

Prisoners' Dignity: A Forgotten Dignity

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ABSTRACT

In Re Inhuman Conditions In 1382 Prisons, a petition before the Supreme Court, many issues concerning the rights of the prisoners were dealt with once again by the court. What had given rise to the petition was a letter dated 13 June, 2013 addressed by Justice R.C. Lahoti, a former Chief Justice of India to Hon'ble the Chief Justice of India relating to inhuman conditions prevailing in 1382 prisons in India. In particular four issues were raised by him which includes: (i) overcrowding of prisons; (ii) unnatural death of prisoners; (iii) gross inadequacy of staff and (iv) available staff being untrained or inadequately trained. By an order dated 5 July, 2013 the letter was registered as a public interest writ petition and the Registry of the Supreme Court was directed to take steps to issue notice to the appropriate authorities. On 5 February, 2016, the Supreme Court passed an order to redress the problem of over-crowding in prisons. While passing the order the court emphasizes that, "prisoners like all human beings, deserve to be treated with dignity."²

In this article an attempt is made to study the problem of overcrowding in Indian jails in light of the international human rights law and in particular the United Nations Standard Minimum Rules for Treatment of Prisoners (the Nelson Mandela Rules) to which India is a signatory. A detailed study will be done on the causes of overcrowding and its impact on the lives and dignity of prisoners. Few suggestions will be made to address the problem.

Keywords: Human Dignity, Overcrowding, Prisoners

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²*Re Inhuman Conditions In 1382 Prisons*, Writ Petition (Civil) No.406/2013.

1. PRISONERS HAVE THE RIGHT TO DIGNITY

In today's rights-conscious world the term 'dignity' is a very popular one. Though lacking in consensus as to its universal meaning its pervasiveness as a concept is undeniable. It has become the foundation of both international human rights law and domestic constitutional rights provisions. The Preamble to the Universal Declaration of Human Rights (UDHR) refers to the inherent dignity of all members of the human family as, "the foundation of freedom, justice and peace in the world"³ . Continuing on the same line Article 1, UDHR, states, "All human beings are born free and equal in dignity and rights."⁴

Similarly the preambles to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), emphasize the "equal and inalienable rights of all members of the human family . . . the inherent dignity of the human person.". Human dignity is also invoked in the preambles to the UN Convention on the Elimination of All Forms of Racial Discrimination and the UN Convention on the Elimination of All Forms of Discrimination against Women, both of which are devoted to the elimination of discrimination based on an external characteristic—race and sex. The Vienna Declaration which was the outcome of the World Conference on Human Rights in 1993 states in its preamble that "all human rights derive from the dignity and worth inherent in the human person."

Referring to the human rights of the prisoners Article 10 of the ICCPR states, "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." On the same vein Rule 1 of the Nelson Mandela Rules provides, "All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification."⁵

The preamble to the Constitution of India contains a solemn commitment of the People of India to protect and defend the human dignity of every person.⁶ Thus, it is most

³ The Universal Declaration of Human Rights, Preamble available at <http://www.un.org/en/universal-declaration-human-rights/> (Accessed on June 1, 2016)

⁴Ibid, Article 1.

⁵United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/175 (Accessed on May 15, 2016)

⁶ Constitution of India, Preamble states, "WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a 1[SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC] and to secure to all its citizens: JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship;

important to seriously deal with every threat to, or violation of, human dignity wherever they exist. It does not matter which group of people, including the prisoners, face the threat to or violation of human dignity, the consequence remains the same, human society gets hurt and its progress and development is greatly hindered besides the silent suffering of the individual victim. Treating prisoners not as objects but as the human beings, no matter how horrifying their prior actions, reflects the deep appreciation that society has for human lives.

