
Rights of Prisoners in Bangladesh: A Legal Analysis

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Abstract

The rights of the prisoners are still not recognized as other rights are recognized by the state and international instruments in Bangladesh. In Bangladesh, the prison system still follows the same out-dated statutes and regulations of the British rulers. This paper explores the issue of prisoners' rights. The laws governing prisons in Bangladesh, namely, *The Prisons Act of 1894*, its accompanying Rules, and a range of internally issued circulars, notices and orders which together form *The Bengal Jail Code of 1920*. Here, I try to draw the attention of the reader to know about the most invisible population and their legal status under the perception of law. In addition, to cover broader issues like legal status of a prisoner and prisoners' rights litigation and the later issues include recommendations and some ethical reflection with an aim to open a new prospect for prisoners' rights. Finally conclude the paper with hope that it will reduce prisoners' sense of injustice and creating their own citizenship room as individual with the spirit of dignity.

Keywords: Prison, Prisoners' Rights, Litigation, Fundamental Rights, Constitution, Authority.

Introduction

When we imagine a courtroom first thing always comes in our mind is the portraying of the blindfold lady with sword and scales which signify the impartial supervision of justice and its principal purpose is to ensure justice under law. Here raises a question whether the responsibility of law ends by ensuring the punishment only. From my perspective something is left and this is the responsibility of law and the society to protect the dignity of a convicted person who is mostly known as prisoner. Sometimes we forget that they are human beings like us and argue that prisoners don't have or should not be allowed to enjoy their human rights because they are sinners. From our child hood we all are taught that hate the sin, not the sinner but in reality we always hate the sinners who are mostly known as

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prisoners. This paper is concerned with the extent to which rights litigation may improve the quality of the lives of defenceless and downgraded prisoners. At this point I try to focus on the effects of certain fundamental rights contained in the *Constitution of People's Republic of Bangladesh* on prisoners. I am of the view that rights, 'if purposively interpreted and consistently enforced, are nevertheless capable of making invaluable contributions to the pursuit of social justice'.² Moreover, it may be argued that how far the prisoners' rights extend and how far it can be possible to ensure the application of their rights. In this paper, I will have an endeavour to narrowly focus on prisoner's legal status in the eye of the law. Prisoners are very rarely given reasons for decisions that affect them, however directly; nor do they have an opportunity to make representations before these decisions are taken.³

Finally the most prominent feature of the issues plotted in this paper is the absence of supervision by the courts, to a lesser role of Legislature, leaving so much at the discretion of the prison authorities and recognize those rights which are guaranteed for the prisoners are silent behind prison cells.

Objective of the Study

This paper explores the issues of prisoners' rights. The principal objective of this study is to draw the attention of the reader to know about the most invisible population and their legal status under the law. The specific objective of this study has been stated below:

- ✓ To know the present situation of the legal rights of the prisoners in Bangladesh.
- ✓ To find out the causes of violation of prisoners' rights.
- ✓ To suggest measures for the improvement of the prisoners' condition in Bangladesh.

Methodology of the Study

The methodology includes qualitative and quantitative methods but in this paper the qualitative method has been mostly utilized. Due to the limited

² Marius Pieterse, 'The Potential of Socio-Economic Rights Litigation for the Achievements of Social Justice: Considering the Example of Access to Medical Care in South Africa Prisons' (2006)50(2) *Journal of African Law* 119.

³ Graham Zellick, 'Prisoners' Rights in England' (1974) 24(4)*The University of Toronto Law Journal* 345.

time span, I could not able to utilize the quantities method broadly. To get in depth knowledge about the subject document study, observational study, descriptive study and case study method has also been used. To reach to the conclusion of the critical study of the Bangladeshi Laws relating to prisoners' rights the qualitative evaluative method has been followed.

