to clothing & bedding. A detailed description is given below-

### **3.2.1 Accommodation**

Accommodation for prisoners shall provide adequate cubic content of air, floor space, lighting, heating, and ventilation. Prisoners required to share sleeping accommodation shall be carefully selected and supervised at night. Regarding accommodation facility for prisoners following provisions are

mentioned in various international treaties and conventions on prisoners' human rights-

- i. Article 16 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* provides: **Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity** (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1987).
- ii. The *Standard Minimum Rules for the Treatment of Prisoners* require as follows:
  1. **Where sleeping accommodation is in individual cells or rooms each prisoner shall occupy by night a cell or room by himself.**
  2. **Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. There shall be regular supervision by night, in keeping with the nature of the institution.**
  3. **All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum**

**floor space, lighting, heating, and ventilation** (The Standard Minimum Rules for the Treatment of Prisoners, 1955).

### **3.2.2 Right to Adequate Food and Drinking Water**

Adequate food and drinking water are human rights. All prisoners have the right to wholesome and adequate food at the usual hours, with drinking water available whenever needed. Regarding adequate food and drinking water facility for prisoners following provisions are mentioned in various international treaties and conventions on prisoners' human rights-

- i. Article 11 of the *International Covenant on Economic, Social, and Cultural Rights* ensures the right to adequate food as a component of the right of everyone to an adequate standard of living. Article 11, paragraph 2, specifically provides that States parties recognize the fundamental right of everyone to be free from hunger (International Covenant on Economic, Social, and Cultural Rights, 1976).
- ii. The right to adequate food is further developed by the *Committee on Economic, Social and Cultural Rights* which provides:

**The right to adequate food is realized when every man, woman, and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement. The right to adequate food shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins, and other specific nutrients.**

**The Committee considers that the core content of the right to adequate food implies: (a) the availability of food in a quantity and quality sufficient to**

**satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; (b) the accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights** (Official Records of the Economic and Social Council, 2000, Supplement No. 2, corrigendum (E/2000/22 and Corr.1), annex V. Committee on Economic, Social and Cultural Rights in its General Comment No. 12 (1999).

iii. Rule 20 of the *Standard Minimum Rules for the Treatment of Prisoners* requires:

**1. Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality, and well prepared and served.**

**2. Drinking water shall be available to every prisoner whenever he needs it.**

iv. Furthermore, rule 26 of the Standard Minimum Rules requires:

**The medical officer shall regularly inspect and advise the director upon the quantity, quality, preparation, and service of food** (Standard Minimum Rules for the Treatment of Prisoners, 1955).

In countries where the quality of food available to many law-abiding members of the community is inadequate, the question may be asked why prisoners should be guaranteed adequate food. The answer is rooted in respect for the right to adequate food. If the State has taken from prisoners the opportunity to provide for their own basic needs, these must be supplied by the State. The Special Rapporteur of the Commission on Human Rights on the right to food has stressed the inclusion of the

right to adequate drinking water as part of the definition of the right to adequate food. In his report to the Commission at its fifty-eighth session, in 2002, the Special Rapporteur wrote: drinking water is essential for healthy nutrition so that it should be considered a public good. Both the quality and the quantity of water available are fundamental. Setting standards for water quality is extremely important, as is ensuring equitable access to water resources to protect social justice. Including drinking water in the right to food is an important way of ensuring such accountability and justifiability. It should be noted that modern legal opinion holds that reduction of diet equates with corporal punishment and constitutes inhuman punishment (Special Rapporteur of the Commission on Human Rights on the right to food, fifty-eighth sessions, in 2002, E/CN.4/2002/58, Paragraph 130).

### **3.2.3 Right to Clothing and Bedding**

Clothing, as a component of the right to an adequate standard of living, is a human right. All prisoners not allowed to wear their clothing shall be provided with suitable clothing. There shall be facilities for keeping clothing clean and in proper condition. All prisoners shall be provided with a separate bed and clean bedding, with facilities for keeping bedding clean. There must be facilities to wash and dry clothing and bedding regularly. Regarding adequate food and drinking water facility for prisoners following provisions are mentioned in various international treaties and conventions on prisoners' human rights.

- i. Article 11, paragraph 1, of the *International Covenant on Economic, Social and Cultural Rights* provides for the right to clothing as a component of the right of everyone to an adequate standard of living

(International Covenant on Economic, Social and Cultural Rights, 1976).

- ii. The *Standard Minimum Rules for the Treatment of Prisoners* require as follows:

**17. (1) Every prisoner who is not allowed to wear his clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating.**

**(2) All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene.**

**(3) In exceptional circumstances, whenever a prisoner is removed outside the institution for an authorized purpose, he shall be allowed to wear his clothing or other inconspicuous clothing.**

**18. If prisoners are allowed to wear their clothing, arrangements shall be made on their admission to the institution to ensure that it shall be clean and fit for use.**

**19. Every prisoner shall, following local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order, and changed often enough to ensure its cleanliness (Standard Minimum Rules for the Treatment of Prisoners, 1955).**

### 3.3 Health Rights of Prisoners

The enjoyment of the highest attainable standard of physical and mental health is a human right. This is equally important for prisoners as well as for other citizens. Article 12, paragraph 1, of the *International Covenant on Economic, Social and Cultural Rights* recognizes **the right of everyone to the enjoyment of the highest attainable standard of physical and mental health** (International Covenant on Economic, Social and Cultural Rights, 1976). The state of health, both physical and mental, of any human being, affects how he or she lives, works and behaves. This is true in the case of both prison staff and prisoners. A person's state of health may affect other people. Sick people need special care and cannot contribute fully to the society in which they live. Some health problems affect people's behaviour. This can affect relations with other people. This is particularly the case with mental health problems, which may affect a significant proportion of prisoners.

Some health problems can be transmitted to other people. This is particularly true of some illnesses which are prevalent in some prison systems. HIV/AIDS and tuberculosis are examples of such illnesses. The vast majority of prisoners leave prison at some point. Staff in prisons come and go between prisons and the outside world, as do visitors to the prison. This means that health problems in prisons can become community health problems. Thus, maintaining health in prisons is in everyone's interests. When prison staff is healthy, they are better able to do their work. When prisoners are healthy, they are fit for work and better able to cope with imprisonment. The health rights of prisoners are divided into three categories i.e. health screening for all new prisoners, the right of prisoners to have access to health care, and healthy conditions in custody.

### 3.3.1 Health Screening For All New Prisoners

It is a basic requirement that all prisoners should be given a medical examination as soon as they have been admitted to prison or place of detention. Any necessary medical treatment should then be provided free of charge. Prisoners should generally have the right to request a second medical opinion.

- i. Principle 24 of the **Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, 1988**) which provides that detained or imprisoned persons shall be offered a proper medical examination as soon as possible after admission and that medical care and treatment shall be provided free of charge (Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, 1988).
- ii. Principle 25 of the **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that: A detained or imprisoned person or his counsel shall, subject only to reasonable conditions to ensure security and good order in the place of detention or imprisonment, have the right to request or petition a judicial or other authority for a second medical examination or opinion** (Body of Principles for the Protection of All Persons, 1988).

The purpose of screening new prisoners on admission is for the sake of the prisoners' health and not for the benefit of the prison authorities. Having deprived a person of his or her liberty, there is an obligation on the State to care for that person. This obligation extends to health care. Several persons who are admitted to prison will

already be suffering from some form of physical or mental illness. There is an obligation on the prison system to ensure that these illnesses are dealt with as soon as possible. In some societies, there is a great reluctance on the part of judicial authorities to send women to prison. When this is done, it is sometimes justified on the basis that the woman involved is mentally unstable. Medical officers should take particular care in respect of women prisoners that there is not an improper diagnosis of mental illness.

### **3.3.2 The Right of Prisoners to Have Access to Health Care**

All prisoners and detained persons have the right to the highest attainable standard of physical and mental health. Prisoners should have free access to the health services available in the country. Decisions about a prisoner's health should be taken only on medical grounds by medically qualified people.

- i. Article 25, paragraph 1, of the *Universal Declaration of Human Rights*, guarantees to everyone, including prisoners: **the right to a standard of living adequate for health and well-being including medical care and necessary social services** (Universal Declaration of Human Rights, 1948).
- ii. Besides, article 12, paragraph 1, of the *International Covenant on Economic, Social and Cultural Rights* recognizes the right to health of everyone, including prisoners (International Covenant on Economic, Social and Cultural Rights, 1976).
- iii. Principle 9 of the *Basic Principles for the Treatment of Prisoners* provides that: **Prisoners shall have access to the health services available in the country without discrimination on the grounds of**

**their legal situation** (Basic Principles for the Treatment of Prisoners, 1990).

In countries where health care in the population at large is not of a high standard, there must be particular concern about health-care standards in prisons. It is not appropriate to argue that, because a person is in prison, he or she is entitled to a lower standard of health care than that provided in the community. On the contrary, in depriving a person of his or her liberty, the State takes on a special responsibility to provide adequate health care.

### **3.3.3 Healthy Conditions in Custody**

All prisoners are entitled to be held in conditions that are decent and humane. The medical officer has an important responsibility to ensure that proper health standards are met. He or she can do this by regularly inspecting and advising the director of the prison upon the suitability of food, water, hygiene, cleanliness, sanitation, heating, lighting, ventilation, clothing, bedding, and opportunities for exercise. Rule 26 of the *Standard Minimum Rules for the Treatment of Prisoners* requires the medical officer shall regularly inspect and advise the director upon;

- a. The quantity, quality, preparation, and service of food;
- b. The hygiene and cleanliness of the institution and the prisoners;
- c. The sanitation, heating, lighting, and ventilation of the institution;
- d. The suitability and cleanliness of the prisoners' clothing and bedding;

The observance of the rules concerning physical education and sports, in cases where there are no technical personnel in charge of these activities (Standard Minimum Rules for the Treatment of Prisoners, 1955).

### **3.4 Making Prisons Safe Places**

Prisons are part of the criminal justice system. Behind their high walls and fences one group of human beings, acting on behalf of the judicial authority, deprives another group of human beings of their liberty. Given a choice, the vast majority of people in the second group, the prisoners, would leave prison. The first group of people that is staff, therefore, have to impose security restrictions to prevent them from escaping. Some prisoners are violent individuals who pose a danger to themselves or others. In the final analysis, staff can impose control over prisoners by coercive means. But this should not be the norm. Good order involves much more than control. It presumes the existence of a set of rules and regulations which govern the daily lives of those who are in prison to ensure that everyone- staff, prisoners, and visitors can go about their business without fear for their safety. Provisions regarding making prisons safe places are divided into three categories i.e. - security, good order & control, and discipline & punishment.

#### **3.4.1 Security**

Use of force, including the use of firearms, to prevent escape should be employed only when less extreme means are insufficient to prevent the escape. Restraints may be used as a precaution against escape during transfer for no longer than strictly necessary, provided that they are removed when the prisoner appears before a judge or administrative authority, or on medical grounds. Instruments of restraint shall never be applied as a punishment. Chains and irons shall not be used as restraints. Provisions of following international laws and treaties are worth to be mentioned here-

- i. Principle 9 of the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* requires that: **Law enforcement officials shall not use firearms against persons except to prevent his or her escape, and only when less extreme means are insufficient to achieve this objective** (Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990).
- ii. Rule 33 of the *Standard Minimum Rules for the Treatment of Prisoners* provides that: **Instruments of restraint, such as handcuffs, chains, irons, and straitjackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints** (Standard Minimum Rules for the Treatment of Prisoners, 1955).

### 3.4.2 Good Order and Control

Prison authorities have a responsibility to ensure the physical safety of prisoners, staff, and visitors. This means that prisons should be places where there is good order. Prisons should be safe environments for all who live and work in them, i.e. for prisoners, staff, and visitors. No one in a prison should fear for his or her physical safety. Chains and irons shall not be used as restraints. Discipline and order shall be maintained with firmness but with no more restriction than is necessary for safe custody and well-ordered community life.

Articles 1 and 16 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, discussed in chapter 3 of this Manual, are relevant when instruments of restraint and other control techniques are

abused by prison staff (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1987).

Men and women who break the law, or who are accused of having done so, are likely to be frightened and to feel personally threatened by being in prison alongside other people who are accused of having broken the law. There must be a balance between positive encouragement and discipline. The vast majority of prisoners will respond positively to being treated decently and humanely.

### **3.4.3 Discipline and Punishment**

All disciplinary offences and punishments must be specified by law or by published legal regulations. No prisoner shall be punished before being informed of the alleged offence and before being allowed to present a proper defence. No prisoner shall be employed in any disciplinary capacity. All cruel, inhuman, or degrading punishments are completely prohibited, including corporal punishment or placing the prisoner in a dark cell. Punishment by close confinement or reduction of diet shall never be inflicted unless the prisoner is certified by the medical officer as medically fit to sustain it. Instruments of restraint, such as handcuffs, chains, irons, and straitjackets, shall never be applied as a punishment. Prisoners who are subject to disciplinary action should have the right to appeal to a higher authority. Provisions of following international laws and treaties are worth to be mentioned here-

- i. The *International Covenant on Civil and Political Rights*. (23 March 1976) in article 8, paragraph 3, makes one further restriction on the type of punishment which may be imposed: **(a) No one shall be required to perform forced or compulsory labour** (The International Covenant on Civil and Political Rights, 1976).

- ii. Principle 7 of the Basic Principles for the Treatment of Prisoners refers to the use of solitary confinement as a punishment: Efforts addressed to the abolition of solitary confinement as a punishment, or the restriction of its use, should be undertaken and encouraged (Basic Principles for the Treatment of Prisoners, 1990).

### **3.5 Making the Best Use of Prisons**

Deprivation of liberty is a punishment in itself. It is not the task of the prison administration to inflict further punishment on the prisoner. On the contrary, prisoners should be encouraged to use their time in prison to learn new skills, to improve their education, to reform themselves, and to prepare for eventual release. The main aim of the prison authorities in their treatment of prisoners should be to encourage personal reformation and social rehabilitation. The purpose of the prison regime should be to help prisoners to lead law-abiding and self-supporting lives after their release.

Article 10 of the *International Covenant on Civil and Political Rights* provides:

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation (International Covenant on Civil and Political Rights, 1976).

Prison authorities are entitled to take all necessary steps to ensure that prisoners do not escape from lawful custody and that there is good order in prisons. In addition, however, they must give prisoners opportunities to make good use of the time they are in custody. This means that there should be a full program of activities, including education, skills training, work, and physical education. Prisoners should

not spend all day locked in a cell or dormitory or sitting in a yard. They should be kept occupied. Provisions regarding making the best use of prisons are divided into three categories i.e. - work, education & cultural activities, and religion.

### **3.5.1 Work**

All sentenced prisoners who are medically fit shall be required to work. As far as possible, this work should give them skills so that they can earn an honest living after their release. National legislation regarding health and safety at work shall apply in prisons in the same way as it does in the community. Vocational training shall be provided, especially for young prisoners. Prisoners should be remunerated for the work they do. Prisoners should be allowed to spend at least part of their earnings, to send a part to their families, and to save a part. Provisions of following international laws and treaties are worth to be mentioned here-

- i. The right of all people to work is enshrined in Article 23 of the *Universal Declaration of Human Rights:*

Everyone has the right to work

- a. Everyone, without any discrimination, has the right to equal pay for equal work.
- b. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection (Universal Declaration of Human Rights, 1948).

- ii. The *Standard Minimum Rules for the Treatment of Prisoners* provide as follows:
- a. Prison labour must not be afflictive.
  - b. All prisoners under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer.
  - c. Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.
  - d. So far as possible, the work provided shall be such as will maintain or increase the prisoners' ability to earn an honest living after release.
  - e. Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners.
  - f. Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, the prisoners shall be able to choose the type of work they wish to perform (The Standard Minimum Rules for the Treatment of Prisoners, 1955).

The international instruments make a distinction between “hard labour”, which may be imposed as part of a court sentence, and "forced or compulsory labour”, which is prohibited. Prisoners should be paid a fair wage for their work. The principle underlined is that the work of prisoners should not be subordinated merely to making a profit either for the prison authorities or for a private contractor.

### 3.5.2 Education and Cultural Activities

To make the best use of prisons education and cultural activities shall be provided and encouraged, including access to an adequate library. Provisions of following international laws and treaties are worth to be mentioned here-

- a. The right of all people to education and participation in cultural life is enshrined in the *Universal Declaration of Human Rights*: Everyone has the right to education. ... [Article 26, Paragraph 1] Education shall be directed to the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms. ... [Article 26, Paragraph 2] Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts, and to share in scientific advancement and its benefits. (Article 27, Paragraph 1) Universal Declaration of Human Rights (10 December 1948) Article. 26, Paragraph 1, Article. 27, Paragraph 1).
- b. These rights are confirmed in article 13 of the *International Covenant on Economic, Social and Cultural Rights* (International Covenant on Economic, Social, and Cultural Rights, 1976).
- c. The right of prisoners to cultural activities and education is also laid down in principle 6 of the *Basic Principles for the Treatment of Prisoners*: All prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality (Basic Principles for the Treatment of Prisoners, 1990).

### **3.5.3 Religion**

All prisoners have the right to observe the tenets of their religion and to have access to a minister of that religion. Prisoners shall be allowed access to qualified representatives of any religion. Provisions of following international laws and treaties are worth to be mentioned here:

- i. Article 18 of the *Universal Declaration of Human Rights* provides that: Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance (Universal Declaration of Human Rights, 1948).
- ii. Article 18 of the *International Covenant on Civil and Political Rights* also provides for the right to freedom of religion. In paragraph 2, it specifically provides that: No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice (International Covenant on Civil and Political Rights, 1976).

### **3.6 Prisoners' Contact with the Outside World**

No one shall be subjected to arbitrary interference with his or her privacy, family, home, or correspondence. All prisoners shall have the right to communicate with the outside world, especially with their families. Foreign prisoners shall be allowed to communicate with their diplomatic representatives. A prisoner's request to be held in a prison near his or her home shall be granted as far as possible. Prisoners shall be kept informed of important items of news. Provisions of following international laws and treaties are worth to be mentioned here:

- i. Article 12 of the *Universal Declaration of Human Rights* provides that: No one shall be subjected to arbitrary interference with his privacy, family, home, or correspondence (Universal Declaration of Human Rights, 1948).
- ii. Article 17 of the *International Covenant on Civil and Political Rights* states:
  - a. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home, or correspondence
  - b. Everyone has the right to the protection of the law against such interference or attacks (International Covenant on Civil and Political Rights, 1976).

Imprisonment will often break up family relationships and break downlinks with the community. If men and women can maintain links with family, friends, and the community while in prison, this will reduce the harmful effects of imprisonment and make it more likely that they will be reintegrated into the community when they are released (Human Rights and Prisons Manual on Human Rights Training for Prison Officials, 2005).

### **3.7 Prisoners' Complaints and Inspection Procedures**

Anyone whose rights or freedoms have been violated has the right to an effective remedy, determined by a competent court. Every prisoner shall have the right to make a complaint regarding his or her treatment and, unless the complaint is frivolous, to have it dealt with promptly and, if requested, confidentially. If necessary, the complaint may be lodged on behalf of the prisoner by his or her legal representative or family. Every prisoner on admission shall be provided with written information on rules and on complaints and disciplinary procedures in a language that

he or she understands. If necessary, these regulations should be explained orally. If a complaint is rejected or not responded to promptly, the complainant shall be entitled to bring it before a judicial or other authority. Provisions of following international laws and treaties are worth to be mentioned here-

- i. Article 13 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* requires that: Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1987).
- ii. The general principles relating to remedies are laid down in Article 2 of the *International Covenant on Civil and Political Rights*-
  - a. To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
  - b. To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

- c. To ensure that the competent authorities shall enforce such remedies when granted (International Covenant on Civil and Political Rights, 1976).

### 3.8 Non-Discrimination

Discrimination on the grounds of race, colour, sex, language, religion or religious belief, political or another opinion, national, ethnic or social origin, property, birth, or other status is prohibited by all the global and regional instruments on human rights. In addition, there should be specific protection for the rights of minorities as groups, as a safeguard for their identity and culture. All persons are equal before the law and are entitled, without discrimination, to equal protection of the law. Everyone has the right to freedom of thought, conscience, and religion, and persons from ethnic, religious, or linguistic minorities have the right to their own culture, religion, and language. Provisions of following international laws and treaties are worth to be mentioned here-

- i. Article 2 of the *Universal Declaration of Human Rights* confirms that these rights apply to all human beings without exception: **Everyone is entitled to all the rights and freedoms outlined in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or another opinion, national or social origin, property, birth or another status.** The same principle of non-discrimination is enshrined in the *International Covenant on Civil and Political Rights*.
- ii. Article 18 of the *Universal Declaration of Human Rights* also provides that: Everyone has the right to freedom of thought,

conscience, and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance (Universal Declaration of Human Rights, 1948).

- iii. Many other international instruments that deal with issues of discrimination. Their provisions also apply to prisoners. They include:
  - a. Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief;
  - b. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities;
  - c. Convention on the Elimination of All Forms of Discrimination against Women;
  - d. Declaration on the human rights of individuals who are not nationals of the country in which they live (Human Rights and Prisons Manual on Human Rights Training for Prison Officials, 2005).

Society regards each of its citizens as equal and the State must safeguard the equal rights of all individuals, regardless of their differences. Because people are different from each other, some individuals need special protection to ensure their equal treatment. Prison populations may reflect the ethnic, linguistic, and religious prejudices of society. In particular, people from ethnic minorities tend to be overrepresented in prison populations in many countries. Imprisonment makes people vulnerable to discrimination. If prisons are to be just and humane places, protection against discrimination is vital. Prisons are designed and run for the majority of

prisoners, so the needs of minorities risk are being overlooked. Minority status should not be used as an excuse for unfair treatment. Prisoners from minority groups may have special needs that should be recognized and provided for. Many features of prison life give scope for the practice of discrimination. Facilities and resources may be scarce. The prison staffs have substantial discretion to allocate desirable locations, work, privileges, and access to activities. In some prison systems, the staff is required to write reports about individual prisoners which can affect their chance of early or conditional release or parole.

### **3.9 Women in Prison**

Women are entitled to equal enjoyment and protection of all human rights in the political, economic, social, cultural, civil, and all other fields. As per provisions of various national and international laws Women, prisoners shall not suffer discrimination and shall be protected from all forms of violence or exploitation. Women prisoners shall be detained separately from male prisoners. Women prisoners shall be supervised and searched by female officers and staff. Pregnant women and nursing mothers who are in prison shall be provided with the special facilities which they need for their condition. Whenever practical, women prisoners should be taken to outside hospitals to give birth. Provisions of following international laws and treaties are worth to be mentioned here-

- i. Article 2 of the *Universal Declaration of Human Rights* states:  
Everyone is entitled to all the rights and freedoms outlined in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or another opinion, national or social

origin, property, birth or another status (Universal Declaration of Human Rights, 1948).

- ii. Article 2, paragraph 1, of the *International Covenant on Civil and Political Rights* and article 2, paragraph 2, of the International Covenant on Economic, Social, and Cultural Rights contain a similar provision. Article 3 of both Covenants provides that States parties "undertake to ensure the equal right of men and women to the enjoyment of all" civil and political rights, and economic, social and cultural rights, respectively, outlined in the Covenants (International Covenant on Civil and Political Rights, 1976).
- iii. The *Standard Minimum Rules for the Treatment of Prisoners* apply to all prisoners, whatever their gender. However, they include special requirements regarding women. First, the Rules require that men and women should be kept separate.
- iv. The situation of women in prison does not receive a great deal of attention in international instruments. However, the general requirements of non-discrimination and equal treatment are set out clearly in the *Convention on the Elimination of All Forms of Discrimination against Women*. The Convention prohibits any discrimination which denies women the same protections and fundamental freedoms in all fields-political, economic, social, cultural, and civil as is accorded to men.

### **3.10 Persons under Detention without Sentence**

People who are detained without a sentence are entitled to specific legal safeguards. Everyone charged with a penal offence has the right to be presumed

innocent until proven guilty. Everyone has the right to liberty and security. No one shall be deprived of his or her liberty except on such grounds and under such procedures as are established by law.

- i. The most important consideration of the status of pre-trial prisoners is that they should be considered innocent. Article 11, paragraph 1, of the *Universal Declaration of Human Rights* states: **Everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to the law in a public trial at which he has had all the guarantees necessary for his defence.**
- ii. Article 3 of the Universal Declaration states: **Everyone has the right to life, liberty, and security of person.**
- iii. These rights are described in article 9 of the *International Covenant on Civil and Political Rights*:
  - a. **Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.**
  - b. **Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.**
  - c. **Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in**

**custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should the occasion arise, for the execution of the judgment.**

- d. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, so that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.**
- e. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.**

Human rights provisions for undertrials prisoners are divided into three categories that are accessible to lawyers and the outside world, treatment of pre-trial prisoners, and release on bail. A detailed description of these provisions is given below:

### **3.10.1 Access to Lawyers and the Outside World**

To receive fair trial pre-trial prisoners must be able to keep in contact with legal advisers, family, and friends to prepare their defence properly and without undue hindrance. All arrested or detained persons shall have access to a lawyer or other legal representative and adequate opportunity to communicate with that representative. Untried prisoners shall be allowed immediately to inform their families of their detention and shall be given all reasonable facilities for communicating with their families and friends. Article 14 of the *International Covenant on Civil and Political Rights* provides-

- a. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality;**

- b. To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his choosing;**
- c. To be tried in his presence, and to defend himself in person or through legal assistance of his choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.**

### **3.10.3 Treatment of Pre-Trial Prisoners**

Accused persons shall save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment. Untried prisoners shall sleep singly in separate rooms, with the reservation of different local customs in respect of the climate. Untried prisoners may, if they so desire, have their food procured at their own expense from outside. Untried prisoners shall be allowed to wear their clothing if it is clean and suitable. If an untried prisoner wears prison clothing, it shall be different from that supplied to convicted prisoners. Untried prisoners shall always be offered the opportunity to work, but shall not be required to work. Untried prisoners shall generally be allowed to procure at their expense books, newspapers, and writing materials. Untried prisoners shall generally be allowed visits from their doctor or dentist. Article 10 of the *International Covenant on Civil and Political Rights* requires- **2. (a) Accused persons shall save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons;**

It is clear from the international instruments that form the basis for the detention of pre-trial prisoners is different from that of the detention of sentenced prisoners, and certain requirements flow from this. The first is the need for separation from convicted prisoners. The reason for this separation is to ensure that the treatment of pre-trial prisoners is appropriate to the presumption of innocence. They are not convicted persons and should not be kept in a place where there are also practical reasons. Pre-trial prisoners have several rights to see lawyers, to have food brought in, to wear their clothes, not to be required to work-which do not apply in the same way to convicted prisoners, and mixing the two categories of prisoners would cause difficulties. The main preoccupation of pre-trial prisoners would normally be their impending trial and making adequate preparations for it. Different expectations would apply to the daily routine and regime for convicted prisoners. Besides, pre-trial prisoners are entitled to all the protections which apply to all prisoners.

### **3.10.3 Release on Bail**

The international instruments make it clear that, whenever possible, accused persons should not be detained in custody while awaiting trial. One method of achieving this is by allowing them to continue to live in their communities but requiring them to provide a guarantee, financial or otherwise, that they will not abscond and will be available when needed for investigation and trial. This arrangement is usually called “bail”. Persons awaiting trial shall not be detained in custody as a general rule. The release pending trial shall be envisaged as early as possible. A pre-trial prisoner shall have the right to appeal to a judicial or other independent authority against his or her detention. The principle in the international

instruments is that a person accused of a crime will be held in custody only if necessary.

Article 9, paragraph 3, of the *International Covenant on Civil and Political Rights*, states- **It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial.**

This provision is confirmed in principle 39 of the **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment: Except in special cases provided for by law, a person detained on a criminal charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law. Such authority shall keep the necessity of detention under review.**

On the first admission into custody, pre-trial prisoners are often confused and distressed, particularly if they have no experience of imprisonment. The prison staff must ensure that such prisoners are aware of their legal situation and their rights as undertrials prisoners.

### **3.11 National Provisions for Prisoners Rights in India**

Prison institutions are known by different names in different countries like ‘Correctional Facilities’, ‘Detention Centre’, ‘Jails’, ‘Remand Centre’ etc. The earlier notion of prison as a place in which inmates are forcibly confined and deprived of their rights and freedom and further given punishment has changed. The purpose of prisons has changed from retribution and punishment to reformation and rehabilitation and there is a change in social perception towards prison and prisoners. Prisons are

now treated as a correction or improvement facility which indicates that there is more emphasis on the reformation of prisoners than to punish them.

In India, Prisons have been included in Entry No. 4 (Prison Reformatories, Borstal Institutions, and other institutions of like nature and persons detained therein; institutions) in the State List (List II) in the Seventh Schedule of the Constitution of India. The management of prisons in the country is regulated by the Prisons Act, 1894, and Prison Manuals/Regulations prepared by various States based on their ground situations. Principal laws relating to prisons and their management are Constitution of India, 1950; The Prisons Act, 1894; The Prisoners Act, 1900; The Prisoners (Attendance in Courts) Act, 1955; The Transfer of Prisoners Act, 1950; The Repatriation of Prisoners Act, 2003; The Identification of Prisoners Act, 1920; The Probation of Offenders Act, 1958; and The Indian Penal Code, 1860. Each state has its own Prison Manual which specifies the rules and regulations for the administration and management of prisons. Many states have revised their manuals to accord due emphasis on the reformation and rehabilitation of offenders in society.

### **3.12 Acts and Provisions for Prisoners Rights in India**

The rights guaranteed under the international legal system are theoretically provided in India too. As India has either ratified or is a signatory of most of the international human rights treaties and conventions. But in India prison is a state list subject so provisions regarding prisoners' rights vary from state to state. For prisoners' rights in India, we can refer to fundamental rights mentioned in the constitution of India, centre/states act, rules and manual on prisons, law commission reports, national schemes on prisons (India), commissions/committees report, and supreme court rulings regarding prisoners' rights.

Indian Constitution assigns the management and administration to states and union territories. Management and administration of prisons run on the principles mentioned in the Prisons Act of 1894, the Prisoners Act of 1900, the Transfer of Prisoners Act of 1950, and The Prisoners (Attendance in Courts) Act, 1955, and various other related acts. A detailed description is given below:

### **3.12.1 The Indian Penal Code, 1860**

The Indian Penal Code, 1860 is the main criminal code of India. It is a comprehensive code intended to cover all substantive aspects of criminal law. The code was drafted in 1860 on the recommendations of the first law commission of India established in 1834 under the Chairmanship of Lord Macaulay. It came into force in 1862.

The Indian Penal Code criminalizes police atrocities. It stipulates imprisonment for a term of 7 years to an officer or an authority who detains a person in his custody with the knowledge that he is acting contrary to law. It further provides an imprisonment for a term up to 7 and 10 years for those police officers who cause hurt or grievous hurt to a person to extort confession or information regarding a commission of an offence. Similarly, it stipulates imprisonment for a term up to three years for wrongfully confining a person for extorting a confession or information leading to the detection of a crime. It is equally important to note that confinement on an individual in violation of these statutory provisions constitutes wrongful confinement warranting imprisonment for a term of up to one year

These provisions are ostensibly designed to deter a police officer who is empowered to arrest a person and to interrogate him during the investigation of an

offence from resorting to third-degree methods, causing torture, or ‘wrongful confinement’ to extract a confession. Though the Code provides certain safeguards to police officers for action taken in good faith these cannot be availed of in situations where police are not acting (The Indian Penal Code, 1860).

### **3.12.2 The Prisons Act, 1894**

The Prisons Act of 1894 is the first legislation regarding prison regulation in India. This Act mainly focuses on the reformation of prisoners in connection with the rights of prisoners. In the year of 2016, the Parliament has been passed the Prisons (Amendment) Bill, 2016 to amend the Prisons Act, 1894 to provide protection and welfare of the prisoners in the present scenario and tune with the constitution of India, and to create an atmosphere to rehabilitate and socialize prisoners to enable them to reintegrate into the society. Following sections of the Prisons Act, 1894 including the provisions of the Prisons (Amendment) Act, 2016 are related to the reformation of prisoners in one way or the other.

- i. Accommodation and sanitary conditions for prisoners (Section 4).
- ii. Provision for the shelter and safe custody of the excess number of prisoners who cannot be safely kept in any prison (Section 7).
- iii. Provisions related to the mental and physical state of prisoners (Section 14).
- iv. Provisions related to the examination of prisoners by qualified Medical Officers (Section 24(2)).
- v. Provisions related to the separation of prisoners, containing female and male prisoners, civil and criminal prisoners, and convicted and undertrials prisoners (Section 27).

- vi. Provisions relating to the treatment of undertrials, civil prisoners, parole, and temporary release of prisoners (Sections 31 & 35).
- vii. Provisions relating to the prisoners' right to health. (Sections 37-39)
- viii. In the case of a pregnant prisoner, her diet and work allocation shall be determined as per medical advice. (Section 26 A Prisons Amendment Act, 2016)
- ix. A pregnant prisoner shall be entitled to a grant of conditional parole for thirty days from the expected date of delivery or thirty days from the date of delivery if the delivery takes place while she is in prison. (Section 26A Prisons Amendment) Act, 2016)
- x. Provisions relating to the skill training in prisons provided to the prisoners and conduct workshops and seminars on such subjects as would be helpful for the rehabilitation of and for educating the prisoners. (Section 58 Prisons Amendment) Act, 2016).

### **3.12.3 The Constitution of India, 1950**

The constitution of India does not expressly provide the provisions related to the rights of the prisoners but in the case of *T.V. Vatheeswaran vs. State of Tamil Nadu*, (AIR 1983 SC 361) it was held that the Articles 14, 19, and 21 are available to the prisoners as well as a freeman. Prison walls do not keep out fundamental rights. The supreme court of India, by interpreting Article 21 of the Constitution, has developed human rights jurisprudence for the preservation and protection of prisoners' rights to human dignity (Chandra, 2010). Prisoners are entitled to all constitutional rights unless their liberty has been constitutionally curtailed.

Article 14 of the constitution of India says that the State shall not deny to any person equality before the law or the equal protection of laws within the territory of India. Thus Article 14 contemplated that like should be treated alike, and also provided the concept of reasonable classification. This article is a very useful guide and basis for the prison authorities to determine various categories of prisoners and their classifications with the object of reformation (Chowdhury, 2002).

Article 19 of the constitution of India guarantees six freedoms to all citizens of India. Among these freedoms, certain freedoms cannot be enjoyed by the prisoners because of the very nature of these freedoms. The convicts by mere reason of their conviction are deprived of some of their fundamental rights such as the right to move freely throughout the territory of India or the right to practice a profession (AIR 2000 SC 2083) *State of Andhra Pradesh vs. Challa Ram Krishna Reddy*.

Article 21 of the constitution of India says that no person shall be deprived of his life or personal liberty except according to the procedure established by law. This Article stipulates two concepts i.e., the right to life and the principle of liberty. By Article 21 of the Indian Constitution, it is clear that it is available not only for free people but also to those people behind the prison. Article 21 casts an obligation upon the state to preserve the life of every person, whether innocent or guilty (*Paramanand vs. Union of India*, (1989) 4 SCC 286).