In *Sunil Batra v. Delhi Administration* the Court asked and affirmed: “Are prisoners’ persons? Yes, of course. To answer in the negative is to convict the nation and the Constitution of dehumanization and to repudiate the world legal order, which now recognizes rights of prisoners in the International Covenant on Prisoners’ Rights to which our country has signed assent.....No prisoner can be personally subjected to deprivation not necessitated by the fact of incarceration and the sentence of court. All other freedoms belong to him – to read and write, exercise and recreation, meditation and chant, creative comforts like protection from extreme cold and heat, freedom from indignities like compulsory nudity, forced sodomy and other unbearable vulgarity, movement within the prison campus subject to requirements of discipline and security, the minimum joys of self-expression, to acquire skills and techniques and all other fundamental rights tailored to the limitations of imprisonment”.⁷

Through various petitions that were filed before the Supreme Court and High Courts the rights of prisoners’ were asserted and upheld by the Court – right to freedom of expression⁸, right against solitary confinement and use bar fetters⁹, right to legal aid¹⁰, right to speedy trial¹¹, right to minimum wages¹², right to compensation¹³ etc. In the recent case, in *Re - Inhuman Conditions In 1382 Prisons*¹⁴, reiterating what it had upheld earlier the Supreme Court said that prisoners “like all human beings, deserve to be treated with dignity.”

In a similar vein the Supreme of Israel in *Academic Center of Law and Business, Human Rights Division v. Minister of Finance*, while striking down a statute that allowed

EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation];...”

⁷ (1978) 4 SCC 494

⁸State Of Maharashtra v Prabhakar Pandurang Sangzgiri and Anr., AIR 1966 SC 424

⁹Sunil Batra Etc v Delhi Administration And Ors. Etc., 1978 AIR SC 1675.

¹⁰Madhav Hayawadanrao Hoskot v State Of Maharashtra, AIR 1978 SC 1548.

¹¹Hussainara Khatoon & Ors v Home Secretary, State Of Bihar, AIR 1979 SC 1369.

¹²State Of Gujarat And Anr v Hon'ble High Court Of Gujarat, 1998 CIVIL APPEAL Nos. 8443-44/83, W.P.(Crl.) Nos. 1113-1122/83 W.P.(C) No. 14150/84, W.P. (Crl.) 19/93, 494/92 C.A. No. 6125/95 AND W.P.(C) No. 12223/84

¹³Rudul Sah v State of Bihar and Another, AIR 1983 SC 1086.

¹⁴Supra n. 2

prisons to be managed by corporations, which according to it can adversely affect the human dignity of prisoners, observed, "The right to dignity is a right that every human being is entitled to enjoy as a human being. Admittedly, when a person enters a prison he loses his liberty and freedom of movement, as well as additional rights that are violated as a result of the imprisonment; but an inmate of a prison does not lose his constitutional right to human dignity."¹⁵

2. THE PROBLEM OF OVERCROWDING

Overcrowding in jails is a global phenomenon. The size of the prison population throughout the world is growing, placing an enormous financial burden on governments and at a great cost to the social cohesion of societies. It is estimated that more than 10.1 million people, including sentenced and pre-trial prisoners, were held in penal institutions worldwide in May 2011.¹⁶ And internationally, there is a growing recognition that one of the key obstacles to implementing the provisions of the Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) is overcrowding in prisons.

Overcrowding is generally defined with reference to the occupancy rate and the official capacity of prisons. Using this simple formula, overcrowding refers to the situation where the number of prisoners exceeds the official prison capacity. The rate of overcrowding is defined as that part of the occupancy rate above 100 per cent.¹⁷

In India, like in many other countries, overcrowding in prisons is a serious issue which the court has been dealing with time and again. And despite several orders passed by different High Courts and the Supreme Court, the problem of overcrowding in jails continues to persist. According to the Prison Statistics of the National Crime Records Bureau 2014, overcrowding in prison is a continuing problem and in fact it has been accentuated with the passage of time. There are 1,84,386 inmates lodged in central prisons of India against the authorized capacity of 1,52,312 inmates, showing an occupancy rate of 121.1%. There are 1,79,695 inmates lodged in district prisons of India against the authorized capacity of 1,35,439 inmates, showing an occupancy rate of 132.7%. The maximum overcrowding is in

