PRISONERS & DUTY OF COURTS

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CONTENTS

			courts
29.	Work for under trial prisoners	30.	Whether/what prisoners can be compelled to do labour
31.	Maintenance of private accounts	32.	(A) Food etc. of undertrial prisoners from private sources (B) Prisoners not entitled to facilities beyond rules
33.	Jail appeal by convicts	34.	Jail Appeal u/s. 383 Cr.P.C.
35.	(A) Supply of free of cost copy of judgment of Sessions Court to the convict/prisoner within 30 days (B) Urgent supply of copy of judgment to prisoners (C) District Magistrates to be supplied free copies of judgments (D) Superintendent, Model Prison, Lucknow to be supplied free of cost copy of judgment	36.	Defective warrant of prisoners
37.	Jail authorities can refuse to honour warrant not containing age of detenu	38.	(A) Civil prisoners (B) Arrest & detention of J.D. when unconstitutional?
39.	Scale of subsistence allowance of civil prisoner	40.	Maximum period of detention of a civil prisoner
41.	When is a civil prisoner to be released	42.	Separation of female prisoners
43.	(A) Mentally ill prisoners & their separation (para 488) (B) Mentally ill prisoners & Supreme Court guidelines (C) Mentally ill prisoners & the Supreme Court guidelines issued in the year 2007 in the case of Michal Lalung for rehabilitation of mentally challenged prisoners (D) Mentally ill persons & provisions in Cr.P.C. for their bail or trial etc.	44.	Release order, preparation & sending to jail (A) Release order issued by Magistrate [Rule 63(a) of G.R. (Criminal)] (B) Release order issued by SJ / ASJ [Rule 63(b) G.R. (Criminal)] (C) Release order not to be sent to jail through private persons [Rule 63(c) G.R. (Criminal)] (D) Release order by post & Radiogram when accused transferred & lodged in other jail (E) Defective release order & correction thereof
45.	Hunger strike by prisoners	46.	(A) Torture of accused/ prisoners in custody or jail (B) Blinding of prisoners & legal aid
46-A	Inquiry report alongwith evidence collected to be sent to DIG, Prisons	47.	Classification of prisoners by courts as professional or non-professional accused
48.	(A) Classification of prisoners & Art. 14 of the Constitution (B) State competent to formulate prison policy and effect classification amongst prisoners	49.	Trial of hardened criminals inside the jail premises

50.	Period of detention in jail	51.	Authorities other than courts may also authorize detention in jail
52.	Presence of under-trial prisoner before Magistrate on date of remand not always necessary	53.	Child in the lap of female accused & the duty of courts
54.	(A) Duration & meaning of "imprisonment for life" (B) "Life imprisonment" does not mean 14 or 20 years	55.	(A) Speedy trial of the cases of under-trial prisoners (B) Priority to be given to the trial of undertrial prisoners (C) No unnecessary adjournments by court (D) Witnesses present in court not to be returned un-examined (E) No time limit can be prescribed for conclusion of a criminal trial
56.	Hand-cuffing & fetters etc. of accused/ prisoners & duty of Courts	57.	Duty of Magistrates when accused/ prisoner produced handcuffed in court
58.	Wages to prisoners	59.	Publication of autobiography of condemned prisoner
60.	Hanging by rope not violative of Art. 14 & 21 of the Constitution	61.	Solitary confinement of prisoners
62.	(A) Suggestion of model new All India Jail Manual (B) States competent to make laws for prisoners		

1. **Acts & Rules Regarding Jails:** Certain important Acts and Rules which deal with the prisons and prisoners are given below:

(1) Prisons Act, 1894
(2) Prisoners Act, 1900
(3) Prisoners (Attendance in Courts) Act, 1955
(4) U.P. Jail Manual
(5) U.P. Security of Prisoners Rules, 1972
(6) U.P. Prisoners' Release on Probation Act, 1938
(7) U.P. Prisoners' Release on Probation Rules,1939
(8) Transfer of Prisoners Act, 1950
(9) U.P. National Security of Prisoners (Conditions of Detention) Order,1980
(10) Identification of Prisoners Act, 1920
(11) U.P. Jail Nursing Services Rules, 1982

2. **Place of jail and power of Government**: Under Section 32 of Prisoners Act, the State Government has been empowered to appoint places within the State, and places in other States with their consent, where transportation prisoners could be lodged for undergoing their sentences. The expression "confinement" occurring in the marginal note of the section means the prisoners' detention in the place for the

purpose of executing or carrying out their sentence. In view of the unqualified and clear language of the section, the State Governments can appoint jails as the "places" for confinement of transportation prisoners. Therefore, a sentence of transportation either for a term or for life could be and a sentence of life imprisonment can be made executable in local jails by constituting such jails as the "places" within the meaning of S. 32 under orders of the State Governments. See:

1. Naib Singh vs. State of Punjab, AIR 1983 SC 855
2. Geetinder Kaur vs. State of Punjab, AIR 1985 SC 1409

3(A). **Constitutional / fundamental rights of prisoners:** It is no more open to debate that convicts are not wholly denuded of their fundamental rights. However, a prisoner's liberty is in the very nature of things circumscribed by the very fact of his confinement. His interest in the limited liberty left to him is then all the more substantial. 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 observance of procedural safeguards. Human dignity cannot be ignored even in prisons. See:

1. State of A.P. vs. Challa Ram Krishna Reddy, AIR 2000 SC 2083
2. Sunil Batra vs. Delhi Administration, AIR 1978 SC 1675 (Five-Judge Bench)
3. D. Bhuvan Mohan Patnaik vs. State of A.P., (1975) 2 SCR 24 (Three- Judge Bench)
4. Kishor Singh Ravinder Dev vs. State of Rajasthan, AIR 1981 SC 625

3(B). **Fundamental rights of prisoners:**The Fundamental right of an under-trial prisoner under Art. 21 of the Constitution is not absolute. His right of visitations as also other rights are provided in the Jail Manual. The respondent as an under-trial prisoner was bound to maintain the internal discipline of the Jail. Such a fundamental right is circumscribed by the prison manual and other relevant statutes imposing reasonable restrictions on such right. The provisions of the Bihar Jail Manual or other relevant statutes having not been declared unconstitutional, the respondent was bound to abide by such statutory rules. See: Kalyan Chandra Sarkar vs. Rajesh Ranjan, AIR 2005 SC 972

3(C). **Restrictions & limitations of the rights of prisoners**: In the case of Charles Shobhraj who had a record of escaping from jail, attempt to commit suicide, commission of murder and many crimes abroad as per the reports of Interpol, it has been held by the Supreme Court that imprisonment does not spell farewell of fundamental rights, although, by a realistic re-appraisal, courts will refuse to

recognize the full panoply of Part III of the Constitution enjoyed by a free citizen. Art. 21, read with Art. 19(1) (d) and (5), is capable of wider application than the imperial mischief which gave it birth and must draw its meaning from the evolving standards of decency and dignity that mark the progress of a mature society. Fair procedure is the soul of Art. 21, reasonableness of the restriction is the essence of Art. 19(5) and sweeping discretion degenerating into arbitrary discrimination is anathema for Art. 14. Constitutional Karuna is thus injected into incarceratory strategy to produce prison justice. Of course, where a prison practice or internal instruction places harsh restrictions on jail life, breaching guaranteed rights, the court directly comes in. Every prison sentence is a conditioned deprivation of life and liberty with civilized norms built in and unlimited trauma interdicted. In this sense, judicial policing of prison practices is implied in the sentencing power. The Criminal Judiciary have thus a duty to guardian their sentencees and visit prisons when necessary. The penological goals which may be regarded as reasonable justification for restricting the right to move freely within the confines of a penitentiary are now well-settled. And if prisoners have title to Articles 19, 21 and 14 rights, subject to certain limitations, there must be some correlation between deprivation of freedom and the legitimate functions of a correctional system. It is now well-settled that deterrence, both specific and general, rehabilitation and institutional security, are vital considerations. Compassion wherever possible and cruelty only where inevitable is the art of correctional confinement. When prison policy advances such a valid goal, the distinction between undertrials and convicts is reasonable. In fact, lazy relaxation on security is a professional risk inside a prison. The court cannot be critical of the Administration if it makes a classification between dangerous prisoners and ordinary prisoners. See: Charles Sobraj vs. Supdt., Central Jail, Tihar, New Delhi, AIR 1978 SC 1514 (Three-Judge Bench)