Prisoners' Law: From Antiquity

Bangladesh inherited present prison system from the British as colonial legacy. It is noted that prisons still follow the out-dated statutes of the British colonial rulers, which were framed in the 19th century. The main objective of the prison system was the confinement and safe custody of prisoners through suppressive and disciplinary measures and this is a humanitarian alternative to harsh and brutal penal methods of the dark ages.⁴ Until 19th century that the reformatory movements took practical shape when for the first time classification, separation, individualized treatment and vocational training of inmates, were given due consideration.⁵ It was the law of the time which never allowed any state prisoner to even think of his fundamental rights that he or she could not be behind the bar at one time or released from the commands of the authority at the other on the will of the controllers.⁶ After the complete domination over sub-continent there was a requirement to amend the law relating to prisons in British India and to provide rule for the regulation of such prisons which under their control an Act No. IX of 1894 was passed by the Governor General of India in Council on the 22nd March.⁷ The Prisons Act was enforced on 1st July 1894 comprised twelve chapters and sixty two sections on establishment, maintenance, duties of prison staff and admission, discipline, rights and obligations of prisoners.⁸ Act III of 1900, the Prisoners Act received the assent of the Governor General on 2nd February 1900 came into force at once and The Act included nine parts and fifty-three sections had the guidance on admission, removal, discharge, attendance in court and employment of prisoners etc.⁹ The origin of jail administration based on a comprehensive law dates back to 1864 when the Government of Bengal framed a detailed jail code and Until 1864, jail administration was carried out by means of sporadically issued

⁴ Mazhar Hussain Bhutta, Muhammad Siddique Akbar, "Situation of Prisons in India and Pakistan: Shared Legacy, Same Challenges" (2012) 27(1) *South Asian Studies* 172.

⁵ *Ibid.*

⁶ *Ibid* 173.

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

circular letters and general orders.¹⁰ There had been an outcome on no uniformity in the jail procedure.

However, The Bengal Jail Code of 1864 developed in the subsequent years into a compendium of rules and regulations issued from time to time and meant for the superintendence and management of all the jails including the subsidiary jails throughout the province.¹¹ The Bengal Jail Code of 1864 that is in operation in Bangladesh today also draws extensively on the provisions of a number of Acts such as the Prisons Act (No. IX of 1894 as amended), Prisoners Act (No. III of 1900 as amended), Identification of Prisoners Act 1920 with aim to regulate the management of jail establishments, confinement and treatment of the prisoners therein, and the maintenance of discipline among them.¹² The Bengal Jail Code includes clear instructions that the provisions of the civil procedure code (Act V of 1908), criminal procedure code (Act V of 1898 as amended) and the Penal Code (Act XIV of 1860 as amended), which relate to the confinement of prisoners, execution of sentences, prisoners' appeals, lunatics, and the like, must also be complied with.¹³

The Sighting of Prisoner's Legal Status

All of new rights and changes in prison programs and philosophy leave us with a new set of questions and those questions are How far do prisoners' rights extend, and to what end do they lead? And the bottom line remains the same: What difference does it make?¹⁴ To make a difference we have to identify the legal status of each prisoner. First of all, 'Legal right is defined in jurisprudence as an interest recognized and protected by a rule of right and it is any interest in respect of which is a duty, and disregard of which is a wrong'.¹⁵ 'To claim a right is to make an assertion of a duty on another that entails either an act of performance or forbearance on the other's part'.¹⁶ Consequently, 'the legal rights of a prisoner can be understood as legally enforceable claims requiring the accomplishment, or restraint, of certain actions on the part of the prison service'.¹⁷

¹⁰ *Ibid.*

¹¹ AMM Shawkat Ali, *Jail Administration*, <http://www.banglapedia.org/HT/J_0031.htm, > access at 12/1/2018.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ Geoffrey P. Alpert (ed), *Legal Rights of Prisoners* (Saga Publication, 1st ed, 1980) 15.

¹⁵ *Fazal Khan v. State*(1962) 14 DLR (SC) 235.

¹⁶ Davit Scott, 'The Politics of Prisoner Legal Rights' (2013) 52 (3) *The Howard Journal of Criminal Justice* 234.