¹⁵ Barak Medina, "Constitutional limits to privatization: The Israeli Supreme Court decision to invalidate prison privatization" *I•CON* (2010), Vol. 8 No. 4, 690–713, available at <http://icon.oxfordjournals.org/content/8/4/690.full.pdf> (Accessed on June 2, 2016)

¹⁶ United Nation Office on Drugs and Crime, Handbook on strategies to reduce overcrowding in prisons, pg. 7 available at https://www.unodc.org/documents/justice-and-prison-reform/Overcrowding_in_prisons_Ebook.pdf (Accessed on May 15, 2016)

¹⁷ *Ibid*

the Union Territory of Dadra & Nagar Haveli (331.7%) followed by Chhattisgarh (258.9%) and then Delhi (221.6%).¹⁸

3. CAUSES OF OVERCROWDING

The main cause of overcrowding in Indian prisons is the increase in the number under-trials.¹⁹ As per the Prison statistics the under-trial prisoners formed a major share of prison inmates among various types of prisoners. The percentage of under-trial and convicted prisoners to the total prisoners in various jails was reported as 67.6% and 31.4% respectively in the country during 2014. The number of under-trial prisoners increased by 1.6% in 2014 (2,82,879) over 2013 (2,78,503). Further as per statistics a total of 12,052 under-trial prisoners were lodged beyond 3 years and up to 5 years at the end of the year 2014. There were 3,479 such under-trial prisoners in Uttar Pradesh followed by Bihar (1,198), Rajasthan (1,088), Punjab (1,038), Jharkhand (839), Maharashtra (677), West Bengal (633) & Gujarat (614). The highest percentage of under-trial prisoners detained for more than three years but less than five years was reported from Jammu & Kashmir (14.4%) followed by Goa (12.0%), A&N Islands (10.3%) and Gujarat (8.2%). All under-trial inmates were detained up to 5 years in Himachal Pradesh and A&N Island during 2014. A total of 3,540 under-trials were detained in jails for 5 years or more in the country. The highest number of such under-trial prisoners were reported from Uttar Pradesh where 1,022 under-trials were lodged in various jails for over 5 years, which accounted for 28.9% of such prisoners at the national level, followed by Rajasthan (523, 14.8%) and Bihar (477, 13.5%) during 2014.²⁰

Poverty is another important factor that contributes to the overcrowding of prisons. It is no secret that a significant number of the prisoners are poor people who cannot afford a good lawyer to defend them nor have money to pay for bail. Hence they continue to languish behind bars for economic reasons. "The prisons continue to be populated with mainly under-trials who are poor, illiterate and also form minority or fringe groups. These prisons around the country are over-crowded with basic amenities like clean drinking water and essential

¹⁸ Prison Statistics India, 2014 available at <http://ncrb.nic.in/> (Accessed on June 5, 2016)

¹⁹ Under Section of the Code of Criminal Procedure, 1973, the Magistrate may authorize the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding- (i) Ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years; (ii) Sixty days, where the investigation relates to any other offence, And, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail.

²⁰ Supra n.18

medical facilities missing. The legal aid system remains in shambles resulting in the denial of the basic right of free and fair trial to the poor prisoners. The much hyped Criminal Law Amendment 2005, which the government authorities claimed will almost empty the prisons across the country, has not brought in any major changes vis-à-vis the prison population as was claimed by the Government. Lakhs of people continue to languish behind bars mainly because they are poor.”²¹ The lack of economic resources combined with a lack of free legal aid leaves the prisoners vulnerable to all forms of human rights violations.

