

## PRISONER'S AMELIORATION UNDER THE ANATOMY OF CONSTITUTION OF INDIA

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### ***Abstract***

*Hate the crime and not the criminal. These humongous words of Mahatma Gandhi hold great relevance in today's contemporary society where imprisonment as a punishment is spreading its tentacles at a great spree and human rights violations seems to be recurrent. Human rights consist of myriad rights that are considered minimal for the human existence. The doctrinal concept of the term human rights plays a very significant role in the lives of all human beings. A prisoner is an individual who is restrained to enjoy his liberty and is captured under the prisons or the detention centers for the violation of rule of law of the country. There has been a drastic transposition during past decade with respect to the increasing consciousness amongst the masses with respect to the desperate need to bring about prison reforms as prisoners are considered to one ostracized segment of the society whose human rights are gravely violated and their voices often go unheard several times. The authors try to elucidate the constitutional provisions and safeguards, various judicial interpretations and guidelines issued by the honourable courts for the upliftment of the rights of the prisoners.*

**Keywords:** Human Rights, Prisoner, Prison Reforms, Violation of Rights, Imprisonment.

## INTRODUCTION

**The Preamble of the Universal Declaration of Human Rights States: —**

**".... It is essential if man is not to be compelled to have recourse, as a last resort to rebellion against tyranny and oppression, that human rights should be protected by the rule of law."<sup>1</sup>**

Human rights consist of myriad rights that are considered minimal for the human existence. The doctrinal concept of the term human rights plays a very significant role in the lives of all human beings. In a nutshell, it can be emphasized that human rights refer to those rights which lays down basic requirements of human to have a ‘minimally good life’.

The basic fact to remember about human rights is that they are not the gift or bounty of any political sovereign through legislation or any edict, but are rights inherent in human existence.<sup>2</sup> ‘Human rights’ in practice have been defined to include all aspects of dignified human existence which make every human being an equal member of the human family. Human dignity is the essence of human rights.<sup>3</sup>

Universal Declaration of Human Rights (UDHR) was adopted by the United Nations General Assembly in 1948 and subsequently large number of international human right instruments and covenants came into existence.

- **The U. N. Charter, 1945.**
- **Universal Declaration of Human Rights, 1948.**
- **International Covenants of 1966 i.e. Civil and Political Rights and Economic, Social and Cultural Rights.**
- **European convention for protection of Human Rights, 1953.<sup>4</sup>**

Human rights are universal and inalienable; indivisible; interdependent and interrelated. They are universal because everyone is born with and possesses the same rights, regardless of where they live, their gender or race, or their religious, cultural or ethnic background.<sup>5</sup> Human Rights

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<sup>1</sup> A Brief Lecture on "HUMAN RIGHTS IN CONSTITUTION OF INDIA", <http://mls.org.in/books/H-2537%20Human%20Rights%20in.pdf>(last visited Dec 3, 2021).

<sup>2</sup> Human Rights, <https://nios.ac.in/media/documents/srsec317newE/317EL25.pdf>(last visited Dec 3, 2021).

<sup>3</sup> *Id.*

<sup>4</sup> *Supra Note 1.*

<sup>5</sup>Human Rights Principles and Rights, [https://www.hurights.or.jp/archives/other\\_publications/section1/pdf/Principles%2C%20Rights%2C%20Duty%20and%20Pedagogy.pdf](https://www.hurights.or.jp/archives/other_publications/section1/pdf/Principles%2C%20Rights%2C%20Duty%20and%20Pedagogy.pdf)(last visited Dec 2, 2021).

are universal and inalienable. All people everywhere in the world are entitled to them. **The universality of human rights is encompassed in the words of Article 1 of the Universal Declaration of Human Rights: “All human beings are born free and equal in dignity and rights.”**<sup>6</sup>