¹⁷ *Ibid.*

The rules of the prison were ambiguous and unspecific and due to this prisoners are being unaware of their content and therefore, unable to ensure their impartial application of their rights. The nature and extent of prisoners' rights have been debated in courts and among professionals for long time. 'Judges are concerned with protecting and conserving those values, institutions, interests and relationships upon which society is founded and unsurprisingly, are naturally sympathetic to such institutions that uphold and enforce the law, such as prison administrators'¹⁸. *The Universal Declaration of Human Rights (UDHR)* states that 'all human beings are born free and equal in dignity and rights'¹⁹ Like all other countries the Government of Bangladesh and the people who belong to this cultured society never try to recognize the rights of the prisoner as a human being which are guaranteed for them by the state and international instruments. *The International Covenant on Civil and Political Rights* which preserved the right of prisoner as 'All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person'.²⁰ It applies to all persons deprived of their liberty including prisoners also.

Part III of our *Constitution* contains number of rights which is called fundamental rights. The framers of the Constitution were particularly impressed with the formulation of the basic rights in the *Universal Declaration of Human Rights* and if we make comparison between parts III of the *Constitution* with the *Declaration*, we shall find that most of the rights enumerated in the *Declaration* have found place in our *Constitution* as fundamental rights.²¹ The *Declaration* followed two Covenants – *Covenant on Civil and Political Rights* and *Covenant on Economic, Social and Cultural Rights* and our courts will not enforce those *Covenants* as *treaties* and *Conventions*, even if ratified by the State, are not part of the *Corpus juries* of the State unless these are incorporated in the municipal legislation.²² However the court can look into these *Conventions* and *Covenants* as an aid to interpretation of the Provision of Part III particularly to determine the rights implicit in the rights like right to life and the right to liberty.²³

¹⁸ *Ibid* 238.

¹⁹ *The Universal Declaration of Human Rights*, GA Res 217(III), UN GAOR, 3rd Sess, 183rd plenary meeting, UN Doc A/810(10 December 1948) Article 1.

²⁰ *The International Covenant on Civil and Political Rights*, open for signature 19 December 2009, UNTS vol. 999 p. 171 and vol. 1057, p. 407(entered into force 23 March 1976) Article 10.

²¹ Mahmudul Islam, *Constitutional Law of Bangladesh* (Mullick Brothers, 2nd ed, 2010) 88.

²² *Ibid* 89.

²³ *Ibid*.

In the eye of law, prisoners are persons not animals and Prison houses are part of State and the *Constitution* cannot be held at bay by jail officials and when Part III is invoked by a convict when a prisoner is traumatized, the Constitution suffers a shock.²⁴ To address the conception of the prisoners legal status three broad principle can apply: the human rights principle, the principle of legality and the principle of proportionality.²⁵ The human rights principle establish the presumption that the legislature ,the executive and importantly the Judiciary respect human rights and the principle of legality and proportionality apply in establishing the legitimacy of human rights limitations or put another way they are the language in which we justify rights limitation.²⁶ A conception of a prisoner's legal status in a legal system dedicated to the protection of human rights is guided by the human rights, legality and proportionality principles. In fulfilling these principles, the conception of the prisoner's legal status must clearly and consistently adhere to the key distinction and make explicit in which context prisoners' rights are limited.²⁷

In other words, 'it must establish whether the prisoner's rights are limited as a consequence of the penal sanction or as a consequence of prison administration'.²⁸ In order to achieve this, the conception of the prisoner's legal status must also establish, and consistently adhere to, the purpose of the custodial sanction as distinct from, and as well as, the purpose of prison administration.²⁹

Finally there have undoubtedly been great improvements this century in food, clothing, the relation between inmates and officers, the abolition of the silence rule, opportunities for association, and much else. But in so many respects the legal position of the prisoner in Bangladesh remains autochthonous. Unlike the rest of us, the prisoner may not infer that he can do whatever is not expressly prohibited. Here the debatable issue is now it is high time to identify the legal status of the prisoners so that they can make their own individual citizenship room like other citizens.

²⁴ *Sunil Batra v. Delhi Administration* (1980) AIR 1579 Supreme Court 1579.

²⁵ Liora Lazarus, 'Conceptions of Liberty Deprivation' (2006) 69(5) *The Modern Law Review* 740.

²⁶ *Ibid.*

²⁷ *Ibid* 741.