Overcrowding of prisons is also attributed to illiteracy or limited education of prisoners. A total of 82,735 under-trial prisoners were illiterate and 1,19,370 were educated below class 10, out of 2,82,879 under-trials lodged in various jails in the country. These two categories have accounted for 29.2% and 42.2% respectively which taken together constitute 71.4% of the total under-trial inmates. A total of 35,202 convicts out of 1,31,157 convicts lodged in various jails in the country were reported as illiterate and 56,469 were educated below class 10th standard. These two categories accounted for 26.8% and 42.9% respectively which together constitute 69.7% of the total convicts.²² Illiteracy or limited education has a direct bearing on the awareness of the prisoners of their rights. The consequence of their ignorance or little knowledge of their own rights would mean that even though the prisoners have rights they will not be assertive about them.

Another very important cause of over-crowding in prison is the apathy and inaction on the part of the police in taking up the investigation in right earnest for various reasons. Corruption at Police Station level is affecting the timely and qualitative investigation. Further, the Police Stations are understaffed and the police personnel lack motivation to act without fear or favour.²³ This contributes significantly to the pendency of court proceedings with the accused persons continued being kept behind bars.

4. CONSEQUENCES OF OVERCROWDING

With a huge number of under trials in prison the logical consequence is overcrowding of prisons which then poses a big challenge to the prison administration in complying with

²¹ Human Rights Law Network, Prisoners' Rights, Volume II available at <http://www.hrln.org/hrln/prisoners-rights/1356.html> (Accessed on June 5, 2016)

²² Supra n.18

²³ Law Commission of India, 239th Report on Expeditious Investigation and Trial of Criminal Cases Against Influential Public Personalities Submitted to the Supreme Court of India in W P (C) NO. 341/2004, Virender Kumar Ohri Vs. Union of India & Others, (March, 2012) available at <http://lawcommissionofindia.nic.in/reports/report239.pdf> (Accessed on June 15, 2016)

international standards for treatment of prisoners. Over-crowding leads to gross violations human rights in prisons. In an overcrowded prison prisoners are forced to live in sub humane conditions. Overcrowding puts a huge stress on the basic amenities like proper accommodation,²⁴ Sanitation facilities²⁵, bath rooms²⁶, supply of water, electrification, health services, etc.

Overcrowding affects the physical and mental well-being of all prisoners, generates prisoner tension²⁷ and violence, exacerbates existing mental and physical health problems. Communicable disease like Tuberculosis thrive in an overcrowded jail. High rates of TB have been reported by Human Rights Watch in India and a study in 2008 had found that 9% of prison deaths were attributed to TB.²⁸

Overcrowding also makes the task of monitoring inmates more difficult. It was reported that there are limited number of counsellors in Central jails in India and no counsellors in sub divisional jails.²⁹ In the absence of timely counseling many inmates with suicidal tendencies ended up committing suicide. The proportion of deaths due to suicide in Indian prisons has been reported to be as high as 5–8%. A study in 2008 reported suicide as a cause for 11% of prison deaths.³⁰

In October 2015, through a criminal public interest litigation filed by a social group, Jan Adalat, a judicial enquiry into the living conditions of the inmates in various jails in Maharashtra was ordered. The report submitted to the court showed lack of basic amenities

²⁴ Supra n. 5, Rule 13, provides, “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.”

²⁵ Supra n. 5, Rule 15 provides, “The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.”

²⁶ Supra n. 5, Rule 16, provides, “Adequate bathing and shower installations shall be provided so that every prisoner can, and may be required to, have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.”

²⁷ National Human Rights Commission, *Suicide in Prison, Prevention Strategy and Implication from Human Rights and Legal points of view*, (December, 2014) available at <http://nhrc.nic.in/Documents/Publications/SUICIDE%20IN%20PRISON%202014.pdf> (Accessed on June 20, 2016)

²⁸ Bhaumik, Soumyadeep and Mathew, Rebecca J. “Health and beyond...strategies for a better India: using the “prison window” to reach disadvantaged groups in primary care” *J Family Med Prim Care*. 2015 Jul-Sep; 4(3): 315–318. doi: 10.4103/2249-4863.161304 (Accessed on October 14, 2016)

²⁹ Dasgupta, Priyasree “Ram Singh's death: Why stopping jail suicides is not easy” available at <http://www.firstpost.com/india/ram-singhs-death-why-stopping-jail-suicides-is-not-easy-654840.html> (Accessed on October 14, 2016)