#### **3.12.4 The Transfer of Prisoners Act, 1950**

This act was enacted for the transfer of prisoners from one state to another for rehabilitation or vocational training. This Act also contains procedures related to the transfer of prisoners from one state to another, but for the application of the provision,

both transferring state and receiving state must have given their prior consent. This Act helps to reduce crowds from over-populated jails to less congested jails.

**Section 3:** Where any person is confined in a prison in a state-

- a. Under sentence of death, or
- b. Under or instead of a sentence of imprisonment or transportation, or
- c. In default of payment of fine, or
- d. In default of giving security for keeping the peace or for maintaining good behaviour, the government of that state may, with the consent of the government of any other state by order, provide for the removal of prisoners from that state to any prison in another state.
- e. Prison authorities in receiving state shall make arrangements for the detention of the prisoner in this respect (The Transfer of Prisoners Act, 1950).

### **3.12.5 The Prisoners (Attendance in Courts) Act, 1955**

This Act contains provisions authorizing the removal of prisoners to a civil or criminal court for giving evidence or for answering to the charge of an offence. Thus, apart from the substantive prison laws, the Government of India appointed a National Expert Committee on women prisoners (1968-87) under the chairmanship of Justice Krishna Iyer to examine the conditions of women prisoners. The committee among other things recommended the following suggestions particularly towards the reformation and rehabilitation of women prisoners.

- i. In women's rehabilitation, employment training has a pivotal role. Consequently, work in prison has to be given such potential economic

worth and utility that all women in custody are willing to engage in work programs.

- ii. Training of women prisoners in an area of great relevance to correctional work and the process of restoration of the dignity of the women offender.
- iii. Probation, Parole, and other non-institutional modalities of corrective treatment shall be widely used in the case of women offenders (The Prisoners (Attendance in Courts) Act, 1955).

### **3.12.6 The Probation of Offenders Act, 1958**

The Probation of Offenders Act, 1958 is intended to reform the amateur offenders by providing rehabilitation in society and to prevent the conversion of youthful offenders into obdurate criminals under the environmental influence by keeping them in jails along with hardened criminals. It aims to release first offenders, after due admonition or warning with advice, who are alleged to have committed an offence punishable under Sections 379, 380, 381, 404, or Section 420 of the Indian Penal Code and also in case of any offence punishable with imprisonment for not more than two years, or with fine, or with both.

This Act empowers the Court to release certain offenders on probation of good conduct if the offence alleged to have been committed is not punishable with death or life imprisonment. However, he/she should be kept under supervision. The Act insists that the Court may order for payment by the offender such compensation and a cost of the proceedings as it thinks reasonable for loss or injury caused to the victim. The Act provides special protection to persons less than twenty-one years of age by not sentencing them to imprisonment. However, this provision is not available to a person

found guilty of an offence punishable with life imprisonment (The Probation of Offenders Act, 1958).

### **3.12.7 The Code of Criminal Procedure, 1973**

Though the Code provides a gamut of powers to the police officers for effective criminal justice administration yet it also includes certain safeguards to ensure that the tendency of misuse of powers by the police officer is resisted.

**Cr.PC. Section 50(1)** provides that every police officer shall communicate to the arrestee full particulars of the offence for which he is arrested or other grounds for such arrest. In other words, it confers a statutory right on an arrestee to know the grounds of his arrest.

**Cr.PC. Section 49** The arrestee cannot be subjected to more restraint than is necessary to prevent his escape.

**Cr.PC. Sections 46 and 49** A police officer, who is allowed to touch or confine the body of the arrestee, is precluded from causing the death of a person who is not accused of an offence punishable with death or with life imprisonment.

**Cr.PC. Section 57 and 167** A police officer is under an obligation to produce an arrestee before the nearest Magistrate having jurisdiction in the case within 24 hours of his arrest.

**Cr.PC. Section 50, 437 and 438** The Magistrate can either order release or bail or remand to the police custody to facilitate the further investigation of the case. The maximum period for the remand is 15 days. The Magistrate should ascertain from the accused whether he has been kept in custody for more than 24 hours or not and

whether he has been tortured by the police. If there is evidence of torture he should refuse to commit him to police remand. The accused can also obtain bail and the Code obliges the police to inform him of his entitlement for bail.

**Cr.PC. Sections 303 and 304** also allows an accused, as a matter of right the case may be, to consult a lawyer of his choice and to seek legal assistance to defend himself.

**Cr.PC. Section 309 and 54** Apart from it, under the Code of Criminal Procedure, the accused is bestowed with the right to a fair and speedy investigation and trial as well as the right to the medical examination.

**Cr.PC. Section 176** A mandatory magisterial inquiry can be held in the death of an accused is caused in police custody.

**Cr.PC. Sections 162, 163 (1), 315, and 342 (9)** also prohibits forced confession and protects the suspect person against such confession (The Code of Criminal Procedure, 1973).

### **3.12.8 The Prisoners Act, 1990**

For prison reformation and prison justice under this Act, the following sections are relevant here to mention:

**Section 28:** that all reference to prisons or the imprisonment or confinement shall be construed as referring also to reformatory schools to detention therein

**Section 30:** that it is the duty of the Government for the removal of any prisoner detained under any order or sentence of any court, which is of unsound mind to a lunatic asylum and another place where he will be given proper treatment.

**Section 33:** That any court which is a High Court may in the case in which it has recommended to Government the granting of a free pardon to any prisoner, permit him to be at liberty on his cognizance (The Prisoners Act, 1990).

### **3.12.9 The Identification of Prisoners Act, 1920**

This act contains various rules regarding measurements and photographs including finger-impressions and foot-print impressions of any person who has been convicted of any offence punishable with rigorous imprisonment for a term of one year or upwards, or of any offence which would render him liable to enhanced punishment on a subsequent conviction, allow his measurements and photographs to be taken by a Police Officer in the prescribed manner.

**Section 6:** Resistance to the taking of measurements if a convicted person creates obstructions or resistance to authorities while the court has ordered to take his finger impression or foot print etc. then authorities can use all the means to take these identification marks.

**Section 7:** This section says that if the accused is acquitted then his photographs and records of measurements should be destroyed (The Identification of Prisoners Act, 1920)

### **3.12.10 The Repatriation of Prisoners Act, 2003**

The Repatriation of Prisoners Act, 2003 came into force on the 1<sup>st</sup> of January, 2004. The word Repatriation is the process of returning a person to his or her place of origin or citizenship. This includes the process of returning refugees or military personnel to their place of origin following a war. So when a contracting nation asks India to transfer any prisoner to his native place then the central government can transfer that person if some reasonable conditions are fulfilled. The main contents of this act are:

**Section 4:** Application for transfer by a prisoner: Any prisoner who is a citizen of a contracting State may make an application to the Central Government for transfer of his custody from India to that contracting State, Provided that if a prisoner is not able to make an application himself because of his ill-health, mental condition, old age or being a minor.

**Section 5:** Consideration of a request by Central Government if -

- No inquiry, trial or any other proceeding is pending against the prisoner;
- The death penalty has not been awarded to the prisoner;
- The prisoner has not been convicted for an offence under martial law, and transfer of custody of the prisoner to the contracting State shall not be prejudicial to the sovereignty, security, or any other interest of India.
- If the central government is convinced regarding transfer It shall be lawful for the person authorised by the contracting State to whom the custody of a prisoner is delivered receive and hold in custody such prisoner and to convey him out of India and if the prisoner escapes from such custody

within India, the prisoner may be arrested without warrant by any person who shall

**Section 10:** Transfer of record where a prisoner is or is to be transferred to a contracting State under the provisions of this Act, the Central Government may requisition the records of any proceeding, including judicial proceedings relating to that prisoner from any court or office, and may direct that such records shall be sent to the Government of the contracting State.

**Section 11:** Power of court and Central Government shall not be affected, the transfer of a prisoner from India to a contracting State shall not affect the power of the court which passed the judgment to review its judgment and power of the Central Government or State Government to suspend, remit or commute the sentence under any law for the time being in force (The Repatriation of Prisoners Act, 2003).

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

court goes on. In this purview, the rights guaranteed under the international legal system are theoretically provided in India too.

India is a signatory to most of the international human rights treaties and conventions. But in India prison is a state list subject so provisions regarding prisoners' rights vary from state to state. It can be said that the prisoners are also entitled to all their fundamental rights while they are behind the prisons. Indian constitution does not expressly provide for the prisoners' rights but articles 14, 19, and 21 implicitly guarantee the prisoners' rights, and the provisions of the Prisons Act, 1894 contains the provisions for the welfare and protection of prisoners. The court has ruled that it can intervene with prison administration when constitutional rights or statutory prescriptions are transgressed to the injury of the prisoner. The Supreme Court in many cases held that a prisoner is a human being, a natural person, and also a legal person. Being a prisoner he does not cease to be a human being, natural person, or legal person. A conviction for a crime does not reduce the person into a non-person, whose rights are subject to the whim of the prison administration and therefore, the imposition of any major punishment within the prison system is conditional upon the absence of procedural safeguards.

## **CHAPTER - 4**

### **PROTECTION OF PRISONERS RIGHTS IN INDIA: JUDICIAL PERSPECTIVE**

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Judiciary in every country has an obligation and a constitutional role to protect the human rights of citizens. It has a great reputation for independence and credibility. The independent judicial system stems from the notion of the separation of powers where the executive, legislature, and judiciary form three branches of the government. This separation and consequent independence is the key to the judiciary's effectiveness in upholding the rule of law and human rights (Singh, 2019).

Since every society has a judicial system for the protection of its law-abiding members, it has to make provisions of prisons for the lawbreakers. But that doesn't mean there are no rights for prisoners. The inmates have their rights as well. By interpreting Article 21 of the Constitution, the Supreme Court of India has developed human rights jurisprudence for the preservation and protection of the rights of prisoners to maintain human dignity (Reddy, 2018). Any violation of this right attracts the provisions of Article 14 of the Constitution, which enshrines the right to equality and equal protection of the law. The Supreme Court and the High Courts have commented upon the deplorable conditions prevailing inside the prisons, resulting in violation of prisoner's rights (Jayakumar, 2018).

#### **4.1 Human Rights of Prisoners - Judicial Initiatives**

In recent years, the Supreme Court of India has been very vigilant against abuses of the human rights of prisoners. Article 21 of the Constitution of India provides that “No person shall be deprived of his life and Personal Liberty except according to the procedure established by law”. The right to life and personal liberty is the backbone of Human Rights in India. Through its constructive approach and advocacy, the Indian judiciary has acted as an institution to provide an effective remedy against abuses of human rights. The courts have formulated and defined a multitude of rights by giving a liberal and thorough description of 'life and personal freedom. The court gave the Fundamental Rights enshrined in Article 21 a very limited and precise sense. In the case of A.K. Gopalan, the court believed that each article dealt with different rights and that there was no connection between them, i.e. they were mutually exclusive. In the case of Maneka Gandhi, however, this view was held to be incorrect and held that they are not mutually exclusive but form a single scheme in the Constitution, that they are all components of an integrated scheme in the Constitution. In the present case, the court noted that “Article 21 of the Constitution provides for a broad and comprehensive scope for personal liberty.” It embraces both the substantive rights to personal liberty and the procedure prescribed for their deprivation and was also of the opinion that the procedures prescribed by statute must be equal, just and reasonable (Beniwal, 2013).

In the cases below, Maneka Gandhi, Sunil Batra (I), M.H. Hoskot, and Hussainara Khatoon, the Supreme Court has taken the view of Hoskot and Hussainara Khatoon that the provisions of Section III should be given the broadest possible meaning. The right to legal support, speedy trial, the right to have an interview with a

friend, relative, and counsel, the right to protect prisoners from degrading, inhuman and barbaric treatment, the right to travel abroad, the right to live with human dignity, the right to live, etc., have been recognized. Fundamental rights under Article 21 of the Constitution, although not expressly stated. The Supreme Court of India has therefore greatly broadened the scope of Article 21 and has held that its protection would be available for the protection of the fundamental rights of prisoners and the implementation of prison reforms. The Supreme Court of India developed human rights jurisprudence for the protection and defence of the right to the human dignity of prisoners.

Any breach of that right is subject to Article 14 of the Constitution, which enshrines the right to equality and equal protection of the law. Besides, the problem of inmate abuse is also discussed, expressly by the Prison Act 1894 and the Code of Criminal Procedure (CRPC). Not only does any excess perpetrated by the police authority on an inmate draw the attention of the legislature, but also of the judiciary. In recent times, the Indian judiciary, particularly the Supreme Court, has been very vigilant against violations of the human rights of prisoners.

A milestone in Indian jurisprudence was Maneka Gandhi's case. The Maneka theory has been applied to the conditions of incarceration and particularly to the plight of under-trials. A series of news articles about the continuing detention of under-trials in Bihar Jails appeared in *The Indian Express*" Some of them have never been created before the tribunals. Some others served more time in prison as under-trials than if they were convicted of the crimes they were charged with the maximum punishment that could be levied on them. In the *Habeas Corpus Writs for Under-Trials*, the Supreme Court claimed that:

“Following the dynamic interpretations put forward by this court on Article 21 in *Maneka Gandhi vs. Union of India*, there can be little doubt that a procedure in which such a large number of persons are held in custody without trial for so long cannot be considered reasonable, just or fair to conflict with the requirement of that Article.”

During the past three or four decades, the need for prison reforms has come into view. The Supreme Court and the High Courts reflected on the deplorable situations existing within the jails, resulting in deprivation of the rights of prisoners. The rights of inmates have become an important agenda item for prison reforms.

The Indian Supreme Court has been instrumental in reacting to human rights abuses in Indian jails and has, by interpreting Articles 21, 19, 22, 32, 37, and 39A of the Constitution positively and humanely, acknowledged many prisoners' rights. In view of the overriding authority of the Supreme Courts, under Article 141 of the Constitution of India, these newly recognised rights are also binding on the State, which specifies that the law proclaimed by the Supreme Court is binding on all courts within the jurisdiction of India.

The following are the reasons cited in various case laws for which the Indian judiciary accepted and upheld the rights of prisoners:

- a. “Convicts are not by mere reason of the conviction denuded of all the fundamental rights which they otherwise possess”- Justice V.R. Krishna Iyer (*Sunil Batra vs. Delhi Administration*, 1978).
- b. “Like me and you, inmates are human beings as well. Therefore, all other rights remain with the inmate, except those that are taken away in the legal

incarceration process. These include rights linked to the protection of fundamental human dignity and the transformation of the prisoner into a better human being” (Charles Sobhraj vs. Superintendent, 1978).

- c. If a person commits any crime, it does not mean that by committing a crime, he/she ceases to be a human being and that he/she can be deprived of those aspects of life which constitutes human dignity.
- d. It is increasingly being recognized that a citizen does not cease to be a citizen just because he/she has become a prisoner.
- e. As punishment, the guilty people go to prisons and not for punishment (Jon Vagg., 1994). Prison sentences must be carried out in compliance with the orders of the court and no further punishment may be enforced without penalty by the prison authorities (Sunil Batra vs. Delhi Administration, 1978).
- f. For almost all of their day-to-day needs, prisoners depend on prison authorities, and the state has authority over their lives and liberty, the mechanism of rights exists to prevent the authorities from exploiting their power. Therefore, prison authorities must be responsible for how they exercise their custody over individuals in their care, especially with regard to their broad discretionary powers.
- g. Imprisonment as punishment is now re-thought as punishment for recovery. This includes a philosophy where people are imprisoned so that they have a chance to practice new habits to curtail their deviant lifestyles. Therefore, correction is a scheme designed to modify certain attributes that result in criminal conduct. The rehabilitative model argues that the purpose of incarceration is to reform inmates through educational, training, and

counselling programs. This development and growth require certain human rights without which no reformation takes place.

- h. The disruption of prison conditions and the abuse of basic human rights such as custodial deaths, physical violence/torture, police excess, degrading care, custodial rape, low food quality, lack of water supply, poor health system support, non-production of prisoners to the court, unjustified prolonged imprisonment, forced labour and other problems identified by the apex court have led to disturbance of prison conditions and violations of basic human rights such as custodial deaths, physical violence/torture, police excess, degrading treatment, custodial rape, poor food quality, lack of water supply, poor health system support, non-production of prisoners to the court, unjustified prolonged imprisonment, forced labour and other problems observed by the apex court (NHRC).
- i. Overcrowded jails, extended imprisonment of inmates under trial, unsatisfactory living conditions, and reports of indifferent and even cruel behaviour by prison personnel have consistently drawn critical attention over the years. Sadly, nothing has changed. Any worthwhile reforms have not affected the basic problems of concern to the prison administration in India.

The rights of the prisoners have been expressed under the Indian Constitution as well as Indian laws governing prisons. In enumerating the rights of inmates, the Supreme Court and High Court decisions have played a key role.

The fundamental human rights of the prisoners were enumerated in a landmark judgment by Justice V.R. Krishna Iyer. Mr. Sunil Batra wrote a letter to the

Supreme Court from Tihar Jail, Delhi, offering information about the prison's brutality and inhumane conditions. This case has been a critical case for prison reforms (*Sunil Batra vs. Delhi Administration*, 1980). In the most detailed way, this case acknowledged the different rights of prisoners.

The decision held:

*“No prisoner can be personally subjected to deprivation not necessitated by the fact of incarceration and the sentence of the court. All other freedoms belong to him to read and write, to exercise and recreation, to meditate and chant, to comforts like protection from extreme cold and heat, to freedom from indignities such as compulsory nudity, forced sodomy, and other such unbearable vulgarity, to movement within the prison campus subject to requirements of discipline and security, to the minimal joys of self-expression, to acquire skills and techniques. A corollary of this ruling is the Right to Basic Minimum Needs necessary for the healthy maintenance of the body and development of the human mind. This umbrella of rights would include: Right to proper Accommodation, Hygienic living conditions, Wholesome diet, Clothing, Bedding, timely Medical Services, Rehabilitative and Treatment programs”*

The Supreme Court found the practice of keeping undertrials with convicts in jail as inhumane in *Sunil Batra vs. Delhi Administration (I)*. The Court held that the test of reasonableness in Article 19 and of equity in Article 21 had been offended by that test. The punishment of solitary confinement, as in the case of Sobhraj, was

considered to violate Article 21 of the Constitution, meaning that the freedom to move, mingle, mix, speak, share a company with co-prisoners, if significantly limited by holding a prisoner in solitary confinement, would violate Article 21 unless the restriction had the support of the law. The Court also held that bar-fetters make a severe violation of the restricted personal liberty with which a prisoner is left and thus must have the power of law before such erosion can be justified (AIR 1980 SC 1579). In *Sunil Batra vs. Delhi Administration (II)*, the judges set out instructions to be prescribed and implemented in favour of prison reforms, which were as follows:

- The State shall take early steps to prepare a Prisoner's Handbook in Hindi and distribute copies to carry the prisoners' home with legal knowledge.
- Periodical jail bulletins stating how improvements and rehabilitative programs are brought into the prison may create a fellowship that will ease tensions.
- The wallpaper of an inmate, which will ventilate complaints openly, will also alleviate tension. All of these are to uphold the Prisons Act, Section 61.
- The State shall take measures to comply with the recommendations of the United Nations Standard Minimum Rules for the Treatment of Prisoners, in particular those relating to employment and salaries, treatment with dignity, community interaction, and correctional strategies.

The Prisons Act requires rehabilitation and a complete overhaul of the Prison Manual, even the model manual with healing goals is out of reach. For prison personnel to inculcate constitutional principles, therapeutic approaches, and tension-free management, a correctional-cum-orientation course is mandatory. The rights of prisoners shall be covered by the court by its written jurisdiction plus the power of contempt. Professional associations approved by the court, such as the Free Legal Aid

(Supreme Court) Society, would facilitate free legal care to inmate systems in order to make this authority viable. We propose that the District Bar maintain a cell for prisoner relief.

Through its judgment in *Sunil Batra (II) vs. Delhi Administration*, the Supreme Court has given the writ of habeas corpus a new dimension. While the judgment of the Supreme Court's Constitution Bench in *Sunil Batra (I) vs. Delhi Administration* had crystallized a prisoner's constitutionally enforceable rights, the later decision in Sunil Batra II radicalized the process for implementing the prisoners' rights.

The writ of habeas corpus has historically been used to secure the release of an unlawfully detained person. Due to its convenience, non-technicality, and the importance given to its hearing by the courts, it is a preferred solution. Sunil Batra (II) provides the essential principle of law that a writ of habeas corpus is available not only to ensure the release of an unlawfully detained prisoner but also to control the conditions and manner of detention of a person whose detention is lawful. A short and easy remedy is therefore available for inmates to obtain redress for their concerns regarding the manner of their incarceration.

The inmates now have a significant platform for their rights to be implemented. Because only via the prison hierarchy could all the concerns formerly be aired, very few prisoners raised any complaints about fear of retribution. A deterrent to prison authorities would be the very presence of the redress of a writ of habeas corpus that could discourage arbitrary and capricious action.

The Supreme Court clarified the ingredients of personal liberty under Article 21 in another recent landmark judgment in the case of '*Francis Corale Mullin vs. the Governor, Union Territory of Delhi & Others.*' The case arose out of the right of a Conservation of Foreign Exchange and Prevention of Smuggling Activities (COFEPOSA) detainee to have an interview with members of his family and lawyers. Meetings with family members were limited to once a month and the lawyer was only permitted to meet in the presence of a customs department officer. The Supreme Court held that his right to life and liberty included his right to live with human dignity and thus, without such stringent limitations, a detainee would be able to have interviews with family members, friends, and lawyers.

The right to compensation in cases of unconstitutional deprivation of personal liberty is another landmark decision made by the judiciary. An example of a breakthrough in Human Rights Jurisprudence is the Rudul Sah case (*Rudul Sah vs. State of Bihar, 1983*). Rudul Sah, the complainant, was unlawfully held in jail for more than 14 years. He filed Habeas Corpus for his immediate release before the court and among other items, prayed for his expenses of recovery, medical charges, and compensation for wrongful detention. The question before the court after his release was whether the court could pass an order for payment of money in the exercise of jurisdiction under Article 32? Was such an order like compensation a consequence of the deprivation of fundamental rights? There is no express provision in the Constitution of India for the grant of compensation for the violation of a fundamental right to life and per life. But the right to compensation in cases of unlawful deprivation of personal liberty has grown within the judiciary. Even after his acquittal, the Court awarded monetary compensation of ₹ 35000 against the Bihar Government for holding the individual in unlawful detention for 14 years. Departing

from the conventional approach, the Court disregarded the technicalities when awarding compensation.

Rudul Sah's decision was noteworthy in two ways. First, it held that a breach of a constitutional right could give rise to a civil liability enforceable in a civil court and, second, it laid the groundwork for a principle of liability that could give rise to civil liability for a violation of the right to personal liberty. The decision was based on intense respect for the security and preservation of a citizen's fundamental right. It also calls for unlawful imprisonment in jail to be subject to compensatory jurisprudence.

In India, the courts have recognised a wide variety of constitutional and other rights of prisoners and many judgments recognize them. The following table lists the large categories of rights that are not exhaustive, as this area continues to grow and evolve slowly. These privileges were taken from different case laws. While the case laws express these protections, they do not penetrate the poor inmates. There are still many privileges which the Indian legal system does not recognize. Several rights and security for prisoners is accepted by the Supreme Court of India. Few such rights are discussed in the paragraphs below (Madhurima, 2009).

1. The right to be lodged appropriately based on Proper Classification.
2. Special rights of young prisoners to be segregated from adult prisoners.
3. Rights of women prisoners.
4. Right to a healthy environment.
5. Right to bail.
6. Right to a speedy trial.
7. Right to free legal services.

8. Right to basic needs such as food, water, and shelter
9. Right to have interviews with one's Lawyer.
10. Right against being detained for more than the period of the sentence imposed by the court.
11. Right to protection against being forced into sexual activities.
12. Right against the arbitrary use of handcuffs and fetters.
13. Right against torture, cruel and degrading punishment.
14. Right not to be punished with solitary confinement for a prison offence.
15. Right against arbitrary prison punishment.
16. Right to air grievances and effective remedy.
17. Right to evoke the writ of habeas corpus against prison authorities for excesses.
18. The right to be compensated for violation of human rights.
19. Right to visits and access by family members of prisoners.
20. The right to write letters to family and friends and to receive letters, magazines, etc.
21. Right to rehabilitation and reformative programs.
22. Right in the context of employment of prisoners and to prison wages.
23. Right to information about prison rules.
24. Right to emergency and reasonable health care (Sreekumar, 2003).

#### **4.2 General Living Conditions**

One of the most important tasks that prison management is required to perform after protection is the essential requirement that protects human life, i.e. food, clothes, and shelter. This part of the prison has a direct effect on the prisoner population's behaviour and morale. For prisoners, too these programs reflect the only

essential items that affect their immediate lives. For long-term prisoners who generally do not expect to look forward to a very happy future outside the walls, the ability to protect the present is very significant. Prison overcrowding is one of the most daunting challenges faced by the Indian Criminal Justice System. Overcrowding threatens the capacity of prison facilities, such as health care, food, and accommodation, to meet the basic needs of inmates. This also jeopardizes the human rights of inmates, including the right to have decent living conditions and the right to the highest attainable physical and mental health standards. Prison overcrowding brings a host of troubling concerns to the administration of prisons in its wake. Not only does it create a security problem, but it also creates extreme pressure on essential resources, leads to significant health risks, and disrupts programs for penal reform and recovery.

In the case of *Ramamurthy vs. State of Karnataka*, the petition originates from a letter addressed to the Hon'ble Chief Justice of this Court by one Rama Murthy, a prisoner in Central Jail, Bangalore. The key complaints in the letter were about the denial of the prisoners' legal pay, despite their hard work in various parts of the jail. "Non-eatable food" and psychological and physical torture were also reported. The Supreme Court, considering the letter as a written petition, sent the District Judge an order to visit the Central Jail and find out the wage payment pattern and the general conditions of the prisoners, such as residence, sanitation, food, medicine, etc. A detailed report was collected and presented by the District Judge to the Court. The Court noted that in the case of Charles Sobhraj and Sunil Batra, 'A sound prison system is a crying need of our time the Court stressed that the cases of Charles Sobhraj and Sunil Batra should be treated as beacon lights in terms of prison management and prisoner rights. Having reviewed the available literature on prisons,

the Court noted that the prison system in India was plagued by nine major problems and needed urgent attention. They were as follows:

1. Overcrowding
2. Delay in trial
3. Torture and ill-treatment
4. Neglect of health and hygiene
5. Insubstantial food and inadequate clothing
6. Prison vices
7. Deficiency in communication
8. Streamlining of jail visits; and
9. Management of open-air prisons.

This Court observed that it is a constitutional duty to produce under-trial prisoners before the court on remand dates. Such output helps the inmate, whether he has faced any ill-treatment or hardship during the time of remand, to carry the prisoner to the court's attention. The actual production of the inmate is also required to be insured by the court of trial before ordering further remand. No guidelines were given by the Court on the subject of torture and ill-treatment in prisons. It stressed, however, the strong need for a new All India Jail Manual that would serve the country as a model.

The previous instructions and observations provided by the Court on the appropriate limits of punishment within prisons should be accepted by this new manual. Similarly, no directions on the health and hygiene of prisoners were given by the Court, but the Court noted that prisoners suffer from a double handicap. Second, they do not have the same access that free people have to medical knowledge.

Secondly, prisoners are subjected to more health risks than free people because of the circumstances of their imprisonment.

The Supreme Court, in this case, directed the concerned authorities to take appropriate steps, which included:

- Enacting a new Prisons Act to replace the century-old Prisons Act, 1894.
- Framing a new All India Jail Manual.
- Taking an appropriate decision on the recommendations that the Law Commission of India made in its 78<sup>th</sup> Report on the subject of “Congestion of under-trial prisoners in jail” within six months of the date of judgment.
- Applying mind to the suggestions of the Mulla Committee relating to streamlining the remission system and premature release (parole), and doing the needful.
- Taking recourse to alternatives to incarceration such as fines, community service, and probation.
- Considering the feasibility of entrusting the duty of producing undertrials prisoners on remand dates to the prison staff.
- Reflecting on the recommendations of the Mulla Committee on the subject of giving proper medical facilities and maintaining appropriate hygienic conditions, and to take appropriate steps.
- Pondering on the need for a complaint box in all the jails.
- Inspecting jails after giving the shortest notice to assure the compliance of rules laid down in the jail manual.
- Taking needful steps for streamlining the jail visits.

- Ruminating on the question of the introduction of open prisons at least in all the district headquarters of the country (AIR 1997 SC 1739).

### **4.3 Right to Speedy Trial**

The right to a speedy trial is a fundamental right of a prisoner implicit in article 21 of the Constitution. It ensures just, fair and reasonable procedure. Furthermore, the fact that a speedy trial is also in the public interest or that it serves the social interest does not render the accused less entitled. It is in the interests of those concerned that the accused guilt or innocence is assessed in the circumstances as soon as possible.

The Code of Criminal Procedure includes the primary procedure for the prosecution and conviction of an offence leading to a speedy trial. Under section 309 of Cr.PC, the right to a speedy trial is included. In their letter and spirit, if the rules of Cr.PC is observed, then there will be no question of any grievance. But these provisions, in their spirit, are not properly enforced. The provisions of the Code must properly reflect the Constitutional guarantee of speedy trial arising from Article 21.

To this end, in the *A.R. Antulay vs R.S. Nayak*, the Supreme Court has laid down the following recommendations that will go a long way to protect prisoners' human rights. In the present case, the Apex Court held that at all points, such as prosecution, investigation, trial, appeal, examination, and retrial, the right to speedy trial arising from Article 21 of the Constitution is available to the accused (1992) 1 SCC 225).

In *Hussainara Khatoon and Others vs. Home Secretary, Bihar*, many undertrials prisoners who had been in jails in the State of Bihar for years pending their

trial filed a petition for writ of Habeas Corpus. The Supreme Court required, on an appeal, that these under-trial inmates be released on personal bonds immediately. The personal bonds thus produced were not to be founded on any monetary obligations because of the peculiar facts and circumstances of the case. The government also filed a counter-affidavit highlighting the plight of many innocent women who were in jail based on “protective custody,” i.e. they were either victims or witnesses needed for proof to be provided.

The Supreme Court noted:

*“It is high time that the public conscience is awakened and the government, as well as the judiciary, begins to realize that in the dark cells of our prisons there is a large number of men and women who are waiting patiently, impatiently perhaps, but in vain, for justice - a commodity which is tragically beyond their reach and grasp.”*

Criticizing the unequal existence of the bail scheme, the Court acknowledged that it is a travesty of justice that, since the bail process is beyond their modest means, many poor suspects are forced into long cellular servitude for little offenses. In a society that aspires to fulfill the constitutional promises of social equality and social justice to its entire people, deprivation of freedom for the sake of financial poverty alone has been considered to be an incongruous feature. The Court challenged the property-oriented approach of the current bail system, arguing that it works very unfairly against the vulnerable in such a bail system. The Court asked Parliament to consider whether other specific considerations, such as family relations, community roots, job security, membership in stable organisations, etc., should be the deciding

factors in the grant of bail instead of the possibility of financial loss and appropriate cases, the accused should be released on his bond without monetary obligation. Remarking on the excessive delay in the start of proceedings, the Court noted that the nature of criminal justice was speedy proceedings, and thus the delay in proceedings alone constituted a denial of justice. A significant and necessary part of the universal right to life and liberty is a fairly expeditious trial. The following instructions were also set out by the Court.

- In the matter of administration of justice, the state government should recognize its duty to the people and set up more courts for the trial of cases.
- The competent judges for the newly constituted courts should be appointed by the state government.
- In situations where the criminal investigation has been postponed by more than two years, the police must file the final report or charge-sheet within a further duration of three months. In the absence of this, these cases should be removed by the State Government.
- Both women and children who are in “protective custody” in jails in Bihar, or who are in jail because their presence is needed to provide evidence, or who are victims of crime, should be released.
- Both women and children released should be taken immediately to welfare homes or rescue homes and kept there and properly looked after. (AIR 1979 SC 1360).

#### **4.4 Right to Legal Aid**

Although the Right to Legal Aid is not explicitly guaranteed by the Constitution of India, due to their poverty, the judiciary has shown its favour towards

poor prisoners and is not in a position to engage the lawyer of its own choosing. Free Legal Assistance was included in the 42nd Amendment Act, 1976, as one of the Directive Principles of State Policy in the Constitution under Article 39A. This is the Constitution's most critical and straightforward article that speaks to Free Legal Assistance. Although this Article finds its position as one of the Directive Principles of State Policy in Part IV of the Constitution and although this Article is not enforceable by the courts, the concept laid down in this Article is central to the country's governance. In making laws, Article 37 of the Constitution imposes a duty on the state to apply these principles. Although Article 38 imposes an obligation on the State to promote the welfare of the people by securing and preserving, as effectively as many others do a social order in which all institutions of national life are informed by justice, social, economic, and political justice. The Legal Services Authorities Act, 1987, was passed by Parliament in which legal aid is guaranteed and various state governments have set up legal aid and advisory boards and framed schemes for free legal aid and incidental matters to give effect to Article 39-A's constitutional mandate. Legal Help is of broader scope under the jurisprudence of Indian Human Rights and is available not only in criminal cases but also in civil, financial, and administrative cases.

Several under-trial prisoners filed a letter in the Supreme Court in the ***Khatri and Ors vs. State of Bihar*** case alleging that they were blinded by police officials following their detention while under police custody. During the proceedings in the case, the Supreme Court also found that no legal representation was provided to the blinded prisoners because none of them demanded it. The Judicial Magistrates also did not ask whether they needed legal representation at state expense from the blinded inmates produced before them.

In Hussainara Khatoon's case, the Court reiterated its stand, holding that the right to free legal services is an important component of a rational, fair and just process for a person accused of an offense and is implied in Article 21 of the Constitution. Besides, the Court observed that legal aid would merely become a paper promise and would fail to fulfill its intent if a poor ignorant, and illiterate accused were left to ask for free legal services. The Magistrate or the Judge of the Session before which the accused appears is obliged to notify the accused that he is entitled to receive, at the expense of the State, free legal assistance if he is unable to participate in the services of a lawyer because of poverty or indigence.

The Court also expressed considerable concern at the irregularities in the production before the magistrates of the accused. An analysis of the documents revealed that the inmates had managed to stay in prison without the Judicial Magistrates granting any remand orders. It noted that the detention-inhibiting clause without detention was very safe and that the magistrates had to strive and enforce this condition. The Court ordered the State Government to inquire into their regularities and ensure that in the future, the administrators of law are not allowed to commit such violations of the law.