²⁸ *Ibid.*

²⁹ *Ibid.*

Prisoners' Rights Litigation: A Preliminary Analysis

The newly emerging awareness of rights of convicted is phenomenon none shared by most of the free world and among jurists, statement and legal writers, a shift in emphasis has recently occurred from the "rights lost" to "rights remaining" to imprisoned convicts.³⁰ The concept of prisoners' rights there has been a growing realization that once the door of the prison close behind them, unfettered access to the courts remains for them as fundamental right as any they may have. If the lines of communication between the inmate and the courts are not kept open, all of his other rights become illusory, as dependent entirely on the whim of prison officials³¹. To defend the rights of a prisoner the access to the courts ought to ensure. Every court of justice is to open to all citizens.³²

Every Court, in absence of any express provision in the Code for that purpose, must be deemed to possess, as inherent in its constitution, all such power as are necessary to do the right and to do a wrong in the course of the administration of justice and when law gives a person anything it gives him that without which it cannot exist.³³ Where the rights of a prisoner, either under the *Constitution* or under other law, are violated the writ power of the court can and should run to his rescue.³⁴ The court has power and responsibility to intervene and protect the prisoner against mayhem, crude or subtle, and may use *habeas corpus* for enforcing in-prison humanism and forbiddance of harsher restraints and heavier severities than the sentence carries.³⁵ The judges are guardians of prisoners' rights because they have a duty to secure the execution of the sentences without excesses and to sustain the personal liberties of prisoners without violence on or violation of the inmates' personality.³⁶

Conviction does not render a person a non-person and his rights cannot be at the whims of the prison official, his liberty within the jail precincts cannot be unreasonably and arbitrarily curtailed.³⁷ Article 32 of our *Constitution* provides that no person shall be deprived of life and liberty and as Article 32 includes both substantive and procedural due process, the principle laid down by the America and Indian Court is applicable in

³⁰ Alpert, above n 14, 155.

³¹ *Ibid* 156.

³² Islam, above n 21, 217.

³³ *Bangladesh v. ShahjahanShiraj* (1980) 32 DLR (AD) 1.

³⁴ *Sunil* (1980) AIR 1579.

³⁵ *Ibid* 1603.

³⁶ *Ibid*.

³⁷ *Ibid* 1590.

Bangladesh with full force.³⁸ A person because of his detention or imprisonment does not forfeit all his fundamental rights and he can claim his right to life and liberty even in detention or imprisonment as well.

As way of punishment handcuff may be used by the authority in jails under rule 716 of *Bengal Jail Code* and it may be iron bar handcuffs, spring-catch handcuffs or chain handcuffs.³⁹ Handcuff may be imposed on the wrist in front or behind, by day or night for a period of not more than 12 hours a day.⁴⁰ Whether a person should be physically restrained and, if so, what should be the degree of restraint is a matter which affects the person in custody so long as he remains in custody and also consistent with the fundamental rights of such person the restraint can be imposed.⁴¹ It is grossly objectionable that the power given by the law to impose a restraint, either by applying handcuffs or otherwise, should be seen as an opportunity for exposing the accused to public ridicule and humiliation and nor is the power intended to be used cruelly or by way of punishment.⁴² If the prisoners break downs because of mental torture, psychic pressure or physical infliction beyond the licit limits of lawful imprisonment the prison administration shall be liable for the excess.⁴³

No prisoners can be personally subjected to deprivation not necessitated by the fact of incarnations and sentence of court and all other freedoms belong to him to read and write, to exercise and recreation, to meditation and chant, to creative comforts like protection from extreme cold and heat, to minimal joys of self-expression, to acquire skills and technique and all other fundamental rights tailored to the limitations of imprisonment.⁴⁴ *Prisons Act*, section 29 talks about solitary confinement of prisoners and any harsh isolation from the society by long, lonely, cellular detention is penal and so must be inflicted only consistently with fair procedure.⁴⁵ *Prisons Act 1894*, section deals with confinement in irons and it must be restored to only in gravest situation.⁴⁶

An alarmingly large number of men and women, children including, are behind prison bars for years awaiting trial in courts of law. Speedy trial is

³⁸ Islam, above n 21, 197.

³⁹ The Bengal Jail Code 1920 Rule 716.

⁴⁰ *Ibid*, 717.