3(D). **Rights of prisoners & security measures**: where three prisoners out of 156 Naxalite prisoners lodged in the Vizagapatnam jail had already escaped and the prison authorities had posted police guards immediately outside the jail and had also installed live electrical wire mechanism with the outer wall of the jail to prevent the escape of the prisoners, it has been held by the Supreme Court that the prisoners have no fundamental freedom to escape from lawful custody of the prison and therefore they cannot complain of the installation of the live wire with which they are likely to come into contact only if they try to escape from the prison. However, the Supreme Court has further held that convicts are not by mere

reason of the conviction, denuded of all the fundamental rights which they otherwise possess. A prisoner is deprived of fundamental rights like the right to move freely through the territory to India or the right to practice a profession. But other freedoms like the right to acquire, hold or dispose of property are available to the prisoner. He is also entitled to the right guaranteed by Art. 21 that he shall not be deprived of his life or the personal liberty except according to the procedure established by law. Therefore, under our Constitution the right of personal liberty and some of the other fundamental freedoms are not to be totally denied to a convict during the period of incarceration. See: D. Bhuvan Mohan Patnaik vs. State of A.P., (1975) 2 SCR 24 (Three -Judge Bench)

4(A). **Certain Rules concerning convicts to apply to under-trial prisoners as well**: According to Rule 409-A, except as otherwise provided, the Rules in the U.P. Jail Manual shall apply to superior and ordinary classes of convicts and to superior and ordinary classes of under-trial prisoners also. Identification of Prisoners Act, 1920 applies at both pre-trial and post-trial stages. See:

1. State of M.P. vs. Devendra, AIR 2009 SC 3009 (Three-Judge Bench)
2. Om Prakash Srivastava @ Babloo Srivastava vs. State of U.P., 1998(37) ACC 96 (All—D.B.)

4(B). **Uttar Pradesh (Suspension of Sentences of Prisoners) (First Amendment) Rules, 2012:** Vide UP Govt. Notification No.104 JL / 22-3-2013-21G /1989 Dated Lucknow, January 29, 2013, Rule 3(3) of the UP (Suspension of Sentences of Prisoners) Rules, 2007 has been amended as under :

Rule 3(3) w.e.f. 29.1.2013: The District Magistrate of the district to which the prisoner belongs may suspend the sentence of a prisoner upto 72 hours on the following grounds :

(a). Death of mother, father, husband or wife, son, daughter, brother or sister,

(b). Marriage of son, daughter, brother or sister.

5(A). **Court not empowered to release prisoner in police custody to attend marriage/Tilak ceremony etc. of near relatives** : An important decision dated 28.04.2011 of the Hon'ble Allahabad High Court rendered in Criminal Misc. Application No. 13434 of 2011 **State of UP Vs. Udai Bhan Singh alias Doctor Singh** & Criminal Misc. Application No. 13566 of 2011 Smt. Ram Lali Mishra Vs. State of UP is quoted here as under :

"Prisoner Udai Bhan Singh alias Doctor Sing & his nephew Sandeep Singh alias Pintu Singh were detained in the District Jail, Mirzapur and were facing trial

before the Court of Addl. Sessions Judge, Bhadohi at Gyanpur for the offences u/s 307, 120-B of the IPC. The prisoner Udai Bhan Singh alias Doctor Singh was already convicted in another Criminal Trial for having committed the offence of murder and was serving life imprisonment. An application was moved by the two under trials named above before the court of the ASJ, Bhadohi at Gyanpur with the prayer to allow them to go from the jail in police custody to attend the tilak ceremony of their sister's daughter. The ASJ allowed the application with the direction to the jail authorities to take the two prisoners named above in police custody to attend the tilak ceremony of their sister's daughter. The said order was immediately challenged by the jail authorities/the State of UP on Sunday itself (on 24.04.2011) by filing a petition u/s 482 CrPC before Hon'ble the Chief Justice of the Allahabad High Court at His Lordship's residence. His Lordship Hon'ble the Chief Justice at once constituted a Bench nominating Hon'ble Justice A.K. Tripathi to hear the petition on Sunday itself and pass appropriate order. After hearing the counsel for the State at his residence, His Lordship Hon'ble Justice A.K. Tripathi passed order dated 24.04.2011 staying the operation of the order of the ASJ Bhadohi and the said petition was thereafter transferred to the regular Bench of Hon'ble Justice Ravindra Singh. Finally allowing the above petition, His Lordship Ravindra Singh J. has observed that 'the impugned order shows that the trial court has passed such order deliberately so that the judicial custody warrants of the accused persons prepared and issued by the committal Magistrate u/s 209 CrPC may not come in the way of execution of the impugned order and that is why the order has been passed releasing the accused persons in police custody. The impugned order has been passed in the garb of the provisions of Section 439 or 309 CrPC to give the benefit to the accused persons which is not proper and is illegal. Section 309 CrPC was not applicable in the present case because the trial court was not empowered to remand the accused persons to police custody to a place other than the jail." The said order of the ASJ, Bhadohi at Gyanpur was consequently set aside by the Hon'ble High Court.

5(B). **Application seeking permission to attend marriage of sister in police custody rejected by High Court** : Where the accused/husband was convicted along with his father for offences u/s 304-B, 498-A of the IPC and u/s 3/4 DP Act and was serving out sentence in jail and meanwhile father/convict was granted bail in appeal by the High Court, the co-accused/husband moved a second application for bail before the High Court. The Hon'ble Allahabad High Court not only rejected the prayer of the co-accused/husband for bail and short term bail but also rejected the prayer to allow him to go from jail to the venue of the marriage in police custody. See: **Upendra Singh Vs. State of UP, 2012 (77) ACC 801(Allahabad) (DB)**

5(C). No short term bail to attend marriage etc : Where the accused/husband was convicted along with his father for offences u/s 304-B, 498-A of the IPC and u/s 3/4 DP Act and was serving out sentence in jail and meanwhile father/convict was granted bail in appeal by the High Court, the co-accused/husband moved a second application for bail before the High Court. The Hon'ble Allahabad High Court not

only rejected the prayer of the co-accused/husband for bail and short term bail but also rejected the prayer to allow him to go from jail to the venue of the marriage in police custody. See: **Upendra Singh Vs. State of UP, 2012 (77) ACC 801(Allahabad) (DB)**

5(D). **M.Ps and.M.L.As. or Influential Politicians not above the law of Prisons Act, 1894**: Where an influential member of Parliament from the State of Bihar was detained in jail for the offence of murder and made several visits outside the jail on the basis of production warrant issued by Fast Track Court and during transit addressed election rallies in his constituency and also managed to go outside the jail for the medical treatment of his alleged ailments unauthorized by jail manual, it has been held by the Supreme Court that the member of Parliament or the Influential Politicians are not above the law contained in Prisons Act, 1894. Doubting the need of the M.P. being present before the Fast Track Court for any proceeding on the date fixed for appearance in the production warrant and also the genuineness of the medical certificate describing the ailment of the M.P., the Supreme Court issued show cause notice to the authorities of the jail and ordered inquiry in the matter. MLA detained in prison on criminal charges has no right to vote or participate in the proceedings of the Assembly. Right to practice one's profession stands stripped when a person is detained in prison. See:

1. Shekhar Tiwari vs. State of U.P., AIR 2009 (NOC) 2863 (Allahabad) (DB)
2. Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav, (2005) 3 SCC 307 (Three-Judge Bench)

5(E). **Right to vote not a constitutional right :** A right to elect, fundamental though it is to democracy is neither a fundamental right nor a common law right, but pure and simple, a statutory right. Even otherwise, there is no basis to say that the right to vote and elect representatives of the State in the Council of the State is a constitutional right. Article 80(4) merely deals with the manner of election of the representatives in the council of the States as an aspects of the composition of the council of the states. There is nothing in the constitutional provisions declaring the right to vote in such election as an absolute right under the Constitution. See : **Kuldip Nayar Vs. Union of India & Others, AIR 2006 SC 3127 (Five-Judge Bench)** *(paras 359 & 360)***.**

6. **M.P.and M.L.A. detained in jail not entitled to attend the session of the House for vote and debate**: Where a Member of Parliament detained in jail under the

Defence of India Act & Rules, 1962 claimed his right to attend the Session of the House for vote and debate, it has been held by the Supreme Court that the true Constitutional position is that so far as a valid order of detention is concerned, a M.P. can claim no special status higher than that of an ordinary citizen and is as much liable to be arrested and detained under it as any other citizen. If the M.P. is validly detained in jail under authority of some law, he cannot claim as matter of right to speech and expression to attend legislature of session or to exercise his right to vote on the floor of the house. MLA detained in prison on criminal charges has no right to vote or participate in the proceedings of the Assembly. Right to practice one's profession stands stripped when a person is detained in prison. See:

1. Shekhar Tiwari vs. State of U.P., AIR 2009 (NOC) 2863 (All—D.B.)
2. K. Anandan Nambiar vs. Chief Secretary, Government of Madras, AIR 1966 SC 657

7(A). **Prisoners' right to vote:** Sub-sec. (5) of Sec. 62 of Representation of the People Act debars a person to vote in an election if he is confined in a prison, whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police. The proviso to sub-sec. (5) carves out an exception for a person subjected to preventive detention under any law for the time being in force. Sub-sec. (5) is not violative of Art. 14 on grounds that it discriminates and does not restrict person convicted and sentenced to imprisonment but released on bail from voting. It is also not violative of Art. 21 on ground that restriction placed on prisoner's right to vote denies dignity of life. Further the classification made for persons in preventive detention is reasonable. Preventive detention differs from imprisonment on conviction or during investigation of the crime of an accused which permits separate classification of the detenus under prevention detention. Preventive detention is to prevent breach of law while imprisonment on conviction or during investigation is subsequent to the commission of the crime. This distinction permits separate classification of a person subjected to preventive detention. See:

1. Shekhar Tiwari vs. State of U.P., AIR 2009 (NOC) 2863 (Allahabad) (DB)
2. Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav, (2005) 3 SCC 307 (Three -Judge Bench)
3. Anukul Chandra Pradhan vs. Union of India, AIR 1997 SC 2814 (Three- Judge Bench)

7(B). A person in prison or in custody of police not qualified to contest election : Interpreting Sections 16(1)(c), 62(5), 4 & 5 of the R.P. Act, 1950 and Article 326

of the Constitution, it has been ruled by the Hon'ble Supreme Court that an imprisoned person or a person in lawful custody of police is not qualified to contest election to the House of the People or Legislative Assembly of a State. A person who has no right to vote by virtue of provisions of Section 62(5) of the R.P. Act, 1951 if he/she is under imprisonment or in police custody and cannot act as an an electoral, then such person can not contest election also. See : **Chief Election Commissioner & Others Vs. Jan Chaukidar (Peoples Watch) & Others, (2013) 7 SCC 507.**

Note : *The Parliament has now rendered the said decision of Jan Chaukidar ineffective by amending Section 8(4) of the R.P. Act, 1950.*

8(A). **Inspection of jails**: Where a prison practice or internal instruction places harsh restrictions on jail life, breaching guaranteed rights, the court directly comes in. Even prison sentence is a conditioned deprivation of life and liberty, with civilized norms built in and unlimited trauma interdicted. In this sense, judicial policing of prison practices is implied in the sentencing power. The criminal judiciary has thus a duty to guardian the sentencees and visit prison when necessary. See: Charles Sobraj vs. Supdt., Central Jail, Tihar, AIR 1978 SC 1514 (Three- Judge Bench)

8(B). **Joint inspection of jails by District Judge, DM & SSP (C.L. No.82/VIIIf-9/Inspection Section, dated 21.9.1994):** The Allahabad High Court vide aforesaid C.L. has directed joint inspection/joint visits of jails by the District Judges, District Magistrates and the SSPs quarterly in each sessions division. The visits should be made by them personally. Nobody else should be deputed on their behalf to visit the jail at such joint inspections. The District Judges will keep in touch with the DM and SSP for the purpose.

8(C). **Inspection of jails by CJMs (Now ACJMs):** The Allahabad High Court, vide G.L. No. 38/Admn. (B), dated 9.12.1968 & C.L. No. 82/Admn. G, dated 18.12.1981, has empowered and directed the CJMs (Now only ACJMs and not CJMs vide C.L. No. 198/1976, dated 10.12.1976) to make inspection of the jails once in a month and submit their report to the District Judge regarding the conditions of prisoners, particularly of undertrial prisoners in jail.

8(D). **CJM's duty regarding under-trial prisoners during inspection of jails (C.L. No. 82 (C.L. No. 82/VIIIg-38 Admn. G dated 18.12.1981):** The Chief Judicial Magistrates should while inspecting the jails make a note from the jail records about the number of undertrials confined in the jail, the offence under which he is confined in jail, reasons for his continued detention and other relevant materials. If

he is released during the period after the date of the last inspection then the date of release and the cause of release, e.g., disposal of case, grant if bail etc., should also be noted. They shall also maintain proper record of these findings and send copy to District Judge.

8(E). **Only ACJMs to inspect jails (C.L. No.198/Admn.(A), dated 10.12.1976):** The Allahabad High Court, vide C.L. No.198/Admn.(A), dated 10.12.1976 has directed that jail inspections will be made by the Addl. Chief Judicial Magistrates only.

8(F-1). **Visitors' Board & the role of Sessions Judges**: The Visitors' Board should consist of cross sections of society; people with good background, social activists, people connected with the news media, lady social workers, jurists, retired public officers from the Judiciary as also the Executive. The Sessions Judge should be given an acknowledged position as a visitor and his visits should not be routine ones. Full care should be taken by him to have a real picture of the defects in the administration qua the resident prisoners and undertrials. See: Sanjay Suri vs. Delhi Administration, AIR 1988 SC 414

8(F-2). **State Govt. to appoint non-official visitors to prisons :** The State Governments shall consider appointment of non-official visitors to prisons and police stations in terms of the relevant provisions of the Act wherever they exist in the Jail Manuals or the relevant Rules and Regulations**.** See : **D.K. Basu Vs. State of W.B., (2015) 8 SCC 744** *(para 38.7)*

9(A). **Complaint box, non overcrowding, open air prisons & jail reforms**: The Supreme Court has emphasized to install complaint boxes in jails, non overcrowding of prisoners, more open air prisons & several other reforms in jails. However overcrowding in jails, from practical point of view, may to a reasonable extent have to be tolerated. See:

1. Rama Murthy vs. State of Karnataka, AIR 1997 SC 1739 (Three- Judge Bench)
2. Sanjay Suri vs. Delhi Administration, AIR 1988 SC 414

(9B) Model Prison Manual 2016: In the case noted below, the Supreme Court directed the States and the Union Territories to consider implementing the reformative and rehabilitation programmes contained in the Model Prison Manual 2016. **See: Raju Jagdish Paswan Vs. State of Maharashtra, AIR 2019 SC 897 (Three-Judge Bench).**

10. **Maintenance of proper hygienic conditions & medical facilities in jails:** The Supreme Court has expressed expectations form the Central & the State Governments for appropriate hygienic conditions in jails and also for proper

medical facilities to the prisoners. See: Rama Murthy vs. State of Karnataka, AIR 1997 SC 1739 (Three-Judge Bench)

11(a). **Transfer of prisoners for trial to another district (Para 450):** When an under-trial prisoner is sent to another district for trial in another case, or for any other purpose, the Superintendent shall send with the prisoner his ticket and a copy of his warrant of remand together with an order requiring his return. The jailer shall take a receipt for these documents from the officer in charge of the police escort. The prosecuting inspector of the district to which the prisoner has been sent shall arrange for the return of the prisoner whom no longer required. Transfer of accused from one jail to another is purely administrative function. See:

1. State of U.P. vs. Fast Track Court, Maharajganj, 2008 (63) ACC 317 (Allahabad) (DB)
2. Raghuraj Pratap Singh @ Raja Bhaiyya vs. State of U.P., Writ Petition No. 6719 (MB)/2002 decided on 11.12.2002 (DB)