The Court also expressed its unhappiness at the lack of interest displayed by the Judicial Magistrates that the blinded prisoners were not examined when they were first brought before the judicial magistrates and subsequently did not inquire from time to time for remand as to how the eyes had been damaged. It directed the High Courts to closely examine these issues and to ensure that such carelessness on the part of the judicial officers will not take place in the future. The Supreme Court thus formed the following directives:

- The state has a statutory mandate to provide the accused with free legal assistance if because of poverty; they are unable to obtain legal services.
- This duty to provide the indigent accused with free legal care arises not only on or after the beginning of the trial but also when the accused is brought before the Judge for the first time and when he is remanded from time to time.
- All Magistrates and Session Judges in the country shall notify any defendant who appears before them and is not represented by a lawyer because of his or her poverty or indigence that he or she is entitled, at the expense of the State, to free legal services (AIR 1981 SC 928).

#### **4.5 Rights against Handcuffing**

The Supreme Court added yet another projectile to its armoury to be used against the fight for prison reform and prisoner rights in *Prem Shanker vs. Delhi Administration*. The question posed in the instant case was whether or not handcuffing is legally valid? The Supreme Court addressed in detail the jurisprudence of handcuffing. It is the case brought before the court by way of Public Interest Litigation that in the light of Article 21 of the Constitution, urges the court to rule on the constitutional validity of the 'handcuffing community'. In the instant case, as a statutory mandate, the court prohibited the routine handcuffing of a prisoner and deemed the distinction between classes of a prisoner as obsolete. The court also held that "handcuffing is cruel prima-facie and thus, unfair, unnecessarily harsh, and arbitrary at the first flush". Zoological methods repugnant to Article 21 of the Constitution shall be used in the absence of fair procedure and impartial control to inflict 'iron' (1980 AIR 1535).

#### **4.6 Rights against Solitary Confinement and Bar Fetters**

The courts have a clear view of solitary confinement and have held that the imposition of solitary confinement has a highly oppressive and dehumanizing impact on inmates. The courts took the view that it should only be enforced in rare circumstances where the inmate was so violent that he had to be isolated from the other inmates. The legitimacy of solitary confinement was found by the Supreme Court in *Sunil Batra (I)*. The Supreme Court has also strongly reacted to imposing bar fetters on inmates. The court found that holding a prisoner in fetters constantly transformed the prisoner from a human being to an animal day and night, and such punishment was so inhuman and unusual that the use of bar fetters was contrary to the spirit of the Indian Constitution.

In this case, the two convicts confined in Tihar Central Jail filed two petitions under Article 32 in the case of *Sunil Batra vs. Delhi Administration & Ors*, questioning the validity of section 30 and section 56 of the Prisons Act. The District and Sessions Judge sentenced Sunil Batra to death and his conviction was the subject of confirmation by the High Court and a potential appeal to the Supreme Court. Batra alleged that he was held in solitary confinement until the Supreme Court intervened on 24 February 1978 on the date of his conviction by the Sessions Judge on 6 July 1976.

In this case, the Supreme Court acknowledged that the “court has a distinctive duty to reform prison practices and inject the system with constitutional conscience.” It must not follow a “hands-off” approach concerning the issue of prison administration because, under the order and guidance of the court, a prisoner is in prison. The Court upheld the constitutional mandate that any basic rights of the

prisoner should not be denied by any prison statute. Disciplinary autonomy in the hands of jail workers threatens human rights and prohibits inmates from accessing the courts because of complaints. The rule of law disallows additional sentences to be levied in disguises that defeat the primary goal of incarceration. Therefore it can be struck down as unfair, arbitrary, and illegal to inflict extra punishment by forced cellular solitude or iron fetters.

Rehabilitation is a vital part of imprisonment, and when justifying the harsh treatment of inmates, this philosophy is often overlooked. Consequently, the punitive need to hold an inmate apart does not require the inclusion of extreme punishing elements.

The Supreme Court took the view that:

*“Liberal paroles, open jails, frequency of familial meetings, location of convicts in jails nearest to their homes tend to release stress, relieve distress, and ensure security better than flagellation and fetters.”*

Solitary Confinement is a prisoner's seclusion from the sight of other inmates and contact with them. It is a serious and distinct penalty that can only be levied by the Judge. It is not possible to keep inmates sentenced to death in solitary confinement. Nevertheless, their separation from other inmates during the regular lockup hours is legal. No group facilities, including sports, newspapers, books, travelling about, and greeting inmates and visitors, may be refused to such inmates, subject to fair prison management regulations. Only when his appeals to the High Court and the Supreme Court and his pleas of mercy to the Governor and the President have been denied shall a prisoner be deemed ‘under sentence of death’.

Inmates awaiting trial are found to be in detention but not subject to punitive incarceration. Relaxed conditions are given to them rather than to convicts. Bar fetters shall be shunned, inside and without jails, as infringing human dignity. When an accused is produced before the judge, indiscriminate recourse to handcuffs and putting iron-on jail prisoners is unconstitutional. It must be stopped immediately, except for a few exceptions. An inmate shall only be held in custody if there is a clear and present risk of violence or a possible breach of custody. The following preconditions were set out by the Supreme Court to be followed before enforcing fetters:

- i. There is an absolute necessity to use fetters.
- ii. There should exist special reasons as to why no other alternative but fetters can ensure secure custody.
- iii. These special reasons must be recorded in detail simultaneously.
- iv. This record must be documented in both the journal of the superintendent and the history ticket of the prisoner.
- v. Before the imposition of fetters, natural justice in its minimal form shall be complied with.
- vi. No fetters shall be kept beyond day time.
- vii. The fetters shall be removed at the earliest opportunity.
- viii. There should be a daily review of the absolute need for the fetters, and
- ix. Any continuation of the fetters beyond a day shall be illegal unless its continuation is directed by an outside body, such as the District Magistrate or Sessions Judge, on the materials imposed. The power to enforce fetters or other iron restraints is subject to quasi-judicial

supervision, even though it is enforced for safety purposes (AIR 1978 SC 1675).

#### **4.7 Rights against Inhuman Treatment of Prisoners**

Human rights are an integral component of human dignity. In different cases, the Supreme Court of India has taken serious notice of the inhumane treatment of prisoners and has given appropriate guidelines to the prison and police authorities to safeguard the rights of prisoners and individuals locked up by the police. The Court noted that the treatment of a human being who offends human dignity, prevents torture, and reduces the individual to the level of an animal will undoubtedly be arbitrary and in compliance with Article 14, could be challenged.

The Supreme Court expressed its anguish over police brutality in *Raghubir Singh vs. State of Bihar* by upholding the life sentence given to a police officer responsible for the death of a suspect due to torture in a police lock-up (1987 AIR 149). The Supreme Court ruled, in *Kishore Singh vs. State of Rajasthan*, that the use of the third-degree procedure by the police violated Article 21 (AIR 1954 Raj 264). The Supreme Court's ruling in the case of D.K. Basu is notable. The court particularly focused on the issue of custodial torture when dealing with the case and gave numerous instructions to eliminate this evil, in order to better protect and promote human rights. The Supreme Court described torture in the present case and explored its consequences.

#### **4.8 Right to Have Interview with Friends, Relatives, and Lawyers**

The human rights horizon is widening. The rights of prisoners have not only been recognised to protect them from physical pain or personal torture but also to

shield them from mental torture. The right to life and personal liberty laid down in Article 21 cannot be limited to the mere presence of animals. Far more than just physical survival, it means everything. The right to have an interview with one's family members and friends is an important part of the personal liberty provided for in Article 21. Article 22 (I) of the Constitution provides that no person who is arrested shall be denied the right to consult a legal practitioner of his choice and to defend him. In the Code of Criminal Procedure referred to in section 304, this legal right is also valid. The court has held that this privilege accrues to the accused person from the time of arrest and he has a lawyer's right of choice. The Supreme Court of India has found in a variety of cases, the extent of the right of prisoners or inmates to have interviews with family members, friends, and lawyers. In *Dharambir vs. State of U.P.*, the court ordered the state government to allow family members to meet prisoners and to visit their families under safe conditions for prisoners at least once a year (1979 AIR 1595).

In *Hussainara Khatoon vs. Home Secretary, Bihar*, the Supreme Court held that it is the fundamental right of an accused person who for reasons such as poverty, indigence, or incommunicado condition, is unable to engage a lawyer and secure legal services to have free legal services given to him by the state and the state is under the Constitutional duty to provide such a lawyer. In the absence of free legal services, the trial can itself be vitiated as contravening Article 21 (1979 AIR 1369).

The court held that interviews with prisoners are important in *Sheela Barse vs. the State of Maharashtra*, as otherwise the correct information cannot be obtained, but such access has to be monitored and regulated (1983 AIR 378). The court held that the human rights horizon is expanding in *Jogindar Kumar vs. State of U.P.*, and

at the same time, the crime rate is also rising and the court has received complaints about abuses of human rights due to indiscriminate arrests. The court noted that the right to have others updated exists (1994 AIR 1349).

#### **4.9 Narco Analysis/Polygraph/Brain Mapping**

The Supreme Court has ruled Narco Analysis, Polygraph Test, and Brain Mapping illegal and violative of human rights in *Selvi vs. State of Karnataka*. This decision is very detrimental to various investigation authorities as it will impede the prosecution of the investigation, and with this new status, many suspected criminals will escape conviction. But the apex court further clarified that when he/she agrees to them a person can only be subjected to such tests. The results of the tests would not be admissible in court as evidence, but can only be used to further the investigation. The Narcoanalysis Polygraph test and Brain mapping emerged as favoured instruments of investigative agencies around the world to extract the facts from the accused with the progress of technology combined with neurology. But finally, voices of criticism from human rights groups and individuals exposed to such assessments were heard. They were labelled as an atrocity to the human mind and a violation of an individual's right to privacy. The Supreme Court has agreed that the tests at issue are contrary to Article 20 (3), which provides that a person cannot be compelled to submit evidence against him. The Court also ordered the investigative agencies to strictly comply with the instructions of the National Human Rights Commission when performing the tests. In many cases, these experiments were previously used for the Arushi Talwar Murder Case, Nithari Murder Case, Abdul Telagi Case, Abu Salem Case, Pragya Thakur (Bomb Blast Case), etc., which generated a lot of public interest (AIR 2010 SC 1974).

#### 4.10 Bail, Bonds, and Sureties

The rule of bail is an integral component of the process under criminal law and the right to bail is subject to legislative requirements. The Criminal Procedure Code, 1973, aims to liberalize the provisions for bail. Bailable and non-bailable crimes are categorized specifically. While bail can be given in all types of offences, the grant of bail in the case of non-bailable offences is by way of concession to the criminal which at the discretion of the judge, may be awarded to protect the interest of justice. A meticulous judicial exercise to fulfill the twin purposes of social defence and individual rights includes the process of granting or denying bail.

A mason named Moti Ram appealed to the Supreme Court in *Moti Ram and Ors vs. State of Madhya Pradesh* that he was unable to secure his release despite being granted bail by the District Court because the Chief Judicial Magistrate set an exorbitant amount of Rs 10,000 as the guarantee amount. Moti Ram said that because his brother resided in another district and his properties were located there the magistrate refused the protection provided by his brother. Moti Ram wanted either to decrease the guarantee amount or order his release on a personal bond by the Supreme Court. It had to be determined by the Court:

- i. Whether a person can be released on bail on a personal bond under the Cr.PC 1973 without having to get other people to stand for him as security?
- ii. The criteria for fixing the bail amount, and
- iii. Whether a surety offered by a person can be rejected because he resides in a different District or State or because his property is situated in a different District or State?

The Supreme Court observed that,

*“The consequences of pre-trial detention are grave. Defendants presumed innocent are subjected to the psychological and physical deprivations of jail life, usually under more onerous conditions than are imposed on convicted defendants. The jailed defendant loses his job if he has one and is prevented from contributing to the preparation of his defence. Equally important, the burden of his detention frequently falls heavily on the innocent members of his family.”*

The court recognized that for minor crimes, many poor people are forced into cellular servitude because trials never end, and bail sums are fixed beyond their meager means. In the justice market, the oppressed are being priced out of their rights. The victims are invariably from deprived parts of society, belonging to linguistic or other minorities, or from far corners of the world, whenever disproportionate sums are set as security for bail. There is no penalty for regional discrimination in any law, such as not accepting assurances from another part of the country or not accepting a declaration in a language other than that spoken in the region.

India is not a conglomeration of untouchably different districts. It cannot be anticipated that a person accused of a crime in a place distant from his native residence would produce security assets that own property in the same district as the trial court. The Supreme Court argued that it is not possible to hinder the path of justice by provincial or linguistic difference. Besides, the Court noted that the bail provisions found in the Cr. P.C. It is in the interest of social justice, individual liberty, and indigent people that it must be understood liberally. To ask a mason to supply an

amount as high as ₹ 10,000 for release on bail shocks one's conscience. The court thus set out the following directives;

- An accused person should not be required to produce a surety from the same District especially when he is a native of some other place.
- Bail covers release on one's bond, with or without sureties.
- Bail should be given liberally to poor people simply on a personal bond if reasonable conditions are satisfied.
- The bail amount should be fixed keeping in mind the financial condition of the accused.
- When dealing with cases of persons belonging to the weak categories in monetary terms - indigent young persons, infirm individuals, or women - courts should be liberal in releasing them on their recognizance (AIR 1978 SC 1594).

#### **4.11 Parole and Furlough**

Parole is released on a license containing certain requirements and limitations under the supervision of a convicted prisoner. This is given after a majority of his term has been completed in prison. The inmates are allowed to visit their families for brief periods while serving their terms of incarceration by Furlough.

For humanizing prison administration, parole and furlough are elements of the penal and prison system, but the two have different functions. Furlough is a question of correctness, but it is not parole. Regardless of any clear cause, Furlough is to be given to the prisoner annually merely to allow him to maintain family and social relations and escape the ill-effects of continuous prison life. The furlough period is regarded as a remission of a sentence. On the other hand, parole is not a matter of law

and can be refused to a prisoner if, on reasonable grounds, the competent authority is convinced that the release of a prisoner on parole will be contrary to the needs of society or of the prison administration. The request for furlough release must be considered on the merits and must not be refused at the threshold.

The complainant, Sharad Mehta, was sentenced to life imprisonment for murder in October 1983 in the *Sharad Keshav Mehta vs. State of Maharashtra and Ors* case. He filed an application for release on furlough in October 1985, but the request was denied. In March 1986 and April 1986, he re-applied for release but was again rejected. In the Bombay High Court, he challenged the denial of furlough, arguing that the denial was in contravention of the rules set out in the Maharashtra Prison Manual. Disagreeing with the state government's claims, the Supreme Court noted that,

*“It is not open to the Home Department of the State Government to prescribe rules giving the facility of the release of the prisoner on furlough by one hand and then providing that the prisoner has no legal right to be released on furlough.”*

The court also stressed the distinction between parole and furlough. For such emergencies, parole is given and release on parole is a discretionary right. Release on furlough, however, is a significant right and accrues to accordance with certain conditions for an inmate. The idea of allowing a prisoner furlough is that the inmate should have an opportunity to come out and mix with society and that the inmate should not be held in jail indefinitely for a considerable long period. The Court thus formed the following directives;

- The right to be released on furlough is a substantial and legal right to be conferred on the prisoner.
- A prisoner can claim the right to be released on furlough after having complied with the requirements of the rules framed for the release of a prisoner on furlough.
- The Commissioner of Police must apply his mind to the facts of each case and should not as a formality submit a report denying the substantial and legal right of the prisoner.
- Unless the Commissioner of Police has material from which a reasonable inference can be drawn, the right to release on furlough cannot be deprived by resort to any exceptions to the rule (MANU/MH/0054/1988).

#### **4.12 Grievance Redressal**

Ideally, if prisoners had complaints against prison authorities, they would tend to rely on a fair and open system whereby they would be assured that the complaint would be considered and acted upon and that the complaints would not have to have any negative implications. Filing lawsuits and receiving redress will have a long-term effect on the justice system and help other inmates in prisons around the country under similar circumstances to illustrate the status of internal institutional transparency and develop mechanisms to prevent discrimination and abuses of human rights.

In this case, in *Sunil Batra vs. Delhi Administration*, the petition arose from a letter from a prisoner, Sunil Batra, complaining of the violent attack carried out by the head guard of Tihar Jail on another prisoner, Prem Chand. Owing to the forced insertion of a stick by the warder as a way of obtaining money from the complainant,

the victim sustained significant anal injury. The Supreme Court observed, “No iron curtain can be drawn between the prisoner and the Constitution”. The Court reaffirmed that judicial supervision of prisons is significant. It also noted that even among lawyers over the rights of inmates, there was a widespread prevalence of legal illiteracy.

The Supreme Court proposed that large notice boards showing the rights and obligations of prisoners in the local language could be hung up in prominent positions inside the prison to make the law open to prisoners. Discussing the importance of the Board of Visitors' institution, the Court claimed that the Board's judicial members had unique duties and had to serve as impartial administrators of the prison system.

The Supreme Court cited from the applicable handbook the roles and functions of visitors, including:

- i. Inspection of barracks, cells, wards, work shed, and other buildings of the jail.
- ii. Inspection of the cooked food,
- iii. Ascertain compliance of set standards for health, hygiene, and sanitation,
- iv. Inquire whether any prisoner is illegally detained or detained for an undue length of time while awaiting trial, and
- v. Examine jail registers and records.

The Supreme Court issued the following directives in this case to the State and the Prison Staff:

- Grievance deposit boxes shall be maintained by or under the orders of the district magistrate and the session's judge, within 3 months of this judgment.
- These shall be opened as frequently as required and suitable action will be taken on the complaints made.
- District Magistrates and Sessions Judges shall visit prisons in their jurisdiction, give opportunities for ventilating legal grievances, make expeditious inquiries, and take suitable remedial action.
- The prison authorities shall not in any manner obstruct or none cooperate with the reception of or inquiry into the complaints by the judicial officers, and if they do, prompt punitive action must follow.
- Judicial appraisal by the Session's Judge shall be required to impose any additive punishment including:
  - i. solitary or punitive cell,
  - ii. Hard labour,
  - iii. Dietary change,
  - iv. Denial of privileges and amenities, and v. transfer to other prisons with penal consequences (AIR 1980 SC 1579).

#### **4.13 Prison Labour and Wages**

The use of inmates in meaningful work has been identified as one of the best ways to bring about the rehabilitation of criminals. It would be good for their physical and mental health to keep the inmates active in meaningful work. Whenever inmates are forced to work in a jail, salaries must be charged at a fair rate. There should be no trivial or below minimum wages at the wage rate.

*State of Gujarat and another vs. Hon'ble High Court of Gujarat*, multiple appeals were filed by some State Governments challenging their respective High Courts' judgments on the issue of wages of prisoners. The State Governments were in agreement with the view that the existing pay rates charged to prisoners are too poor and must therefore be increased. The key question to be answered by the Supreme Court was whether to pay salaries for such jobs at the rates mandated by the Minimum Wages Law to inmates who were forced to do work as part of their punishment.

Noting that there are four types of inmate visits undertrials inmates, convicted prisoners, those held in jail as a protective measure, and those in custody for failure to pay a fine, the Court ruled that only convicted prisoners should be expected to do prison work. The Court further observed that unless they volunteer to work, individuals sentenced to simple imprisonment cannot be expected to work. Therefore only those convicted inmates who are sentenced to rigorous imprisonment may by statute inflict hard labour on prison authorities. On the issue of the quantum of wages, the Court declared that it should be appropriate for the government to deduct from the minimum wages a fair percentage of wages from the expenditures incurred by the State for the provision of food, clothing, and other facilities to prisoners. On the fixing of wages, the Court addressed the report of the Mulla Committee, citing that wage rates should be equal and equitable and not merely nominal or insignificant. In order to achieve a broad uniformity in the pay structure in all prisons in each state and Union territory, these wages should be standardized. The Court laid down the following directives:

- It is lawful to employ prisoners sentenced to rigorous imprisonment to do hard labour whether he consents to do it or not.
- Jail officials may permit other prisoners to do any work which they choose to do, provide such prisoner requests for that purpose.
- The prisoners must be paid equitable wages for the work done by them.
- To determine the quantum of equitable wages payable to prisoners, the State Government shall constitute a wage fixation body for making recommendations.
- The concerned State should consider making laws for setting apart a portion of the wages earned by the prisoners to be paid as compensation to deserving victims of the offence for which the prisoner was convicted (AIR 1998 SC 3164).

#### **4.14 Visitorial Role of Judiciary**

The proposal to nominate officials and non-officials to act as prison visitors seems to us to be a very valuable aspect of the Indian prison administration system. First of all, it guarantees the presence of an agency of free and impartial monitors whose visits serve as an assurance to the government and the public that the laws of the Prisons Act and Prison Manuals are properly followed and that violations, if they were to occur, will be revealed quickly (Jain, 2016).

A lifer lodged in the Tihar Central Jail, New Delhi Kaushik, in ***Rakesh Kaushik vs. Superintendent Central Jail***, moved the quasi-habeas corpus petition in which he bitterly complains about facts and figures, of fear and horror, physical and psychic let loose on him and other prisoners by a crypto-criminal combination of senior officials and superior prisoners, thus making the prison life within that walled

world such as trauma and torment. He also claimed that a drug racket was being run, as well as alcoholic and aggressive misconduct by gangs and that this mix of illegal activity was defeating the entire purpose of reforming sentences.

Despite the various guidelines on prison reforms provided by it, the Court expressed concern over the worsening of conditions in Tihar Jail. It noted that such ignorance did not prevent the court's decision to run into prisons and convince compliance, although the opposition was tough, however big the officials were. The Court ordered the State to comply with the action-oriented findings expressed in the case of Sunil Batra. Some major ones have been reiterated, including:

- i. The nomination of lawyers by the judiciary to visit prisons as part of the visitorial and supervisory judicial role,
- ii. Provision of grievance deposit boxes in every prison,
- iii. Periodical prison visits by District Magistrates and Sessions Judges,
- iv. No solitary or punitive cell, no other punishment or denial of privileges without a judicial appraisal by the Session's Judge, and
- v. Preparation of Prisoners' Handbook in Hindi and circulation of copies among prisoners to create awareness. It emphasized that there can be human rights conscious reform in the prison only when there is a transformation in the awareness of the top brass, introduction of new techniques instilling dignity and mutual respect among prisoners, and curative techniques pervade the staff and inmates.

This Court directed the District and Sessions Judge to hold an open inquiry within the jail premises to enquire into the allegations contained in the petition. Following instructions were included such as:

- The judge shall ascertain whether the directions given in *Sunil Batra's Case* are substantially complied with and where there is the default, enquired into the reasons thereof.
- Being a visitor to jail, it is part of his visitorial functions to acquaint himself with the condition of tension, vice and violence, and prisoner grievances.
- The Sessions Judge's attention should not be exclusively on the warden and prison guards but also on the medical officers (AIR 1981 SC 1767).

#### **4.15 Prison Conditions and Facilities**

There was no need to identify inmates at the moment when the reaction to the crime was solely punitive, and they were all flocked together in a single jail. However, this method of singular prosecution of prisoners transformed the jails of all kinds of vices into a living hell on earth. The notion of individualization of inmates attracted the attention of penologists towards the end of the 19th century, and this theory has since been firmly established in practice. The cardinal principle of contemporary penology has now been the individualization of an inmate as a technique of his recovery. An objective classification of prisoners according to unequal treatment has been carried out by contemporary penologists. While being lodged in high-security jails, in order to improve them, contemporary inmates are put in quasi-penal and even non-penal facilities. Inmates are now categorized according to the care they are most likely to react to most favourably.

In this case, the petition was filed in the High Court of Kerala by a convict lodged in Thiruvananthapuram Central Jail complaining of the sub-human conditions prevailing in the prison, *A Convict Prisoner in the Central Prisoner vs. State of Kerala*. He also complained of prison officials' connivance with some inmates when

certain convicts were free to do as they wanted, making others feel outraged and neglected. They were turned into hardcore criminals by the interaction of first-time offenders with repeat offenders and the presence of homosexuality and other types of physical attacks in prison.

The Supreme Court noted that,

*“With imprisonment, a radical transformation comes over a prisoner, which can be described as prisonisation. He loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems resulting from loss of freedom, status, possessions, dignity, and autonomy of personal life.”*

The court noted that while life in prison is not supposed to be the same in the free world, the human dignity of the prisoner must, in all circumstances, be preserved. Imprisonment can strip a person of certain aspects of life, but he does not become a non-person, and it is important to give him the rights that human dignity demands and circumstances justify. The Court thus formed the following directives;

- The State shall build a sufficient number of prisons to accommodate prisoners. It should also consider the construction of open jails within the state.
- High-security prisons shall be built to house the category of prisoners who are considered dangerous.
- The State shall effectively implement segregation, keeping habitual offenders away from fresher's, to avoid the possibility of hardcore criminals turning jails into schools of crime.

- The State will ensure that short-term appointments of prison staff are not made and that adequate trained staff is provided in jails, keeping in view the needs of security.
- The State will take appropriate action to pay reasonable wages to prisoners so that motivation for work is generated.
- The State will consider the possibility of registering societies for managing economic activities in jails on a profitable basis.
- The State may consider the advisability of avoiding short term imprisonment and simple imprisonment, wherever possible. Necessary statutory amendments could be thought of, substituting short term sentences with free work or work with regulated wages.
- The registry shall make appropriate arrangements for providing a meeting place in the premises of the High Court's where prisoners can meet their counsel and give instructions by prior appointment. For this purpose, a desk in the Criminal Section can be considered.
- Sufficient provision will be made to segregate civil prisoners and military prisoners, from prisoners convicted of criminal charges.
- Proper arrangements will be made for the escort of prisoners from jails to courts and back.
- A rational parole policy must be evolved by the state.
- Blades for shaving, sterilized needles in dispensaries, and sufficient fans should be provided. Sanitary napkins that are not included in the clothing supplied to female prisoners, should also be supplied.
- Necessary facilities for the jail staff must be provided, as a congenial working environment alone can ensure a contented service.

- Reservation of a nominal percentage of jobs for convict prisoners of good behaviour can be an incentive and it would be consistent with the concept of rehabilitation.
- Educational and recreational facilities, within reasonable limits, may be provided in prisons (1993 Cri LJ 3242).

An analysis of Supreme Court Cases speaks of the fact that the decisions of the Indian Judiciary regarding the protection of the human rights of prisoners shows that in situations where the executive and legislature have failed to resolve the problems of the people, the judiciary has played the role of saviour. The Supreme Court has come forward to take corrective steps and provide the executive and legislature with the requisite guidance. It is evident from the perusal of the above contribution that the Indian Judiciary was very receptive to the defence of the human rights of the people and was alive. It has forged new instruments and devised new remedies through judicial activism to vindicate the most valuable of the precious human right to life and personal liberty.

Although judicial sensitivity and activism are appreciable, it must be borne in mind that the criminal justice system of the country still suffers from substantive and procedural deficiencies; once a citizen is arrested, he/she could be held in custody for years before his/her case comes up for a trial, even if on a relatively minor charge. Many that are rich will also work their way through the many barriers lying on the path to justice. An experience with the law is very much the stuff of nightmares for an average person. The Indian judiciary has a long way to go to achieve the goal of social justice. Although prisoners have been granted different rights, they do not in reality, reach the prisoners. The right to a speedy trial is an outstanding example. The

delivery of justice is impeded by a huge backlog of cases and this is a breach of the rights of the court itself. Likewise, free legal aid is an idealistic objective, but far from reality at present. Many inmates do not know about the facilities and are unable to use them.

Judicial conscience recognized that the prisoners are also human beings and that the purpose of imprisonment is to reform them rather than to make them hardened criminals. From the perusal of the above contribution, it is evident that the Indian Judiciary has been very sensitive and alive to the protection of the Human Rights of the prisoners. It has, through judicial activism, initiated new tools and devised new remedies to protect the most precious Human Rights of the prisoners. Despite the deficiencies in the existing enactments, the judiciary in its creative spirit had contributed much to prison justice thereby ensuring the fundamental human rights of prisoners.

## **CHAPTER - 5**

### **ISSUES AND CONCERNS OF HUMAN RIGHTS PRACTICES IN THE PRISONS OF SIKKIM: AN EMPIRICAL STUDY**

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The fact that prisoners are a subject of human rights abuses is a sad truth. Every day their human rights are being abused around the world. Prisoners are treated inhumanely, they are harassed and humiliated by prison officials as well as fellow inmates, they have little access to proper health care, inadequate food, insufficient clothing and bedding, and they are held in overcrowded conditions where living conditions are unbearable. These are only a handful of examples of prison mistreatment to be found all over the world. Also in some of the richest countries, prison services are no exception to this. As the situation is today, many prisoners become much more damaged and hardened criminals after having been held behind bars.

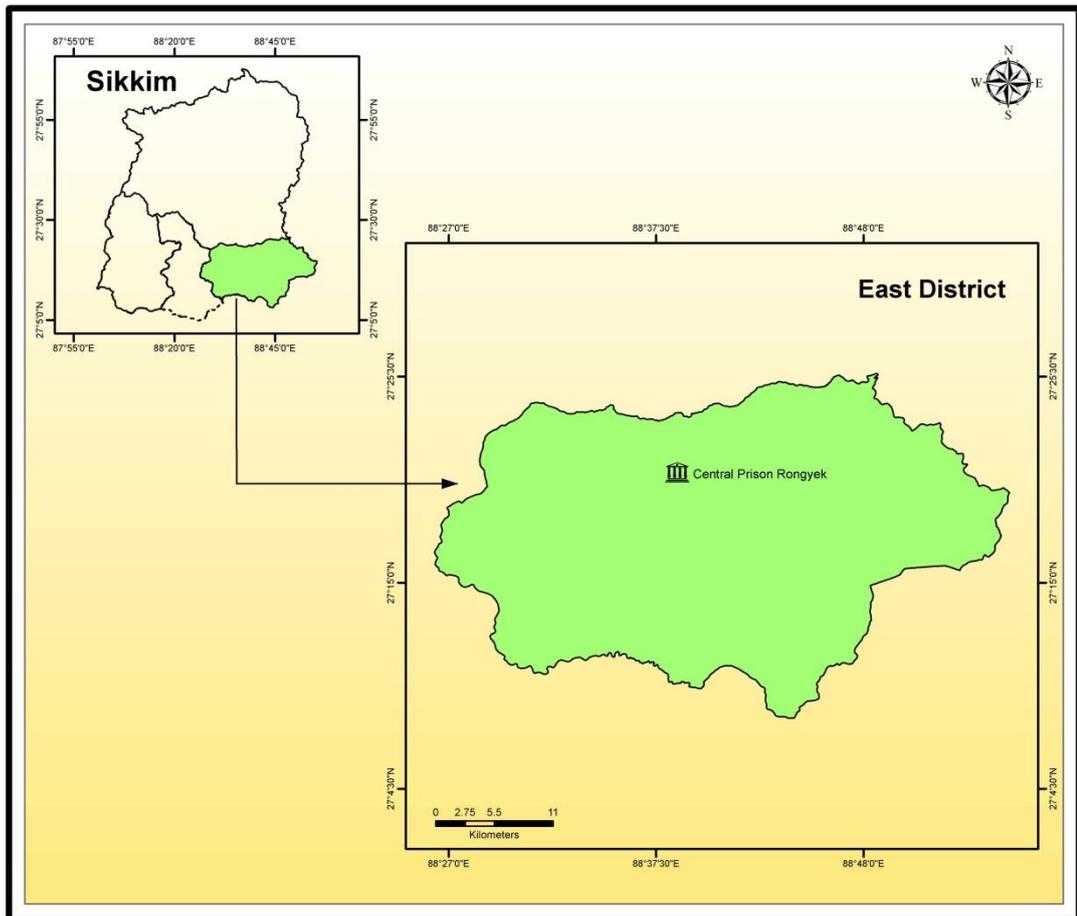
In this chapter, an attempt has been made to analyse the human rights practices of prisoners into three sections. Section-5.6 presents an evaluation of prisoners' responses to human rights practices in the Central Prison of Sikkim (Rongyek). Section-5.7 presents an evaluation of prisoners' responses to human rights practices in the District Prison of Sikkim (Namchi). Section-5.8 presents a comparative study of human rights practices in the Central and District Prisons of Sikkim.

## **5.1 Prison System in Sikkim: History and Development**

The Central Prison of Sikkim (Rongyek) is located on a patch of land measuring 26 acres on the slopes of picturesque hills at an altitude of 6200 to 6500 feet in the outskirts of Gangtok. Thirteen (13) acres of land area within the perimeter walls and the rest lie outside. The Sikkim State Prison falls under the jurisdiction of the Home Department. The Prison Administration in the State is headed by the Senior Superintendent of Police on deputation from the Police Department as Head of the Prison Administration who is assisted by the executive cum correctional officers consisting of the various ranks and files like Additional Superintendent of Police, Jailor, Sub-Jailor, Assistant Sub-Jailor, Head Warder, Warders, and Warder Drivers. There are two prisons in Sikkim one is the Central Prison of Rongyek in Gangtok, East Sikkim and another one is District Prison Namchi which is located at Boomtar, South Sikkim.

The prison system has existed since the time of monarchical rule in Sikkim. Unconfirmed information reveals that the proper prison system came into existence in Sikkim in 1936 and later a prison was set up at Chandmari near Enchey Monastery, Gangtok with a capacity of 35 inmates, and at that time the strength of prison staff was around seven. In those days the jail used to be looked after by the Land Revenue Department with District Magistrate of East Sikkim, Gangtok as ex-officio Superintendent of Prison. Later the charge of the prison was taken over by the Home Department and the District Magistrate of East District; Gangtok continued to be the Ex-officio Superintendent of Prison. With time the number of prisoners increased and so also the strength of prison staff. In 1995 when the jail was shifted from Chandmari to Rongyek, the number of prison inmates was 65 with 25 prison staff.

**Figure 5.1: Location Map of Central Prison of Sikkim (Rongyek)**



**Source:** Digitized from Google Earth Pro  
Generated on ArcMap 10.2.0

## **5.2 Staff Position at Central Prison of Sikkim (Rongyek)**

Presently the Central Prison of Sikkim (Rongyek) is headed by one Senior Superintendent of Police and assisted by one Additional Superintendent of Prison; both of them are on deputation from Sikkim Police. All the members of the prison staff have received basic training before deployment for duty from the police department. This apart, some of them are also attending courses outside Sikkim which are organised by the Bureau of Police Research and Development, Ministry of Home Affairs. The present sanctioned and existing strength of the cadre post of Central Prison of Sikkim are reproduced below-

**Table 5.1: Staff Position under the Cadre Post at Central Prison of Sikkim**

SL.No	Name of Post	Sanctioned Strength	Existing Strength	Vacancies	Total
1.	Sr. Superintendent of Police	01	01	-	01
2.	Superintendent of Prison	01	-	01	-
3.	Addl. Superintendent of Prison	01	01	-	01
4.	Assistant Superintendent of Prison	01	01	-	01
5.	Jailor	01	-	01	-
6.	Sub-Jailor	05	-	05	-
7.	Assistant Sub Jailor	08	08	-	08
8.	Head Warder	16	15	01	15
9.	Head Warder Driver	-	01	-	01
10.	Warder	80	20	60	20
11.	Warder Driver	15	04	10	04
12.	Cook	03	04	-	04
13.	Cleaners	02	01	01	01
14.	Water Carrier	02	-	02	-
15.	Head Cook	01	-	01	-
16.	Barber	01	-	01	-
<b>Grand Total</b>		<b>138</b>	<b>56</b>	<b>83</b>	<b>56</b>

**Source:** Fieldwork, September 2019 to January 2020

Table 5.1 illustrates the information regarding the staff position under the cadre post in the Central Prison of Sikkim Rongyek. It shows that 1 post of Superintendent of Prison, 1 post of Jailor, 5 posts of Sub-Jailor are vacant. On the other hand, 1 Head Warders, 60 Warders, 10 Warders Driver, 1 Cleaner, 2 Water Carrier, 1 Head Cook, and 1 Barber are still lying vacant respectively in the prison. These Warders were earlier working in the police department and were summarily dismissed for their indiscipline conduct. On reinstatement, they have been posted to the jail as Head Warders against vacancies in the rank of Warders. Posting officers and men with such adverse service records to the prisons may not be quite desirable.