⁴¹ *Prem Shankar Shukla v. Delhi Administration* (1980) AIR Supreme Court 1535, 1546.

⁴² *Ibid*, 1547.

⁴³ *Sunil* (1980) AIR 1579, 1581.

⁴⁴ *Ibid*, 1581.

⁴⁵ *Ibid*, 1581.

⁴⁶ *Ibid*.

of the essence of criminal justice and, therefore, delay in trial by itself constitutes denial of justice. Though speedy trial is specifically enumerated as a fundamental right under Article 35(3) of our *Constitution* but we can see the accused are in the custody without trial for indefinite period.⁴⁷ Expeditious trial and freedom from detention are a part of human rights and basic freedoms and a judicial system which allows incarceration of individuals for long periods of delay without trial must be held to be denying human rights.⁴⁸ About 7409 person who are under trial person has been furnished by the petitioner to show that these persons are also suffering in custody without trial for indefinite period of time.⁴⁹ The case has been made out by the Petitioner, is that the impugned action of the respondent is without lawful authority is the violation of the prisoners fundamental rights to personal liberty and to a speedy trial as guaranteed by Article 31, 32 and 35(3) of the *Constitution* and also violation of Government obligation under International Human Rights treaties, in particular Article 14 of the *International Covenant on Civil and Political Rights* to a speedy trial.⁵⁰ If a person is deprived of his liberty under a procedure which is not "reasonable, fair or just", such deprivation would be violation of his fundamental right and he would be entitled to enforce such fundamental right and secure his release.⁵¹

Remission earned on the basis of rules framed under Section 59 of *Prisons Act* reducing 20 years imprisonments to 14 years and after 14 years completion the matter to be referred to the Government for action and convict cannot claim 14 years as a matter of right.⁵² Prisoners can be released only in the exercise of the power conferred on the Government by Section 491 of the *Criminal Procedure Code*.⁵³ Though the provision of Remission available for the prisoners but with restriction. Inspector General (Prison) are inform that presently more than ten thousand inmates who are convicted with lifelong imprisonment are staying in jails and the released process of 1042 inmates still on progression.⁵⁴ This delay occurred because the Home Affairs Ministry asked documents like FIR, Charge Sheet, and judgment copy of those inmates though there is no such provision in *Jail Code* and Jail authority failed to produce those

⁴⁷ Islam, above n 21, 213.

⁴⁸ *Ibid.*

⁴⁹ *BLAST v. Bangladesh* 57 DLR (2005) 12.

⁵⁰ *Ibid.*

⁵¹ *Hussainara Khatoon & Ors v. Home Secretary, State Of Bihar*, (1979) AIR Supreme Court, 1360.

⁵² *Muhammad Hussain v. The State* (1968) 20 DLR (WP) 25.

⁵³ *Ibid.*

⁵⁴ Ministry of Parliamentary Standing Committee on Home Affairs, Bangladesh Parliament, *Remission and Procedure of Release of Long Term/Imprisoned Prisoners* (2010) 132.

documents. As a result the progression of release of those inmates delayed with passage of time and he also claimed that as a condition of release asked for 20/30 years previous documents from the inmates is far away from humanity.⁵⁵ However, to focus only on litigation would be too inadequate. Legislatures and executive agencies have also had key roles to play to protect the legal status of prisoners.

An addition, it is crying shame on judicial system which permits incarceration of men and women for such long periods of time without trial.⁵⁶ Why our legal and judicial system continually denies justice to the poor by keeping them for long years in pre-trial detention is the highly unsatisfactory bail system and where an accused is to be released on his personal bond; it insists that the bond should contain monetary obligations which require the accused to pay a sum of money.⁵⁷ The poor find it difficult to furnish bail even without sureties because very often the amount of the bail fixed by the Court is so unrealistically excessive that in a majority of cases the poor are unable to satisfy the Police or the Magistrate about their solvency for the amount of the bail and where the bail is with sureties, as is usually the case, it becomes an almost impossible task for the poor to find persons sufficiently solvent to stand as sureties.⁵⁸ The result is that either they are fleeced by the police and revenue officials or by touts and professional sureties and sometimes they have even to incur debts for securing their release or, being unable to obtain release, they have to remain in jail until the court is able to take up their cases for trial which leading to grave consequences.⁵⁹ It is indisputable that an unnecessarily prolonged detention in prison of under trials before being brought to trial is an affront to all civilized norms of human liberty.⁶⁰ Law-makers would take an important step in defence of individual liberty if appropriate provision was made in the statute for non-financial releases.⁶¹