³⁰ Supra 28

toilets, bathrooms and medical aid in various prisons including Yerwada, Arthur Road and Byculla prisons.³¹

Overcrowding becomes a major roadblock for prison administrations and other competent authorities to “offer education, vocational training and work, as well as other forms of assistance that are appropriate and available, including those of a remedial, moral, spiritual, social and health- and sports-based nature”.³²

Overcrowding makes separation of the under-trials almost impossible which according to Rule 112 of Nelson Mandela Rules the untried prisoners are to be kept separate from convicted prisoners and that young untried prisoners should be kept separate from adults in a separate institutions Overcrowding makes the task of rehabilitation more difficult.³³

Overcrowding also has a major impact on the safety and security of prisoners and staff. Where the prisoner to staff ratio increases, tensions can be high and prisoners' anger and frustration about the conditions in which they are being held develop naturally. It increases the risk of violence, prisoner protests and other disturbances leading even to suicide.

5. SUGGESTIONS TO REDUCE OVERCROWDING

The first prerogative for achieving success in reducing overcrowding in prisons is the existence of political will. Without the will and courage to introduce policies and programmes that may challenge punitive approaches or which may need significant investment initially, as well as the will to sustain such policies over a period sufficient to establish a strong basis for a long lasting reduction in prison overcrowding, it is extremely challenging, if not impossible, to achieve real change.³⁴

Speed up and improve police investigation through proper training and orientation programmes, sensitizing them of the human rights violations that result from a delayed investigation.³⁵ In *Hussainara Khatoon (I)*³⁶ the Supreme Court stressing the right to speedy

³¹<http://www.dnaindia.com/india/report-dna-exclusive-maharashtra-jails-are-overcrowded-lack-basic-amenities-like-bathrooms-2193607> (Accessed on May 25, 2016)

³² *Supra* n. 5, Rule 4 (2)

³³ *Supra* n. 5, Rule. 1 provides, “The purposes of a sentence of imprisonment or similar measures deprivative of a person’s liberty are primarily to protect society against crime and to reduce recidivism. Those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life.”

³⁴ *Supra* n. 16

³⁵ In *Hussainara Khatoon (I)* [(1980) 1 SCC 81. The Court stressed the importance of speedy trial in criminal justice system. It observed, “...it is the constitutional obligation of the State to devise such a procedure as

trial observed, "...it is the constitutional obligation of the State to devise such a procedure as would ensure speedy trial to the accused. The State cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that the State has no adequate financial resources to incur the necessary expenditure needed for improving the administrative and judicial apparatus with a view to ensuring speedy trial".

Inordinate delays in the investigation and prosecution of criminal cases involving serious offences and in their trials is a blot on the system of justice. The objective of penal law and societal interest in setting criminal law in motion against offenders with reasonable expedition is thereby frustrated. The adverse effect of this delay on society at large is immeasurable. Both, fear of law and faith in the criminal justice system are eroded irretrievably.³⁷

Imprisonment of fine defaulters exacerbates overcrowding amongst other negative consequences. Consideration should be given to other non-custodial options to deal with defaulters, taking into account their particular circumstances. Such options may include providing them with remunerated work by the state, so that the proceeds of their labour can be used to pay their fines.

Introducing community service as a form of punishment for lesser or minor offences will help to reduce overcrowding in jails. Though community service at present is being ordered by some courts as a condition for release on probation of good conduct under the Probation of Offenders Act, 1958, there have also been instances of such orders being set aside with the appellate courts holding that there was no legislative sanction for it.³⁸