11(b). Govt. empowered to transfer only convicts and not under- trails from one jail to other without permission of court : Removal of any prisoner under S. 29 is envisaged only at instance of State Government is cases where prisoner is under a sentence of death or under or in lieu of sentence of imprisonment or transportation or is undergoing imprisonment in default of payment of fine or imprisonment in default of security for keeping the peace or for maintaining behavior. Transfer in terms of sub-section (1) of Section 29 is thus permissible only in distinct situations covered by clauses (a) to (d) of S. 29(1). The provision does not deal with under-trial prisoners who do not answer the description given therein. Sub-Section (2) of Section 29, also does not make the transfer of an under-trial permissible. Sub-Section (2) no doubt empowers the Inspector General of Prisons to direct a transfer but what is contemplated is transfer of a prisoner who is confined in circumstances mentioned in sub-section (1) of Section 29. Use of words "any prisoner confined as aforesaid in a prison". In sub-sec. (2) of S. 29 leave no manner of doubt that a transfer under sub-section (2) is also permissible only if it relates to prisoners who were confined in circumstances indicated in sub-section (1) of S. 29 *(paras 20,21).* Section 26 of Prisones Act also does not authorize transfer of an under trial. All that Section 26 provides is that before being removed to any other prison the prisoner shall be examined by the medical officer and unless the medical officer certifies that the prisoner is free from any illness rendering him unfit for removal, no such removal shall take place. Section 26 may, therefore, oblige the prison

authorities to have the prisoner, whether a convict or an under trial, medically examined and to remove him only if he is found fit but any such requirement without any specific power vested in any authority to direct removal, cannot by itself, he interpreted to mean that such removal can be ordered under the order either by the Inspector General of Prisons or any other officer for that matter. (*para 23).* The rationale underlying Ss. 167 and 309 of Criminal P.C. is that the Continue detention of the prisoner in jail during the trial or inquiry is legal and valid only under the authority of the Court/Magistrate before whom the accused is produced or before whom he is being tried. An under-trial remains in custody by reasons of such order of remand passed by the concerned Court and such remand is by a warrant addressed to the authority who is to hold him in custody. The remand orders are invariably addressed to the Superintendents of Jails where the under-trials are detained till their production before the Court on the date fixed for that purpose. The prison where the under-trial is detained is thus a prison identified by the competent Court either in terms of Section 167 or Section 309 of the Code. It is axiomatic that transfer of the prisoner from any such place of detention would be permissible only with the permission of the Court under whose warrant the under-trial has been remanded to custody. *(para 25)* The power exercisable by the Court while permitting or refusing transfer is 'judicial' and not 'ministerial'. Exercise of ministerial power is out of place in situations where quality of life or the liberty of a citizen is affected, no matter he/she is under a sentence of imprisonment or is facing a criminal charge in an on going trial. Transfer of an under-trial to a distant prison may adversely affect not only his right to defend himself but also may isolate him from the Society of his friends and relations. Any order that the Court may make on a request for transfer of a prisoner is bound to affect him prejudicially. As such it is obligatory for the Court to apply its mind fairly and objectively to the circumstances in which the transfer is being prayed for and take a considered view having regard to the objections which the prisoner may have to offer. There is in that process of determination and decision making an implicit duty to act fairly, objectively or in order words to act judicially. It follows that any order of transfer passed in any such proceeding can be nothing but a judicial order or at least a quasi-judicial one. See : **State of Maharashtra and Others etc. Vs. Saeed Sohail Sheikh etc, AIR 2013 SC 168** ***(para 39)***

11(C). **<u>Transfer of prisoner from a place of detention permissible only with permission of the Court</u>** : Interpreting Section 29 of Prisons Act, 1900, it has

been ruled by the Hon'ble Supreme Court that transfer of prisoner from a place of detention is permissible only with the permission of the court. See : **State of Maharashtra and Others etc. Vs. Saeed Sohail Sheikh etc, AIR 2013 SC 168.**

11(D). **Order permitting transfer of prisoner to other jail judicial in nature and not ministerial :** Order permitting or refusing transfer of prisoner to other jail is judicial in nature and not ministerial. See : **State of Maharashtra and Others etc. Vs. Saeed Sohail Sheikh etc, AIR 2013 SC 168.**

11(E). **Obligatory for court to apply its mind to circumstances in which transfer is prayed :** It is obligatory for court to apply its mind to circumstances in which transfer is prayed. See : **State of Maharashtra and Others etc. Vs. Saeed Sohail Sheikh etc, AIR 2013 SC 168.**

11(F). **Under trial cannot be transferred in terms of order of Inspector General of Prisons :** Transfer of prisoner is permissible under Section 29(1) of the Prisons Act, 1900 only in distinct situations covered by clauses (a) to (d). A transfer under Section 29(2) also permissible only if it relates to prisoners confined in circumstances indicated in Section 29(1). Under trials cannot be transferred in terms of orders of Inspector General of Prisons. See : **State of Maharashtra and Others etc. Vs. Saeed Sohail Sheikh etc, AIR 2013 SC 168**

11(G). ***When can jailor abstain from obeying the order of court to produce prisoner before court. See Section 269 CrPC***

12. **Transfer of prisoners from one jail to another to avoid overcrowding:** Interpreting the provisions under paras 128, 137, 138, 409-A of the U.P. Jail Manual and Sections 4, 5, 7 of the Prisoners Act, 1894, a Division Bench of the Allahabad High Court has held that the jail authorities or competent to transfer the prisoners from one jail to another jail to avoid overcrowding provided in the transferee jail there is an environment natural to the transferred prisoner, proper climate, language, food and other incidence of life and living. Transfer of accused from one jail to another is purely administrative functions. See:

1. Balram Singh vs. State of U.P., 1991 CrLJ 903 (All—D.B.)
2. State of U.P. vs. Fast Track Court, Maharajganj, 2008 (63) ACC 317 (All—D.B.)
3. Raghuraj Pratap Singh @ Raja Bhaiyya vs. State of U.P., Writ Petition No. 6719 (MB)/2002 decided on 11.12.2002 (D.B.)

13. **Accused not to be detained in jail after bail due to receipt of production warrant from another court:** Where the accused detained in jail was granted bail

but the jail authorities refused to release the accused from jail on the ground that they had received requisition from other criminal court to produce the accused, explaining the provisions of Prisoners Attendance In Courts Act, 1955 and the Prisoners Act, 1900, it has been held by the Division Bench of Allahabad High Court that the refusal by the jail authorities to release the accused from jail was illegal particularly when the accused was already granted bail and the date mentioned in the requisition for production of the accused had already expired. See: Dharampal vs. State of U.P., 1982 ALJ 130 (All—D.B.)

14. **Removal of prisoner to District Hospital for treatment (Para 1058):** (a) On the advice of the Civil Surgeon and after obtaining the sanction of the Inspector-General, the Superintendent may remove to the Local District Hospital any prisoner who is suffering from a disease which cannot be properly treated in the jail or who should undergo a surgical operation which cannot be properly performed in the jail. If the Civil Surgeon is of opinion that the delay necessary to obtain the sanction of the Inspector-General would endanger the prisoner's life the transfer may be made and a report submitted to the Inspector-General for formal sanction.

(b) Civil Surgeons shall, however, exercise the utmost possible care in recommending prisoners for treatment in outside institutions. Jail hospitals are equipped to meet all ordinary requirements, and it should seldom be necessary to remove prisoners for treatment elsewhere except for surgical operations.

(c) A patient should not be removed to the district hospital from the jail until actually required for the operation or the treatment.

(d) The Superintendent shall when sending the patient, inform the hospital authorities that he is still under duress.

(e) Whenever a prisoner is transferred to a district hospital under this paragraph the Superintendent shall depute a guard of one head warder and three warders of the permanent staff, for the purpose of watch and ward over the prisoner and shall appoint temporary men for work in the jail for such period as may be necessary with the sanction of the Inspector-General:

provided that the number of head warders and warders deputed for the purpose of watch and ward under the provisions of this paragraph shall not at any time exceed 25 percent of the permanent strength and that the Superintendent shall call upon the police for assistant whenever it would otherwise be necessary to depute more than 25 percent of the permanent strength for this purpose.

(f) The Superintendent shall make an inquiry from the hospital from time to time as to convict's progress. It is important that with a view to prevent escapes or other misconduct the patient should not be kept in the district hospital longer than absolutely necessary and his early return to the jail after treatment should be arranged for. He may subsequently be admitted to the jail hospital for his convalescence, if necessary.

(g) When the prisoner is due to be released before the time when the Civil Surgeon expects that the prisoner will be discharged from hospital after treatment, the prisoner should be released at once, provided that the period remitted shall not, without the previous sanction of the Inspector General, exceed three months.

15. **Under-trial prisoners unfit to attend court owing to sickness (Para 455):** In the event of an under-trial prisoner being unfit by reason of sickness to attend court on the appointed date, the Superintendent shall immediately send a report of the case to the court concerned for orders. The report shall indicate the time when the prisoner was taken ill, the nature of the illness and the opinion of the Medical Officer as to when the prisoner is likely to be fit to attend court. The report shall be sent to the court as soon as it is clear that the prisoner will not be able to appear in court on the date fixed. If in the meantime the prisoner recovers or his illness seems likely to be prolonged a further report or reports should be sent to the court.

16. **Serious illness of an under-trial prisoner (Clause 456):** When an under-trial prisoner is seriously ill, the Superintendent shall send a report of the fact to the court concerned, and such report shall be accompanied by a medical statement of the case in order to enable the court to consider the possibility of releasing the prisoner on bail.