## **NOTION OF HUMAN RIGHTS**

**Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.**

### **Preamble, Universal Declaration of Human Rights**<sup>7</sup>

Human rights are a set of principles concerned with equality and fairness. They are not a recent invention - ideas about rights and responsibilities have been an important part of all societies throughout history. Since the end of World War II, there has been a united effort by the nations of the world to decide what rights belong to all people and how they can best be promoted and protected.<sup>8</sup> Governments have a particular responsibility to ensure that people are able to enjoy their rights. They are required to establish and maintain laws and services that enable people to enjoy a life in which their rights are respected and protected.<sup>9</sup>

Three of the most important international instruments pertaining to human rights are collectively known as the International Bill of Human Rights:

- **The Universal Declaration of Human Rights (UDHR)**
- **International Covenant on Civil and Political Rights (ICCPR)**
- **International Covenant on Economic, Social and Cultural Rights (ICESCR)**<sup>10</sup>

The first human rights principle, dignity, can be found in the preamble of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), containing a recognition that “these rights derive from the inherent dignity of the human person”.<sup>11</sup>

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<sup>6</sup> *Id.*

<sup>7</sup>International Human Rights Law, [https://www.uscis.gov/sites/default/files/document/foia/International\\_Human\\_Rights\\_Law\\_RAIO\\_Lesson\\_Plan.pdf](https://www.uscis.gov/sites/default/files/document/foia/International_Human_Rights_Law_RAIO_Lesson_Plan.pdf)(last visited Dec 3, 2021).

<sup>8</sup>An Introduction to Human Rights, <https://humanrights.gov.au/our-work/education/introduction-human-rights>(last visited Dec 3, 2021).

<sup>9</sup> *Id.*

<sup>10</sup> *Supra Note 8.*

<sup>11</sup> Preamble ICESCR and ICCPR, see also Article 1 of the Universal Declaration of Human Rights.

Human rights constitute a set of norms governing the treatment of individuals and groups by states and non-state actors on the basis of ethical principles regarding what society considers fundamental to a decent life.<sup>12</sup> These norms are incorporated into national and international legal systems, which specify mechanisms and procedures to hold the duty-bearers accountable and provide redress for alleged victims of human rights violations.<sup>13</sup>

Human Rights (UDHR) with a view to promoting human rights in the world. It was mentioned below,

- **Article 1** of the UDHR states that, “in dignity and rights all human beings are born free and equal.”
- **Article 2** of the UDHR states that, “everyone shall have the right, without dissimilarity of any kind, to all the rights and freedoms provided for in this Declaration, such as race, colour, sex, language, religion, political or another opinion, national or social origin, property, birth or other status.”
- **Article 3** of the UDHR states that, “every person has the right to life, freedom and personal security.”
- Under **Article 5** of the UDHR states that, “no one shall be subjected to torture or cruel, inhuman or humiliating treatment or punishment.”<sup>14</sup>

The ICCPR offers every person the right to life by birth, whether he is a prisoner or a liberator. Law protects this right and nobody is forcibly deprived of his or her life. It was provided according to:

- **Article 7** of the ICCPR states that, “no one shall be tortured or subjected to cruel, inhuman or humiliating treatment or punishment.”
- **Article 10** of the ICCPR, which is the most important article relating to prisoner treatment. It offers that, “all people deprived of their freedom are treated with humanity and with respect for the human person's inherent dignity.”<sup>15</sup>

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<sup>12</sup>Human Rights: A Brief Introduction, <https://cdn1.sph.harvard.edu/wp-content/uploads/sites/134/2016/07/Human-Rights-A-brief-intro-2016.pdf> (last visited Dec 3, 2021).

<sup>13</sup> *Id.*

<sup>14</sup> RIGHTS OF PRISONERS IN INDIA: A LEGAL ANALYSIS., <http://www.ipindexing.com/article/16572>(last visited Dec 3, 2021).

<sup>15</sup> The International Covenant on Civil and Political Rights, art. 10, para. 1.