Recommendations and Some Ethical Considerations

What should be done about the prisoners' condition in Bangladesh jails, if anything? Is there something that one could recommend to improve the present condition in cells and which also protect the wellbeing of

⁵⁵ *Ibid.*

⁵⁶ *Hussainara Khatoon (1979) AIR 1361.*

⁵⁷ *Ibid* 1361.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

prisoners? Needless to say, we are going to give recommendation which can be made immediate implication or has long term impacts. This is a reference by the Government under section 6 (Ena) of the Law Commission Act, 1996 seeking opinion and recommendations of the Law Commission on some specific recommendations made by the Jail Reform Commission, 1978, for prison reforms.⁶² The recommendations of the Jail Reform Commission with which we are concerned in this reference are as follows:

Firstly, the proposal of the Ministry of Law, Justice and Parliamentary Affairs for enforcing the *Probation of Offenders Ordinance, 1960* may be accepted and implemented.⁶³ By implementing this Ordinance there might be created the opportunity to reduce the prisoners' problems. If we look at the Act in section 4 which deals with the conditional discharge of the convicted having not more than two years imprisonment by considering some facts like the age, character, antecedents or physical or mental condition of the offender.⁶⁴

Secondly, if the Government takes a policy decision to introduce community service as an alternative to imprisonment, a legal framework for the purpose may be evolved by suitable legislation.⁶⁵ As alternative to Imprisonment such as, bail, conditional discharge, suspension of sentence, probation, binding-over, fines, community service order, compensation, restitution, etc.⁶⁶ To take another example the state might facilitate exercise of freedom of speech by ensuring that prisoners have ready access to forms of cultural stimulation and forums in which they can express their ideas among themselves and to the general public.⁶⁷

Thirdly, the judges trying criminal cases and the magistrates may be sensitized to apply the existing law of bail conscientiously and on judicial consideration and judicial consideration alone and not on any consideration other than judicial and the police officers may be sensitized to exercise their powers to grant bail to an arrested person properly and conscientiously.⁶⁸ It is high time that risk of monetary loss is not the only deterrent against fleeing from justice but, there are other factors which act

⁶² Law Commission, *Report on the Reference of the Government on Prison Reforms*, Serial No.54 (2003) 1.

⁶³ *Ibid.*

⁶⁴ *The Probation of Offenders Ordinance, 1960* Section 4.

⁶⁵ Law Commission, above n 62, 1.

⁶⁶ *Ibid.*

⁶⁷ Richard L. Lippke, 'Toward a Theory of Prisoners' Rights' (2002) 15(2) *Ratio Juris* 122.

⁶⁸ Law Commission, above n 62, 1.

as equal deterrent against fleeing and there might be other relevant consideration like family ties, roots in the community, job security, membership of stable organization should be deterrent factors in grant of bail and the accused should in appropriate cases be released on his personal bond without monetary obligation to ensure speedy trial.⁶⁹

From ethical reflection, need to emphasis on the more contact staff have with prisoners the less punitive they become, possibly because the interaction humanizes prisoners in their eyes. The research also suggests that the more prison staff members engage with prisoners to change their behaviours and improve their lives, the more likely they are to be no punitive in their attitudes. Therefore, these findings would suggest that training and staff development which exposes staff, of all social backgrounds, to these rehabilitative roles will reduce overall levels of punitive attitudes among staff. One possible approach with rights fully retained by prisoners is to hold that state facilitation should allow prisoners to enjoy or exercise such rights in ways that are at least roughly comparable to the ways in which free citizens do so. But to say this is only to raise a series of problems, not address them⁷⁰. The parole system has long been recognized as the single most inequitable, potentially capricious and uniquely arbitrary corner of the criminal justice map.⁷¹

Another ethical consideration, too many in our society, the impact of imprisonment on prisoners and their families is a matter of little or no importance. The effects of incarceration include the high financial, emotional and social costs which prisoners' family members are often forced to pay.⁷² Such costs have been termed 'invisible punishment', because they often leave prisoners' families feeling as if they have been penalized for crimes they have not committed.⁷³ Many people are directly and indirectly affected by crime each year, the worst crimes at times dropping entire families into devastating loss. However, as a society we are in control of our response to crime and the way in which we punish.⁷⁴

Subject to consideration of security and discipline, liberal visits by family members, close friends and legitimate callers, are part of the prisoners' kit

⁶⁹ *Hussainara Khatoon* (1979) AIR 1363.