Even after taking this excess strength, there remains a vacancy of 60 personnel in the Warders category, which requires to be filled up early. No regular institute for induction training of prison staff is available in the state. Those of them who have been inducted from the police department had received routine police training at the beginning of their career, which does not adequately equip them for discharging their duty in correctional institutions. Those recruited by the prison department from the open market were also being trained by the police. Many of the police personnel who were earlier working in the State Reserve Lines of Police Department followed by those men dismissed for their indiscipline conduct are posted in the prisons of Sikkim which shows that the existing staff may not be quite desirable to sensitize them to the rights of prisoners, their psychological and emotional needs, etc.

### **5.3 Prison Population at Central Prison of Sikkim**

Sikkim has four revenue districts but only two prisons. The North and West districts have no separate prison and prisoners remanded to custody from these districts are being accommodated in the Central Prison of Sikkim at Rongyek, Gangtok. Against a sanctioned capacity for 186 prisoners (165 males and 21 females), a total of 307 prisoners (300 males and 7 females), are lodged in Central Prison of Sikkim (Rongyek) as of 31<sup>st</sup> December 2019. Out of the total population, 148 convicts are 145 male and 3 female convicts are incarcerated. Similarly out of 159 undertrials prisoners 155 male and 4 female prisoners are lodged in the Central Prison of Sikkim.

**Table 5.2: Category Wise Distribution of Prisoners in Central Prison of Sikkim**

SL.No	Category of Prisoners		East	West	North	South	Total
1.	Convicts	Male	61 (42.06%)	35 (24.16%)	13 (8.96%)	36 (24.82%)	145 (100%)
		Female	01 (33.33%)	02 (66.67%)	00	00	03 (100%)
2.	Undertrials	Male	147 (94.84%)	00	08 (5.16%)	00	155 (100%)
		Female	04 (100%)	00	00	00	04 (100%)
<b>Grand Total</b>			<b>213</b>	<b>37</b>	<b>21</b>	<b>36</b>	<b>307</b>

Source: Fieldwork, September 2019 to January 2020

Table 5.2 illustrates the information regarding the total population of prisoners in the Central Prison of Sikkim. It shows that out of the total number of prisoners confined in the Central Prison of Sikkim the number of male convicts in the east district is 42 percent, 24 percent from the west, 9 percent from the north, and 25 percent from the south district respectively. Likewise, the female convicts from the east district are 33 percent and 67 percent from the west district respectively. In the same manner, the number of undertrials prisoners consists of 95 percent from the east district, and 5 percent undertrials prisoners from the north district respectively. Similarly, the female undertrials prisoners consist of 100 percent from the east district, and in another district, the number is zero. There are no undertrial prisoners lodged from the west and south districts in the Central Prison of Sikkim because there is a separate prison for west and south district prisoners at Namchi.

#### 5.4 Accommodation at Central Prison of Sikkim

In the Central Prison of Sikkim, there are a total of 11 numbers of wards/ barracks in the prison for convicts and undertrials including separate wards for the female prisoners which were meant for the political prisoners.

**Table 5.3: Barrack-wise Accommodation at Central Prison of Sikkim (Rongyek)**

SL.No	Barracks/ Wards	Status	Capacity	Occupied
1.	Barrack No - 1	Undertrials (M)	21	40
2.	Barrack No - 2	Undertrials (M)	21	41
3.	Barrack No - 3	Undertrials (M)	21	40
4.	Barrack No - 4	Undertrials (M)	16	32
5.	Barrack No - 5	Sick (M)	10	02
6.	Barrack No - 6	Convict (M)	10	28
7.	Barrack No - 7	Convict (M)	05	10
8.	Barrack No - 8	Convict (M)	10	28
9.	Barrack No - 9	Convict (M)	21	37
10.	Barrack No - 10	Convict (M)	30	42
11.	Barrack No - 11	Female UTPs+Convict	21	07
<b>Grand Total</b>			<b>186</b>	<b>307</b>

**Source:** Fieldwork, September 2019 to January 2020

Table 5.3 illustrates the information regarding barrack wise accommodation at the Central Prison of Sikkim. We can see from the table that the accommodation facilities in every barracks of the Central Prison the number of convicts and undertrials prisoners is almost double except barrack number 5 for male prisoners which is exclusively for sick and the barrack number 11 for female undertrials and convicts prisoners. In the Central Prison of Sikkim, only one toilet each is available inside 21/20 bedded wards/barracks in the male wards. The prisoners are not allowed

to use the toilet blocks outside their wards during night hours. There were however no separate bathroom cubicles inside their barracks and all the inmates had to manage within the toilet.

### 5.5 Prisoners Offences under IPC Sections at Central Prison of Sikkim

Notwithstanding Sikkim is well known as a peaceful state in the Indian Union and the number of crimes is minimal as compared to other states of India but the crime rate is increasing day by day in the state. In the Central Prison of Sikkim, the prisoners consist mainly of Sexual Offences, Murder; Drug trafficking, Cheating, Theft, and Offences under Arms Act.

**Table 5.4: Distribution of Prisoners under IPC Sections at Central Prison of Sikkim**

SL.No	Sections	Convicts		
		Male	Female	Total
1.	302 IPC (Punishment for Murder)	49 (94.23%)	03 (5.76%)	52 (100%)
2.	307 IPC (Attempt to Murder)	09 (90%)	01 (10%)	10 (100%)
3.	376 IPC (Punishment for Rape)	16 (100%)	00	16 (100%)
4.	379 IPC (Punishment for Theft)	18 (100%)	00	18 (100%)
5.	419 IPC (Punishment for Cheating)	14 (93.33%)	01 (6.66%)	15 (100%)
6.	Sikkim Anti Drugs Act (SADA), 2006	58 (96.66%)	02 (3.33%)	60 (100%)
7.	Protection of Children from Sexual Offences (POCSO Act, 2012)	135 (100%)	00	135 (100%)
8.	Arms Act, 1959	01 (100%)	00	01 (100%)
<b>Grand Total</b>		<b>300</b>	<b>07</b>	<b>307</b>

Source: Fieldwork, September 2019 to January 2020

Table 5.4 illustrates the information regarding the list of prisoners under various sections of the Indian Penal Code (IPC) incarcerated at the Central Prison of Sikkim. Out of a total number of convicts that is 98 percent of male and 2 percent of female prisoners are incarcerated due to IPC 302 (Punishment for Murder), similarly, 90 percent of male and 10 percent of female incarcerated due to 307 IPC (Attempt to Murder), Likewise 100 percent of male prisoners are lodged due to 376 IPC (Punishment for Rape), and 379 IPC (Punishment for Theft) from the total population. 93 percent of male prisoners and 7 percent of female prisoners are due to 419 IPC (Punishment for Cheating). In the sections, (SADA) Act, 2006 the percent of male prisoners is 97 and 3 percent of females respectively. 100 percent of male prisoners incarcerated in the Central Prison of Sikkim is due to the Protection of Children from Sexual Offences (POCSO Act, 2012) and the Arms Act, 1959 during research.

## **5.6 Issues and Concerns of Human Rights Practices in Central Prison of Sikkim**

### **5.6.1 Social Profile of Prisoners at Central Prison of Sikkim (Rongyek)**

The social profile of respondents includes age, gender, marital status, place of origin, and social group. Social profile constitutes the basic socio-economic data by which we can understand the bio-statistics of the respondents. This basic data gives us the starting point of understanding the respondents. These details furnish the basic frame of reference regarding the physiological and geographical status of the respondents and it's very important to formulate the first impression about the respondents.

**Table 5.5: Age-wise Distribution at Central Prison of Sikkim**

<b>SL.No</b>	<b>Age Group (in years)</b>	<b>Number of Prisoners</b>	<b>Percentage</b>
<b>1.</b>	18-30	127	41.4%
<b>2.</b>	31-50	137	44.6%
<b>3.</b>	51-60	25	8.1%
<b>4.</b>	61-80	18	5.9%
<b>Grand Total</b>		<b>307</b>	<b>100%</b>

**Source:** Fieldwork, September 2019 to January 2020

Table 5.5 illustrates the information regarding the age-wise distribution of prisoners in the Central Prison of Sikkim. In the Prison of Sikkim, the range of the age starts from eighteen (18) years and above. The number of prisoners between the age group of 18-30 years consists of 41 percent, similarly, the age group between 31-50 years was 45 percent, the age group between 51-60 years was 8 percent, and the age between 61-80 years was 6 percent. Out of the total population, the majority of prisoners predominantly dominated by the young offenders of the age group ranges from 18 to 50 years in the Central Prison of Sikkim.

**Table 5.6: Gender-wise Distribution at Central Prison of Sikkim**

<b>SL.No</b>	<b>Gender</b>	<b>Number of Prisoners</b>	<b>Percentage</b>
<b>1.</b>	Male	300	97.7%
<b>2.</b>	Female	07	2.3%
<b>Grand Total</b>		<b>307</b>	<b>100%</b>

**Source:** Fieldwork, September 2019 to January 2020

Table 5.6 illustrates the information regarding the gender-wise distribution of prisoners in the Central Prison of Sikkim. The total prisoners consist of three hundred (300) males that are 98 percent and seven (7) females which is only 2 percent of the

total population. We can see from the table that the female respondents are predominantly dominated by the male population in the Central Prison of Sikkim.

**Table 5.7: Marital Status at Central Prison of Sikkim**

SL.No	Marital Status	Male	Female	Total
1.	Married	97 (96%)	04 (4%)	101 (100%)
2.	Widow/Widower	00	00	00
3.	Divorced	00	00	00
4.	Unmarried	203 (98.55%)	03 (1.45%)	206 (100%)
5.	Separated	00	00	00
<b>Grand Total</b>		<b>300</b>	<b>07</b>	<b>307</b>

Source: Fieldwork, September 2019 to January 2020

Table 5.7 illustrates the information regarding the marital status of prisoners in the Central Prison of Sikkim. Out of the total number of the population, the prisoners confined in the Central Prison of Sikkim 96 percent of male prisoners are married, and from the female side, only 4 percent are married. Similarly, 99 percent of the male are unmarried and 1 percent of female prisoners are unmarried out of the total number of female prison inmates but widow, divorced, and separated represents zero percent of the total population.

**Table 5.8: Region-wise Distribution at Central Prison of Sikkim**

SL.No	Region	Number of Prisoners	Percentage
1.	Urban	121	39.4%
2.	Rural	186	60.6%
<b>Grand Total</b>		<b>307</b>	<b>100%</b>

Source: Fieldwork, September 2019 to January 2020

Table 5.8 illustrates the information regarding the region (urban/rural) wise distribution of prisoners in the Central Prison of Sikkim. Out of the total population,

39 percent of prisoners are confined in the prison from urban areas whereas 61 percent belong to rural areas. It indicates that the total population of the Central Prison of Sikkim mainly consists of the rural population. It can be inferred that the rural population has lesser opportunities, thus is more susceptible to commit crimes.

**Table 5.9: Religion-wise Distribution at Central Prison of Sikkim**

SL.No	Religion	Number Of Prisoners	Percentage
1.	Hindu	167	54.4%
2.	Buddhist	91	29.6%
3.	Christian	41	13.4%
4.	Muslim	08	2.6%
<b>Grand Total</b>		<b>307</b>	<b>100%</b>

**Source:** Fieldwork, September 2019 to January 2020

Table 5.9 illustrates the information regarding the religion-wise distribution of prisoners in the Central Prison of Sikkim. The prisoners mainly fall under four religious groups that are Hindu, Buddhist, Christian, and Muslim in Central Prison of Sikkim. A total of 54 percent of the total prisoners practiced Hinduism, 30 percent Buddhism, 13 percent Christianity, and 3 percent of prisoners belong to the Muslim community. The numbers of prisoners are predominantly dominated by Hindu.

**Table 5.10: Social Group at Central Prison of Sikkim**

SL.No	Social Group	Number of Prisoners	Percentage
1.	General	87	28.3%
2.	Other Backward Class	74	24.1%
3.	Scheduled Tribe	105	34.2%
4.	Scheduled Caste	41	13.4%
<b>Grand Total</b>		<b>307</b>	<b>100%</b>

**Source:** Fieldwork, September 2019 to January 2020

Table 5.10 illustrates the information regarding the social group of prisoners in the Central Prison of Sikkim. From the total population of Central Prison, 28 percent comprises the general category, 24 percent from other backward classes, 34 percent are from schedule tribe and 13 percent belong to schedule caste.

**Table 5.11: Educational Qualification at Central Prison of Sikkim**

SL.No	Educational Qualification	Number of Prisoners	Percentage
1.	Illiterate	139	45.3%
2.	Primary	113	36.8%
3.	Secondary	34	11%
4.	Senior Secondary	15	4.9%
5.	Undergraduate	06	2%
<b>Grand Total</b>		<b>307</b>	<b>100%</b>

**Source:** Fieldwork, September 2019 to January 2020

Table 5.11 illustrates the information regarding the educational qualification of prisoners in the Central Prison of Sikkim. Out of the total 307 prisoners, 45 percent of prisoners are illiterate, 37 percent of prisoners were having education up to the primary level, and 11 percent of prisoners were in the education level of secondary. 5 percent of prisoners were up to the education level of senior secondary and only 2 percent of total prisoners graduated from Central Prison of Sikkim. It can be observed that with the increase in the educational qualification among the prisoners the incidence of crime decreases.

**Table 5.12: Occupational Distribution at Central Prison of Sikkim**

SL.No	Occupation Of Prisoners	Number Of Prisoners	Percentage
1.	Government Job	07	2.3%
2.	Private Job	39	12.7%
3.	Business	83	27%
4.	Unemployed	178	58%
<b>Grand Total</b>		<b>307</b>	<b>100%</b>

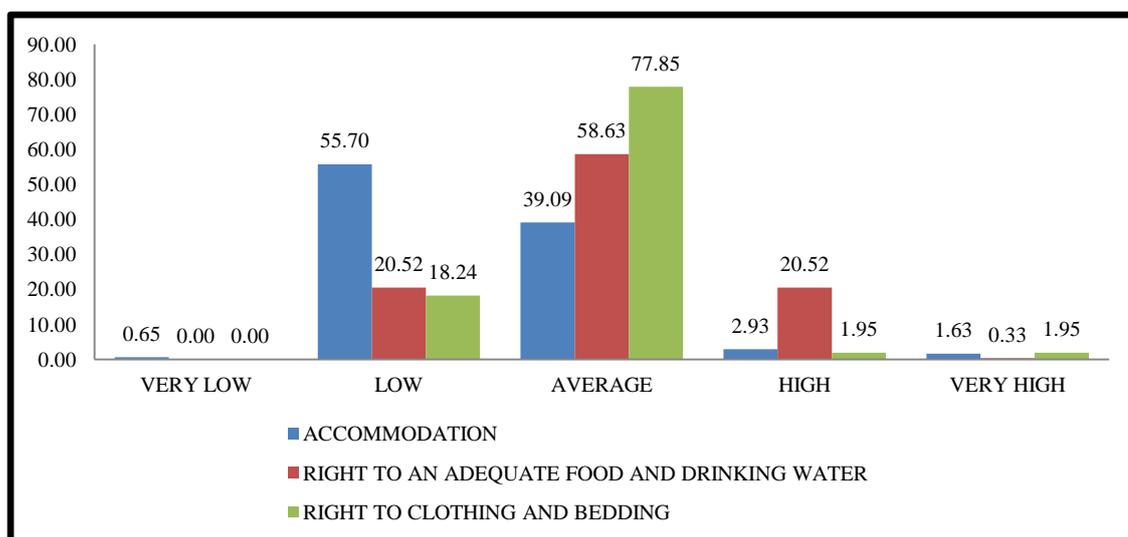
**Source:** Fieldwork, September 2019 to January 2020

Table 5.12 illustrates the information regarding the occupational distribution of prisoners in the Central Prison of Sikkim. From the total population in the Central Prison of Sikkim, only 2 percent of prisoners were employed under government jobs. 13 percent of the prisoners were employed in a private job. 27 percent of prisoners were engaged in small-scale business and 58 percent were unemployed before incarcerated in the prison. It can be inferred from the findings that lack of employment opportunities leads to a higher crime rate in society.

### 5.6.2 Right to an Adequate Standard of Living at Central Prison of Sikkim

The objective of this category is to underline the principle that prisoners have the right to an adequate standard of living and appropriate conditions of detention. These rights have been based on three components that are (a) Accommodation (b) Food and drinking water and (c) Clothing and bedding.

**Figure 5.2: Right to an Adequate Standard of Living at Central Prison of Sikkim**



**Source:** Fieldwork, September 2019 to January 2020

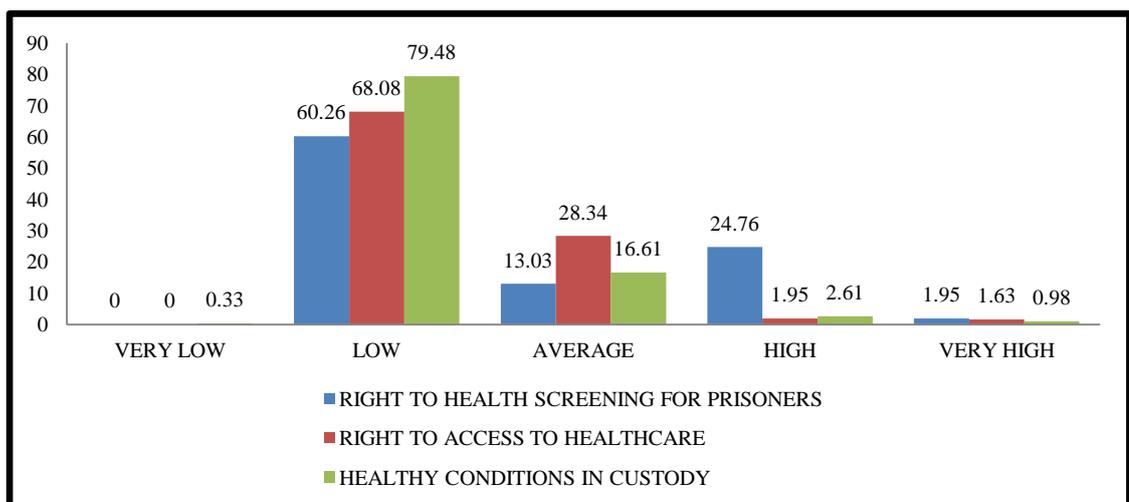
Figure 5.2 represents the information regarding human rights practices in the Central Prison of Sikkim based on the right to an adequate standard of living. We can

see from the figure that out of the total number of prisoners 56 percent of prisoners rated in low, 39 percent rated on average, 3 percent of prisoners rated in high, and 2 percent rated in very high in the category of accommodation. On the other hand in the category of right to adequate food and drinking water 20 percent of prisoners rated in low, 59 percent rate on average, and 21 percent rated in high. Similarly in the category of right to clothing and bedding 18 percent of prisoners rated in low, 78 percent rate on average, and 2 percent rated in high and 2 percent rated in very high in the Central Prison of Sikkim.

### 5.6.3 Health Rights of Prisoners at Central Prison of Sikkim

The objective of this category is to emphasize that proper health care is a basic right that applies to all human beings and the conditions of health care in prisons. These rights have been based on three components provided to them that are (a) Right to health screening for prisoners (b) Right to access to healthcare and (c) Healthy conditions in custody.

**Figure 5.3: Health Rights of Prisoners at Central Prison of Sikkim**



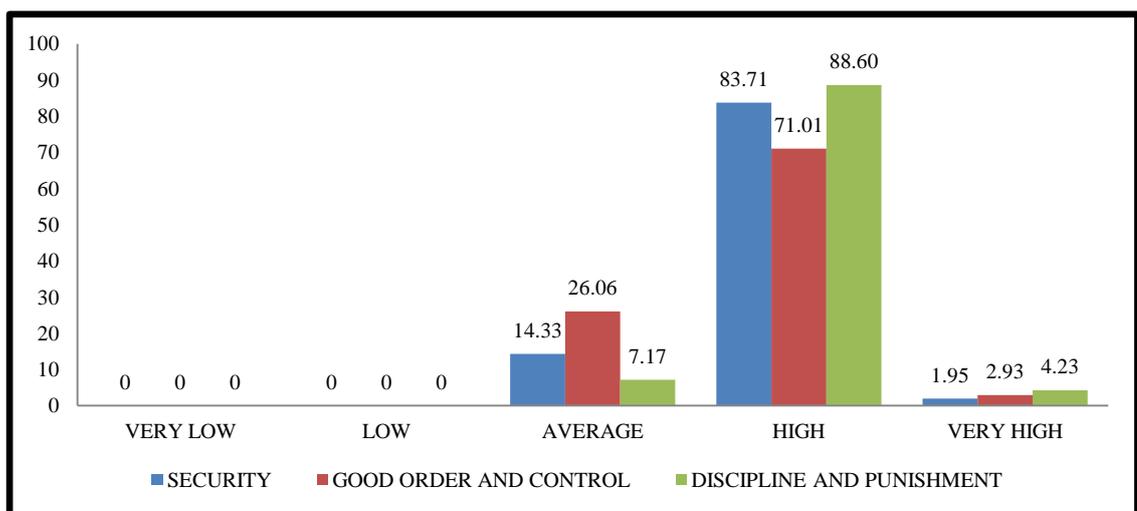
**Source:** Fieldwork, September 2019 to January 2020

Figure 5.3 represents the information regarding human rights practices in the Central Prison of Sikkim based on the health rights of prisoners. According to figures, out of the total number of prisoners 60 percent of prisoners rated in low, 13 percent rate on average, 25 percent of prisoners rated in high, and only 2 percent rated very high in the category of right to health screening for prisoners. On the other hand, the right to access healthcare 68 percent rated in low, 28 percent rate on average, 2 percent rated in high, and again 2 percent rated in very high. Similarly, 79 percent rated in low, 17 percent rated on average, 3 percent rated in high and 1 percent rated in very high in the category of healthy conditions in custody.

#### 5.6.4 Making Prisons Safe Places at Central Prison of Sikkim

The objective of this category is to demonstrate that there are three elements in ensuring that prisons are safe places and they cannot be harmed by the prison officials. These rights have been based on three components that are (a) Security (b) Good order and control and (c) Discipline and Punishment.

**Figure 5.4: Making Prisons Safe Places at Central Prison of Sikkim**



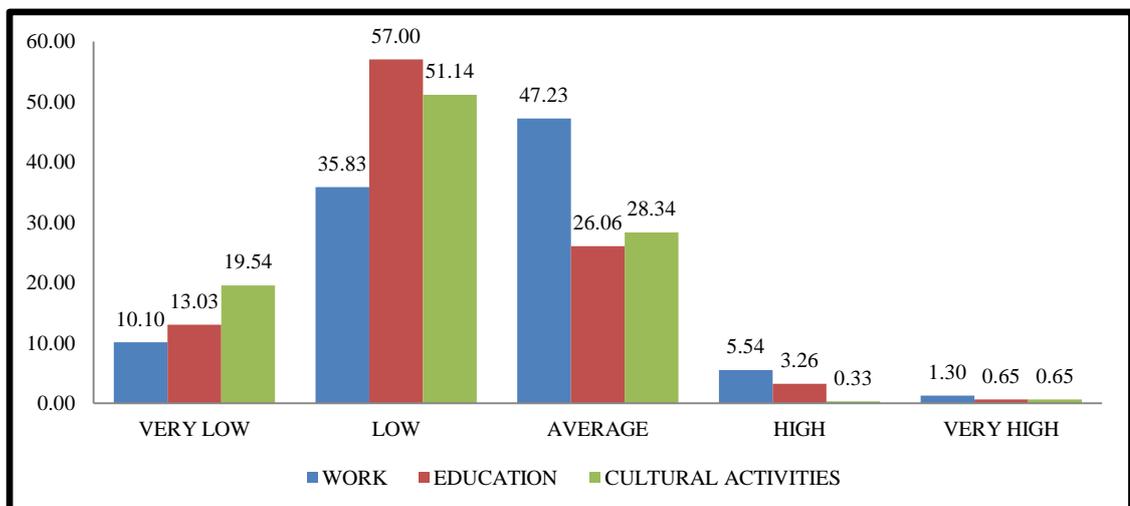
**Source:** Fieldwork, September 2019 to January 2020

Figure 5.4 represents the information regarding human rights practices in the Central Prison of Sikkim based on making prisons safe places. We can see from the figure that 14 percent of prisoners rated on average, 84 percent of prisoners rated in high, and 2 percent rated very high in the category of security. Similarly in the category of good order and control 26 percent of prisoners rated on average, 71 percent rated in high, and 3 percent of prisoners rated in very high. On the other hand, 7 percent of prisoners rated on average, 89 percent rated high and 4 percent rated very high in the category of discipline and punishment.

### 5.6.5 Making Best Use of Prison at Central Prison of Sikkim

The objective of this category is to underline that it is not the task of the prison administration to inflict further punishment on the prisoner. On the contrary, prisoners should be encouraged to use their time in prison to learn new skills, to improve their education, to reform themselves, and to prepare for eventual release. These rights have been based on three components that are (a) Work (b) Education and (c) Cultural activities.

**Figure 5.5: Making Best Use of Prisons at Central Prison of Sikkim**



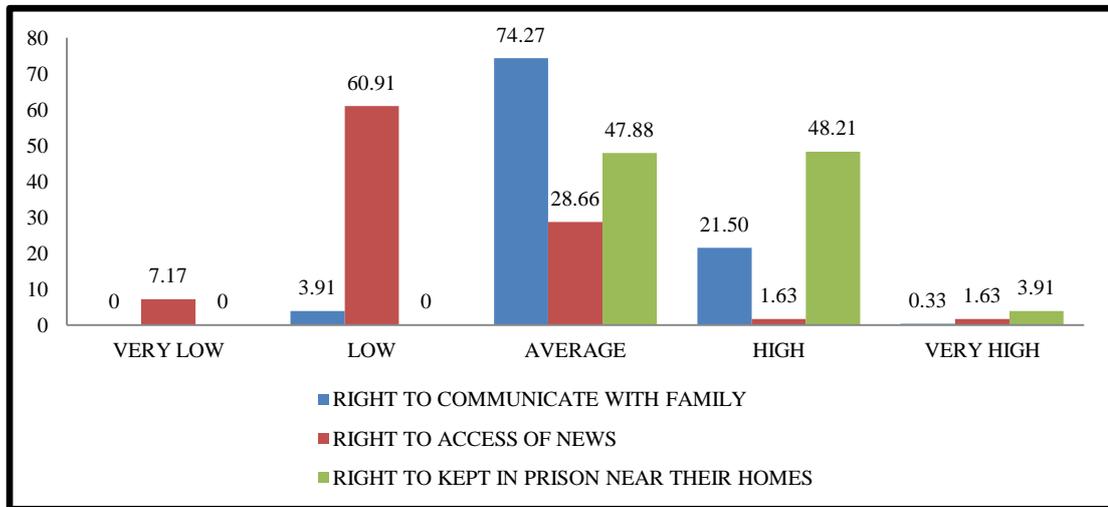
**Source:** Fieldwork, September 2019 to January 2020

Figure 5.5 represents the information regarding human rights practices in the Central Prison of Sikkim based on making the best use of prisons. It is evident from the figure that 10 percent of prisoners rated in very low, 36 percent of prisoners rated in low, 47 percent rated in average 6 percent rated in high, and only 1 percent of prisoners rated in very high in the category of work. On the other hand in the category of education 13 percent of prisoners rated in very low, 57 percent of prisoners rated in low, 26 percent of prisoners rated in average, 3 percent of prisoners rated in high, and 1 percent of prisoners rated in very high. Similarly, 20 percent of prisoners rated in very low, 51 percent of prisoners rated in low, 28 percent of prisoners rated on average, and 1 percent rated in very high from the total prisoners incarcerated in the Central Prison of Sikkim.

#### **5.6.6 Prisoners Contact with the Outside World at Central Prison of Sikkim**

The objective of this category is to emphasize that, despite being deprived of liberty, prisoners retain a right to have contact with their family and friends and the outside world, prisoners shall be kept informed of important items of news, and a prisoners request to be held in a prison near his or her home shall be granted as far as possible. These rights have been based on three components that are (a) Right to communicate with family (b) Right to access news and (c) Right to be kept in prison near their homes.

**Figure 5.6: Prisoners Contact with the Outside World at Central Prison of Sikkim**



**Source:** Fieldwork, September 2019 to January 2020

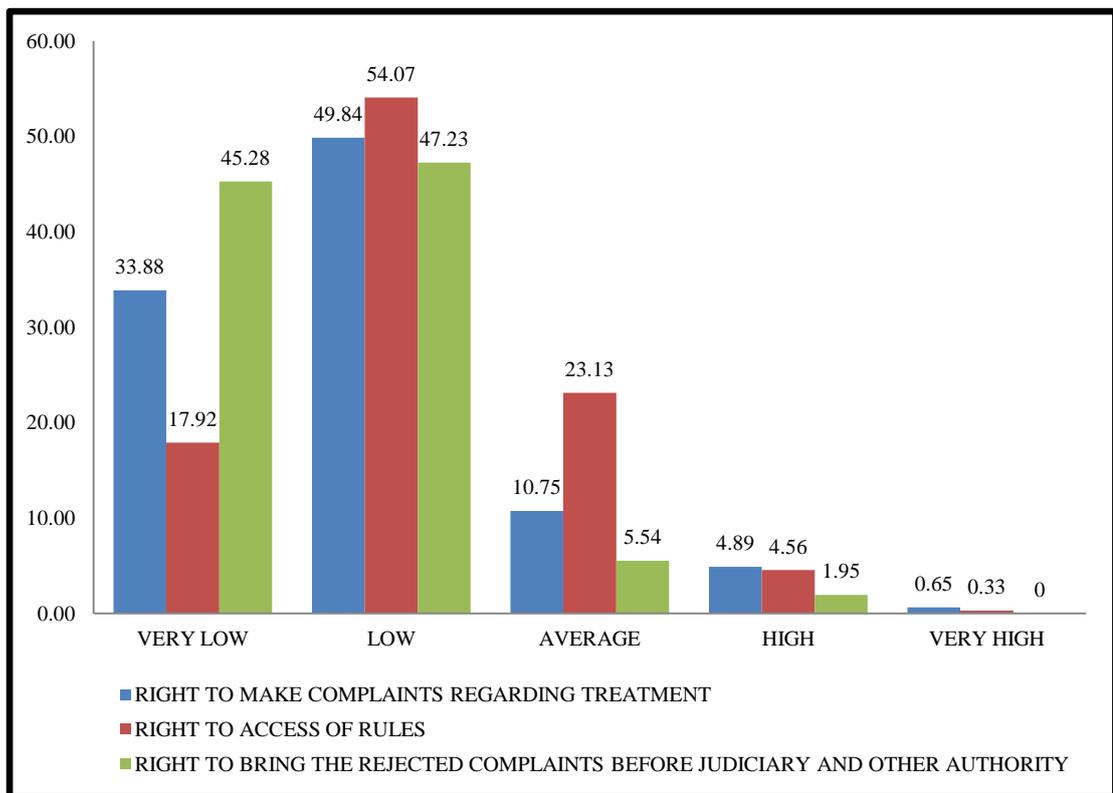
Figure 5.6 represents the information regarding human rights practices in the Central Prison of Sikkim based on prisoners' contact with the outside world. According to figures out of total prisoners in the category of right to communicate with family 4 percent of prisoners rated in low, 74 percent of prisoners rated on average, 22 percent of prisoners rated in high. Similarly 7 percent of prisoners rated in very low, 61 percent of prisoners rated in low, 29 percent of prisoners rated in average, 2 percent of prisoners rated in high, and again 2 percent of prisoners rated in very high in the category of right to access news. On the other hand in the category of right to be kept in prison near their homes 48 percent of prisoners rated on average, 48 percent rated in high, and 4 percent of prisoners rated in very high in the Central Prison of Sikkim.

### **5.6.7 Prisoners Complaints and Inspection at Central Prison of Sikkim**

The objective of this category is to emphasize on every prisoner shall have the right to make a complaint regarding his or her treatment and, unless the complaint is

frivolous, to have it dealt with promptly and, if requested, confidentially. If necessary, the complaint may be lodged on behalf of the prisoner by his or her legal representative or family. Every prisoner on admission shall be provided with written information on rules and on complaints and disciplinary procedures in a language that he or she understands. If necessary, these regulations should be explained orally. If a complaint is rejected or not responded to promptly, the complainant shall be entitled to bring it before a judicial or other authority. These rights have been based on three components that are (a) Right to make a complaint regarding his/her treatment (b) Right to access rules and (c) Right to bring the rejected complaints before the judiciary and other authority.

**Figure 5.7: Prisoners Complaints and Inspection at Central Prison of Sikkim**



**Source:** Fieldwork, September 2019 to January 2020

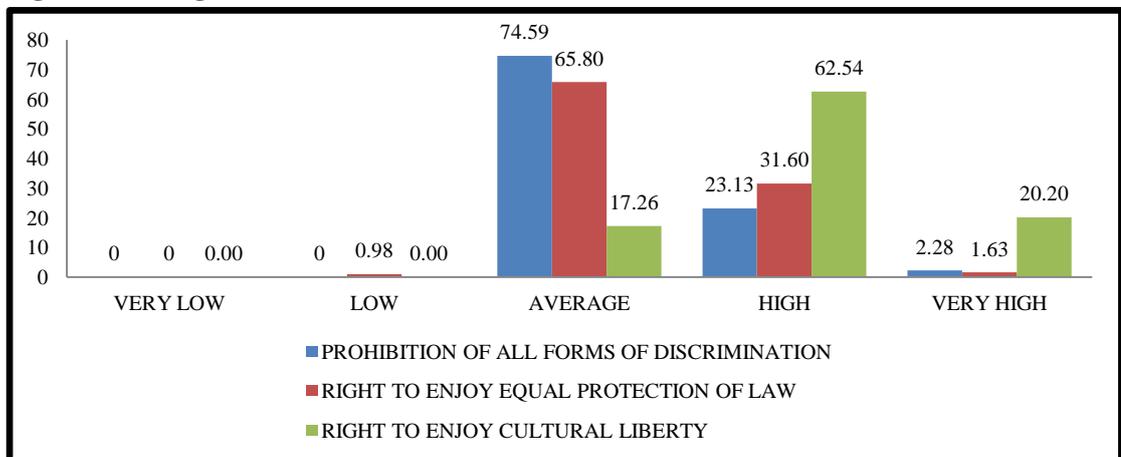
Figure 5.7 represents the information regarding human rights practices in the Central Prison of Sikkim based on prisoners' complaints and inspection. It is evident

from the figure that 34 percent of prisoners rated in very low, 50 percent of prisoners rated in low, 11 percent rated in average 5 percent rated in high, and only 1 percent of prisoners rated in very high in the category of right to make complaints regarding treatment. On the other hand, 18 percent of prisoners rated very low, 54 percent of prisoners rated low, 23 percent of prisoners rated in average, and 5 percent of prisoners rated high in the category of right to access rules. Similarly 45 percent of prisoners rated in very low, 47 percent of prisoners rated in low, 6 percent prisoners rated on average, and 2 percent of prisoners rated in high in the category of right to bring the rejected complaints before the judiciary and other authority in the Central Prison of Sikkim.