In 2006, in response to well-documented patterns of abuse, a distinguished group of international human rights experts met in Yogyakarta, Indonesia to outline a set of international principles. The result was the Yogyakarta Principles: a universal guide to human rights which affirm binding international legal standards with which all States must comply. They promise a different future where all people born free and equal in dignity and rights can fulfil that precious birth right.<sup>16</sup>

## **UNITED NATIONS BASIC PRINCIPLES FOR THE TREATMENT OF PRISONERS**

The basic principles for the treatment of prisoners of the United Nations provide that all prisoners should be treated without distinction of any kind, with due with due respect due respect for their inherent dignity and value as human beings. They should be rendered in accordance with all human rights and fundamental freedoms laid down in internationally recognized instruments with the exception of freedom of movement.<sup>17</sup> Values of tolerance, equality and respect can help reduce friction within society. Putting human rights ideas into practice can helps us create the kind of society we want to live in.<sup>18</sup>

## **RIGHTS OF PRISONERS UNDER THE CONSTITUTION OF INDIA**

The word prisoner means any person who is kept under custody in jail or prison because he/she committed an act prohibited by law of the land. A prisoner also known as an inmate is anyone who against their will is deprived of liberty. This liberty can be deprived by forceful restrain or confinement. Prisoners' rights deal with the rights of the inmates while behind bars.<sup>19</sup>

**Section 1 of the Prison Security Act 1992, defines the term prisoner. The word prisoner means any person for the time being in a prison as a result of any requirement imposed by a court or otherwise that he be detained in legal custody.** This paper presents the rights of the prisoners in detail with related case laws.<sup>20</sup>

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<sup>16</sup> Human Rights Principles, <https://www.humanrightscommission.ky/human-rights-principles>(last visited Dec 3, 2021).

<sup>17</sup> *Supra Note 14.*

<sup>18</sup> *Supra Note 9.*

<sup>19</sup> Rights of Prisoners, <https://www.legalserviceindia.com/legal/article-75-rights-of-prisoners.html>(last Visited on Dec 14,2021).

<sup>20</sup> *Id.*

***“Every Saint Has A Past; Every Sinner Has A Future” – Oscar Wilde***

While the Supreme Court is seized with the matter concerning inhuman conditions of prisoners in prisons in India, primarily due to overcrowding of prisons, lack of training, personnel and infrastructure and is deliberating with the governments of states and centre to improve such conditions; treatment of prisoners in India is grim and secretly violative of fundamental as well as statutory rights of an individual. For this condition to improve, the rights of prisoners should be put in a two-page bullet pointed manual and compulsorily circulated to arrestees and prisoners, at the time of their arrest or production before a magistrate and again at the time of lodging in the prisons.<sup>21</sup> Prisoners are also entitled to rights to some extent as a normal human being when they are behind the prison. These rights are provided under the Constitution of India, the Prisons Act, 1894 etc. Prisoners are persons and have some rights and do not lose their basic constitutional rights.<sup>22</sup>

In the case of *State of A.P. v. Challa Ramkrishna Reddy*, it was held that a prisoner is entitled to all his fundamental rights unless his liberty has been constitutionally curtailed. The Supreme Court has emphasized that a prisoner, whether a convict, under-trial or detenu, does not cease to be a human being and, while lodged in jail, he enjoys all his fundamental rights guaranteed by the Constitution of India including the right to life guaranteed by the Constitution.<sup>23</sup>

Even a person is convicted and deprived of his liberty in accordance with the procedure established by law; a prisoner still retains the residue of constitutional rights.<sup>24</sup> Certain rights that have been mentioned in Part 3rd of the Indian Constitution are offers to the prisoners also because a prisoner remains a “person” inside the prison.<sup>25</sup>

**Article 14** in which the principle of equality is expressed. The concept of “equal should be treated equally” and the concept of reasonable classification are mentioned in Article 14 that has been a very useful weapon for the courts to examine the category of prisoners and their basis of classification in different classes.<sup>26</sup>

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<sup>21</sup> Prisoners’ rights in India, <https://timesofindia.indiatimes.com/blogs/lawtics/prisoners-rights-in-india/> (last Visited on Dec 14,2021).