17. **Death of an under-trial prisoner in jail (Clause 457):** When an under-trial prisoner dies in jail the Superintendent shall atonce report the occurrence to the District Magistrate and the prosecuting inspector. The latter shall give immediate information to the court concerned. A note shall also be made in column 14 of the casualty roll showing that the orders in this and the preceding paragraphs were complied with.

18. **Courts not to allow superior class in jail to a prisoner**: Where a hardened criminal apprehended at Singapore and brought to India after extradition proceedings, claimed superior class status in jail at Naini, Allahabad, a Division

Bench of the Allahabad High Court after quoting the clauses 279, 280(2) (4), 409-A, 457-A, 457-C, 457-D, 691 of the U.P. Jail Manual has held that as per Clause 409-A of the U.P. Jail Manual, the rules regarding convicts would be applicable to prisoners also. Clause 691 of the U.P. Jail Manual permits a prisoner to make an application to the State Government through the District Magistrate for admission to the superior class. Clause 279 of the U.P. Jail Manual empowers the court to recommend that an accused be given a particular class. If it is the Court of Session or a Magistrate, recommendation is to be made to the District Magistrate for an accused who is facing an enquiry or trial before the Court of Session or Magistrate. High Court may also make a recommendation to the State Government if an appeal or revision is pending in respect of that accused. Clause 280(2) of the U.P. Jail Manual authorizes the District Magistrate on his satisfaction that the prisoners education, character and antecedent, nature of offence committed and the motives therefor justify a superior class treatment, to give the status to a prisoner and in case he does so the District Magistrate is required to furnish the details to the State Government. Clause 280(4) of the U.P. Jail Manual empowers the State Government, even on its own motion to accord superior class to a prisoner upon satisfaction that his education, character and antecedents, the nature of the offence committed and the motives therefore justify the same. The order of the District Magistrate is to be recorded not only on the social status of the prisoner but also on the nature of the crime committed. See: Om Prakash Srivastava @ Babloo Srivastava vs. State of U.P., 1998(37) ACC 96 (All—D.B.)

19. **Number of letters which an undertrial prisoner can write (para 457-B):** An undertrial prisoner shall be allowed to write a letter once a week at Government expense. If an undertrial prisoner desires to write more letters in connection with his defence he may be allowed to do so at Government expense, only if the Superintendent considers this necessary. He may also be permitted to send other letters at his own expense.

20. **Release of prisoners on probation:** Interpreting the provisions of U.P. Prisoners' Release on Probation Act, 1938 & the U.P. Prisoners' Release on Probation Rules, it has been held by the Supreme Court that Rule 3(1) of the Rules is beyond the power conferred u/s. 9 of the Act and if the rule is given effect to, it defeats the object of Sec. 2. Sec. 2 of the Act was enacted with a view to encourage people in prison to lead a peaceable life and to give them the opportunity of hospitability and

return to the mainstream of the society. Sec. 9 of the Act gives the powers to the State Government to make rules. Sec. 9 of the Act has to be held as complementary and supplementary provision to Sec. 2 and Rule 3 cannot frustrate the very purpose by negativing the rights of those prisoners to claim the benefit of Sec. 2 of the Act. **The Supreme Court struck down Sec. 2 r/w. Sec. 9 of the U.P. Act, 1938 by declaring the same as ultra vires but the entire Rule 3 of the U.P. Rules** was not struck down. See: State of U.P. vs. Sadhu Saran Shukla, (1994) 2 SCC 445

21. **Interviews etc. of prisoners (Para 457-A):** (A) Under-trial prisoners shall be granted all reasonable facilities at proper times and under proper restrictions for interviewing or otherwise communicating either orally or in writing, with their relatives, friends or legal advisers.

(B) **Interview of convict by media**: Article 19(1)(a), which includes the freedom of the Press, is not an absolute right and does not confer any right on the Press to have an unrestricted access to means of information. The Press is entitled to exercise its freedom of speech and expression by publishing a matter which does not invade the rights of other citizens and which does not violate the sovereignty and integrity of India, the security of the State, public order, decency and morality. However, a right to means of information through the medium of an interview of the convicted prisoners, instead of right to express any particular view or opinion, cannot be claimed by the Press unless in the first instance, the person sought to be interviewed is willing to be interviewed. The existence of a free Press does not imply or spell out any legal obligation on the citizens to supply information to the Press, such for example, as there is u/s. 161(2) of the Cr.P.C. The interviews can be permitted to the Press only subject to the rules and regulations contained in the Jail Manual, such as Rule 552-A. Although journalists or newspapermen are not expressly referred to in Rule 549 (4) of the Manual, but that does not mean that they can always and without good reasons be denied the opportunity to interview a condemned prisoner. If in any given case, there are weighty reasons for doing so, which is expected always to be recorded in writing, the interview may be appropriately refused. Rule 559-A also does not provide that no newspapermen will be allowed to interview condemned prisoners. However, the Court cannot direct the Jail Superintendent to allow the representatives of the newspapers to be present at the time of the execution of the death sentence imposed on the said two convicts. If such an application is made to the Jail Superintendent, he will be free to consider the same on merits and in accordance with the jail regulations. See: Smt. Prabha Dutt vs. Union of India, (1982) 1 SCC 1 (Three-Judge Bench)

(C) **Interview by prisoners with family members and friends**:The right to life enshrined in Art. 21 cannot be restricted to mere animal existence. It means something much more than just physical survival. The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. Thus, as part of the right to live with human dignity and therefore as a necessary component of the right to life, the prisoner or detenu would be entitled to have interviews with the members of his family and friends and no prison regulation or procedure laid down by prison regulation regulating the right to have interviews with the members of the family and friends can be upheld as constitutionally valid under Articles 14 and 21, unless it is reasonable, fair and just. See: Francis Coralie vs. Union Territory of Delhi, AIR 1981 SC 746

22. **Certain under trial prisoners who are not allowed to be interviewed (Para 457-C):** Orders of the Court or of the District Magistrate to the effect that a particular undertrial prisoner could not be allowed to be interviewed by any persons including official or non-official visitors, shall be strictly complied with and intending interviewers informed of such orders. In special cases a reference should be made to the Court or the District Magistrate as the case may be.

23.**(A) Parole & its meaning**: Parole is not a suspension of the sentence. Convict continues to be serving the sentence despite granting of parole under the Statute, Rules, Jail Manual or the Government orders. "Parole" means the release of a prisoner temporarily for a special purpose before the expiry of a sentence, on the promise of good behaviour and return jail. It is a release from jail, prison or other internment after actually been in jail serving part of sentence.See: **Dadu vs. State of Maharashtra, 2000 CrLJ 4619 (SC) (Three -Judge Bench)**

(B) **Parole to prisoners serving life imprisonment or long detentions:** In the matters of the prisoners serving life imprisonment or long duration imprisonments, the Supreme Court has issued following guidelines:

(a) despatching the two prisoners to one of the open prisons in U.P., if they substantially fulfil the required conditions;
(b) being agriculturists by profession they be put to use as agriculturists, whether within or without the prison compass or them small wages;
(c) by keeping the prisoners in contact with their family with small wages

(d) by keeping the prisoners in contact with their family
(i) by allowing members of the family to visit them and
(ii) by permitting the prisoners under guarded conditions at least once a year, to visit their families and
(e) the prisoners to be released on parole for two weeks, once a year, which will be repeated throughout their period of incarceration provided their conduct, while at large, is found to be satisfactory. See: Dharambir vs. State of U.P., (1980) 1 SCR 1.