### 5.6.8 Right to Non-Discrimination of Prisoners at Central Prison of Sikkim

The objective of this category is to emphasize on discrimination on the grounds of race, colour, sex, language, religion, birth, social origin or any other status is prohibited in prisons. The rights have been based on three components that are (a) Prohibition of all forms of discrimination (b) Right to enjoy equal protection of the law and (c) Cultural Liberty.

**Figure 5.8: Right to Non-Discrimination of Prisoners at Central Prison of Sikkim**



**Source:** Fieldwork, September 2019 to January 2020

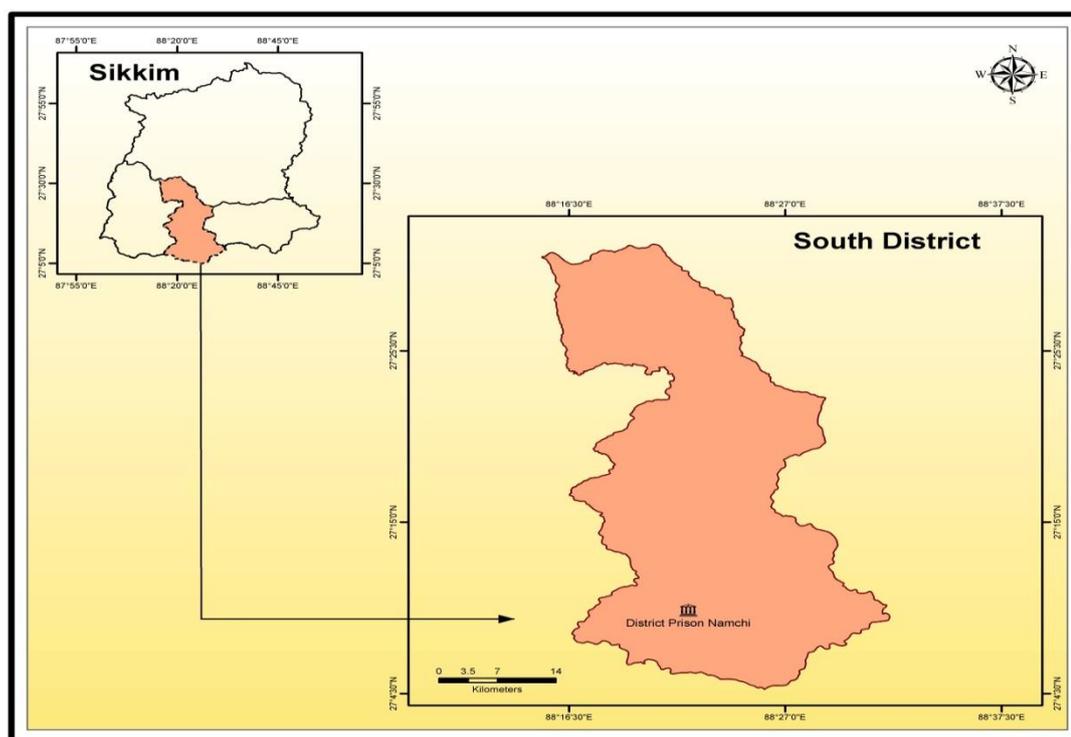
Figure 5.8 represents the information regarding human rights practices in the Central Prison of Sikkim based on the right to non-discrimination of prisoners. We can see from the figure that 75 percent of prisoners rated on average, 23 percent of prisoners rated in high, and 2 percent rated in very high in the category of the prohibition of all forms of discrimination. On the other hand, 66 percent of prisoners rated on average, 32 percent rated in high, and 2 percent of prisoners rated very high in the category of right to enjoy equal protection of the law. Similarly 17 percent of prisoners rated on average, 63 percent of prisoners rated in high, and 20 percent of prisoners rated in very high in the category of right to enjoy cultural liberty in the Central Prison of Sikkim.

## **5.7 Issues and Concerns of Human Rights Practices in District Prison of Sikkim**

### **5.7.1 Background of District Prison of Sikkim (Namchi)**

The District Prison of Sikkim (Namchi) is situated in the suburbs of a small town in the southern part of Sikkim called Namchi. Unlike Gangtok, here we find a lesser number of people, and the area it holds as a town is comparatively quite smaller. However, it is the second-largest urban settlement in Sikkim to date. This prison was established on the 24<sup>th</sup> of April 2007 and since then; there has been a considerable amount of relief in the management of the Central Prison of Rongyek, Gangtok.

**Figure 5.9: Location Map of District Prison of Sikkim (Namchi)**



**Source:** Digitized from Google Earth Pro

Generated on ArcMap 10.2.0

### **5.7.2 Staff Position at District Prison of Sikkim (Namchi)**

At present, the District Prison of Namchi is headed by one Superintendent of Police and assisted by one Additional Superintendent of Police; both of them are on deputation from Sikkim Police. All the members of the prison staff have received basic training before deployment for duty from the police department.

Table 5.13 illustrates the information regarding the staff position under the cadre post in the District Prison of Sikkim Namchi. It shows that 2 posts of Sub Jailor, 1 post of Assistant Sub Jailor, are vacant. On the other hand, 4 Warders, 5 Warders Driver, 1 Cook, 1 Water Carrier, are still lying vacant in the prison. No regular institute for induction training of prison staff is available in the state. Those of them who have been inducted from the police department had received routine police

training at the beginning of their career, which does not adequately equip them for discharging their duty in correctional institutions. Those recruited by the prison department from the open market were also being trained with the police who may not be quite desirable to sensitize them to the rights of prisoners in correctional institutions. The present sanctioned and existing strength of the cadre post of District Prison of Sikkim are reproduced below:

**Table 5.13: Staff Position under the Cadre Post at District Prison of Sikkim (Namchi)**

SL.No	Name of Post	Sanctioned Strength	Existing Strength	Vacancies	Total
1.	Superintendent of Police	01	01	00	01
2.	Addl. Superintendent of Police	01	01	-	01
3.	Jailor	01	01	-	01
4.	Sub-Jailor	02	00	02	00
5.	Assistant Sub Jailor	04	03	01	03
6.	Head Warder	04	04	00	04
7.	Warder	19	15	04	15
8.	Warder Driver	05	00	05	00
9.	Cook	03	02	01	02
10.	Cleaners	01	01	00	01
11.	Water Carrier	01	00	01	00
<b>Grand Total</b>		<b>42</b>	<b>28</b>	<b>14</b>	<b>28</b>

Source: Fieldwork, September 2019 to January 2020

### 5.7.3 Prison Population at District Prison of Sikkim

Against a sanctioned capacity of sixty-nine (69) undertrials prisoners in District Prison Namchi (Boomtar), the total prisoners were ninety-three (93) consists of 88 male undertrials prisoners and five (5) female undertrials prisoners are lodged in District Prison of Sikkim (Namchi) as on 31<sup>st</sup> December 2019.

**Table 5.14: Total Undertrials Prisoners at District Prison of Sikkim (Namchi)**

SL.No	Category of Prisoners		West	South	Total
1.	Undertrials	Male	16 (18.20%)	72 (81.80%)	88 (100%)
		Female	2 (40%)	3 (60%)	5 (100%)
<b>Grand Total</b>			<b>18</b>	<b>75</b>	<b>93</b>

Source: Fieldwork, September 2019 to January 2020

Table 5.14 illustrates the information regarding the total population of undertrial prisoners in the District Prison of Sikkim. It shows that out of the total number of population confined in District Prison of Sikkim the number of male undertrials consisting of the west district is 18 percent and the south district is 82 percent respectively. Likewise, the female undertrials prisoners consist of 40 percent from the west district and 60 percent from the south district respectively.

#### 5.7.4 Accommodation at District Prison of Sikkim

In the District Prison of Sikkim (Namchi), there are a total of 5 numbers of wards/ barracks in the prison for undertrials including separate wards for the female prisoners.

**Table 5.15: Barrack-wise Accommodation of Undertrials Prisoners at District Prison of Sikkim**

SL.No	Barracks/Wards	Status	Capacity	Occupied
1.	Barrack No -1	Undertrials (Male)	18	22
2.	Barrack No -2	Undertrials (Male)	18	23
3.	Barrack No -3	Undertrials (Male)	14	22
4.	Barrack No -4	Undertrials (Male)	14	21
5.	Barrack No -5	Undertrials (Female)	05	05
<b>Grand Total</b>			<b>69</b>	<b>93</b>

Source: Fieldwork, September 2019 to January 2020

Table 5.15 illustrates the information regarding barrack wise accommodation of undertrials prisoners at the District Prison of Sikkim. We can see from the table that the accommodation facilities in every barracks of the District Prison are a little higher as compared to the Central Prison of Sikkim but not overcrowding. Barrack number five (5) is for female prisoners and the existing capacity and the number of prisoners is the same that is five (5). If the number of female undertrials prisoners rises then the problem of accommodation facilities will also arise.

#### 5.7.5 Prisoners Offences under IPC Sections at District Prison of Sikkim

Notwithstanding Sikkim is known for the peaceful state in the Indian Union and the number of crimes is minimal as compared to other states of India but the crime rate is increasing day by day in the state. In the District Prison of Sikkim, the prisoners consist mainly of Sexual Offences, Murder, Drug trafficking, Cheating, and Theft.

**Table 5.16: Distribution of Prisoners under IPC Sections at District Prison of Sikkim**

SL.No	Sections	South	West	Total
1.	302 IPC (Punishment for Murder)	06 (75%)	02 (25%)	08 (100%)
2.	307 IPC (Attempt to Murder)	05 (55.56%)	04 (44.44%)	09 (100%)
3.	363 IPC (Punishment for Kidnapping)	02 (66.67%)	01 (33.33%)	03 (100%)
4.	376 IPC (Punishment for Rape)	14 (93.33%)	01 (6.67%)	15 (100%)
5.	379 IPC (Punishment for Theft)	07 (87.5%)	01 (12.5%)	08 (100%)
6.	419 IPC (Punishment for Cheating)	01 (25%)	03 (75%)	04 (100%)
7.	Sikkim Anti Drugs Act (SADA), 2006	31 (100%)	00	31 (100%)
8.	Protection of Children from Sexual Offences (POCSO Act, 2012)	09 (60%)	06 (40%)	15 (100%)
<b>Grand Total</b>		<b>75</b>	<b>18</b>	<b>93</b>

**Source:** Fieldwork, September 2019 to January 2020

Table 5.16 illustrates the information regarding the list of undertrial prisoners under various sections of the Indian Penal Code (IPC) at the District Prison of Sikkim. Out of the total number of undertrials that is 75 percent of male and 25 percent of female prisoners are incarcerated due to IPC 302 (Punishment for Murder), similarly, 56 percent of male and 44 percent of female prisoners incarcerated due to 307 IPC (Attempt to Murder), Likewise 93 percent of male prisoners and 7 percent of female prisoners are lodged due to 376 IPC (Punishment for Rape). 88 percent of male and 12 percent of female prisoners are lodged due to 379 IPC (Punishment for Theft) from the total population. 25 percent of male prisoners and 75 percent of female prisoners are due to 419 IPC (Punishment for Cheating). In the sections, Sikkim Anti Drugs Act (SADA), 2006 the percent of male prisoners is 100 percent. 60 percent of male prisoners incarcerated in the District Prison of Sikkim are due to the Protection of Children from Sexual Offences (POCSO Act, 2012) during the time of research.

#### **5.7.6 Social Profile of Prisoners at District Prison of Sikkim (Namchi)**

The social profile of respondents includes age, gender, marital status, place of origin, and social group. Social profile constitutes the basic socio-economic data by which we can understand the bio-statistics of the respondents. This basic data gives us the starting point of understanding the respondents. These details furnish the basic frame of reference regarding the physiological and geographical status of the respondents and it's very important to formulate the first impression about the respondents.

**Table 5.17: Age-wise Distribution at District Prison of Sikkim**

SL.No	Age Groups (in years)	Number of Prisoners	Percentage
1.	18-30	46	50%
2.	31-50	38	41%
3.	51-60	05	5%
4.	61-80	04	4%
<b>Grand Total</b>		<b>93</b>	<b>100%</b>

**Source:** Fieldwork, September 2019 to January 2020

Table 5.17 illustrates the information regarding the age-wise distribution of undertrials prisoners in the District Prison of Sikkim. In the prison of Sikkim, the range of the age starts from eighteen (18) years and above. The number of prisoners between the age group of 18-30 years consists of 50 percent, similarly, the age group between 31-50 years was 41 percent, age group between 51-60 years was 5 percent, and age between 61-80 years was 4 percent. Out of the total population, the majority of prisoners were predominantly dominated by the young offenders of the age group ranging from 18 to 50 years in the District Prison of Sikkim.

**Table 5.18: Gender-wise Distribution at District Prison of Sikkim**

SL.No	Gender	Number of Prisoners	Percentage
1.	Male	88	94.6%
2.	Female	05	5.4%
<b>Grand Total</b>		<b>93</b>	<b>100%</b>

**Source:** Fieldwork, September 2019 to January 2020

Table 5.18 illustrates the information regarding the gender-wise distribution of prisoners in the District Prison of Sikkim. The total population is ninety-three (93) which consists of males that are 95 percent and five (5) females which is only 5 percent of the total population. We can see from the table that the female prisoners are predominantly dominated by the male population in the District Prison of Sikkim.

**Table 5.19: Marital Status at District Prison of Sikkim**

SL.No	Marital Status	Male	Female	Total
1.	Married	47 (95.9%)	2 (4.1%)	49 (100%)
2.	Widow/Widower	00	00	00
3.	Divorced	00	00	00
4.	Unmarried	41 (93.2%)	3 (6.8%)	44 (100%)
5.	Separated	00	00	00
<b>Grand Total</b>		<b>88</b>	<b>5</b>	<b>93</b>

**Source:** Fieldwork, September 2019 to January 2020

Table 5.19 illustrates the information regarding the marital status of undertrials prisoners in the District Prison of Sikkim. Out of the total number of the population, the prisoners confined in District Prison of Sikkim 96 percent of male prisoners are married, and from the female side, only 4 percent are married. Similarly, 93 percent of the male are unmarried and 7 percent of female prisoners are unmarried out of the total number of female prison inmates but widow, divorced, and separated represents zero percent of the total population.

**Table 5.20: Region-wise Distribution at District Prison of Sikkim**

SL.No	Region	Number of Prisoners	Percentage
1.	Urban	35	37.6%
2.	Rural	58	62.4%
<b>Grand Total</b>		<b>93</b>	<b>100%</b>

**Source:** Fieldwork, September 2019 to January 2020

Table 5.20 illustrates the information regarding the region (urban/rural) wise distribution of prisoners in the District Prison of Sikkim. Out of the total population, 38 percent of prisoners are confined in the prison from urban areas whereas 62 percent belong to rural areas. It indicates that the total population of the District

Prison of Sikkim mainly consists of the rural population. It can be inferred that the rural population has lesser opportunities, thus is more susceptible to commit crimes.

**Table 5.21: Religion-wise Distribution at District Prison of Sikkim**

SL.No	Religion	Number Of Prisoners	Percentage
1.	Hindu	41	44.1%
2.	Buddhist	35	37.6%
3.	Christian	14	15.1%
4.	Muslim	03	3.2%
<b>Grand Total</b>		<b>93</b>	<b>100%</b>

**Source:** Fieldwork, September 2019 to January 2020

Table 5.21 illustrates the information regarding the religion-wise distribution of undertrials prisoners in the District Prison of Sikkim. The prisoners mainly fall under four religious groups that are Hindu, Buddhist, Christian, and Muslim in the District Prison of Sikkim. A total of 44 percent of the total prisoners practiced Hinduism, 37 percent Buddhism, 15 percent Christianity, and 3 percent of prisoners belong to the Muslim community. The numbers of prisoners are predominantly dominated by Hindu followed by the male population in the District Prison of Sikkim.

**Table 5.22: Social Group at District Prison of Sikkim**

SL.No	Social Group	Number of Prisoners	Percentage
1.	General	23	24.7%
2.	Other Backward Class	31	33.4%
3.	Scheduled Tribe	28	30.1%
4.	Scheduled Caste	11	11.8%
<b>Grand Total</b>		<b>93</b>	<b>100%</b>

**Source:** Fieldwork, September 2019 to January 2020

Table 5.22 illustrates the information regarding the social group of undertrials prisoners in the District Prison of Sikkim. From the total population that is ninety-

three (93) of District Prison, 25 percent comprises the general category, 33 percent from other backward classes, and 30 percent are from schedule tribe and 12 percent belong to schedule caste.

**Table 5.23: Educational Qualification at District Prison of Sikkim**

SL.No	Educational Qualification	Number of Prisoners	Percentage
1.	Illiterate	19	20.4%
2.	Primary	35	37.6%
3.	Secondary	21	22.6%
4.	Senior Secondary	14	15.1%
5.	Undergraduate	04	4.3%
<b>Grand Total</b>		<b>93</b>	<b>100%</b>

**Source:** Fieldwork, September 2019 to January 2020

Table 5.23 illustrates the information regarding the educational qualification of prisoners in the District Prison of Sikkim. Out of the total population, 20 percent of prisoners are illiterate, 38 percent of prisoners were having education up to the primary level, and 23 percent of prisoners were in the secondary education level. 15 percent of prisoners were up to the education level of senior secondary and only 4 percent of total prisoners graduated from District Prison of Sikkim. It can be observed that with the increase in the educational qualification among the prisoners the incidence of crime decreases.

**Table 5.24: Occupational Distribution at District Prison of Sikkim**

SL.No	Occupation Of Prisoners	Number Of Prisoners	Percentage
1.	Government Job	05	5.4%
2.	Private Job	19	20.4%
3.	Business	26	27.9%
4.	Unemployed	43	46.3%
<b>Grand Total</b>		<b>93</b>	<b>100%</b>

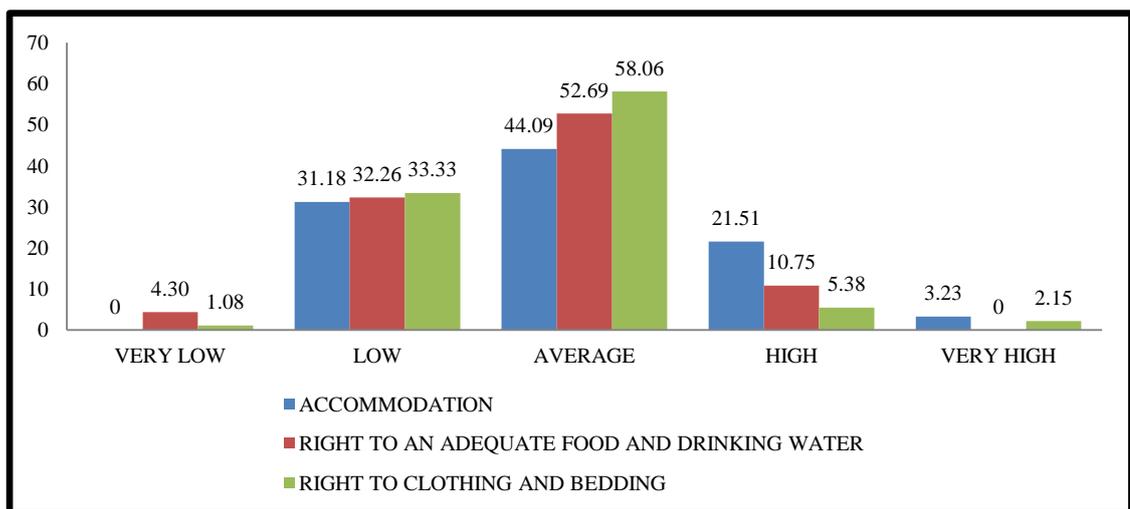
**Source:** Fieldwork, September 2019 to January 2020

Table 5.24 illustrates the information regarding the occupational distribution of undertrials prisoners in the District Prison of Sikkim. From the total population in the District Prison of Sikkim, only 5 percent of prisoners were employed under government jobs. 20 percent of the prisoners were employed in a private job. 28 percent of prisoners were engaged in small-scale business and 46 percent were unemployed before incarcerated in the prison. It can be inferred from the findings that lack of employment opportunities leads to a higher crime rate in society.

### 5.7.7 Right to an Adequate Standard of Living at District Prison of Sikkim

The objective of this category is to underline the principle that prisoners have the right to an adequate standard of living and appropriate conditions of detention. These rights have been based on three components that are (a) Accommodation (b) Food and drinking water and (c) Clothing and bedding.

**Figure 5.10: Right to an Adequate Standard of Living at District Prison of Sikkim**



**Source:** Fieldwork, September 2019 to January 2020

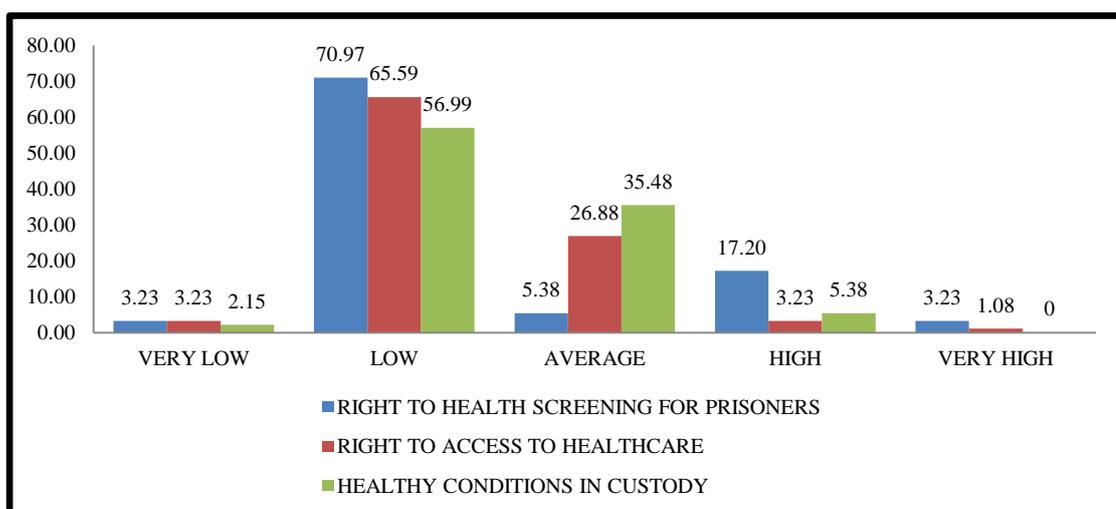
Figure 5.10 represents the information regarding human rights practices in the District Prison of Sikkim based on the right to an adequate standard of living. We can

see from the figure that out of the total number of prisoners in the category of accommodation 31 percent of prisoners rated very low, 44 percent rated on average, 22 percent rated high and 3 percent rated very high. Under the right to adequate food and drinking water, 4 percent of prisoners rated very low, 32 percent of prisoners rated low, 53 percent rated on average and 11 percent of prisoners rated high. Similarly in the category of right to clothing and bedding 1 percent of prisoners rated very low, 33 percent rated in low, 58 percent of prisoners rated on average, 5 percent of prisoners rated in high, and 2 percent rated in very high in the District Prison of Sikkim.

### 5.7.8 Health Rights of Prisoners at District Prison of Sikkim

The objective of this category is to emphasize that proper health care is a basic right that applies to all human beings and the conditions of health care in prisons. These rights have been based on three components provided to them that are (a) Right to health screening for prisoners (b) Right to access to healthcare and (c) Healthy conditions in custody.

**Figure 5.11: Health Rights of Prisoners at District Prison of Sikkim**



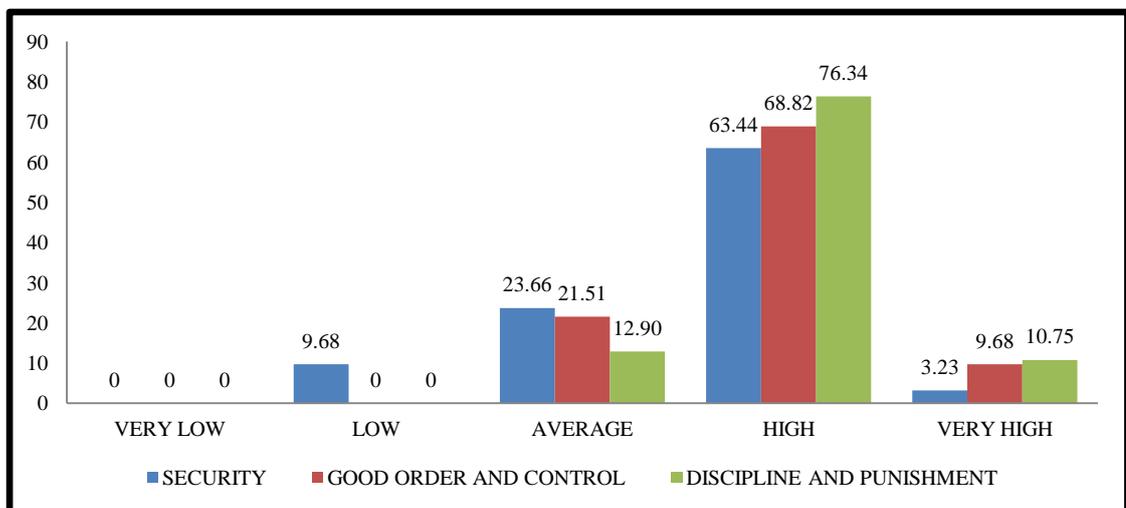
**Source:** Fieldwork, September 2019 to January 2020

Figure 5.11 represents the information regarding human rights practices in the District Prison of Sikkim based on the health rights of prisoners. According to figures, out of the total number of prisoners 3 percent of prisoners rated very low, 71 percent of prisoners rated low, 5 percent rated in average, 17 percent rated high, and 3 percent of prisoners rated very high in the category of right to health screening for prisoners. On the other hand in the category of right to access to healthcare 3 percent rated in very low, 66 percent rated in low, 27 percent rated in average, 3 percent rated in high and 1 percent of prisoners rated very high. Similarly 2 percent of prisoners rated in very low, 57 percent of prisoners rated in low, 35 percent of prisoners rated in average, and 5 percent of prisoners rated in high in the category of healthy conditions in custody in the District Prison of Sikkim.

### 5.7.9 Making Prisons Safe Places at District Prison of Sikkim

The objective of this category is to demonstrate that there are three elements in ensuring that prisons are safe places and they cannot be harmed by the prison officials. These rights have been based on three components that are (a) Security (b) Good order and control and (c) Discipline and Punishment.

**Figure 5.12: Making Prisons Safe Places at District Prison of Sikkim**



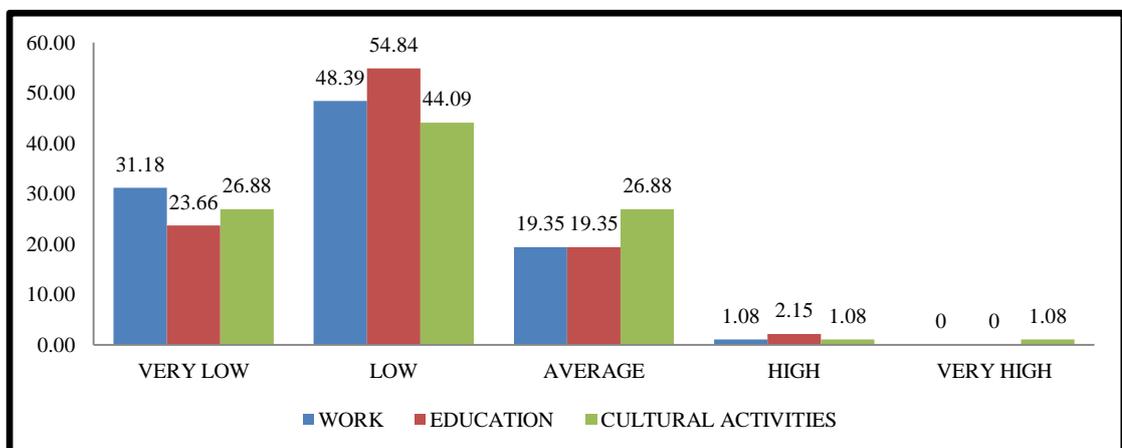
**Source:** Fieldwork, September 2019 to January 2020

Figure 5.12 represents the information regarding human rights practices in the District Prison of Sikkim based on making prisons safe places. We can see from the figure that 10 percent of prisoners rated in low, 24 percent of prisoners rated on average, 63 percent of prisoners rated in high, and 3 percent rated very high in the category of security. Similarly in the category of good order and control 22 percent of prisoners rated on average, 69 percent rated in high, and 10 percent of prisoners rated in very high. On the other hand, 13 percent of prisoners rated on average, 76 percent rated in the high, and 11 percent of prisoners rated very high in the category of discipline and punishment.

#### 5.7.10 Making Best Use of Prisons at District Prison of Sikkim

The objective of this category is to underline that it is not the task of the prison administration to inflict further punishment on the prisoner. On the contrary, prisoners should be encouraged to use their time in prison to learn new skills, to improve their education, to reform themselves, and to prepare for eventual release. These rights have been based on three components that are (a) Work (b) Education and (c) Cultural activities.

**Figure 5.13: Making Best Use of Prisons at District Prison of Sikkim**



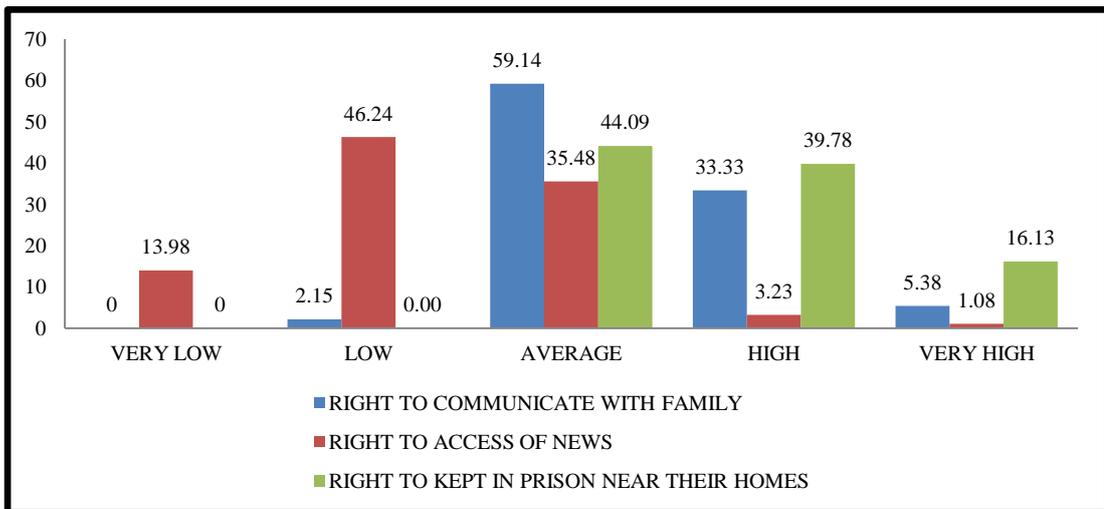
**Source:** Fieldwork, September 2019 to January 2020

Figure 5.13 represents the information regarding human rights practices in the District Prison of Sikkim based on making the best use of prisons. It is evident from the figure that 31 percent of prisoners rated in very low, 48 percent of prisoners rated in low, 19 percent rated on average, and 1 percent of prisoners rated in high in the category of work. On the other hand in the category of education 24 percent of prisoners rated very low, 55 percent of prisoners rated low, 19 percent of prisoners rated in average, and 2 percent of prisoners rated high. Similarly 27 percent of prisoners rated in very low, 44 percent of prisoners rated in low, 27 percent of prisoners rated in average, and 1 percent rated in high, and again 1 percent of prisoners rated in very high in the category of cultural activities in the District Prison of Sikkim.

#### **5.7.11 Prisoners Contact with the Outside World at District Prison of Sikkim**

The objective of this category is to emphasize that, despite being deprived of liberty, prisoners retain a right to have contact with their family and friends and the outside world, prisoners shall be kept informed of important items of news, and a prisoners request to be held in a prison near his or her home shall be granted as far as possible. These rights have been based on three components that are (a) Right to communicate with family (b) Right to access news and (c) Right to be kept in prison near their homes.

**Figure 5.14: Prisoners Contact with the Outside World at District Prison of Sikkim**



**Source:** Fieldwork, September 2019 to January 2020

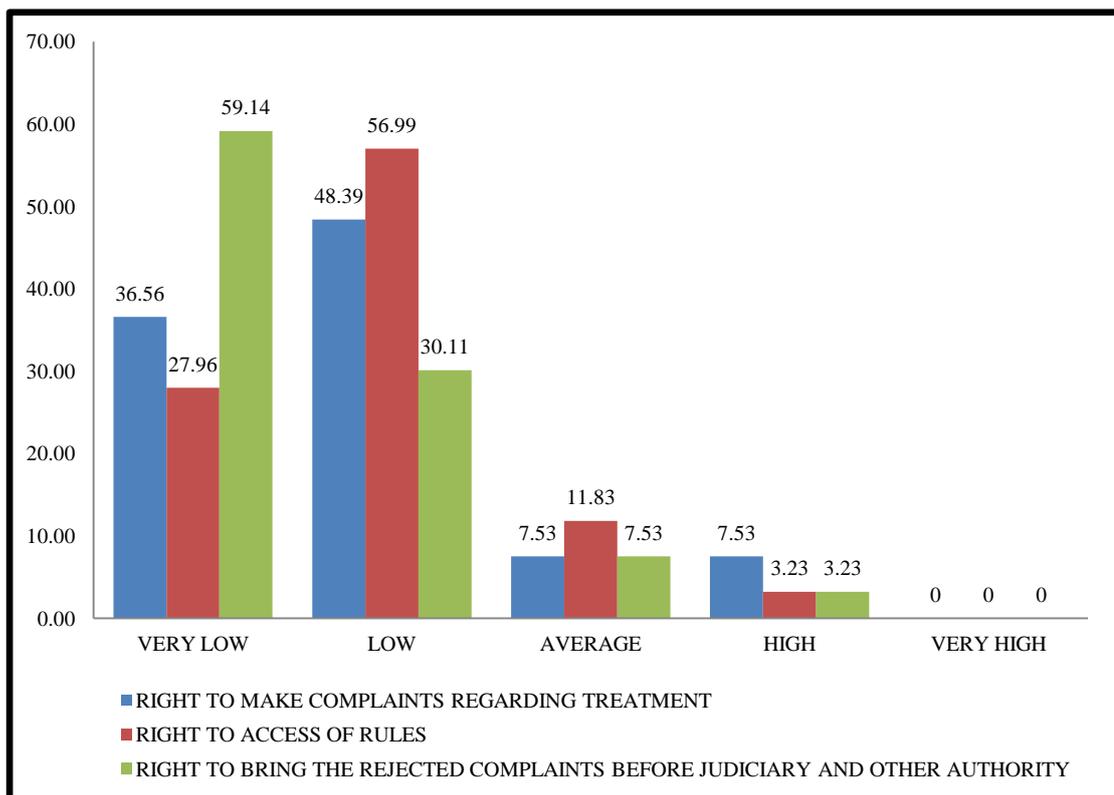
Figure 5.14 represents the information regarding human rights practices in the District Prison of Sikkim based on prisoners’ contact with the outside world. According to figures out of the total prisoners in the category of right to communicate with family 2 percent of prisoners rated in low, 59 percent of prisoners rated in average, 33 percent of prisoners rated in high, and 5 percent of prisoners rated in very high. Similarly 14 percent of prisoners rated in very low, 46 percent of prisoners rated in low, 35 percent of prisoners rated in average, 3 percent of prisoners rated in high, and 1 percent of prisoners rated in very high in the category of right to access news. On the other hand in the category of right to be kept in prison near their homes 44 percent of prisoners rated on average, 40 percent rated in high, and 16 percent of prisoners rated in very high in the District Prison of Sikkim.