<sup>22</sup> Rights of Prisoners under Indian Law, <https://legaldesire.com/rights-prisoners-indian-law/> (last Visited on Dec 14,2021).

<sup>23</sup> (2000) 5 SCC 7122083

<sup>24</sup> Jain M.P., “Indian Constitutional Law”, 5th Edition, Vol. 1, Wadhwa and Company, Nagpur, 2003, p.1295.

<sup>25</sup> *Sunil Batra v. Delhi Administration*, A.I.R 1980 S.C. 1579.

<sup>26</sup> INDIA CONST. art. 14.

**Article 19** of the Constitution provides 6 freedoms to the citizens of our nation. Among these certain freedoms like “freedom of movement”, “freedom to reside and to settle” and “freedom of profession, occupation, trade or business” cannot be enjoyed by the prisoners because these freedoms have some conflict with the concept of prisons and authorities has the power to put reasonable restrictions. But other fundamental rights like “freedom of speech and expression” “freedom to become a member of an association” etc. can be accessed by the prisoners convicted for an offence. But these will be considered as the limitations of prison laws.<sup>27</sup>

According to our **Article 21** of the Constitution which prohibits any inhuman, cruel or degrading treatments to any person (either citizen or non-citizen) will be punished. In the same way, Prisoners Act, 1984 specifically dealt with cruelty of prisoners. If any excesses are committed on a prisoner, the prison official is responsible for that. The Indian judiciary, especially Supreme Court in the recent past years has been very vigilant against encroachments upon the human rights of the prisoners.<sup>28</sup>

In the case of *M.H. Wadanrao Hoskot V. State Of Maharashtra*, the court held that the right to legal aid is one of the ingredients of the procedure.<sup>29</sup>

Initially, right to speedy trial was firstly discussed in the landmark document of English law, the Magna Carta. Right to speedy trial is an abstract idea which deals with the disposal of along with the justice. In the leading landmark case *Hussainara Khatoon V. Home Secretary, State Of Bihar*, it was held that speedy trial of a accused is his fundamental right under Article 21. If any person who denied his right to speedy trial can directly go to Supreme Court under Article 32 for enforcing such rights.<sup>30</sup>

**Right to meet friends and their Consult lawyer-** Prisoners are not only protected physically but also mentally. It is necessary for individuals to meet for the purpose of information, it's people's right. Consult lawyers are their legal representatives, the act done by them directly affects the convict's case. Visiting of friends and family members give them mental stability to survive in such a worst condition where people are unknown to each other.

In *Francis Coralie Mullin V. The Administrator, Union Territory Of Delhi And Others*, the Supreme Court held that prisoners can have interview with family members, friends and

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<sup>27</sup> INDIA CONST. art. 19.

<sup>28</sup> “Rights of Prisoners under Indian Law”, <http://www.penacclaims.com/wp-content/uploads/2018/08/Paridhi-Verma.pdf>/(last Visited on Dec 14,2021).

<sup>29</sup> 1978 AIR 1548, 1979 SCR (1) 192.

<sup>30</sup> AIR 1979 SC 1360.

lawyers without any severe restrictions, and allowed to go outside the jail and could not socialize with persons outside jail.<sup>31</sup>

## **THE PRISON ACT, 1894**

This act is the first legislation regarding prison regulation in India. Following are the provisions of that:

- Accommodation and sanitary conditions of the prisoners.
- Medical officer must be there.
- There are some provisions relating to mental and physical state of prisoners.
- Separation of prisoners for male, female, criminal, civil, convicted and under trials prisoners.<sup>32</sup>

## **THE PRISONERS ACT, 1990**

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 other place where he will be given proper treatment.<sup>33</sup>

## **RIGHTS OF PRISONERS UNDER PRISON ACT**

The supreme court of India has decided to grant some rights and duties of prisoner. In the respect of all India committee on jail reforms during 1980-1983 as given under;

- Right to human dignity.
- Right to basic minimum needs.
- Right to communication.
- Right to legal aid.
- Right against arbitrary prison punishment.
- Right to meaningful and gainful employment.
- Right to release on due date.
- Right to health care.
- Right to education in prison.<sup>34</sup>

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<sup>31</sup> *Supra Note 22.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> National policy on prison reform and correctional administration manual 2003., <https://bprd.nic.in/WriteReadData/userfiles/file/5261991522-Part%20I.pdf> / (last Visited on Dec 14,2021).