⁷⁰ Lippke, above n 67, 133.

⁷¹ Alpert, above n 14, 38.

⁷² Jessica Breen, 'Prisoners' Families and the Ripple Effects of Imprisonment' (2008) 97(385) *An Irish Quarterly Review* 60.

⁷³ *Ibid.*

⁷⁴ *Ibid* 68.

of rights and shall be respected.⁷⁵ There should be in connection with every institution social workers charged with the duty of maintaining and improving all desirable relations of a prisoner with his family and social agencies.⁷⁶

Conclusion: Taking to Forward

Though much work remains to be done on the specific rights of prisoners' retain fully or in part, but it should be admitted that State has the accountability to ensure those retained rights of the prisoners. Suppose that while some of their rights are justifiably curtailed, prisoners retain important rights such as freedom of speech and religion, the right to work, the right to vote, and the right to health care.⁷⁷ In reply State might claimed that by committing crimes of a serious kind, prisoners have put themselves in a position where they may not be able to enjoy or exercise their retained rights. The State is therefore not obligated to offer them any special help or support and this argument implies that inability to exercise or enjoy retained rights is part of the cost to the guilty of their criminal misconduct.⁷⁸ Here we can draw the attention of the state as the prison population may well include some of the most reviled members of the community and similarly, in modern conflicts the respectful treatment of prisoners is essential for legitimacy, and international rights standards are seen as key guarantees of good treatment.⁷⁹ The essential feature of rights is precisely that they are available to all, even those who through their actions may appear to be less deserving than others and rights should, therefore, not be linked to virtue.⁸⁰

To recognize prisoners as general rights-holders and would, therefore, acknowledge their citizen status, but it would also mean recognizing a separate category of rights resulting from their prisoner status.⁸¹ There is also the question of how far we may legitimately restrain or intervene upon those rights that confinement requires us to shorten. To answering these questions would require us to look at our *Constitution* where part III enumerates some fundamental rights for all citizen of this country and here

⁷⁵ *Sunil* (1980) AIR 1579, 1581.

⁷⁶ *Ibid* 1601.

⁷⁷ Lippke, above n 67,131.

⁷⁸ *Ibid*.

⁷⁹ Susan Easton, 'Constructing Citizenship: Making Room for Prisoners' Rights' (2008) 30(2), *Journal of Social Welfare & Family Law* 142.

⁸⁰ *Ibid*.

⁸¹ *Ibid* 144.

prisoners are not exception. To address the conception of the prisoners legal status three broad principle can be applied: the human rights principle, the principle of legality and the principle of proportionality with full spirit.

For purposes of discussion, there might be scope for argument that lawbreakers forfeit all their rights due to their criminal delinquency. The decrease of offense is, without any doubt, one of the central justifying aims of legal punishment. However, to defend the rights of a prisoner the access to the courts ought to ensure and to the progress achieved in the recognition of fundamental freedom as available also to confined felon, the right of access to the court.⁸² Initially a brief overview of the international approach to protection of prisoners' right in general and their right of access to the courts in particularly ensured.

For concluding remarks, bringing a rights-based claim can itself promote respect for the law on the part of the prisoner through reaffirming his or her nationality.⁸³ Finally we hope that within the prison system, it may contribute to decent order by reducing prisoners' sense of injustice. It may also satisfy states' obligations under law.

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⁸² Alpert, above n 14, 130.

⁸³ Susan Easton, 'Constructing Citizenship: Making Room for Prisoners' Rights' (2008) 30(2), *Journal of Social Welfare & Family Law* 142.

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