### **5.7.12 Prisoners Complaints and Inspection at District Prison of Sikkim**

The objective of this category is to emphasize on every prisoner shall have the right to make a complaint regarding his or her treatment and, unless the complaint is frivolous, to have it dealt with promptly and, if requested, confidentially. If necessary,

the complaint may be lodged on behalf of the prisoner by his or her legal representative or family. Every prisoner on admission shall be provided with written information on rules and on complaints and disciplinary procedures in a language that he or she understands. If necessary, these regulations should be explained orally. If a complaint is rejected or not responded to promptly, the complainant shall be entitled to bring it before a judicial or other authority. These rights have been based on three components that are (a) Right to make a complaint regarding treatment (b) Right to access rules and (c) Right to bring the rejected complaints before the judiciary and other authority.

**Figure 5.15: Prisoners Complaints and Inspection at District Prison of Sikkim**



**Source:** Fieldwork, September 2019 to January 2020

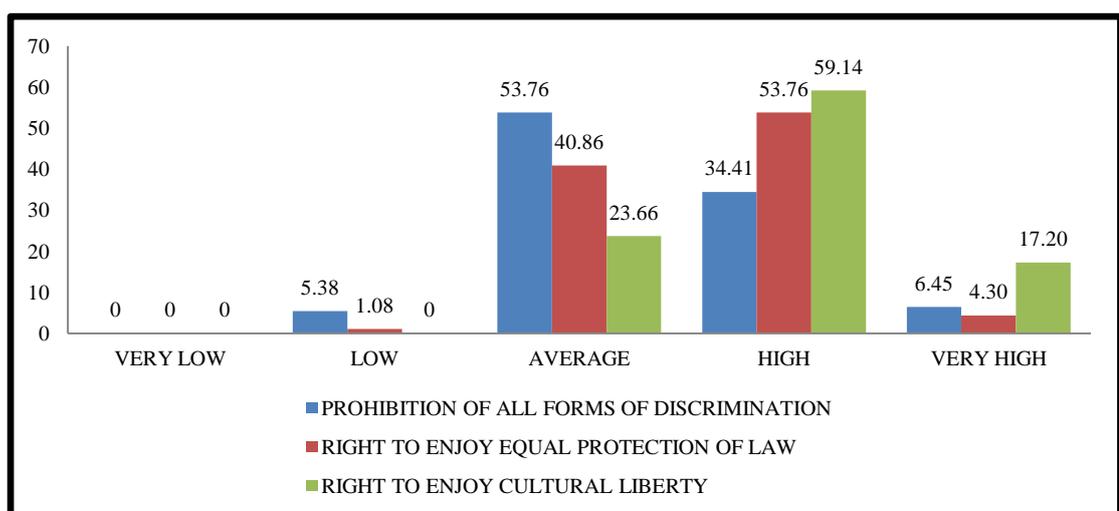
Figure 5.15 represents the information regarding human rights practices in the District Prison of Sikkim based on prisoners' complaints and inspections. It is evident from the figure that 37 percent of prisoners rated in very low, 48 percent of prisoners

rated in low, 8 percent rated on average, and 8 percent rated in high in the category of right to make complaints regarding treatment. On the other hand, 28 percent of prisoners rated very low, 57 percent of prisoners rated low, 12 percent of prisoners rated in average, and 3 percent of prisoners rated high in the category of right to access rules. Similarly 59 percent of prisoners rated in very low, 30 percent of prisoners rated in low, 8 percent prisoners rated on average, and 3 percent of prisoners rated in high in the category of right to bring the rejected complaints before the judiciary and other authority in the District Prison of Sikkim.

### 5.7.13 Right to Non-Discrimination of Prisoners at District Prison of Sikkim

The objective of this category is to emphasize on discrimination on the grounds of race, colour, sex, language, religion, birth, social origin or any other status is prohibited in prisons. The rights have been based on three components that are (a) Prohibition of all forms of discrimination (b) Right to enjoy equal protection of the law and (c) Cultural Liberty.

**Figure 5.16: Right to Non-Discrimination of Prisoners at District Prison of Sikkim**



**Source:** Fieldwork, September 2019 to January 2020

Figure 5.16 represents the information regarding human rights practices in the District Prison of Sikkim based on the right to non-discrimination of prisoners. We can see from the figure that 5 percent of prisoners rated in low, 54 percent of prisoners rated on average, 34 percent of prisoners rated in high, and 6 percent rated in very high in the category of the prohibition of all forms of discrimination. On the other hand, 1 percent of prisoners rated low, 41 percent of prisoners rated on average, and 54 percent rated high, and 4 percent of prisoners rated very high in the category of right to enjoy equal protection of the law. Similarly, 24 percent of prisoners rated on average, 59 percent of prisoners rated in high, and 17 percent of prisoners rated very high in the category of right to enjoy cultural liberty in the District Prison of Sikkim.

## **5.8 Comparative Study of Human Rights Practices in Central and District Prisons of Sikkim**

We have studied the status of human rights practices in the Central and District Prison of Sikkim from prisoners' viewpoint based on seven fundamental human rights categories provided to them in prisons. Here we shall compare our findings in respect of Central and District Prison so that it can be found out which prisons are more compatible with human rights parameters. In the course of undertaking our analysis we shall follow the following thumb rules, (i). All fractions greater than half will be rounded up to the nearest next-higher digit (ii). Similarly all fractions less than half will be round up to the nearest lower digit and (iii). While making the comparative study the differences less than 10 percent will be ignored.

### 5.8.1 Right to an Adequate Standard of Living in Central and District Prison of Sikkim

The objective of this category is to underline the principle that prisoners have the right to an adequate standard of living and appropriate conditions of detention. These rights have been based on three components that are (a) Accommodation (b) Food and drinking water and (c) Clothing and bedding.

**Table 5.25: Comparative Study of Right to an Adequate Standard of Living in Central and District Prisons of Sikkim**

Facility	Components Related to Right to an Adequate Standard of Living					
	Accommodation		Adequate Food and Drinking Water		Right to Clothing and Bedding	
	Central Prison %	District Prison %	Central Prison %	District Prison %	Central Prison %	District Prison %
Very Low	0.65	0.00	0.00	4.30	0.00	1.08
Low	55.70	31.18	20.52	32.26	18.24	33.33
Average	39.09	44.09	58.63	52.69	77.85	58.06
High	2.93	21.51	20.52	10.75	1.95	5.38
Very High	1.63	3.23	0.33	0.00	1.95	2.15
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

Source: Fieldwork, September 2019 to January 2020

**Table 5.26: Component Wise Scoring of Right to an Adequate Standard of Living Central and District Prisons of Sikkim**

SL.No	Components of Standard of Living	Mean Score	
		Central Prison	District Prison
1.	Accommodation	2.60	2.96
2.	Adequate Food and Drinking Water	3.00	2.69
3.	Right to Clothing and Bedding	2.28	2.13
<b>Grand Total</b>		<b>2.62</b>	<b>2.59</b>

Source: Fieldwork, September 2019 to January 2020

Table 5.25 illustrates the comparative study of human rights practices in Central and District Prisons of Sikkim. It is evident that regarding accommodation 56 percent of prisoners of Central Prison and 31 percent of prisoners of District Prison rated this facility in the low category. For adequate food and drinking water, 21 percent of prisoners of Central Prison rated this facility in the low category, and 36 percent of prisoners of District Prison rated this facility in either low or very low category. Regarding the right to clothing and bedding, 18 percent from Central Prison rated low category, and 34 percent of prisoners of District Prison rated this facility as either low or very low category.

Table 5.26 presents the comparative study of the mean score of Central and District Prisons for an adequate standard of living. It can be seen that the mean score for accommodation in Central and District Prisons is 2.60 and 2.96 respectively. The mean score for food and drinking water is 3 for Central Prison and 2.69 for District Prison. Regarding clothing and bedding, the mean score is 2.28 in Central Prison and 2.13 in District Prison. The composite mean score of Central Prison is 2.62 which is higher than the composite mean score of District Prison that is 2.59.

The inference which can be drawn from the table is that the overall mean score of Central Prison and District Prison falls in the low category, as both the composite mean scores fall below 2.5, which is our threshold for low. It can be concluded that there are more problems of accommodation, food, and drinking water, and clothing & bedding in the Central Prison in comparison to the District Prison which makes it obvious that human rights practices in respect of these facilities are a little better in District Prison than Central Prison. But still, the level of human rights is not up to the desired level either in Central or the District Prison.

### 5.8.2 Health Rights of Prisoners in Central and District Prison of Sikkim

The objective of this category is to emphasize that proper health care is a basic right that applies to all human beings and the conditions of health care in prisons. These rights have been based on three components provided to them that are (a) Right to health screening for prisoners (b) Right to access to healthcare and (c) Healthy conditions in custody.

**Table 5.27: Comparative Study of Health Rights of Prisoners in Central and District Prisons of Sikkim**

Facility	Component Related to Health Rights of Prisoners					
	Right to Health Screening for Prisoners		Access to Health Care		Healthy Conditions in Custody	
	Central Prison %	District Prison %	Central Prison %	District Prison %	Central Prison %	District Prison %
Very Low	0.00	3.23	0.00	3.23	0.33	2.15
Low	60.26	70.97	68.08	65.59	79.48	56.99
Average	13.03	5.38	28.34	26.88	16.61	35.48
High	24.76	17.20	1.95	3.23	2.61	5.38
Very High	1.95	3.23	1.63	1.08	0.98	0.00
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

Source: Fieldwork, September 2019 to January 2020

Table 5.27 illustrates the comparative study of human rights practices in Central and District Prisons of Sikkim. It is evident that regarding the right to health screening for prisoners 60 percent of prisoners of Central Prison rated this facility low and 74 percent of prisoners of District Prison rated this facility in the low or very low category. Regarding access to health care, 68 percent of prisoners of Central Prison

rated low and 69 percent prisoners of District Prison rated this facility in either low or very low category, 79 percent of prisoners in Central Prison rated low category for healthy conditions in custody and 59 percent of prisoners from District Prison rated this facility in either very low or low category.

**Table 5.28: Component Wise Scoring of Health Rights of Prisoners in Central and District Prisons of Sikkim**

SL.No	Components of Health Rights of Prisoners	Mean Score	
		Central Prison	District Prison
1.	Right to Health Screening for Prisoners	2.68	2.46
2.	Access to Health Care	2.37	2.33
3.	Healthy Conditions in Custody	2.24	2.44
<b>Grand Total</b>		<b>2.43</b>	<b>2.41</b>

**Source:** Fieldwork, September 2019 to January 2020

Table 5.28 presents the comparison of the component-wise mean score of the health rights of prisoners. The mean score for health screening for prisoners is 2.68 and 2.46 for Central and District Prisons respectively. The mean score for access to health care in Central Prison is 2.37, which is higher than the mean score of District Prisons, that is, 2.33 for the same component. But the mean score for healthy conditions in custody is a little less in Central Prison, that is, 2.24 than District Prisons, that is, 2.44.

The average mean scores are 2.43 and 2.41 for Central and District Prisons respectively. Since the score is less than 2.5 so it may be taken to fall in the low category of human rights rating on the five-point scale being used. There is no significant difference in human rights practices in respect of the health rights of prisoners in the Central and District Prisons of Sikkim.

### 5.8.3 Making Prisons Safe Places in Central and District Prison of Sikkim

The objective of this category is to demonstrate that there are three elements in ensuring that prisons are safe places. These rights have been based on three components that are (a) Security (b) Good order and control and (c) Discipline and Punishment.

**Table 5.29: Comparative Study of Making Prisons Safe Places in Central and District Prisons of Sikkim**

Facility	Components Related to Making Prisons Safe Places					
	Security		Good Order and Control		Discipline and Punishment	
	Central Prison	District Prison	Central Prison	District Prison	Central Prison	District Prison
Rating	%	%	%	%	%	%
Very Low	0.00	0.00	0.00	0.00	0.00	0.00
Low	0.00	9.68	0.00	0.00	0.00	0.00
Average	14.33	23.66	26.06	21.51	7.17	12.90
High	83.71	63.44	71.01	68.82	88.60	76.34
Very High	1.95	3.23	2.93	9.68	4.23	10.75
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

Source: Fieldwork, September 2019 to January 2020

**Table 5.30: Component Wise Scoring of Making Prisons Safe Places in Central and District Prisons of Sikkim**

SL.No	Components of Making Prisons Safe Places	Mean Score	
		Central Prison	District Prison
1.	Security	3.87	3.60
2.	Good Order and Control	3.76	3.88
3.	Discipline and Punishment	3.97	3.97
<b>Grand Total</b>		<b>3.86</b>	<b>3.81</b>

Source: Fieldwork, September 2019 to January 2020

Table 5.29 illustrates the comparative study of human rights practices in Central and District Prisons of Sikkim. It is evident that regarding security 84 percent of prisoners of Central Prison rated security in the high category while 63 percent of prisoners of District Prison also rated this facility in the high category. Regarding good order and control, 71 and 68 percent of prisoners of Central and District Prison rated this category in the high category. While for the discipline and punishment category 89 percent of prisoners of Central Prisons and 87 percent of prisoners of District Prison rated this facility either high or very high category.

Table 5.30 presents the comparative mean score of Central and District Prisons regarding making prisons safe places. It can be seen from the table that the score regarding the security component is 3.87 and 3.60 in Central and District Prisons respectively. The mean score regarding good order and control in Central Prison is 3.76 and in the District Prison is 3.88. The mean score for discipline and punishment is 3.97 and 3.97 in Central and District Prisons respectively.

It can be said that the overall mean score of both Central and District Prison falls in the high category. But the composite mean score of Central Prison, that is, 3.86 is a little higher than District Prison that is 3.81. So, it can be said that making prisons safe places comprising security, good order, and control, discipline & punishment are observed a little higher in Central Prison than District Prison of Sikkim.

#### **5.8.4 Making the Best Use of Prisons in Central and District Prison of Sikkim**

The objective of this category is to underline that it is not the task of the prison administration to inflict further punishment on the prisoner. On the contrary, prisoners

should be encouraged to use their time in prison to learn new skills, to improve their education, to reform themselves, and to prepare for eventual release. These rights have been based on three components that are (a) Work (b) Education and (c) Cultural activities.

**Table 5.31: Comparative Study of Making the Best Use of Prisons in Central and District Prisons of Sikkim**

Facility	Components Related to Making the Best Use of Prisons					
	Work		Education		Cultural Activities	
	Central Prison	District Prison	Central Prison	District Prison	Central Prison	District Prison
Rating	%	%	%	%	%	%
Very Low	10.10	31.18	13.03	23.66	19.54	26.88
Low	35.83	48.39	57.00	54.84	51.14	44.09
Average	47.23	19.35	26.06	19.35	28.34	26.88
High	5.54	1.08	3.26	2.15	0.33	1.08
Very High	1.30	0.00	0.65	0.00	0.65	1.08
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

Source: Fieldwork, September 2019 to January 2020

**Table 5.32: Component Wise Scoring of Making the Best Use of Prisons in Central and District Prisons of Sikkim**

SL.No	Components of Making the Best Use of Prisons	Mean Score	
		Central Prison	District Prison
1.	Work	2.52	1.90
2.	Education	2.21	2
3.	Cultural Activities	2.11	2.05
<b>Grand Total</b>		<b>2.28</b>	<b>1.98</b>

Source: Fieldwork, September 2019 to January 2020

Table 5.31 illustrates the comparative study of human rights practices in Central and District Prisons of Sikkim. The majority of prisoners are dissatisfied with

the work, education, and cultural facilities provided to them in the Central and District Prisons of Sikkim. It is evident from the table that regarding the work facility 46 percent of prisoners of Central Prison and 79 percent of prisoners of District Prison rated this facility in either very low or low category. Similarly, regarding the education facility, 70 percent of Central Prison and 79 percent of District Prison rated either very low or low category. While for cultural activities category 71 percent of prisoners of Central Prison and 71 percent of prisoners of district rated this facility either low or very low category.

Table 5.32 presents the comparison of the mean score of Central and District Prisons regarding making the best use of prisons as rehabilitation places. The mean score for work is 2.52 and 1.90 in Central and District Prisons respectively. The mean score for education also falls in the low category, that is, 2.21 and 2 in Central and District Prisons respectively. Similarly mean score regarding cultural activities also falls in a low or a very low category, that is, 2.11 in Central Prison and 2.05 in District Prison.

The overall mean score for Central Prison is 2.28 and for the District, Prison is 1.98 which is less than 2.5 in both the cases so it may be taken to fall in the low category of human rights rating on the five-point scale being used. There is no significant difference in human rights practices in respect of making the best use of prisons as rehabilitation places in the Central and District Prisons of Sikkim. So, it can be concluded that several vocational units like Carpentry, Tailoring, Dairy, Piggery, Handicrafts, Knitting, Orchids and Floriculture, Mushrooms and Vegetable Cultivation, have been set up inside the prison, utilizing funds allocated under the modernization scheme. Apart from female convicts, the male convicts were provided

with training in traditional carpentry and bamboo works and few of them were engaged as per the state government under the Home Department; they were supposed to receive ₹ 30 for unskilled workers and ₹ 40 for skilled workers. However, in prison, those involved in carpentry are given ₹ 40 per day while the bamboo workers and the rest are given ₹ 30 per day. Considering the cost of living in Sikkim, these rates appear to be inadequate, and also the vocational training was not up to the mark.

#### **5.8.5 Prisoners Contact with the Outside World in Central and District Prison of Sikkim**

The objective of this category is to emphasize that, despite being deprived of liberty, prisoners retain a right to have contact with their family and friends and the outside world, prisoners shall be kept informed of important items of news, and a prisoners request to be held in a prison near his or her home shall be granted as far as possible. These rights have been based on three components that are (a) Right to communicate with family (b) Right to access news and (c) Right to be kept in prison near their homes.

Table 5.33 illustrates the comparative study of human rights practices in Central and District Prisons of Sikkim. It is evident that regarding the right to communicate with family 96 percent of prisoners of Central Prisoners rated this facility in either average or high category and 92 percent of prisoners of District Prison rated these facilities either average or high category. Similarly regarding their right to access news 68 percent of prisoners of Central Prison and 60 percent of prisoners of District Prison rated it in either very low or low category. In the context of their right to be kept in prison near their homes, 96 percent of prisoners of Central

Prison and 84 percent of prisoners of District Prison rated it in either average or high category.

**Table 5.33: Comparative Study of Prisoners Contact with the Outside World in Central and District Prisons of Sikkim**

Facility	Components Related to Prisoners Contact with the Outside World					
	Right to Communicate with Family		Right to Access News		Right to Kept in Prison near their Homes	
	Central Prison %	District Prison %	Central Prison %	District Prison %	Central Prison %	District Prison %
Very Low	0.00	0.00	7.17	13.98	0.00	0.00
Low	3.91	2.15	60.91	46.24	0.00	0.00
Average	74.27	59.14	28.66	35.48	47.88	44.09
High	21.50	33.33	1.63	3.23	48.21	39.78
Very High	0.33	5.38	1.63	1.08	3.91	16.13
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

Source: Fieldwork, September 2019 to January 2020

**Table 5.34: Component Wise Scoring of Prisoners Contact with the outside world in Central and District Prisons of Sikkim**

SL.No	Components of Prisoners Contact With Outside World	Mean Score	
		Central Prison	District Prison
1.	Right to Communicate with Family	3.18	3.41
2.	Right to Access News	2.29	2.31
3.	Right to Kept in Prison near their Homes	3.56	3.72
<b>Grand Total</b>		<b>3.01</b>	<b>3.14</b>

Source: Fieldwork, September 2019 to January 2020

Table 5.34 presents the comparison of mean scoring of Central and District Prisons for prisoners' contact with the outside world. The mean score regarding the right to communicate with family in Central Prison is 3.18 and 3.41 respectively. The mean score for the right to access news is 2.29 for Central Prison and 2.31 for District Prison and the mean score for the right to be kept in prison near their homes is 3.56 for Central Prison and 3.72 for District Prison.

The overall mean score for Central Prisons is 3.01 and the District Prison is 3.14. Since the score of both the prisons is less than 3.5 so it may be taken to fall in the average category of the five-point scale being used. It can be concluded that prisoners of Central and District Prisons are somehow satisfied with the status of their rights regarding prisoners' contact with the outside world because prisoners are allowed to meet visitors once a week and the time allotted for each interview is between 20-30 minutes. Similarly, the prison inmates are also allowed to partake (eat or drink) meals brought by their relatives in both the prisons of Sikkim.

#### **5.8.6 Prisoners Complaints and Inspection in Central and District Prison of Sikkim**

The objective of this category is to emphasize on every prisoner shall have the right to make a complaint regarding his or her treatment and, unless the complaint is frivolous, to have it dealt with promptly and, if requested, confidentially. If necessary, the complaint may be lodged on behalf of the prisoner by his or her legal representative or family. Every prisoner on admission shall be provided with written information on rules and on complaints and disciplinary procedures in a language that he or she understands. If necessary, these regulations should be explained orally. If a complaint is rejected or not responded to promptly, the complainant shall be entitled

to bring it before a judicial or other authority. These rights have been based on three components that are (a) Right to make a complaint regarding treatment (b) Right to access rules and (c) Right to bring the rejected complaints before the judiciary and other authority.

**Table 5.35: Comparative Study of Prisoners Complaints and Inspection in Central and District Prisons of Sikkim**

Facility	Components Related to Prisoners Complaints and Inspection					
	Right to Make Complaints Regarding Treatment		Right to Access of Rules		Right to Bring the Rejected Complaints Before Judiciary	
	Central Prison %	District Prison %	Central Prison %	District Prison %	Central Prison %	District Prison %
Very Low	33.88	36.56	17.92	27.96	45.28	59.14
Low	49.84	48.39	54.07	56.99	47.23	30.11
Average	10.75	7.53	23.13	11.83	5.54	7.53
High	4.89	7.53	4.56	3.23	1.95	3.23
Very High	0.65	0.00	0.33	0.00	0.00	0.00
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

Source: Fieldwork, September 2019 to January 2020

Table 5.35 illustrates the comparative study of human rights practices in Central and District Prisons of Sikkim. It is evident from the table that regarding the right to make complaints regarding treatment 84 percent of prisoners from Central Prison and 85 percent from District Prison respectively rated either very low or low category. Similarly right to access rules 72 percent of prisoners of Central Prison and 85 percent of District Prison rated this facility either very low or low. Regarding their right to bring rejected complaints before the judiciary 94 percent of prisoners of

Central Prison and 89 percent of District Prison rated this facility in either very low or low category.

**Table 5.36: Component Wise Scoring of Prisoners Complaints and Inspection in Central and District Prisons of Sikkim**

SL.No	Components of Prisoners Complaints and Inspections	Mean Score	
		Central Prison	District Prison
1.	Right to make Complaints Regarding Treatment	1.85	1.86
2.	Right to Access of Rules	2.15	1.90
3.	Right to Bring the Rejected Complaints Before Judiciary	1.64	1.54
<b>Grand Total</b>		<b>1.88</b>	<b>1.76</b>

**Source:** Fieldwork, September 2019 to January 2020

Table 5.36 presents the component-wise mean score of Central and District Prison regarding prisoners' complaints and their inspections. It can be seen that the mean score of all three categories falls in the low category. The mean score regarding the right to make complaints regarding treatment in Central and District Prisons is 1.85 and 1.86 respectively. Regarding the right to access rules both Central and District Prison mean score is also low that is 2.15 and 1.90. The mean score of Central Prisons in the context of the right to bring the rejected complaints before the judiciary is also low that is 1.64 in Central and 1.54 in District Prison.

The overall mean score regarding prisoners' complaints and inspection falls in the low category on the five-point scales being used. The overall composite mean score of Central Prisons is 1.88 and the District is 1.76. It is clear that the mean score of both types of prisons falls in the low category and it shows that the difference

between human rights practices in Central and District Prisons of Sikkim is no different.

### 5.8.7 Right to Non-Discrimination of Prisoners in Central and District Prison of Sikkim

The objective of this category is to emphasize on discrimination on the grounds of race, colour, sex, language, religion, birth, social origin or any other status is prohibited in prisons. The rights have been based on three components that are (a) Prohibition of all forms of discrimination (b) Right to enjoy equal protection of the law and (c) Cultural Liberty.

**Table 5.37: Comparative Study of Right to Non-Discrimination of Prisoners in Central and District Prisons of Sikkim**

Facility	Components Related to Right to Non-Discrimination of Prisoners					
	Prohibition of all forms of Discrimination		Right to Enjoy Equal Protection of Law		Right to Enjoy Cultural Liberty	
	Central Prison %	District Prison %	Central Prison %	District Prison %	Central Prison %	District Prison %
Very Low	0.00	0.00	0.00	0.00	0.00	0.00
Low	0.00	5.38	0.98	1.08	0.00	0.00
Average	74.59	53.76	65.80	40.86	17.26	23.66
High	23.13	34.41	31.60	53.76	62.54	59.14
Very High	2.28	6.45	1.63	4.30	20.20	17.20
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

Source: Fieldwork, September 2019 to January 2020

Table 5.37 illustrates the comparative study of human rights practices in Central and District Prisons of Sikkim. It is evident from the table regarding the

prohibition of all forms of discrimination as 98 percent of prisoners of Central Prison and 88 percent of District Prison rated either average or high category. While 98 percent of prisoners of Central Prison and 95 percent of prisoners of District Prison rated the right to enjoy equal protection of the law in either average or high category. Similarly regarding the right to enjoy cultural liberty also the majority of prisoners that are 82 percent in Central Prisons and 76 percent in District Prison rated high or very high category.

**Table 5.38: Component Wise Scoring of Right to Non-Discrimination of Prisoners in Central and District Prison of Sikkim**

SL.No	Components of Right to Non-Discrimination of Prisoners	Mean Score	
		Central Prison	District Prison
1.	Prohibition of all Forms of Discrimination	3.27	3.41
2.	Right to Enjoy Equal Protection of Law	3.33	3.61
3.	Right to Enjoy Cultural Liberty	4.02	3.93
<b>Grand Total</b>		<b>3.54</b>	<b>3.65</b>

**Source:** Fieldwork, September 2019 to January 2020

Table 5.38 presents the mean score of Central and District Prison regarding the right to non-discrimination of prisoners. The mean score for the prohibition of all forms of discrimination in Central Prison is 3.27 which is less than the mean score of District Prison that is 3.41. While the mean score for the right to enjoy equal protection of the law in Central Prison is 3.33 and in District Prison, it is 3.61. The mean score regarding the right to enjoy cultural liberty in Central and District Prisons is 4.02 and 3.93 respectively.

The overall mean score regarding the right to non-discrimination in Central Prison is 3.54 and in District Prison, it is 3.65 which falls in the high category. Hence

it can be concluded that the prohibition of all forms of discrimination, right to enjoy equal protection of the law, and right to enjoy cultural liberty to prisoners in Central Prison and District Prison fall in the high category on the five-point scale being used. Hence there is no discrimination on the grounds of caste, race, gender, and nationality in Central and District Prisons of Sikkim.

## **5.9 Observations of the Field Study**

### **5.9.1 Social Profile of Prisoners in Central and District Prisons of Sikkim**

The social profile of the respondents constitutes the basic socio-economic data by which we can understand the bio-statistics of the respondents. This basic data gives us the starting point of understanding the respondents and it's very important to formulate the first impression about the respondents.

The majority of prisoners are predominantly dominated by the age group of young male offenders in both the prisons of Sikkim which primarily consists of the rural population. It can be inferred that the rural population has lesser opportunities, thus is more susceptible to commit crimes. The information regarding the educational qualification and the occupational distribution of the prisoners in Sikkim was also dominated by the illiterate and unemployed prisoners which reveal that with the increase in the educational qualification among the prisoners the incidence of crime rate decreases and also the lack of employment opportunities lead to a higher crime rate in the contemporary society.

In the prisons of Sikkim, the class of prisoners has committed a crime not because of social and economic status but either because of their bad company or in a moment of excitement, provocation or in anger or under the influence of alcohol with

no motive or gain. Those involved in theft cases seemed to be hardened ones because some of them have lodged in prison more than once and it seems that any amount of counselling shall have any effect on them. As already mentioned before barring a few, the prisoners involved in murder cases seem to be the victims of circumstances as they have committed crimes either under the influence of alcohol or in anger or sudden provocation or self defence. There are few cases in which the murders were committed for monetary or material gains.

### **5.9.2 Standard of Living**

There are more problems of accommodation, food and drinking, clothing, and bedding in Central Prison in comparison to the District Prison of Sikkim which makes it obvious that human rights practice in respect of these facilities is a little better in District Prison due to the accommodation for only undertrials prisoners. But still, the level of Human rights is not up to the desired level either in Central or the District Prison of Sikkim.

In both, the prison of Sikkim prisoners had submitted to the researcher that the quality of food was very poor and mostly potatoes and rice was served as regular food even in the case of the diabetic patients. Whereas cereals and pulses are being provided at a scale much higher than the scale recommended in the Model Prison Manual formulated by the Bureau of Police Research and Development (BPR&D), the scale prescribed for green vegetables, milk, meat, and sugar is considerably less than what has been recommended by the BPR&D.

Due to overcrowding, inmates have to live in extremely unhygienic conditions, with little concern for health or privacy. Often barracks built to house 20-

23 persons now accommodate twice the number that is 40-45. The research also reveals that women prisoners, convicts, and undertrial prisoners are kept together in two-storied buildings meant for political prisoners in the Central Prison of Sikkim. Hence, different kinds of offenders share their crime experiences and cause contamination, overcrowding, and weaken prison security.

### **5.9.3 Health and Hospital**

The overcrowding, inadequate sanitary facilities, lack of physical and mental activities, lack of decent health services, all raise the risk of health issues in prisons. The prison does not have a separate hospital of its own but there is a dispensary within the prison premises in both the Central and District Prison of Sikkim. The doctor comes only twice a week but he/she stays for a short period and thus visiting happens on a seniority basis especially for the convicts. Undertrials prisoners have almost no access to a health facility in both the prisons of Sikkim. In almost every case, the inmates after being taken to the hospital in Gangtok, all the necessary tests are never allowed by the prison escorts. Only a few of the tests are done but reports are never considered by prison authorities. Non-availability of adequate medical facilities for prisoners is largely due to the lack of full-time doctors as well as lack of basic infrastructure, like well-equipped ambulances, stretchers, dispensaries, hospital beds, etc. sometimes, the prisoner may need expert and urgent medical attention which is not available within the prison premises.

### **5.9.4 Clothing and Bedding**

Even though most of the UTPs lodged in this prison are very poor there is no provision for supplying clothing to undertrials prisoners. Due to the severity of winter

in Sikkim, at least prisoners should be provided with pullovers/ jackets as a part of their clothing for winter.

The researcher found some torn bed sheets still in use. It is desirable to prescribe fixed life periods for all clothing and bedding items which should invariably be replaced at the end of such a period but there is no life prescribed for clothing and bedding items. The Superintendent of Prison mentioned that these are replaced only becoming unserviceable. According to prison manuals, this should however not forbid the superintendent from issuing such items if the same become unserviceable for one reason or the other, before the lapse of the prescribed life period.

#### **5.9.5 Sanitation and Hygiene**

Hygiene in the Central Prison, Rongyek was a subjective issue. The undertrials were unhygienic while the convicts were up to date. Even the bedding of the two differed significantly. The convicts used to stay neat and clean with cleaner clothes. The undertrials were like guests of the prison and they were never kept appropriately.

Similarly, in the case of District Prison, Namchi due to the acute shortage of water the prison inmates are unhygienic. Prisoners are provided with all the toiletries but bathing is not possible due to cold weather. The Central Prison, Rongyek is located at a higher altitude where winter simply means torture to the prison inmates. To overcome the problem of cold, there is the availability of extra sheets of the blanket but the main problem out here is the non-availability of the water heating system. Not all would be affected by these but several old prison inmates have a problem while bathing with chilling cold water.

In the prisons of Sikkim, there is an inadequate facility of the washroom inside the prison cell. There are no separate washroom cubicles inside their cells and all the prison inmates had to manage within the small toilet inside their barracks. Only one toilet each is available inside 21/20 bedded wards/barracks. The prisoners are supplied with one lifebuoy soap for bathing and two washing soaps for washing their clothes. No footwear is supplied to the prisoners; most are wearing slippers and shoes arranged privately by them. Similarly, no bath towel has been supplied to any of them. There is a case for providing at least one pair of footwear annually to the prisoners in the interest of their overall hygiene as per the prison manuals.

#### **5.9.6 Vocational Training**

The vocational training was not up to the mark. Several vocational units like Carpentry, Tailoring, Knitting, Dairy, Piggery, Orchids and Floriculture, Mushrooms, and Vegetable Cultivation, have been set up inside the prison, utilizing funds allocated under the modernization scheme. The convicts were provided with training in traditional carpentry and bamboo works. Few people were working on these two platforms and as per the State Government under the Home Department; they were supposed to receive ₹ 30 for unskilled workers and ₹ 40 for skilled workers. However, in prison, those involved in carpentry are given ₹ 40 per day while the bamboo workers and the rest are given ₹ 30 per day. Considering the cost of living in Sikkim, these rates appear to be inadequate. Any amount that the inmates are entitled to be directly put into their bank accounts by the prison administration. In addition to this prison inmates were not provided with sufficient raw materials to engage themselves in vocations, which were assigned to them. The women were not provided with any kind of vocational training nor were they involved in any kind of activity.