It can be said that the prisoners are also entitled to all his fundamental rights while they are behind the prisons. Indian Constitution does not expressly provides for the prisoners' rights but Articles 14, 19 and 21 implicitly guaranteed 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.<sup>35</sup>

Supreme Court in many cases held that 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. 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.<sup>36</sup>

### **DESIDERATUM OF PRISON REFORMS IN INDIA**

A sentence of life imprisonment deprives a person from his right to liberty. Imprisonment affects the prisoner and also his family living in poverty. When a income generating member of the family is imprisoned the whole family has to suffer and adjust to the loss of income. The family has to suffer financial loss because they have to engage a lawyer, arrange food for the prisoner, transport to prison to visit the prison etc.<sup>37</sup> Prisons have very serious health implications. There are some prisoners who are suffering from various diseases before entering to the prison or they get effected after coming in the prison. Hence there is no healthy atmosphere in the prison. It is overcrowded, there is no fresh air, absence of proper and nutritious food etc.<sup>38</sup>

There are various loopholes in prison system which are not allowing us to achieve what we want.

- **Overcrowding:**

One of the most difficult challenges facing our criminal justice system is jail overcrowding. According to the National Crime Records Bureau's 2019 Prison Statistics Report, our country

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<sup>35</sup> *Supra Note 19.*

<sup>36</sup> *Id.*

<sup>37</sup> Prison Reform And Social Change In India, <http://www.grkarelawlibrary.yolasite.com/resources/FM-Jul14-LSC-Koustubh.pdf>(last Visited on Dec 14,2021).

<sup>38</sup> *Id.*

has 1350 prisons with a maximum capacity of 4,03,739 prisoners, but they are now occupied by 4,78,600 inmates, indicating that our prisons are at 118.5 percent capacity, which is an alarming number. This undermines the ability of prison systems to meet the basic needs of prisoners, such as healthcare, food, and accommodation. This also endangers the basic rights of prisoners, including the right to have adequate standards of living and the right to the highest attainable standards of physical and mental health.<sup>39</sup>

- **No Separation:**

There is no separation between under trials from convicts, convicts of petty offences and serious crimes in our prisons. According to Standard Minimum Rules for the Treatment of Prisoners 1955 by United Nations under trials must be kept separated from convicts, female from male, juvenile from adults' offenders, civil offenders from criminal offenders. However, so little has been accomplished. According to the 2019 Prison Statistics Report, 70% of inmates in our jails are under-trials which is not a small number to ignore. As these awaiting trial inmates come into touch with their incarcerated inmates due to a lack of separation, they get influenced into the world of crime by them, which contradicts the whole objective of our prison system as it may contribute to an uptick of criminality in community. This is why our jails are referred to as Recruitment Centres for the Army of Crime.<sup>40</sup>

- **Treating Women Prisoners Generously**

The women prisoners should be treated more generously and allowed to meet their children frequently. This will keep them mentally fit and respond favourably to the treatment methods. The woman who fall prey to sex offence should be treated with sympathy and their illegitimate children should be assured an upright life in the society. Women prisoners should also be allowed to meet their sons and daughters more frequently, particularly the attitude in this regard should be more liberal in case of under-trial prisoners.<sup>41</sup>

- **Remedy of Compensation**

The prison legislation should make provision for remedy of compensation to prisoner who are wrongfully detained or suffer injuries to callous or negligent acts of the prison personnel. It is gratifying to note that in recent decades the Supreme Court has shown deep concern for

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<sup>39</sup> Prison Reforms: Most Ignored Need of the Hour, <https://www.legalserviceindia.com/legal/article-5503-prison-reforms-most-ignored-need-of-the-hour.html> (last Visited on Dec 14,2021).