(C) **Prisoner continues to serve the sentence even when released on parole:** A prisoner is not a free man while he is out of jail on parole. Even while on parole he continues to serve the sentence or undergo the period of detention in a manner different than from being in custody. See: Sunil Fulchand Shah vs. Union of India, AIR 2000 SC 1023 (Five -Judge Bench)

(D) **Period of parole to be counted towards the total period of detention**: Overruling its earlier smaller benches decisions reported in Poonam Lata vs. M.L. Wadhawan, AIR 1987 SC 1383 & Pushpa Devi M. Jatia vs. M.L. Wadhawan, AIR 1987 SC 1748, a Constitution bench of the Supreme Court has held that the period of detention in jail of a prisoner would not stand automatically extended by any period of parole granted to him unless the order of parole or rules or instructions specifically indicates as a term & condition of parole to the contrary. The period during which the detenu/prisoner is on parole, therefore, requires to be counted towards the total period of detention. See: Sunil Fulchand Shah vs. Union of India, AIR 2000 SC 1023 (Five- Judge Bench)

(E1) Grounds for granting parole: There is a subtle distinction between parole and furlough. A parole can be defined as conditional release of prisoners i.e. an early release of a prisoner, conditional on good behavior and regular reporting to the authorities for a set period of time. It can also be defined as a form of conditional pardon by which the convict is released before the expiration of his term. Thus, the parole is granted for good behavior on the condition that the parolee regularly reports to a supervising officer for a specified period. Such a release of the prisoner on parole can be also temporarily on some basic ground. In that eventuality, it is to be treated as mere suspension of the sentence for time being keeping the quantum of sentence intact. Release on parole is designed to afford some relief to the prisoners in certain specified exigencies. Such paroles are normally granted in certain situations some of which may be as follows:

(i) a member of the prisoner's family has died or is seriously ill or the prisoner himself is seriously ill; or

(ii) the marriage of the prisoner himself, his son, daughter, grandson, granddaughter, brother, sister, sister's son or daughter is to be celebrated or

(iii) the temporary release of the prisoner is necessary for ploughing, sowing or harvesting or carrying on any other agricultural operation of his land or his father's undivided land actually in possession of the prisoner; or

(iv) it is desirable to do so for any other sufficient cause;

(v) parole can be granted only after a portion of sentence is already served;

(vi) if conditions of parole are not abided by the parolee, he may be returned to serve his sentence in prison such conditions may be such as those of committing a new offence; and

(vii) parole may also be granted on the basis of aspects related to health of the convict himself. **See: Asfaq Vs. State of Rajasthan, (2017) 15 SCC 55.**

(E2) **Furlough: What is?:** Furlough is a brief release from the prison. It is conditional and is given in case of long term imprisonment. The period of sentence spent on furlough by the prisoner need not be undergone by him as is done in the case of parole. Furlough is granted as a good conduct remission. **See: Asfaq Vs. State of Rajasthan, (2017) 15 SCC 55.**

(E3) **Object behind grant of furlough:** A convict, literally speaking, must remain in jail for the period of sentence or for rest of his life in case he is a life convict. It is in this context that his release from jail for a short period has to be considered as an opportunity afforded to him not only to solve his personal and family problems but also to maintain his links with the society. Convicts too must breathe fresh air for at least some time provided they maintain good conduct consistently during incarceration and show a tendency to reform themselves and become good citizens. Thus, redemption and rehabilitation of such prisoners for good of society must receive due weightage while they are undergoing sentence of imprisonment. **See: Asfaq Vs. State of Rajasthan, (2017) 15 SCC 55.**

(E4) **Parole and furlough distinguished:** Parole and furlough can be distinguished as under:

(i) Both parole and furlough are conditional release.

(ii) Parole can be granted in case of short term imprisonment whereas in furlough it is granted in case of long term imprisonment.

(iii) Duration of parole extends to one month whereas in the case of furlough it extends to fourteen days maximum.

(iv) Parole is granted by Divisional Commissioner and furlough is granted by the Deputy Inspector General of Prisons.

(v) For parole, specific reason is required, whereas furlough is meant for braking the monotony of imprisonment.

(vi) The term of imprisonment is not included in the computation of the term of parole, whereas it is vice versa in furlough.

(vii) Parole can be granted number of times whereas there is limitation in the case of furlough.

(viii) Since furlough is not granted for any particular reason, it can be denied in the interest of the society. **See: Asfaq Vs. State of Rajasthan, (2017) 15 SCC 55.**

(E5) **Furlough & parole distinguished**--- Furlough is the periodical release of a prisoner irrespective of any particular reason merely with a view to enable the prisoner to have family association, family and social ties and to avoid ill-effects of continuous prison life. Since it is granted for no particular reason, it can be denied in the interests of the society. Parole is the release of a prisoner for a particular purpose. Period of furlough is treated as period spent in prison. Release on furlough is not an absolute right of the prisoner. **See; State of Maharashtra vs. Suresh Pandurang Darvakar, (2006) 4 SCC 776**

(F) **Bail and Parole distinguished** : Parole is a form of temporary release of a convict from custody which provides conditional release from custody and changes the mode of undergoing sentence . Parole has nothing to do with the actual merits of the matter i.e. the evidence which has been led against the convicted prisoner but parole is granted in cases of emergency like death, illness of near relative or in cases of natural calamity such as house collapse, fire or flood. Bail and parole operate in different spheres and in different situations. The CrPC does not contain any provision for grant of parole. By administrative instructions, however, rules have been framed in various States regulating the grant of parole. Thus, the action of grant of parole is

generally speaking and administrative action. See : **S. Sant Singh Vs. Secretary, Home Department, Government of Maharashtra Mantralaya, 2006 CrLJ 1515 (Bombay)(Full Bench).**

(G) **Supreme Court and High Courts empowered to grant parole**: For securing release on parole, a prisoner has to approach the government concerned or the jail authorities. The courts cannot, generally speaking, exercise the power to grant temporary release to prisoner on parole (particularly in COFEPOSA), but the High Courts under Article 226 and the Supreme Court under Article 32, 136, 142 of the Constitution can direct a prisoner to be released on parole. See--- Sunil Fulchand Shah vs. Union of India, AIR 2000 SC 1023 (Five- Judge Bench)

(H) **Parole & Bail distinguished**: Bail and parole have different connotations in law. Bail is well understood in criminal jurisprudence and Chapter XXXIII of the Cr.P.C. contains elaborate provisions relating to grant of bail. Bail is granted to a person who has been arrested in a non-bailable offence or has been convicted of an offence after trial. The effect of granting bail is to release the accused from internment though the Court would still retain constructive control over him through the sureties. In case the accused is released on his own bond such constructive control could still be exercised through the sureties. In case the accused is released on his own bond such constructive control could still be exercised through the conditions of the bond secured from him. The literal meaning of the word 'Bail' is surety. In Halsbury's Laws of England (Halsbury's Laws of England, 4th Ed., Vol. 11, Para 166), the following observation succinctly brings out the effect of bail: "The effect of granting bail is not to set the defendant (accused) at liberty but to release him from the custody of law and to entrust him to the custody or his sureties who are bound to produce time and place. The sureties may seize their principal at any time and may discharge themselves by handling him over to the custody of law and he will then be imprisoned." 'Parole', however, has a different connotation than bail even though the substantial legal effect of both bail and parole may be the release of a person from detention or custody. The dictionary meaning of 'Parole' is:

THE CONCISE OXFORD DISTIONARY- NEW EDITION: "The release of a prisoner temporarily for a special purpose or completely before the expiry of a sentence, on the promise of good behavious; such a promise, a word of honour."

BLACK'S LAW DISTIONARY—SIXTH EDITION: "Release from jai, prison or other confinement after actually serving part of sentence; conditional release from imprisonment which entitles parolee to serve remainder of his term outside confines of an institution, if he satisfactorily complies with all terms and conditions provided in parole order." According to the law Lexicon [P. Ramanatha Aiyar's The Law Lexicon with Legal Maxims, Latin Terms and Words and dPhrases; p. 1410]. 'parole' has been defined as: "A parole is a form of conditional pardon, by which the convict is released before the expiration of his term, to remain subject, during the remainder thereof, to supervision by the public authority and to return to imprisonment on violation of the condition of the parole." According to Words and Phrases [Words and Phrases (Permanent Edition); Vol 31:pp. 164, 166, 167; West Publishing Co.] 'Parole' ameliorates punishment by permitting convict to serve sentence outside of prison walls, but parole does not interrupt sentence. People ex. rel. Rainone v. Murphy, 135 NE 2d 567, 571, 1 N.Y. 2d 367, 153 N.Y.S. 2d 21, 26.

"A 'parole' is not a 'suspension of sentence,' but is a substitution, during continuance of parole, of lower grade of punishment by confinement in legal custody and under control of warden within specified prison bounds outside the prison, for confinement within the prison adjudged by the Court. Jenkins vs. Madigan, C.A. Ind, 211 F. 2d 904, 906. "A 'parole' does not suspend or curtail the sentence originally imposed by the Court as contrasted with a 'communication of sentence' which actually modifies it." In this country, there are no statutory provisions dealing with the question of grant of parole. The Cr.P.C. does not contain any provision for grant of parole. By administrative instructions, however, rules have been framed in various States, regulating the grant of parole. Thus, the action for grant of parole is generally speaking an administrative action. See:

1. Sunil Fulchand Shah vs. Union of India, AIR 2000 SC 1023 (Five- Judge Bench)
2. State of Haryana vs. Mohinder Singh, (2000) 1 JT (SC) 629

24. **<u>Interviews by legal advisers (para 457-D)</u>:** When any person desires an interview with an undertrial prisoner in the capacity of his legal adviser, he shall apply in writing, giving his name and address and stating to what branch of the legal profession he belongs, and shall satisfy the Superintendent that he is the *bona fide* legal adviser of the prisoner with whom he seeks an interview and that he has legitimate business with him.