Barring these, there were no other activities of any kind in the prison. Not even the cultural and recreational activities in both the Prisons of Sikkim.

### **5.9.7 Literacy and Education**

Education is the very base of the modern correctional process. It not only brings about sublimation of the anti-social instinct in a criminal but also helps him in his ultimate resettlement in society. An ideal scheme of prison education should include diversified programs for both general and vocational education with an emphasis on the needs of different inmate groups. Elementary education apart, the general education programs in prison should also include moral and spiritual education, cultural and creative activities. Correction and change in the prisoners' mentality can be brought about if certain other facilities are extended to the deserving inmates, such as the supply of books, periodicals, and newspapers and facilities for the continuation of studies during incarceration. Given practical difficulties for ex-offenders to secure stable and suitable jobs after release, the prisoners should be given such vocational training as would enable them to establish themselves through self-employment.

The prison authorities have initiated measures for giving elementary informal education to the inmates. The help of educated prisoners and prison staff are being enlisted for the purpose. The inmates are provided with the facility to continue with their distance education courses but only when the inmates by themselves ask for it. The authorities do not even provide information regarding the various educational programs and instructional facilities that are being provided in their respective prisons. No literacy missions are working in the prison of Sikkim. All those illiterate inmates go as they come. Not all prisoners are however interested in taking such

instructions. Some of them find it profitable to work in the various vocational units to earn wages.

### **5.9.8 Contact with Outside World**

It is found that Prisoners of Central and District Prisons are somehow satisfied with the status of their rights regarding prisoners' contact with the outside world because prisoners are allowed to meet their family members and visitors once a week and the time allotted for each interview is between 20-30 minutes. Similarly, the prison inmates are also allowed to partake (eat or drink) meals brought by their relatives and family in both the prisons of Sikkim.

The study reveals that there is a disparity between rich and poor in the cases of undertrials prisoners rich and well connected often get bail within a few days for being arrested for drug offences and robbery while those who were poor or partly educated get delayed trials, incarceration, etc. However, the majority of the prison population is illiterate, lacking an understanding of their rights, the poor do not always get the benefit of the provisions of the law in this regard.

### **5.9.9 Staff Position in the Prisons of Sikkim**

The study argues that the sanctioned and existing strength of staff to run the prison administration is inadequate in both the prisons of Sikkim. In the prison of Sikkim those who are earlier working in the police department, and were summarily dismissed for their indiscipline conduct. On reinstatement, they have been posted to the prison as Head warders against vacancies in the rank of warders. Similarly, the political victimization of police officers by the state government is also practiced like the police officers from the State Reserve Lines (SRL) are transferred in the prisons of

Sikkim. Posting officers and men with such adverse service records to the prisons may not be desirable. No regular institute for induction training of prison staff is available in the state. Those of them who have been inducted from the police department had received routine police training at the beginning of their career, which does not adequately equip them for discharging their duty in correctional institutions.

## **5.10 Suggestions and Few Recommendations**

### **5.10.1 Adequate Facilities for Prisoners**

It is recommended that in the context of cold weather in Sikkim, providing adequate proper nutritional value for maintaining inmate's health and physical strength is of vital importance. Clean drinking water in every ward, a special diet for inmates who are diabetic patients, green vegetables, and fruits is also recommended. It is also recommended that clean and sufficient clothing and bedding to inmates are provided along with slippers and necessary additional warm clothes.

The research recommends that there is an urgent need to construct new barracks to address the problem of overcrowding until the new prisons come up in other districts of Sikkim. The Central Prison, Rongyek needs to be upgraded since the number of convict prisoners' is increasing due to the rise in the Protection of Children from Sexual Offences (POCSO) Act, 2012, and Sikkim Anti Drugs Act, 2006 (SADA) cases.

### **5.10.2 Better Health and Sanitation Facilities**

The healthcare system of prison should be improved. There should be a medical examination of the prisoners at the time of their entry to the prison in the

prescribed format. Thereafter, regular medical check-ups should be ensured and provisions should be made for mentally ill prisoners and high-risk prisoners. The records of the prisoners should be maintained properly. Better sanitation facilities, hygiene, and potable drinking water should be provided. The Prison should be provided with mechanical cleaning, treatment, and maintenance of sewage plants so that the septic tanks do not have to be manually cleaned by the prisoners.

The recommendations also include provisions for a lady doctor to attend to female prisoners, an ambulance on call at both prisons, and an urban on-campus PHC at each prison. A full-time medical officer with Para-medical staff shall be assigned in both the Prisons of Sikkim.

### **5.10.3 Formation of Separate Committee to Monitor Human Rights of Prisoners**

A committee devoted solely to monitoring these detainees' rights should be created immediately. The committee should consist of a local judge, a prosecutor, a police officer, and two other law enforcement officials. The committee's sole charge would consist of overseeing the prisoners' well-being and facilitating their cases through the criminal justice process.

### **5.10.4 Complaint Box and Prison Manual**

Complaint boxes and prison manuals should be provided to the inmates in every prison so that they are made aware of their rights, duties, and rules. Orientation and refresher courses for prison staff- short duration and regular courses are needed for prison staff to keep them informed and motivated regarding human rights and work culture to maintain the right perspective in them.

### **5.10.5 Positive Initiatives**

Most convicts are illiterate with no vocational skills and suffer from anxiety and depression. They can be educated, imparted vocational training. Regular meditation and yoga may be conducted regularly for the benefit of all prisoners. Assistance may be sought from NGOs in this regard.

Proper sanitation facilities and construction of new toilets inside the barracks/wards may be taken up at the earliest. A counsellor should be available to help inmates face this difficult phase of their lives. Different ethnic or religious festivals may be celebrated in the prison too.

### **5.10.6 Vocational Training**

During the research, it was found that there were virtually no raw materials reported due to a paucity of funds. Due to the lack of vocational training, the prison inmates try on their own to keep themselves busy. The prisoners not being trained, not being given any work complained of mental and psychological problems, the research mentions.

The research recommends that training should be conducted by professionals from the handicrafts and Handloom Directorate in making Chokshe (Central Table), Thangka Painting, Tibetan Carpet, File and Folder Making, Computer Data Entry, Typing, and Short-Hand, etc. Life skills can significantly improve mental health as well as equip them post-release to earn their livelihood after going back to society.

### **5.10.7 Prisons to Act as Reforms Centres**

The objective of prison management should be to make prisons a safe place by maintaining security and discipline and to provide basic minimum facilities to prisoners to maintain human dignity. The prisons should act as a Reform Centre where the prisoners should learn good lessons and build themselves as useful and civilized persons after going back to society.

### **5.10.8 Capacity Building**

The energies of the prisoners (Male and Female) need to be enhanced by introducing educational programs for which the permission to appear in exams should be readily allowed to the student prisoners. Similarly, the training programs should be arranged for imparting computer skills for the educated prisoners, and for illiterate prisoners, the agriculture/ horticulture skills should be started.

### **5.10.9 Need for Reformative National Policy Framework**

In India, prison is a state list subject so provisions regarding prisoners' rights vary from state to state. Legislations, if made by the states, will always lack the unique standards for the protection of prisoner's rights. There should be a national policy framework that substitutes the varying state legislations. To have a satisfactory human rights regime in states there is a need to enact national legislations duly incorporating the international provisions of prisoners which in turn will serve as a model for state legislation of human rights.

#### **5.10.10 Adequate Training Programmes for Prison Officials**

The Prisons in Sikkim lag in the matter of the awareness and training of officials regarding the prisoners' rights and there is a need to take special efforts to provide awareness in the officials regarding prisoners' rights. A prisoner despite his deeds and wrongs is a human being, the prison staff is required to be sensitized and adequately trained that they have to deal with human beings. Some adequate training programs to awaken a response in them must be made to feel that they are in the care of fellow humans.

#### **5.10.11 Steps toward Making Prison to Open Institutions**

The basic problem with prisons is that they are closed institutions that breed corruption and malpractices. This can be changed by involving non-governmental organisations, academicians, and media in various ways including as visitors. This will usher in accountability and openness.

Besides suffering from physical ailments, the prisoner also undergoes considerable stress and trauma during his stay in prison. Imprisonment is often accompanied by depression and a feeling of isolation and neglect. It was; therefore felt that active counselling must be made available to the prisoners to overcome these problems. The counselling should aim not merely at providing a temporary relief by pulling them out of their depression, but at instilling hope and a sense of purpose in them and by equipping them with skills that may prove useful upon release.

It is anticipated that the execution of the above recommendations would go a long way to enhance the human rights conditions in the Prisons of Sikkim.

## CHAPTER - 6

### CONCLUSION

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Humans are born free. Freedom is god's greatest gift to men and women. But many have lost their freedom by their criminal behaviour which is the outcome of a sick mind. For a long time until the beginning of the present century criminals were looked at with hatred. Society's reaction to the crime was entirely retributive and punitive. But the social reformers all over the world in the recent past showed great concern for the reformatory treatment of criminals. In western countries, progressive governments are experimenting with various reform schemes on the grounds of humanitarianism. But in India even after 73 years of Independence, horrors of prison life continue to exist.

According to Gandhi, prisons, like hospitals, are to be places of correction, reconciliation, reformation, and a centre of rehabilitation training. But today, they are, on the contrary, seed-beds of vices, totally undignified and inhumane. Thousands of men and women all over India are condemned to live in isolation, often under subhuman conditions, physically, mentally, morally leading to the wreckage of human lives and families. During the British period the barbaric treatment, dehumanizing atmosphere, human torture, and wholly unhygienic food made a goal a place to dread. Similar appalling and gruesome conditions prevail in prisons in our country.

People in prisons are not persons to be condemned. Some are there for no fault of their own sometimes wrongly accused; some others are there without any trial for years. Even those who are found guilty are those who have repented for their

misdeeds. The goals of punishment also have been undergoing radical changes contemporaneous with the wider awakening about the rights of even wrongdoers. This approach eschews the deterrent and retributive elements of punishment and strongly advocates a reformatory approach. The government should accord the highest priority to prison reform by converting them from institutions of horror to modern reclamation and correctional centres. It is high time that the antediluvian Prisons Act of 1894 is radically amended and the outdated mode of classification of prisoners based on the so-called social status that strikes at the root of equality be scrapped.

It is indeed a noble task to bring freedom and hope into the lives of those who are condemned to social ostracization and solitude and to work for their integral personal development. They need our help and support for their renewal and rehabilitation. A voluntary group of dedicated people with sufficient training in psychology and counselling must be encouraged to interact with prisoners and to work for their rehabilitation in society. There is an urgent need also to energize the conscience of the public towards this neglected segment of our society. We must realize that we have a duty (dharma) to enkindle the hope of enlightenment in the life of those whose lives have been in darkness and to help them to restore their lost freedom and human dignity.

Crime is a matter of serious concern for people everywhere today. Both crime and criminals have become the focus of attention in the present society. Today social scientists believe that only punishment cannot solve that problem relating to crime in a society, because all the criminals are not going to be reformed under the same type of punishment. They differ socially and economically and in so many other ways. Since criminals differ in their socio-economic backgrounds, it also becomes necessary

to give them different kinds of punishment. Now it is generally accepted that not all types of crimes can be prevented by punishment from violating criminal laws. Punishment is to be directed towards correction and reformation in such a way as to enable the criminals to change their lifestyle and to be assimilated into the society as its useful members.

Many scholars believe that crime, far from being an individual affair, is the frustrating outcome of the social situations which provide stimuli to an individual leading him to different types of criminal behaviour. So there is a need to identify causative factors for crime in the family and community. The discordant home life, adverse social situations, bad influences of friends and colleagues will always motivate and instigate people to become involved in criminal activities. Crime presents itself basically as a manifestation of the dysfunction of the social system. Deep-seated poverty, destitution, unemployment, illiteracy, ill-health, and lack of adequate social services can create a pathological situation where crime can easily flourish.

What requires immediate attention is to identify such situations which play a major role in the development of deviant behaviour. New ways and means must be devised to reform and rehabilitate even branded criminals. Based on modern theories on crime and criminals our attitude towards punishments must change. Regarding the reformation and rehabilitation of the criminals, a fresh look at the structure and function of the prison system is necessary. The Prison system in India must be modified on modern patterns. It must fully follow the reformatory trend of thought as prevailing in the contemporary period. The existing justice system must be re-oriented on the growing realization to delink criminality from social misbehaviour.

Traditionally, the tendency has been to label much socially unacceptable behaviour as 'crime'. This tendency towards 'criminalization' has led to the unfortunate state where social misbehaviour is being tackled through law and court rather than through social welfare action. Begging, prostitution, and destitution are examples of such misconducts that cannot be tackled through court and punishment.

The new school of thought concentrates on preventive and correctional approaches to coping with crime. Under this orientation, social welfare becomes a crucial adjunct to crime prevention mechanisms. So policymakers must reduce the reliance on law and courts to tackle social deviance. Consequently, legal reforms are necessary to tackle socio-economic crimes arising out of poverty and destitution, and ignorance. Asia and the Pacific adopted not only the systems of law from the west but penal institutions and court systems along with them. Today we find the clash of cultures in the penal institutions. For example, imprisonment could see more like a reward as a punishment in societies living from hand to mouth. The privacy in prison treasured by people in the west is a kind of punishment for people who have always lived in groups. In these contexts innovations in three areas, that is, decriminalization, depenalisation, and diversion are necessary. They have to be understood as components of a continuous, dynamic process within the criminal justice system by which some forms of behaviours become stigmatization and penalization process.

The maintenance of law and order based on values of socio-economic justice, freedom, and equal opportunity, is an important factor in creating a just social order in our country. This will also accelerate overall development and technological progress. It will ultimately help in improving national integration, political stability, and overall growth. Actions by citizens out of tune with the constitution and the laws are

considered as crimes that will lead them to suffer punishments of various sorts. The nature of crimes, the socio-economic factors, and environmental conditions influencing the criminals, the effects of punishments on offenders, and the modern theories related to them have to be studied so that the existing laws based on outdated theories and principles can be amended, crimes can be effectively prevented, offenders can be properly treated and transformed as responsible citizens and victims of crimes can be adequately compensated.

Internationally, it has become a well-accepted rule that the correctional mechanism in the criminal justice administration should comply with reformatory policies. It is also declared that all prisoners shall be treated with respect due to their inherent dignity and value as human beings. There is a set of rights identified by the international legal system to save the human dignity and value of prisoners and thereby the reformatory theme of correction. It is also strongly argued that the community can never tolerate a scheme of correction that does not maintain a connection with the evilness of the crime done. Thus punishment always maintains a subjective perspective. The rights of the imprisoned person have to be read despite this perception. It is truly meant that there can be varied punishments for the same offence, but one should not be treated badly while the sentence once declared by the court goes on. In this purview, the rights guaranteed under the international legal system are theoretically provided in India too.

India is a signatory to most of the international human rights treaties and conventions. But in India prison is a state list subject so provisions regarding prisoners' rights vary from state to state. It can be said that the prisoners are also entitled to all their fundamental rights while they are behind the prisons. Indian

constitution does not expressly provide for the prisoners' rights but articles 14, 19, and 21 implicitly guarantee the prisoners' rights, and the provisions of the Prisons Act, 1894 contains the provisions for the welfare and protection of prisoners. The court has ruled that it can intervene with prison administration when constitutional rights or statutory prescriptions are transgressed to the injury of the prisoner. The Supreme Court in many cases held that a prisoner is a human being, a natural person, and also a legal person. Being a prisoner he does not cease to be a human being, natural person, or legal person. A conviction for a crime does not reduce the person into a non-person, whose rights are subject to the whim of the prison administration and therefore, the imposition of any major punishment within the prison system is conditional upon the absence of procedural safeguards.

Indian Judiciary regarding the protection of the Human Rights of prisoners indicates that the judiciary has been playing the role of saviour in situations where the executive and legislature have failed to address the problems of the people. The Supreme Court has come forward to take corrective measures and provide necessary directions to the executive and legislature. From the perusal of the above contribution, it is evident that the Indian Judiciary has been very sensitive and alive to the protection of the Human Rights of the people. It has, through judicial activism forged new tools and devised new remedies to vindicate the most precious of the precious Human Right to Life and Personal Liberty.

Sikkim has four revenue districts but only two prisons. The North and West districts have no separate prison and prisoners remanded to custody from these districts are being accommodated in the Central Prison at Rongyek (Gangtok) for North District and District Prison at Boomtar (Namchi), for West District. Therefore,

the area of the study shall be limited to Sikkim's geographical and political authority i.e. Central Prison at Rongyek (Gangtok), East Sikkim, and District Prison at Boomtar (Namchi), South Sikkim. Management of prisons falls exclusively under the domain of the state government, and in Sikkim, prison administration is under the Home Department. During the study in Central and District Prison of Sikkim, a researcher verify the living conditions of the prisoners and to determine if the human rights of the prison inmates are being duly respected and protected by the prison and other authorities in several areas including the accommodation of barracks, hygiene, medical facilities, clothing, bedding, food, vocational training, recreational facilities, women prisoner and health and hospital in both the Prison of Sikkim.

The majority of prisoners are predominantly dominated by the age group of young male offenders in both the Prisons of Sikkim which primarily consists of the rural population. It can be inferred that the rural population has lesser opportunities, thus is more susceptible to commit crimes. The information regarding the educational qualification and the occupational distribution of the prisoners in Sikkim was also dominated by the illiterate and unemployed prisoners which reveal that with the increase in the educational qualification among the prisoners the incidence of crime rate decreases and also the lack of employment opportunities lead to a higher crime rate in the contemporary society.

In the prisons of Sikkim, the class of prisoners has committed a crime not because of social and economic status but either because of their bad company or in a moment of excitement, provocation or in anger or under the influence of alcohol with no motive or gain. Those involved in theft cases seemed to be hardened ones because some of them have lodged in prison more than once and it seems that any amount of

counselling shall have any effect on them. As already mentioned before barring a few, the prisoners involved in murder cases seem to be the victims of circumstances as they have committed crimes either under the influence of alcohol or in anger or sudden provocation or self defence. There are few cases in which the murders were committed for monetary or material gains.

The study has revealed that there are more problems of accommodation, food and drinking water, clothing, and bedding in Central Prison in comparison to the District Prison of Sikkim which makes it obvious that human rights practice in respect of these facilities is a little better in District Prison due to the accommodation for only undertrials prisoners. But still, the level of Human rights is not up to the desired level either in Central or the District Prison of Sikkim. In both, the prison of Sikkim prisoners had submitted to the researcher that the quality of food was very poor and mostly potatoes and rice was served as regular food even in the case of the diabetic patients. Whereas cereals and pulses are being provided at a scale much higher than the scale recommended in the Model Prison Manual formulated by the Bureau of Police Research and Development (BPR&D), the scale prescribed for green vegetables, milk, meat, and sugar is considerably less than what has been recommended by the BPR&D.

The research reveals that women prisoners, convicts, and undertrial prisoners are kept together in two-storied buildings meant for political prisoners in the Central Prison of Sikkim. Hence, different kinds of offenders share their crime experiences and cause contamination, overcrowding, and weaken prison security. Every prisoner is made to undergo a medical examination before admission. On receipt from the courts, each prisoner is sent to the government hospital for a medical check-up, and

only after such check-up he or she is admitted to the wards. But not a single prisoner patient is treated humanely in the District Hospital, Namchi, and Gangtok by the medical personnel. But quite often the prison administration does not take this responsibility as seriously as they should. Medical checks are routine and complaints of ill-health are not attended to urgently even though there are different national and international safeguards for the human rights of prisoners.

The overcrowding, inadequate sanitary facilities, lack of physical and mental activities, lack of decent health services, all raise the risk of health issues in prisons. The prison does not have a separate hospital of its own but there is a dispensary within the prison premises in both the Central and District Prison of Sikkim. The doctor comes only twice a week but he/she stays for a short period and thus visiting happens on a seniority basis especially for the convicts. Undertrials prisoners have almost no access to a health facility in both the prisons of Sikkim. In almost every case, the inmates after being taken to the hospital in Gangtok, all the necessary tests are never allowed by the prison escorts. Only a few of the tests are done but reports are never considered by prison authorities. Non-availability of adequate medical facilities for prisoners is largely due to the lack of full-time doctors as well as lack of basic infrastructure, like well-equipped ambulances, stretchers, dispensaries, hospital beds, etc. sometimes, the prisoner may need expert and urgent medical attention which is not available within the prison premises.

Due to the severity of winter in Sikkim, prisoners should be provided with pullovers/ jackets as a part of their clothing for winter. Even though most of the undertrials prisoners lodged in this prison are very poor there is no provision for supplying clothing to undertrials prisoners. The researcher found some torn bed sheets

still in use. It is desirable to prescribe fixed life periods for all clothing and bedding items which should invariably be replaced at the end of such a period but there is no life is prescribed for clothing and bedding items it can be replaced only becoming unserviceable. According to prison manuals, this should however not forbid the superintendent from issuing such items if the same become unserviceable for one reason or the other, before the lapse of the prescribed life period.

Hygiene in the Central Prison, Rongyek was a subjective issue. The undertrials were unhygienic while the convicts were up to date. Even the bedding of the two differed significantly. The convicts used to stay neat and clean with cleaner clothes. The undertrials were like guests of the prison and they were never kept appropriately. Similarly, in the case of District Prison, Namchi due to the acute shortage of water the prison inmates are unhygienic. Prisoners are provided with all the toiletries but bathing is not possible due to cold weather. The Central Prison, Rongyek is located at a higher altitude where winter simply means torture to the prison inmates. To overcome the problem of cold, there is the availability of extra sheets of the blanket but the main problem out here is the non-availability of the water heating system. Not all would be affected by these but several old prison inmates have a problem while bathing with chilling cold water.

In the prison of Sikkim, there is an inadequate facility of the washroom inside the prison cell. There are no separate washroom cubicles inside their cells and all the prison inmates had to manage within the small toilet inside their barracks. Only one toilet each is available inside 20/21 bedded wards/barracks. The prisoners are not allowed to use the toilet blocks outside their wards during night hours. It is therefore considered desirable to provide at least two toilets each inside every male barracks in

both the Prisons of Sikkim. The prisoners are supplied with one lifebuoy soap for bathing and two washing soaps for washing their clothes. No footwear is supplied to the prisoners; most are wearing slippers and shoes arranged privately by them. Similarly, no bath towel has been supplied to any of them. There is a case for providing at least one pair of footwear annually to the prisoners in the interest of their overall hygiene as per the prison manuals. Most toilets are open, denying the prisoner his basic right to privacy and human dignity, and are also dirty. Water shortage being the rule rather than the exception the toilets prove to be the ideal breeding grounds for health hazards and epidemics in the Prison of Sikkim.

The vocational training was not up to the mark. Several vocational units like Carpentry, Tailoring, Dairy, Piggery, Orchids, and Floriculture, Mushrooms, and Vegetable Cultivation, have been set up inside the prison, utilizing funds allocated under the modernization scheme. The convicts were provided with training in traditional carpentry and bamboo works. Few people were working on these two platforms and as per the State Government under the Home Department; they were supposed to receive ₹ 30 for unskilled workers and ₹ 40 for skilled workers. However, in prison, those involved in carpentry are given ₹ 40 per day while the bamboo workers and the rest are given ₹ 30 per day. Considering the cost of living in Sikkim, these rates appear to be inadequate. In addition to this prison inmates were not provided with sufficient raw materials to engage themselves in vocations, which were assigned to them. The women were not provided with any kind of vocational training nor were they involved in any kind of activity in both the prisons of Sikkim.

Education is the very base of the modern correctional process. It not only brings about sublimation of the anti-social instinct in a criminal but also helps him in

his ultimate resettlement in society. An ideal scheme of prison education should include diversified programs for both general and vocational education with an emphasis on the needs of different inmate groups. Elementary education apart, the general education programs in prison should also include moral and spiritual education, cultural and creative activities. Correction and change in the prisoners' mentality can be brought about if certain other facilities are extended to the deserving inmates, such as the supply of books, periodicals, and newspapers and facilities for the continuation of studies during incarceration. Given practical difficulties for ex-offenders to secure stable and suitable jobs after release, the prisoners should be given such vocational training as would enable them to establish themselves through self-employment. No literacy missions are working in the prison of Sikkim. All those illiterate inmates go as they come. Not all prisoners are however interested in taking such instructions. Some of them find it profitable to work in the various vocational units to earn wages.

The study argues that the sanctioned and existing strength of staff to run the prison administration is inadequate in both the prisons of Sikkim. In the prison of Sikkim those who are earlier working in the police department, and were summarily dismissed for their indiscipline conduct. On reinstatement, they have been posted to the prison as Head warders against vacancies in the rank of warders. Similarly, the political victimization of police officers by the state government is also practiced like the police officers from the State Reserve Lines (SRL) are transferred in the prisons of Sikkim. Posting officers and men with such adverse service records to the prisons may not be desirable. No regular institute for induction training of prison staff is available in the state. Those of them who have been inducted from the police

department had received routine police training at the beginning of their career, which does not adequately equip them for discharging their duty in correctional institutions.

Lastly, the management and administration of Prisons fall exclusively in the domain of the respective State Governments. Thus, States have the primary role, responsibility, and authority to change the current prison laws, rules, and regulations. But the majority of Indian prisons are still governed by a 126-year-old the Prisons Act, of 1894 which focuses primarily on enforcement of discipline with no regard for the reformation and rehabilitation of prisoners. Some prison manuals still mention barbaric practices such as flogging, the use of fetters, shackles, and handcuffs. To date, handfuls of states have taken the lead in framing a new act that emphasizes the “correctional” aspects of the prison administration in India.

The Prisons of Sikkim look very beautiful from the outside world. Even the documentation was done properly by the prison administration, everything looks fine but the invisible side of the issue is the gross violation of the basic human rights of the prisoners. So, efforts should be made to organize periodical refresher courses for the existing staff to sensitize them to the rights of prisoners, their psychological and emotional needs. If a favourable atmosphere is provided, any prisoner can rise to a normal standard of living. Every prisoner has an ardent desire to lead a better life in society. But society is not prepared to accept a prisoner, and the prisoner is not equipped to face the challenges of society. Even though prisoners are deprived of their liberty, they should value their basic human rights and freedoms to rehabilitate and reintegrate them after going back to society.

## APPENDIX: I

### *Interview Schedule for Prisoners of Sikkim*

Date of Interview				
Types of Prison	Central Prison		District Prison	
Arrested Under IPC Section				
Prisoner Category	Convict		Undertrial	

#### **A. Prisoners' Profile:**

\* Name of the Prisoner:

\* Age:

(a) 18-30 years (b) 31-50 years (c) 51-60 years (d) 61-80 years

\* Gender: (a) Male (b) Female

\* Marital Status:

(a) Married (b) Widow (c) Divorced (d) Unmarried (e) Separated

\* Region: (a) Urban (b) Rural

\* Religion: (a) Christian (b) Buddhist (c) Muslim (d) Hindu

\* Social Group: (a) General (b) OBC (c) ST (d) SC

\* Educational Qualification:

(a) Illiterate (b) Primary (c) Secondary (d) Senior Secondary (e) Undergraduate

\* Occupation:

(a) Government Job (b) Private Job (c) Business (d) Unemployed

**B. Human Rights of Prisoners:**

Human Rights Categories	Prisoners Rating	Very Low	Low	Average	High	Very High
	Score Assigned	1	2	3	4	5
<b>1. RIGHT TO AN ADEQUATE STANDARD OF LIVING:</b>						
A. ACCOMMODATION						
B. RIGHT TO ADEQUATE FOOD AND DRINKING WATER						
C. RIGHT TO CLOTHING AND BEDDING						
<b>2. HEALTH RIGHTS OF PRISONERS:</b>						
A. RIGHT TO HEALTH SCREENING FOR PRISONERS						
B. RIGHT TO HAVE ACCESS TO HEALTHCARE						
C. HEALTHY CONDITIONS IN CUSTODY						
<b>3. MAKING PRISONS SAFE PLACES:</b>						
A. SECURITY						
B. GOOD ORDER AND CONTROL						
C. DISCIPLINE AND PUNISHMENT						
<b>4. MAKING THE BEST USE OF PRISONS:</b>						
A. WORK						
B. EDUCATION						
C. CULTURAL ACTIVITIES						

<b>5. PRISONERS CONTACT WITH THE OUTSIDE WORLD:</b>					
A. <i>RIGHT TO COMMUNICATE WITH THE FAMILY</i>					
B. <i>RIGHT TO ACCESS NEWS</i>					
C. <i>RIGHT TO KEPT IN PRISON NEAR THEIR HOMES</i>					
<b>6. PRISONERS COMPLAINTS AND INSPECTIONS:</b>					
A. <i>RIGHT TO MAKE COMPLAINTS REGARDING HIS/HER TREATMENT</i>					
B. <i>RIGHT TO ACCESS OF RULES</i>					
C. <i>RIGHT TO BRING THE REJECTED COMPLAINTS BEFORE JUDICIARY AND OTHER AUTHORITY</i>					
<b>7. RIGHT TO NON-DISCRIMINATION OF PRISONERS:</b>					
A. <i>PROHIBITION OF ALL FORMS OF DISCRIMINATION</i>					
B. <i>RIGHT TO ENJOY EQUAL PROTECTION OF LAW</i>					
C. <i>RIGHT TO ENJOY CULTURAL LIBERTY</i>					

Signature of Prisoner

## APPENDIX: II

### *List of Undertrials Prisoners at District Prison of Sikkim (Namchi) as on 31/12/2019*

SL. No	Name of the Prisoners	Sex	Age	Category	FIR/Crime No	Arrested Under Section	Date of Admission in Prison	District
1.	Prisoner 1	Male	42	ST	22/2017	302/34 IPC	4.8.2018	South
2.	Prisoner 2	Male	21	OBC	13/2018	376 IPC r/w 4/6 POCSO	3.8.2018	South
3.	Prisoner 3	Male	58	OBC	21/2018	376 IPC r/w POCSO	9.8.2018	South
4.	Prisoner 4	Male	25	OBC	34/2018	9/14 SADA r/w 9(1)(a) SADA	25.10.2018	South
5.	Prisoner 5	Male	20	OBC	30/2018	6 POCSO	7.12.2018	South
6.	Prisoner 6	Male	52	SC	3/2018	376/341 IPC r/w 6 POCSO	10.1.2018	South
7.	Prisoner 7	Male	28	OBC	3/2018	5(m) 6/12 POCSO	24.1.2018	South
8.	Prisoner 8	Male	33	OBC	96/2018	7/9(14) SADA	31.12.2018	South
9.	Prisoner 9	Male	53	SC	8/2018	8/10 POSCO	12.2.2018	South
10.	Prisoner 10	Male	28	ST	9/2018	353(34) IPC r/w 7/9/14 SADA	19.2.2018	South
11.	Prisoner 11	Male	26	ST	9/2018	353/34 IPC r(w) 7/9/14 SADA	19.2.2018	South
12.	Prisoner 12	Male	21	OBC	9/2018	353/34 IPC r/w 7/9/14 SADA	19.2.2018	South
13.	Prisoner 13	Male	38	OBC	7/2018	9/14 SADA	26.2.2018	South
14.	Prisoner 14	Male	30	OBC	12/2018	9/14 SADA	25.3.2018	South
15.	Prisoner 15	Male	45	ST	7/2018	8 POCSO	11.4.2018	South
16.	Prisoner 16	Male	25	OBC	29/2018	7/9/15 SADA	27.4.2018	South

17.	Prisoner 17	Male	21	ST	16/2018	376/34 IPC r/w 6 POCSO	5.6.2018	South
18.	Prisoner 18	Male	21	SC	37/2018	7/9/14 SADA 2006, r/w 7(i)(b)S ADAA 2017	8.6.2018	South
19.	Prisoner 19	Male	37	GEN	48/2018	22(27 ND Act r/w 7/9/14 SADA	13.6.2018	South
20.	Prisoner 20	Male	18	SC	38/2018	380/457 IPC	15.5.2018	South
21.	Prisoner 21	Male	40	GEN	45/2018	9/14 SADA	6.6.2018	South
22.	Prisoner 22	Male	20	SC	41/2018	341/326/ 34 IPC	22.6.2018	South
23.	Prisoner 23	Male	43	GEN	14/2018	376 IPC r/w 6 POCSO	24.6.2018	South
24.	Prisoner 24	Male	35	GEN	44/2018	SADA	29.6.2018	South
25.	Prisoner 25	Male	41	GEN	44/2018	SADA	29.6.2018	South
26.	Prisoner 26	Male	26	GEN	47/2018	436 IPC	23.7.2018	South
27.	Prisoner 27	Male	52	OBC	56/2018	6 POSCO	24.7.2018	South
28.	Prisoner 28	Male	26	ST	20/2018	376/34 r/w 6 POCSO	2.8.2018	South
29.	Prisoner 29	Male	26	ST	20/2018	376(34 r/w 6 POCSO	2.8.2018	South
30.	Prisoner 30	Male	20	ST	20/2018	376(34 r/w 6 POCSO	2.8.2018	South
31.	Prisoner 31	Male	34	ST	20/2018	376/34 r/w 6 POCSO	2.8.2018	South
32.	Prisoner 32	Male	21	OBC	13/2018	376 IPC r/w 4/6 POCSO	3.8.2018	South
33.	Prisoner 33	Male	42	ST	22/2018	326/302 IPC	4.8.2018	South
34.	Prisoner 34	Male	58	OBC	21/2018	376 IPC r/w POCSO	9.8.2018	South
35.	Prisoner 35	Male	38	GEN	23/2018	354 IPC r/w 10 POCSO	16.8.2018	South

36.	Prisoner 36	Male	21	OBC	70/2018	302/341 IPC	11.9.2018	South
37.	Prisoner 37	Male	35	OBC	70/2018	302/341 IPC	11.9.2018	South
38.	Prisoner 38	Male	40	OBC	16/2018	326 IPC	13.9.2018	South
39.	Prisoner 39	Male	68	ST	35/2018	376 IPC r/w 4 POCSO	14.8.2018	South
40.	Prisoner 40	Male	34	GEN	35/2018	376 IPC r/w 4 POCSO	14.9.2018	South
41.	Prisoner 41	Male	55	GEN	53/2018	376 IPC r/w 4 POCSO	17.9.2018	South
42.	Prisoner 42	Male	25	ST	11/2018	363/376 IPC r/w 4 POCSO	25.9.2018	South
43.	Prisoner 43	Male	29	SC	3/2017	22/27 ND Act	8.10.2018	South
44.	Prisoner 44	Male	39	OBC	28/2018	4 POCSO	9.10.2018	South
45.	Prisoner 45	Male	25	OBC	4/2018	9(14 SADA r/w 9(i)(a) SADA	25.10.2018	South
46.	Prisoner 46	Male	27	ST	8/6/2018	376/448/ 506 IPC r/w 4 POCSO	28.10.2018	South
47.	Prisoner 47	Male	28	GEN	31/2018	9(b)(d), 14 SADA r/w 7 SADA	29.10.2018	South
48.	Prisoner 48	Male	23	OBC	94/2018	4 POCSO	20.12.2018	South
49.	Prisoner 49	Male	29	ST	88/2018	379/34 IPC	1.11.2018	South
50.	Prisoner 50	Male	26	OBC	28/2018	376 IPC	15.11.2018	South
51.	Prisoner 51	Male	21	OBC	43/2017	SADA	15.11.2018	South
52.	Prisoner 52	Male	20	OBC	30/2018	6 POCSO	7.12.2018	South
53.	Prisoner 53	Male	23	GEN	68/2018	7/9/14 SADA r(w 7(i)(b) SADA	13.12.2018	South
54.	Prisoner 54	Male	26	GEN	32/2018	366 IPC r/w 8 POCSO Act 2012	26.12.2018	South