Providing legal assistance to the poor and needy prisoners will greatly reduce overcrowding. It must not be forgotten that providing legal services for the weak, the poor and the marginalized is a constitutional mandate (Article 39 A). Therefore states should strengthen the mechanisms for free legal aid. Lok Adalats, as envisaged under Section 19 of the The Legal Services Authorities Act, 1987, should be organized more regularly to dispose of minor offences. Justice Ramaswamy says, "Resolving disputes through Lok Adalat not only minimizes litigation expenditure, it saves valuable time of the parties and their witnesses

would ensure speedy trial to the accused. The State cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that the State has no adequate financial resources to incur the necessary expenditure needed for improving the administrative and judicial apparatus with a view to ensuring speedy trial"

³⁶(1980) 1 SCC 81

³⁷ Supra n. 23

³⁸ <http://indiatoday.intoday.in/story/make-social-work-a-form-of-punishment/1/213234.html> (Accessed on May 25, 2016)

and also facilitates inexpensive and prompt remedy appropriately to the satisfaction of both the parties.”³⁹

More open jails should be set up as an alternative to closed jails. As per the Prison Statistics India, 2014 there are only 54 open jails in India.⁴⁰ It is believed that open jails eliminate tensions and barriers created by the restrictions and physical restraints placed on inmates of a closed jail and provide them better opportunity for re-interaction and re-assimilating with free community and family.⁴¹

Probation should be resorted to whenever individual circumstance of an offender allows. Convicts should not be sent to jails as matter of routine. This will drastically reduce prison population. Under section 4 of the Probation of Offenders Act, 1958, the court has the power to release certain offenders on probation of good conduct. Sub section 1 states, “When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct..”

6. DIRECTIONS OF THE SUPREME COURT IN RE-INHUMAN CONDITIONS IN 1382 PRISONS

By an order dated 5 February 2016 the Supreme Court had taken note of fact of overcrowding in prisons and had given directions which were considered helpful in the reduction of the prison population and generally improve the living conditions of prisoners. These directions were as follows:

- (i) The Under Trial Review Committee in every district should meet every quarter and the first such meeting should take place on or before 31st March, 2016. The

³⁹ V Chengte, Dr. Pralhad “Lok Adalat: Some Review” International Journal of Development Research Vol. 06, Issue, 05, pp. 7963-7965, May, 2016 available at <http://www.journalijdr.com/sites/default/files/5466.pdf> (Accessed on October 14, 2016)

⁴⁰ *Supra* 18

⁴¹ Vibhute Khushali. “Open Peno-Correctional Institutions In India A Review Of Fifty-Five Years Experiences and Expectations” available at https://www.mpicc.de/shared/data/pdf/fa_31_vibhute03_06.pdf (Accessed on October 14, 2016)

Secretary of the District Legal Services Committee should attend each meeting of the Under Trial Review Committee and follow up the discussions with appropriate steps for the release of under trial prisoners and convicts who have undergone their sentence or are entitled to release because of remission granted to them.

- (ii) The Under Trial Review Committee should specifically look into aspects pertaining to effective implementation of Section 436 of the Cr.P.C. and Section 436A of the Cr.P.C. so that under trial prisoners are released at the earliest and those who cannot furnish bail bonds due to their poverty are not subjected to incarceration only for that reason. The Under Trial Review Committee will also look into issue of implementation of the Probation of Offenders Act, 1958 particularly with regard to first time offenders so that they have a chance of being restored and rehabilitated in society.
- (iii) The Member Secretary of the State Legal Services Authority of every State will ensure, in coordination with the Secretary of the District Legal Services Committee in every district, that an adequate number of competent lawyers are empanelled to assist under-trial prisoners and convicts, particularly the poor and indigent, and that legal aid for the poor does not become poor legal aid.
- (iv) The Secretary of the District Legal Services Committee will also look into the issue of the release of under-trial prisoners in compoundable offences, the effort being to effectively explore the possibility of compounding offences rather than requiring a trial to take place.
- (v) The Director General of Police/Inspector General of Police in-charge of prisons should ensure that there is proper and effective utilization of available funds so that the living conditions of the prisoners is commensurate with human dignity. This also includes the issue of their health, hygiene, food, clothing, rehabilitation etc.
- (vi) The Ministry of Home Affairs will ensure that the Management Information System is in place at the earliest in all the Central and District Jails as well as jails for women so that there is better and effective management of the prison and prisoners.
- (vii) The Ministry of Home Affairs will conduct an annual review of the implementation of the Model Prison Manual 2016 for which considerable efforts have been made not only by senior officers of the Ministry of Home Affairs but also persons from civil society. The Model Prison Manual 2016 should not be

reduced to yet another document that might be reviewed only decades later, if at all. The annual review will also take into consideration the need, if any, of making changes therein.