Note: The Superintendent may allow a legal adviser to have an interview with an undertrial prisoner even though the latter be on hunger strike.

25. **Interviews with undertrial prisoners and approvers (para 457-E):** (a) Every interview between an undertrial prisoner and his legal adviser shall take place within sight of a jail officer but out of his or police officer's hearing. A similar concession may be allowed by the Superintendent in the case of an interview with any near relative of such prisoner.

(b) The Jailer shall personally conduct interviews with approvers and shall bring all such interviews to the notice of the Superintendent. Such interviews should be terminated at once if any attempt is made by the interviewer to influence the prisoner to withdraw his confession or to alter his evidence.

(c) Approves and confessing accused persons shall be interviewed in a place separate from other undertrial prisoners in the same case.

26. **Written communications from undertrials for legal advisers (para 457-F):** Any *bona fide* written communication prepared by an undertrial prisoner as instructions to his legal adviser shall be forwarded to that legal adviser and the Superintendent shall not disclose the contents of the communication or any portion thereof to any other person.

27. **Search of prisoners going to courts (para 446):** The jailer shall obtain a receipt from the officer in charge of the escort for the undertrial prisoners sent to courts, and such officer shall certify in the gate-keeper's book that he has searched the prisoners and examined the fetters, if any, and found them secure and well fitting. All undertrial prisoners shall be searched again at the main gate on return from courts before they are taken over from the police.

28. **Early return of undertrial prisoners from courts (para 448):** Undertrial prisoners should not be kept in courts so late as to necessitate their admission to the jails or the lock-up after locking-up time. The Superintendent shall draw the attention of the District magistrate to any instances in which this rule has not been observed.

29. **Work for under trial prisoners (para 436):** An undertrial prisoner shall not labour unless he elects to labour. Every effort should, however, be made to encourage him to elect to work at any trade or profession inside the enclosure or yard in which undertrial prisoners are confined, provided that necessary arrangements can be made in jail. Prisoners who in the opinion of the Superintendent turn out a reasonable amount of work may receive diet on the labouring scale.

30. **When and what prisoners can be compelled to do labour?**: Jail authorities are enjoined by law to impose hard labour on a particular section of the convicted prisoners who were sentenced to rigorous imprisonment. A person sentenced to simple imprisonment cannot be required to work unless he volunteers himself to do the work. Sec. 374 of the IPC makes imposition of work on an unwilling person as an offence. The section reads thus: "Whoever unlawfully compels any person to labour against the will of that person shall be punished with imprisonment of either descriptions, for a term which may extend to one year or with fine or with both." But the jail officer who requires a prisoner sentenced to rigorous imprisonment to do hard labour would be doing so as enjoined by law and mandated by the Court. Prisoner sentenced to rigorous imprisonment can conceivably complain that the jail authorities committed the offence u/s. 374 of IPC by compelling him to do work during the term of his imprisonment. So the task to do labour can be imposed on a prisoner only if he has been sentenced to rigorous imprisonment. Neither the under-trial interness nor the detainees with simple imprisonment nor even detenus who are kept in jails as preventive measures can be asked to do manual work during their prison term. It is a different matter that he is allowed to do it at his request. See: State of Gujarat vs. Hon'ble High Court of Gujarat, AIR 1998 SC 3164 (Three -Judge Bench)

31. **Maintenance of private accounts (para 434):** The account of private money received for undertrial prisoners and purchases made therefrom shall be maintained in Jail Form No. 19.

32. **Food etc. of undertrial prisoners from private sources (Para 432):** (A) Every undertrial prisoner shall be permitted to purchase or receive from private sources, food, clothing bedding and other necessaries subject to the following restrictions:

(a) The articles shall be examined by the Jailor before being introduced into the jail.

(b) Nothing that may be considered deleterious to health or unnecessary or unsuiable by the Superintendent shall be allowed. Spirituous liquors and intoxicating drugs are prohibited, unless prescribed by the Medical Officer on medical grounds.

(c) All purchases shall be made by the Jailor under the orders of the Superintendent.

(B) **Prisoners not entitled to facilities beyond rules**: Where the prisoners were being provided undue facilities in jail in violation of Maharashtra Prisons (Facilities to Prisoners) Rules, 1962 & unauthorized "Darbars" were being held by the prisoners in the prison, five star hotel comforts were being provided to privileged prisoners, entry of unauthorized persons and hatching of conspiracies to commit murder was being allowed by not making entry in the visitor's record of the jail, the Supreme Court not only condemned the highly objectionable conduct of the I.G. Prisons, Commissioner of Police, Jail Superintendent & the Addl. Chief Secretary (Home) but also directed the State Government to conduct enquiry into the matter and take action against the irresponsible officers with further direction to take remedial measures for implementation of the jail rules. See: State of Maharashtra vs. Asha Arun Gawli, (2004) 5 SCC 175

33. **Jail appeal by convicts (Para 71):** The Superintendent shall inform every convict on first admission to jail of the period within which an appeal from the order under which he has been committed to jail may be filed. If the convict desires to appeal and is entitled to do so, every facility shall be given to him for the purpose.

34. **Jail Appeal u/s 383 CrPC**: If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer-in-charge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court." Interpreting the scope of Art. 21 & 39-A of the Constitution, the Supreme Court has laid down that a convict/prisoner must be supplied copy of judgment of conviction and he is also entitled to prefer an appeal against his conviction and sentence at the expenses to be borne by the state. A convict/prisoner is also entitled to pre legal aid in the form of counsel etc. and special duty has been cast upon the authorities of the jail detaining such convict/prisoner. See: M.H. Hoskot vs. State of Maharashtra, AIR 1978 SC 1548

35. **Supply of free of cost copy of judgment of Sessions Court to convict/prisoner within 30 days:** (A) In compliance with the order dated 18-8-1998 passed by the Supreme Court in writ petition (Criminal) No. 312/1994, Supreme Court Legal Services Committee vs. Union of India, AIR 1998 SC 2940, the Allahabad High Court, vide C.L. No. 20/2009 Admin. (G-II), dated 20.4.2009, has issued directions to the Sessions Judges & the Addl. Sessions Judges of the State of U.P. to ensure that every prisoner/convict is provided with free copy of the judgment of the Sessions Judge or the High Court in his/her case within 30 days of the pronouncement of such judgment and the registry of the Court concerned will personally endorse such copy to the Superintendent of Jail for

forwarding the same to the petitioner. Vide C.L. No. 23/1961, dated 28.2.1961 & under rules 152, 155 of the G.R. (Criminal), the Allahabad High Court has directed all the presiding officers of the criminal courts in the State of U.P. to provide copies of judgments to the convicts free of cost and without delay u/s. 363 Cr.P.C.

(B) **Urgent supply of copy of judgment to prisoners (C.L. No. 94/VII-b-35, dated 17.9.1953):** All applications u/s. 363 Cr.P.C. (old) for copies of judgments from prisoners confined to jail should be treated as urgent applications and should be issued without any delay.

(C) **District Magistrates to be supplied free copies of judgments (C.L. No.65/VIIc-8-Admn.(G), dated 21.10.1983):** Attention of District Judges is invited to the provisions of Sec. 363 of the Cr.P.C., 1973, Sec. 2 of the U.P. Prisoners Release on Probation Act, 1938, rule 6 of the U.P. Prisoners Release on Probation Rules and rule 143 of the General Rules (Criminal) 1957. The District Judges are further directed to supply free copies of judgments to the District Magistrates, if they move a written application for the same.

(D) Superintendent, Model Prison, Lucknow to be supplied free of cost copy of judgment (C.L. No. 21/VII-b-35, dated 9.3.1951)--- The Superintendent, Model Prison, Lucknow, shall be supplied free of cost with a copy of the judgment of the Sessions Court in the case of every convict who is sentenced to a term of five years or more and who is classified in the star sub-category of casual prisoners.

36. **Defective warrant of prisoners (para 28):** (A) The Superintendent shall return the warrant for correction to the officer who issued it, by any error or omission, the warrant is defective in form or otherwise irregular.