55.	Prisoner 55	Male	28	SC	2/2019	376 IPC r/w 4 POCSO	10.01.2019	South
56.	Prisoner 56	Male	41	GEN	32/2019	457/376	17.12.19	South
57.	Prisoner 57	Male	37	OBC	2/2019	326 IPC	17.01.2019	South
58.	Prisoner 58	Male	23	ST	5/2019	353/323/ 324/332/ 188/147/ 149/506 IPC	18.01.2019	South
59.	Prisoner 59	Male	28	OBC	5/2019	353/323/ 324/332/ 188/147/ 149/506 IPC	18.01.2019	South
60.	Prisoner 60	Male	20	GEN	4/2019	457/380 IPC	18.01.2019	South
61.	Prisoner 61	Male	22	ST	65/2019	454/380 IPC	23.01.2019	South
62.	Prisoner 62	Male	26	GEN	31/2018	9(b)(d), 14 SADA r/w 7 SADA	29.10.2019	South
63.	Prisoner 63	Male	18	SC	18/2019	376/511/ 354/506 IPC r/w 8/10 POCSO Act	20.6.2019	South
64.	Prisoner 64	Male	45	OBC	35/2019	9/14 SADA r/w 7(ii) (c) 19	5.7.2019	South
65.	Prisoner 65	Male	24	GEN	24/2019	457/ IPC r/w 8 POCSO	9.7.2019	South
66.	Prisoner 66	Male	27	GEN	62/2019	302 IPC	26.8.2019	South
67.	Prisoner 67	Male	27	ST	45/2019	8/10 POCSO	28.8.2019	South
68.	Prisoner 68	Male	59	ST	45/2019	8/10 POCSO	28.8.2019	South
69.	Prisoner 69	Male	35	ST	23/2019	376 IPC r/w 8 POCSO Act	10.9.2019	South
70.	Prisoner 70	Male	18	ST	24/2019	376 IPC r/w 4 POCSO	11.9.2019	South
71.	Prisoner 71	Male	25	SC	50/2019	7/9/14 SADA	17.10.2019	South
72.	Prisoner 72	Male	19	OBC	29/2019	7/9/14 SADA	4/11/2019	South

73.	Prisoner 73	Male	52	ST	12/2018	376 IPC r/w POCSO	17.3.2018	West
74.	Prisoner 74	Male	32	GEN	8/2018	7/9/14 SADA r/w 9(1)(a)(b) ) SADA	15.6.2018	West
75.	Prisoner 75	Male	19	SC	8/2018	7/9/14 SADA r/w 9(1)(b)	16.6.2018	West
76.	Prisoner 76	Male	22	ST	7/2018	376 IPC r/w 4 POCSO	29.1.2018	West
77.	Prisoner 77	Male	19	SC	7/2018	376 IPC r/w 4 POCSO	29.1.2018	West
78.	Prisoner 78	Male	28	ST	7/2018	376 IPC r/w 4 POCSO	29.1.2018	West
79.	Prisoner 79	Male	52	ST	7/2018	376 IPC r/w 4 POCSO	29.1.2018	West
80.	Prisoner 80	Male	19	ST	7/2018	376 IPC r/w 4 POCSO	29.1.2018	West
81.	Prisoner 81	Male	33	GEN	27/2018	376 IPC r/w 6 POCSO	6.8.2018	West
82.	Prisoner 82	Male	27	GEN	29/2018	376 IPC r/w 6 POCSO	28.8.2018	West
83.	Prisoner 83	Male	21	OBC	01/2019	9/14 SADA r/w 9(1)(b) SADA	8.2.2019	West
84.	Prisoner 84	Male	33	OBC	34/2017	7/9/14 SADA	4.5.2019	West
85.	Prisoner 85	Male	25	ST	26/2019	366/376/ r/w 4 POCSO Act	18.5.2019	West
86.	Prisoner 86	Male	40	ST	31/2019	376/511 IPC r/w 8 POCSO Act	14.6.2019	West
87.	Prisoner 87	Male	33	OBC	34/2017	7/9/14 SADA	4.5.2019	West
88.	Prisoner 88	Male	21	ST	51/2019	379 IPC	31.10.2019	West
89.	Prisoner 89	Female	25	GEN	44/2019	341/384/ 500/506/ 34 IPC	28.8.2019	West

90.	Prisoner 90	Female	23	GEN	44/2019	341/384/ 500/506/ 34 IPC	28.8.2019	West
91.	Prisoner 91	Female	46	ST	30/2019	302 IPC	11.06.2019	South
92.	Prisoner 92	Female	27	OBC	29/2019	7/9/14 SADA r/w 7(1)(b) SADA	4.11.2019	South
93.	Prisoner 93	Female	27	OBC	88/2019	7/9/14 SADA r/w 22/27 ND ACT	6.12.2019	South

**Note:** The name of the Prisoners has been replaced with numbers to maintain the confidentiality.

**Source:** Fieldwork, September 2019 to January 2020

## APPENDIX: III

### *List of Undertrials Prisoners at Central Prison of Sikkim (Rongyek)*

SL. No	Name of Prisoner	Sex	Age	Category	Section	Sentence Awarded
1.	Prisoner 1	Male	30	GEN	302 IPC	Life
2.	Prisoner 2	Male	52	SC	376 IPC r/w sec 4 of POCSO	Life
3.	Prisoner 3	Male	25	ST	307/34 IPC	10 yrs
4.	Prisoner 4	Male	30	ST	376 IPC r/w sec 4 of POCSO	Life
5.	Prisoner 5	Male	32	MUSLIM	307/395/120-B IPC	Life
6.	Prisoner 6	Male	24	SC	302 IPC	Life
7.	Prisoner 7	Male	25	ST	307/120-B IPC r/w sec.27 Arms Act, 1959	10 Yrs
8.	Prisoner 8	Male	40	SC	376 IPC r/w sec. 6 & 10 of POCSO	10 Yrs
9.	Prisoner 9	Male	32	SC	7(a)(b)/9/13/14 SADA	5 Yrs
10.	Prisoner 10	Male	31	ST	7(a) (b)/14 SADA r/w sec. 9(1)(4)of SADA Amendment Act. 2017	5 Yrs
11.	Prisoner 11	Male	21	ST	457/380 IPC	7 Yrs
12.	Prisoner 12	Male	28	OBC	7(a)(b)/9(d)/14 SADA	5 Yrs
13.	Prisoner 13	Male	24	ST	7(a)(b)/14 SADA	5 Yrs
14.	Prisoner 14	Male	49	GEN	7(a)(b) SADA	5 Yrs
15.	Prisoner 15	Male	27	OBC	7(a)(b)/9/14 SADA	5 Yrs
16.	Prisoner 16	Male	30	GEN	7(a)(b)/9/14 SADA	5 Yrs
17.	Prisoner 17	Male	29	ST	7(a)(b)/9/14 SADA	5 Yrs

18.	Prisoner 18	Male	23	SC	363/376IPC r/w sec. 10 of POCSO	10 Yrs
19.	Prisoner 19	Male	20	SC	7(a)(b)/14 SADA r/w sec. 9(1)(b) of SADA Amendment Act. 2017	5 Yrs
20.	Prisoner 20	Male	23	OBC	7(a)(b)/14 SADA r/w sec. 9(1)(b) of SADA Amendment Act. 2017	5 Yrs
21.	Prisoner 21	Male	30	SC	307 IPC	10 Yrs
22.	Prisoner 22	Male	51	ST	304 IPC	10 Yrs
23.	Prisoner 23	Male	25	SC	7(a)(b)/9/14 SADA r/w sec. 9(1)(b) of SADA Amendment Act. 2017	5 Yrs
24.	Prisoner 24	Male	31	SC	7(a)(b)/9/14 SADA r/w sec. 9(1)(b) of SADA Amendment Act. 2017	5 Yrs
25.	Prisoner 25	Male	27	SC	7(a)(b)/9/14 SADA r/w sec. 9(1)(b) of SADA Amendment Act. 2017	5 Yrs
26.	Prisoner 26	Male	25	OBC	7(a)(b)/9/14 SADA r/w sec. 9(1)(b) of SADA Amendment Act. 2017	5 Yrs
27.	Prisoner 27	Male	29	ST	7(a)(b)/9/14 SADA r/w sec. 9(1)(b) of SADA Amendment Act. 2017	5 Yrs
28.	Prisoner 28	Male	28	ST	7(a)(b)/9/14 SADA r/w sec. 9(1)(b) of SADA Amendment Act. 2017	5 Yrs
29.	Prisoner 29	Male	36	ST	7(a)(b)/9/14 SADA r/w sec. 9(1)(b) of SADA Amendment Act. 2017	5 Yrs
30.	Prisoner 30	Male	21	GEN	7(a)(b)/9/14 SADA r/w sec. 9(1)(b) of SADA Amendment Act. 2017	5 Yrs
31.	Prisoner 31	Male	30	OBC	7(a)(b)/9/14 SADA	5 Yrs
32.	Prisoner 32	Male	23	ST	7(a)(b)/9/14 SADA r/w sec. 9(1)(b) of SADA	5 Yrs
33.	Prisoner 33	Male	24	GEN	302 IPC	Life
34.	Prisoner 34	Male	27	OBC	7(a)(b)/9/14 SADA	5 Yrs

35.	Prisoner 35	Male	45	OBC	08 of POCSO	10 Yrs
36.	Prisoner 36	Male	28	OBC	454/380 IPC	7 Yrs
37.	Prisoner 37	Male	40	OBC	376 IPC r/w sec. 04 of POCSO	10 Yrs
38.	Prisoner 38	Male	25	ST	7(a)(b)/9/14 SADA r/w sec. 9(1)(b) of SADA Amendment Act. 2017	5 Yrs
39.	Prisoner 39	Male	34	ST	7/9/14 SADA r/w sec 9(1)(b)/14(b) of SADA, 2017	5 Yrs
40.	Prisoner 40	Male	32	OBC	7/9/14 SADA r/w sec 9(1)(b)/14(b) of SADA, 2017	5 yrs
41.	Prisoner 41	Male	24	GEN	427/379/324/34 IPC	7 yrs
42.	Prisoner 42	Male	27	GEN	7/9(1)(b)/14 SADA	5 yrs
43.	Prisoner 43	Male	27	SC	354 IPC r/w sec. 08 of POCSO	10 yrs
44.	Prisoner 44	Male	42	ST	7/9/14 SADA r/w sec 9(1)(b)/14(b) of SADA, 2017	5 yrs
45.	Prisoner 45	Male	23	ST	7/9/14 SADA r/w sec 9(1)(b)/14(b) of SADA, 2017	5 yrs
46.	Prisoner 46	Male	27	OBC	457/380 IPC	7 yrs
47.	Prisoner 47	Male	26	OBC	7(a)(b0)/9/14 SADA	5 yrs
48.	Prisoner 48	Male	60	OBC	376 IPC r/w sec. 04 of POCSO	10 yrs
49.	Prisoner 49	Male	42	ST	7/9/14 SADA r/w sec 9(1)(b)/14(b) of SADA, 2017	5 yrs
50.	Prisoner 50	Male	30	OBC	7/9/14 SADA r/w sec 9(1)(b)/14(b) of SADA, 2017	5 yrs
51.	Prisoner 51	Male	21	OBC	380/457 IPC	7 yrs
52.	Prisoner 52	Male	21	OBC	7(a)(b)/9/14 SADA	5 yrs

53.	Prisoner 53	Male	22	OBC	379 IPC	7 yrs
54.	Prisoner 54	Male	30	ST	7/9/14 SADA r/w sec 9(1)(b)/14(b) of SADA, 2017 r/w sec 34 IPC	5 yrs
55.	Prisoner 55	Male	27	CHRISTIAN	7/9/14 SADA r/w sec 9(1)(b)/14(b) of SADA, 2017 r/w sec 34 IPC	5 yrs
56.	Prisoner 56	Male	41	ST	7/9/14 SADA r/w sec 9(1)(b)/14(b) of SADA, 2017	5 yrs
57.	Prisoner 57	Male	27	ST	380 IPC	7 yrs
58.	Prisoner 58	Male	30	ST	354 A/376/506/ 511 IPC	10 Yrs
59.	Prisoner 59	Male	28	OBC	7/9/14 SADA r/w sec 9(1)(b)/14(b) of SADA, 2017	5 yrs
60.	Prisoner 60	Male	38	OBC	376/363/511 IPC	10 yrs
61.	Prisoner 61	Male	27	ST	457/380 IPC	7 yrs
62.	Prisoner 62	Male	24	GEN	363 IPC	10 Yrs
63.	Prisoner 63	Male	28	MUSLIM	7/9/14 SADA r/w sec 9(1)(b)/14(b) of SADA, 2017	5 Yrs
64.	Prisoner 64	Male	19	GEN	354/380 IPC	7 Yrs
65.	Prisoner 65	Male	19	GEN	354/380 IPC	7 Yrs
66.	Prisoner 66	Male	39	ST	Cr.L.P No.02/2018	
67.	Prisoner 67	Male	28	OBC	376 IPC r/w sec 04 of POCSO	10 Yrs
68.	Prisoner 68	Male	31	SC	376 IPC r/w sec 08 of POCSO	10 Yrs
69.	Prisoner 69	Male	24	OBC	376 IPC r/w sec 06 of POCSO	10 Yrs
70.	Prisoner 70	Male	45	ST	376 IPC r/w sec 05 (m)/06 of POCSO	10 Yrs
71.	Prisoner 71	Male	26	ST	380 IPC	7 Yrs
72.	Prisoner 72	Male	29	ST	452/392/506 IPC	7 Yrs

73.	Prisoner 73	Male	49	SC	7/9/14 SADA r/w sec 9(1)(b)/14(b) of SADA, 2017	5 Yrs
74.	Prisoner 74	Male	29	ST	7 (a) (b)/9/14 SADA r/w sec 9(1)(c)/14 of SADA, 2017	5 Yrs
75.	Prisoner 75	Male	34	OBC	7 (a) (b)/9/14 SADA r/w sec 9(1)(c)/14 of SADA, 2017	5 Yrs
76.	Prisoner 76	Male	22	SC	376/448/506 IPC r/w sec 4 of POCSO	10 Yrs
77.	Prisoner 77	Male	26	MUSLIM	7 (a) (b)/9/14 SADA r/w sec 9(1)(b)/4 of SADA, 2017& 34 IPC	5 Yrs
78.	Prisoner 78	Male	27	SC	7 (a) (b)/9/14 SADA r/w sec 9(1)(b)/4 of SADA, 2017& 34 IPC	5 Yrs
79.	Prisoner 79	Male	23	OBC	341/ 307 IPC	10 Yrs
80.	Prisoner 80	Male	44	SC	7 (a) (b)/9/14 SADA r/w sec 9(1)(b)/4 of SADA, 2017& 34 IPC	5 Yrs
81.	Prisoner 81	Male	34	SC	7 (a) (b)/9/14 SADA r/w sec 9(1)(c)/4 of SADA, 2017	5 Yrs
82.	Prisoner 82	Male	29	SC	7 (a) (b)/9/14 SADA r/w sec 9(1)(c)/4 of SADA, 2017	5 Yrs
83.	Prisoner 83	Male	46	ST	04 of POCSO Act 2012	10 Yrs
84.	Prisoner 84	Male	30	OBC	380 IPC	7Yrs
85.	Prisoner 85	Male	24	ST	302 IPC	Life
86.	Prisoner 86	Male	39	SC	7 (a) (b)/9/14 SADA r/w sec 9(1)(c)/4 of SADA	5 Yrs
87.	Prisoner 87	Male	57	SC	354 A IPC r/w sec.0(m)/10 of POCSO Act 2012	10 Yrs
88.	Prisoner 88	Female	33	SC	302 IPC	Life
89.	Prisoner 89	Male	40	GEN	354 IPC r/w sec. 10 of POCSO Act 2012	10 Yrs

90.	Prisoner 90	Male	32	OBC	380/457 IPC	7 Yrs
91.	Prisoner 91	Male	23	GEN	380/457 IPC	7 Yrs
92.	Prisoner 92	Male	30	ST	7(a)(b)/(d)/14 SADA, 2006	5 Yrs
93.	Prisoner 93	Male	26	SC	7(a)(b)/9(d)/14 SADA, 2006	5 Yrs
94.	Prisoner 94	Male	60	GEN	376 IPC	Life
95.	Prisoner 95	Male	29	GEN	376 IPC r/w sec. 06 of POCSO Act 2012	10 Yrs
96.	Prisoner 96	Male	23	GEN	06 of POCSO Act. 2012	10 Yrs
97.	Prisoner 97	Male	26	SC	7 /9/14 SADA	5 Yrs
98.	Prisoner 98	Male	30	GEN	10 of POCSO Act 2012	10 Yrs
99.	Prisoner 99	Male	53	ST	307 IPC	Life
100.	Prisoner 100	Male	25	SC	7 (a) (b)/9/14 SADA r/w sec 9(1)(b)/4 of SADA, 2017 & 34 IPC	5 Yrs
101.	Prisoner 101	Male	19	GEN	376 IPC, r/w sec. 4 of POCSO	10 Yrs
102.	Prisoner 102	Male	20	SC	7 (a) (b)/9(d)/14 SADA r/w sec 34 IPC	5 Yrs
103.	Prisoner 103	Male	25	ST	7 (a) (b)/9/14 SADA r/w sec 34 IPC	5 Yrs
104.	Prisoner 104	Male	25	ST	7/9/14 SADA r/w sec 9(1)(a) of SADA Amdt. Act, 2017	5 Yrs
105.	Prisoner 105	Male	28	OBC	342/376 (f)/354 A IPC r/w sec. 6/10 of POCSO	10 Yrs
106.	Prisoner 106	Male	35	SC	08 of POCSO, 2012	10 Yrs
107.	Prisoner 107	Male	22	SC	376/341/342 IPC	10 Yrs
108.	Prisoner 108	Male	38	ST	7(a)(b)/14 SADA r/w sec 9(1)(c) of SADA Amdt. Act, 2017 r/w sec. 34 IPC	5 Yrs
109.	Prisoner 109	Male	38	OBC	7/9/14 SADA r/w sec 9(1)(b)of SADA Amdt. Act, 2017	5 Yrs

110.	Prisoner 110	Male	32	SC	7(a)(b)/14 SADA	5 Yrs
111.	Prisoner 111	Male	30	ST	7(a)(b)/14 SADA r/w sec 9(1)(a)of SADA Amdt. Act, 2017 r/w sec. 34 IPC	5 Yrs
112.	Prisoner 112	Male	27	OBC	22/27 NDPS Act 1985	10 Yrs
113.	Prisoner 113	Male	24	OBC	7(a)(b)/9/14 SADA	5 Yrs
114.	Prisoner 114	Male	22	GEN	457/380 IPC	7 Yrs
115.	Prisoner 115	Male	29	GEN	457/380 IPC	7 Yrs
116.	Prisoner 116	Male	37	ST	7/9/14 SADA r/w sec 9(1)(b)of SADA Amdt. Act, 2017	5 Yrs
117.	Prisoner 117	Male	19	SC	363/354/34 IPC r/w sec. 08 of POCSO	10 Yrs
118.	Prisoner 118	Male	25	GEN	363/354/34 IPC r/w sec. 08 of POCSO	10 Yrs
119.	Prisoner 119	Male	30	MUSLIM	302 IPC	Life
120.	Prisoner 120	Female	30	ST	302 IPC	Life
121.	Prisoner 121	Male	33	GEN	363/376 IPC r/w sec.04 of POCSO	10 Yrs
122.	Prisoner 122	Male	25	OBC	376 IPC r/w sec. 04 of POCSO	10 Yrs
123.	Prisoner 123	Male	28	GEN	302 IPC	Life
124.	Prisoner 124	Male	27	OBC	7(a)(b)/9/14 SADA r/w sec 9(1)(c)of SADA Act	5 yrs
125.	Prisoner 125	Male	26	SC	7(a)(b)/9/14 SADA r/w sec 9(1)(c)of SADA Amdt. Act, 2017, R/W sec 4 of IPC	5 Yrs
126.	Prisoner 126	Male	39	ST	7/9/14 SADA r/w sec 9(1)(b)of SADA	5 Yrs
127.	Prisoner 127	Male	32	GEN	420/409/34 IPC	7 Yrs
128.	Prisoner 128	Female	35	GEN	420/409/34 IPC	7 Yrs

**Note:** The name of the Prisoners has been replaced with numbers to maintain the confidentiality.

**Source:** Fieldwork, September 2019 to January 2020

## APPENDIX: IV

### *List of Convicts at Central Prison of Sikkim (Rongyek) as on 31/12/2019*

SL. No	Name of Convict	Sex	Age	Category	Section	Date of Admission	Sentence Awarded
1.	Prisoner 1	Male	70	GEN	376 IPC	05:09:13	7 yrs 1 month
2.	Prisoner 2	Male	32	ST	376 IPC	03:10:12	10 yrs 2 months
3.	Prisoner 3	Male	25	ST	376/342 IPC	19:10:11	10 yrs 2 months 15 days
4.	Prisoner 4	Male	38	OBC	Sec 10 of POCSO r/w sec 354 B IPC	10.3.13	8 years
5.	Prisoner 5	Male	27	OBC	Sec 6 of POCSO r/o sec. 376 (2) IPC	16.9.13	10 yrs 6 months
6.	Prisoner 6	Male	45	ST	354B IPC r/w sec. 9(m)/10 POCSO	21.5.13	8 years
7.	Prisoner 7	Male	26	GEN	363/376 IPC r/w sec. 4 of POCSO	7.5.13	7 years 3 months
8.	Prisoner 8	Male	20	SC	9/10 of POCSO r/w sec 341 IPC	5.4.14	7 yrs 6 months
9	Prisoner 9	Male	36	OBC	376 IPC r/w sec. 4 of POCSO	21.5.13	7 yrs 6 months
10.	Prisoner 10	Male	60	ST	341/506(II)IPC r/w sec 4 of POCSO	20.5.14	11 years
11.	Prisoner 11	Male	35	ST	511/376 IPC r/w sec 8 of POCSO	5.10.13	8 years
12.	Prisoner 12	Male	52	GEN	376 IPC r/w sec 6 of POCSO	15.12.14	10 yrs 8 months
13.	Prisoner 13	Male	60	GEN	376 IPC r/w sec 4 of POCSO	18.12.14	10 yrs 6 months
14.	Prisoner 14	Male	31	ST	Sec 4 of POCSO	6.11.14	7 yrs 3 months (with fine)
15.	Prisoner 15	Male	49	GEN	Sec 5 POCSO r/w 506 IPC	27.9.14	11 yrs (with fine)
16.	Prisoner 16	Male	72	ST	376 IPC r/w 4 of POCSO	12.6.14	10 yrs 2 months
17.	Prisoner 17	Male	25	OBC	363/376 IPC r/w 4 POCSO	6.12.13	7 yrs 3 months

18.	Prisoner 18	Male	26	OBC	376 IPC r/w 8 POCSO	7.8.14	6 yrs with fine
19.	Prisoner 19	Male	24	OBC	376/34 IPC r/w 8 POCSO	21.8.14	11 yrs with fine
20.	Prisoner 20	Male	65	OBC	376 IPC r/w 4 of POCSO	17.11.14	10 yrs 3 months
21.	Prisoner 21	Male	28	OBC	376/448 IPC	1.11.14	7 yrs 6 months
22.	Prisoner 22	Male	38	ST	354 IPC r/w sec. 8 of POCSO	6.12.14	7 years
23.	Prisoner 23	Male	55	OBC	9 m/n POCSO	1.1.15	5 yrs 3 months
24.	Prisoner 24	Male	34	ST	6 of POCSO	9.12.14	10 yrs 3 months
25.	Prisoner 25	Male	80	GEN	10 of POCSO	05.11.15	5 yrs & 3 months
26.	Prisoner 26	Male	40	SC	376(2)(i) IPC r/w sec 4 of POCSO	23.3.14	11 yrs 6 months
27.	Prisoner 27	Male	29	ST	376 IPC r/w sec 4 of POCSO Act 2012	23.03.15	10 yrs 6 months
28.	Prisoner 28	Male	30	OBC	363/342/376 IPC r/w sec 4 of POCSO	23.07.15	8 yrs with fine
29.	Prisoner 29	Male	31	ST	10 POCSO r/w sec 354 B IPC	3.8.15	6 yrs with fine
30.	Prisoner 30	Male	38	GEN	Sec 10 of POCSO r/w 451 IPC	26.5.16	6 yrs with fine
31.	Prisoner 31	Male	34	SC	354 IPC r/w sec 8 of POCSO	4.7.15	10 yrs with fine
32.	Prisoner 32	Male	28	ST	304-I/324/323 IPC	5.3.14- 3.6.14 3.6.14(bail)	10 yrs + fine of Rs.30,000/ - (2 yrs)
33.	Prisoner 33	Male	46	GEN	10 POCSO, 2012 376(2)(g)(2)(h)/3 54 IPC	16.7.15	19 yrs with fine
34.	Prisoner 34	Male	38	GEN	376 IPC r/w 4 POCSO	28.5.15	8 yrs with fine
35.	Prisoner 35	Male	27	GEN	6 POCSO	19.10.15	10 yrs 6 months
36.	Prisoner 36	Male	38	OBC	304(ii) IPC	8.10.15	5 yrs 2 months

37.	Prisoner 37	Male	27	GEN	343/363/376/34 IPC r/w sec 04 of POCSO	30.08.16	7years 6months
38.	Prisoner 38	Male	45	SC	376IPC r/w sec 06 of POCSO	29.09.16	10years 6months
39.	Prisoner 39	Male	26	OBC	04 of POCSO	03.10.16	12 Years
40.	Prisoner 40	Male	20	SC	08 of POCSO	03.10.16	7 Years 6 months
41.	Prisoner 41	Male	36	ST	376 IPC r/w sec POCSO Act	06.01.17	10 Years
42.	Prisoner 42	Male	60	OBC	376 IPC	28.02.17	7 Years 2 months
43.	Prisoner 43	Male	35	GEN	354 IPC r/w sec. 08 of POCSO	29.02.17	3 Years 4 months
44.	Prisoner 44	Female	52	ST	08 of POCSO	24.02.17	16 Years
45.	Prisoner 45	Male	60	ST	376/506 IPC r/w sec. 04 of POCSO	23.03.17	17 Years
46.	Prisoner 46	Male	31	OBC	447/376(2) IPC	03.04.17	5 Years 4 months
47.	Prisoner 47	Male	49	ST	376/341 IPC r/w sec. 04 of POCSO	21.04.17	10 Years
48.	Prisoner 48	Male	45	OBC	354 A IPC r/w sec.8,10,12 of POCSO	19.04.17	7 Years
49.	Prisoner 49	Male	26	GEN	307/363/342/323 IPC	19.04.17	3 Years 9 months
50.	Prisoner 50	Male	20	GEN	307/363/342/323 IPC	19.04.17	3 Years 9 months
51.	Prisoner 51	Male	36	GEN	POCSO	03.05.17	10 Years
52.	Prisoner 52	Male	60	OBC	354/323 IPC r/w sec. 8 of POCSO	26.05.17	5 Years 2 months
53.	Prisoner 53	Male	42	SC	448/363/369/376 IPC r/w sec. 8,12 of POCSO	03.06.17	6 Years
54.	Prisoner 54	Male	32	OBC	376 r/w sec.6 Of POCSO	03.07.17	10 Years
55.	Prisoner 55	Male	58	SC	25(1)(a) the Arms Act 1959	25.07.17	6 Years 9 months
56.	Prisoner 56	Male	21	ST	376/342/506 IPC	27.07.17	8 Years
57.	Prisoner 57	Male	43	SC	376 IPC r/w sec. 06 of POCSO	28.07.17	20 Years
58.	Prisoner 58	Male	32	OBC	376 IPC r/w sec. 06 of POCSO	28.07.17	20 Years
59.	Prisoner 59	Male	23	GEN	304 II IPC	31.07.17	5 Years 2 months

60.	Prisoner 60	Male	47	OBC	376/323 IPC r/w sec. 4 of POCSO	26.08.17	9 Years 6 months
61.	Prisoner 61	Male	51	ST	06 of POCSO	19.09.17	10 Years
62.	Prisoner 62	Male	63	OBC	376 IPC	25.09.17	15 Years
63.	Prisoner 63	Male	26	OBC	06 of POCSO	26.09.17	10 Years 1 month
64.	Prisoner 64	Male	39	GEN	376/342/34 IPC	26.09.17	22 Years
65.	Prisoner 65	Female	27	OBC	376/342/34 IPC	26.09.17	11 Years 3 months
66.	Prisoner 66	Male	64	GEN	363/365/376 r/w sec. 04 of POCSO	20.09.18	10 Years 1 month
67.	Prisoner 67	Male	33	ST	376 IPC	20.09.18	5 Years
68.	Prisoner 68	Male	32	OBC	4&8 of POCSO	22.09.18	12 Years
69.	Prisoner 69	Male	44	OBC	4 of POCSO r/w 14 Foreigners Act 1946	25.09.17	10 Years 6 months
70.	Prisoner 70	Male	27	SC	354 A/ 376 r/w sec. 4 & 12 of POCSO	25.09.17	12 Years
71.	Prisoner 71	Male	67	SC	376 IPC r/w sec. 4&8 of POCSO	01.09.17	12 Years
72.	Prisoner 72	Male	28	SC	376 r/w sec 4 of POCSO	31.10.17	10 Years 2 months
73.	Prisoner 73	Male	34	ST	363/366/376(2)(i) & 3(a) of POCSO	31.10.17	10 Years 3 Months
74.	Prisoner 74	Male	40	SC	304 II IPC	31.10.17	5 Years 2 months
75.	Prisoner 75	Male	35	ST	376/506 r/w sec. 3 of POCSO	15.11.17	13 Years
76.	Prisoner 76	Male	28	OBC	376/506 IPC r/w sec 6 of POCSO	15.11.17	30 Years
77.	Prisoner 77	Male	36	OBC	376/506 IPC r/w sec. 8 of POCSO	15.11.17	4 Years 6months
78.	Prisoner 78	Male	54	ST	376 IPC r/w sec 6 of POCSO	06.12.17	10 Years 1 month
79.	Prisoner 79	Male	25	ST	376 (i)(J) & 506 IPC r/w sec. 04 of POCSO	13.12.17	10 Years 2 months
80.	Prisoner 80	Male	37	OBC	304 II IPC	16.12.17	5 Years 1 month
81.	Prisoner 81	Male	49	OBC	307/376/34 IPC r/w sec. 4 of POCSO	27.02.18	5 Years 4 months
82.	Prisoner 82	Male	38	GEN	307 IPC	27.02.18	3 Years 2 months

83.	Prisoner 83	Male	46	ST	4/6/8 of POCSO	26.04.18	10 Years 4 months
84.	Prisoner 84	Male	30	ST	323 r/w sec. 75/78 JJ Act	02.05.18	2 Years

**Note:** The name of the Prisoners has been replaced with numbers to maintain the confidentiality.

**Source:** Fieldwork, September 2019 to January 2020

## APPENDIX: V

### *Photographs from the Field Study*



*Central Prison of Sikkim (Rongyek)*

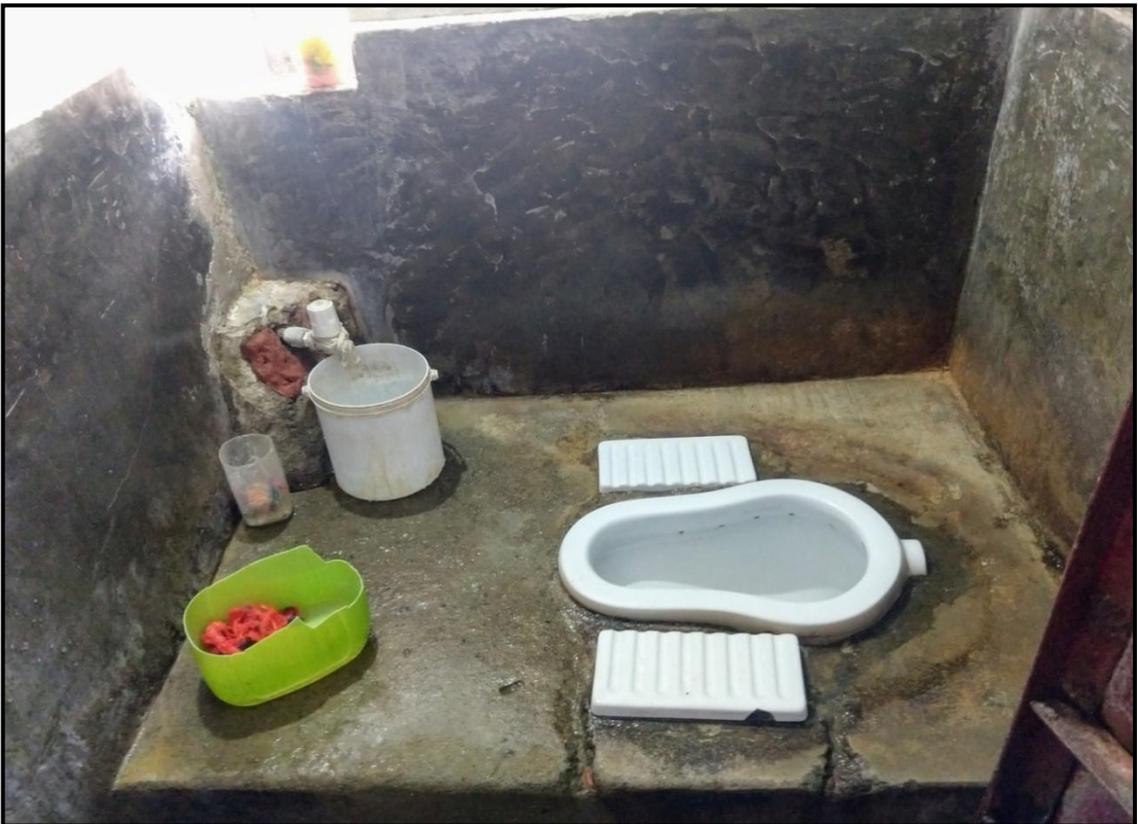
Interviews with Prison Inmates



## Standards of Living



*Barracks and Accommodation of Prisoners at Central Prison*



*Washroom inside Barracks*

## Making Best Use of Prisons



*Legal Aid Clinic and Library in the Same Room at Central Prison of Sikkim*



*Place Where Prisoners Contact with the Family & Visitors*



*Sarva Dharma Mandir for Prison Inmates of All Religious Faith*

## Vocational Units



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