<sup>40</sup> *Id.*

<sup>41</sup> *Francis Coralie Mullin V. Union Territory Delhi, AIR 2981 SC 746.*

prisoners right to justice and fair treatment and requires prison officials to initiate measures so that prisoners basic right are not violated and they are not subjected to harassment and inhuman conditions of living.<sup>42</sup>

- **Education in Prisons**

The education in prisons should be beyond three R's and there should be greater emphasis on vocational training of inmates. This will provide them honourable means to earn their livelihood after release from jail. The facilities of lessons through correspondence courses should be extended to inmates who are desirous of taking up higher or advanced studies. Women prisoners should be provided training in tailoring, doll making, embroidery etc. The prisoners who are well educated should not be subjected to rigorous imprisonment, instead they should be engaged in some mental cum manual work.<sup>43</sup>

- The Supreme Court, in its landmark decision in *Ramamurthy v. State of Karnataka*, has identified nine major problems which need immediate attention for implementing prison reforms. The court observed that the present prison system is affected with major problems of;

- Overcrowding
- Delay in trial
- Torture and ill treatment
- Neglect of health and hygiene
- Insufficient food and inadequate clothing
- Prison vices
- Deficiency in communication
- Streamlining of jail visits and
- Management of open-air prisons.<sup>44</sup>

- **Rehabilitation:**

The assumption of rehabilitation is that people are not permanently criminal and that it is possible to restore a criminal to a useful life, to a life in which they contribute to themselves and to society. A goal of rehabilitation is to prevent habitual offending, also known as criminal recidivism. Rather than punishing the harm out of a criminal, rehabilitation would seek, by

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<sup>42</sup> *Sanjay Suri V. Delhi Administration*, (1988) Cr. LJ 705.

<sup>43</sup> *Mohd. Gaisuddin V. State of Andhra Pradesh*, AIR 1977 SC 1925.

<sup>44</sup> (1997) 2 SCC 642.

means of education or therapy, to bring a criminal into a more peaceful state of mind, or into an attitude which would be helpful to society, rather than be harmful to society. The assumption of rehabilitation is that people are not permanently criminal and that it is possible to restore a criminal to a useful life, to a life in which they contribute to themselves and to society. A goal of rehabilitation is to prevent habitual offending, also known as criminal recidivism. Rather than punishing the harm out of a criminal, rehabilitation would seek, by means of education or therapy, to bring a criminal into a more peaceful state of mind, or into an attitude which would be helpful to society, rather than be harmful to society.<sup>45</sup>

## CONCLUSION AND CULMINATING REMARKS

To ensure good discipline and administration, an initial classification must be made to separate male from females, the young from the adults, convicted from the unconvicted prisoners, civil from criminal prisoners and from casual from habitual prisoners. The main object of prison labour is prevention of crime and reformation of the offenders. And the other main object was to engage them so as to prevent mental damage and to enable them to contribute to the cost of their maintenance. The under trial prisoners constitute a majority of population in prison than convicted prisoners. The under trial prisoners are presumed to be innocent and most of them are discharged or acquitted after immeasurable physical and mental loss caused to them by detention due to delay in investigation and trial.<sup>46</sup>

Prison reforms are being ignored in our country from the very long time now probably because prisoners don't constitute a vote bank or garner much sympathy. But now our government's carelessness is costing us at the international stage too, as we are unable to provide our prisoners with the rights that we promised at international forums such as the International Covenant on Civil and Political Rights and UN Standard Minimum Rules for the Treatment of Prisoners, it is resulting for our country to perform poorly on the Human Rights Index.<sup>47</sup>

The courts have in recent years been giving serious thought to the of human rights of prisoners and have, on that ground, interfered with the exercise of powers of superintendents of jails in respect of measures for safe custody, good order and discipline.<sup>48</sup>

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<sup>45</sup> *Supra Note 37.*

<sup>46</sup> *Id.*

<sup>47</sup> *Supra Note 39.*

<sup>48</sup> *Supra Note 46.*