- (viii) The Under Trial Review Committee will also look into the issues raised in the Model Prison Manual 2016 including regular jail visits as suggested in the said Manual.

Further vide our order dated 6th May, 2016⁴² the Supreme Court had directed the States and the Inspector General of Prisons to prepare a Plan of Action either to reduce overcrowding or to augment the infrastructure so that there is more space available for each prisoner. In particular the order was passed to expand the mandate of the under-trial Review Committee to examine the cases of under-trials who fall in the following categories:

- (a) Become eligible to be released on bail under Section 167(2)(a)(i)&(ii) of the Code read with Section 36A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (where persons accused of section 19 or section 24 or section 27A or for offences involving commercial quantity) and where investigation is not completed in 60/90/180 days;
- (b) Are imprisoned for offences which carry a maximum punishment of 2 years;
- (c) Are detained under Chapter VIII of the Criminal Procedure Code i.e. under Sections 107, 108, 109 and 151 of Cr.P.C.;
- (d) Become sick or infirm and require specialized medical treatment (S.437 of the Code);
- (e) Women offenders (S.437 of the Code);
- (f) Are first time male offenders between the ages 19 and 21 who are in under trial custody for offences punishable with less than 7 years of imprisonment and have suffered at least 1/4th of the maximum sentence possible;
- (g) Are of unsound mind and must be dealt under Chapter XXV of the Code;
- (h) Are eligible for release under Section 437(6) of the Code, wherein in a case triable by a Magistrate, the trial of a person accused of any non-bailable offence has not been concluded within a period of sixty days from the first date fixed for taking evidence in the case.

⁴² Re - Inhuman Conditions In 1382 Prisons (II) Writ Petition (Civil) No.406/2013

Then on 3 October 2016 the Supreme Court took stock of the failures of the states to comply with its orders for the protection of the fundamental rights of prisoners. Though the court had, vide order 6 May 2016, directed the States and the Inspector General of Prisons to prepare a Plan of Action for reducing the prison population, yet not a single State or Union Territory has bothered to prepare a Plan of Action. Expressing its dismay the Court said “We are a little distressed to note that even though this Court has held on several occasions that prisoners both under trials and convicts have certain fundamental rights and human rights, little or no attention is being paid in this regard by the States and some Union Territories including the National Capital Territory of Delhi. Certainly fundamental rights and human rights of people, however they may be placed, cannot be ignored only because of their adverse circumstances.”⁴³ The court, thus, directed the Union of India through the Ministry of Home Affairs to obtain the status of compliance of its orders passed on 5 February 2016 and 6 May, 2016 as on 30 September 2016.

7. CONCLUSION

Overcrowding in prisons undermines the rights of a prisoner to human dignity inherent in all human beings. There could be several factors that lead a prisoner to commit a crime but nevertheless a prisoner has a right to be treated as a human being who is entitled to all the basic human rights, human dignity and human sympathy.⁴⁴ While there is no doubt that a prisoner’s liberty is restricted by the fact of his incarceration, his or her rights which are not linked to incarceration are to be upheld and defended. Moreover, we should not forget that prison is a human institution and therefore all noble human aspirations should be nurtured like in any other civil institutions and not to arrest them either directly or indirectly. Prisoners should not be treated with contempt as though they ceased to be human beings on entering prison. It is the duty of the state to ensure that fundamental rights of the prisoners are not grossly violated while in prison.

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⁴³ Ibid

⁴⁴ T. K. Gopal v. State of Karnataka (2000) 6 SCC 168.

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