(B) **Conviction warrant & its format (C.L. No.3/2009 Admin. (G-II) dated 12.1.2010):** The Allahabad High Court, vide C.L. No. 3/2009 Admin. (G-II) dated 12.1.2010, that no convicted person should be committed to Jail by the trial courts or Chief Judicial Magistrates/Judicial Magistrates for detention on the basis of robkars and they must be committed to Jail by the trial court in accordance with Sec. 418 Cr.P.C. and Rules 96 to 99 of General Rules (Criminal) to serve out the sentence alongwith conviction/sentence warrants prepared on the proforma attached herewith mentioning details of sentence awarded by the trial court or appellate court against him. Only the format of the conviction warrant, as given below, should be used:

WARRANT OF COMMITMENT ON A SENTENCE OF IMPRISONMENT OR FINE IF PASSED BY A MAGISTRATE

(Section 245 and 258, Schedule V From XXIX, Old Cr.P.C.)

Case no…… of 20

To the Superintendent of the Jail at

Whereas, on the …… day
of…….20 , (Name of prisoner)
…… the……prisoner in case
no…….. of the calendar for 20 , was
convicted before me (Name and official designation) of
the offence of……... (Mention the offence
or offences concisely)
under section (or sections)
the Indian Penal Code (or of Act),
…… and was sentenced to
(state the punishment fully and distantly);

This is to authorize and require you, the said Superintendent, to receive the said (prisoner's name) in to Your custody in the said jail together with this warrant, and there carry the aforesaid sentence into execution according to law.

Given under my hand and the seal of the Court, this day of 20

Seal Magistrate

37. Jail authorities can refuse to honour warrant not containing age of detenu: Magistrate or trial Judge authorized to issue warrants for detention of prisoners should ensure that every warrant authorizing detention specifies the age of the person to be detained. Judicial mind must be applied in cases where there is doubt about the age—not necessarily by a trial—and every warrant must specify the age of the person to be detained. The Supreme Court called upon the authorities in the jails throughout India not to accept any warrant of detention as a valid one unless the age of detenu is shown therein. It shall be open to the jail authorities to refuse to honour a warrant if the age of the person remanded to jail custody is not indicated. It would be lawful for such officers to refer back the warrant to the issuing Court for rectifying the defect before it is honoured. See: **Sanjay Suri vs. Delhi Administration, Delhi, AIR 1988 SC 414**

38. **Civil prisoners (para 459)---** (A) Civil prisoners shall be confined in a special ward outside the jail or in an enclosure inside the jail entirely separate from the enclosure allotted to criminal prisoners.

(B) **Arrest and detention of judgment debtor when unconstitutional?:** Arrest and detention in civil prison of a Judgment Debtor subsequent to the date of decree having no means to pay and there being absence of malafides and dishonesty, is violative of Art. 11 of international covenant on civil and political rights and Art. 21 of the Constitution of India. Where the J.D. if once had the means to pay the debt but subsequently after the date of decree, has no such means or he has money on which there are other pressing claims, his arrest and detention u/s. 51 CPC r/w. Or. 21, rule 37 CPC is violative of Art. 11 of the covenant. See: Jolly George Varghese vs. Bank of Cochin, AIR 1980 SC 470

39. **Scale of subsistence allowance of civil prisoner (Para 464):** The scales of subsistence allowance in this and subsequent paragraphs have been fixed by the State Government under section 57 of the Code of Civil Procedure, 1908 (Act V of 1908).

The following scales of subsistence allowance are prescribed for the superior and ordinary grades of civil prisoners:

Grade	*Diet Allowance*	*Clothing Allowance*	
		Summer	*Winter*
Superior	Rs. 2 per day	Rs. 60	Rs. 75
Ordinary	Rs. 1 per day	Rs. 40	Rs. 50

The Superintendent shall decide what articles of clothing shall be supplied, taking into consideration the clothing already in possession of the judgment-debtor and his actual requirements.

40. **Maximum period of detention of a civil prisoner (para 477):** (1) The maximum period of detention in the civil prison in execution of a decree are as follows:

(a) Where the decree is for the payment of a sum of money exceeding Rs. 50—Six months.
(b) In other cases—Six weeks.
(2) The maximum period of detention for revenue defaulters is fifteen days.

41. **When is a civil prisoner to be released (para 479):** The Superintendent shall release a civil prisoner—

(a) on the amount mentioned in the warrant for his detention being paid by the prisoner to the Superintendent;
(b) on the omission by the person, on whose application the prisoner has been detained, to pay the subsistence allowance;
(c) on receipt of an order of release from the court;
(d) on the expiry of the term of the sentence prescribed in the warrant.

42. **Separation of female prisoners (para 339):** Female prisoners, both convicted and under-trial shall, as required by section 27 of the Prisons Act, 1894 (Act IX of 1894), be rigidly secluded from male prisoners so as to prevent their seeing, or conversing or holding any intercourse with them. The female ward shall be so situated as not to be visible from any part of the male jail.

43. **Mentally ill prisoners and their separation (Para 488):** (A) Every person supposed or found to be a mental patient, whether detained or confined in a jail, and also every person who, with a similar past history, may have been declared sane or cured, shall be kept separate from other prisoners.

(B) **Mentally ill prisoners & Supreme Court guidelines**: In compliance with the directions issued by the Supreme Court in the matter of Sheela Barse vs. Union of India, (1993) 4 SCC 204, the Allahabad High Court vide its C.L. No. 30/2006, dated 7.8.2006, has issued following directions to the judicial officers of the State of U.P. for compliance in relation to mentally ill persons:

(i) It is directed that the function of getting mentally ill persons examined and sent to places of safe custody hitherto performed by Executive Magistrate shall hereafter be performed only by Judicial Magistrate.

(ii) The Judicial Magistrate, will, upon a mentally ill person being produced, have him or her examined by a Mental Health professional/Psychiatrist and if advised by such P/Psychiatrist send the mentally ill person to the nearest place of treatment and care.

(iii) The Judicial Magistrate will send reports every quarter to the High Court setting out the number of cases of persons sought to be screened and sent to place of safe custody and action taken by the Judicial Magistrate thereon.

(C) **Mentally ill prisoners & the Supreme Court guidelines issued in the year 2007 in the case of Michal Lalung for rehabilitation of mentally challenged prisoners**: Where an undertrial mentally ill prisoner Michal Lalung was languishing in prison for 54 years and another undertrial prisoner for the last 38 years was detained in jail without trial, the Supreme Court in writ petitions (Criminal) No. 296/2005 & 18/2006 has issued the following guidelines for the welfare and rehabilitation of the mentally ill undertrial prisoners lying since long in various psychiatric hospitals/nursing homes:

(i) whenever a person of unsound mind is ordered to be detained in any psychiatric hospital/nursing home u/s. 330(2) of the Cr.P.C., the reports contemplated u/s. 30 shall be submitted to the concerned Court/Magistrate periodically. The Court/Magistrate shall also call for such reports if they are not received in time.

When the reports received, the Court/Magistrate shall consider the reports and pass appropriate orders whenever necessary. In regard to prisoners covered by sub-section (1) of Section 30 of the Prisoners Act, 1900, the procedure prescribed by sub-sections (2) and (3) of that Section read with Section 40 of the Mental Health Act, 1987 shall be followed.

(ii) Wherever any under trial prisoner is in jail for more than the maximum period of imprisonment prescribed for the offence for which he is charged (other than those charged for offenses for which life imprisonment or death is the punishment), the Magistrate/Court shall treat the case as closed and report the matter to the medical officer in charge of the psychiatric hospital, so that the Medical Officer in charge of the hospital can consider his discharge as per Section 40 of the Mental Health Act, 1987.

(iii) In cases where, the under trial prisoners (who are not being charged with offense for which the punishment is imprisonment for life or death penalty), their cases may be considered for release in accordance with sub-section (1) of Section 330 of the Cr.P.C., if they have completed five or more years as inpatients.

(iv) As regards the under trial prisoners who have been charged with grave offenses for which life imprisonment or death penalty is the punishment, such persons shall be subjected to examination periodically as provided in sub-section (1), (3) and (4) of Section 39 of the Act and the officers names therein (visitors, medical officer in charge of the hospital and the examining medical officer respectively) should send the reports to the court as to whether the under trial prisoner is fit enough to face the trial to defend the charge. The Sessions Courts where the cases are pending should also seek periodic reports from such hospitals and every such case shall be given a hearing at least once in three months. The Sessions Judge shall commence the trial of such cases as such as it is found that such mentally ill person has been found fit to face trial.

(D) **Mentally ill persons and provisions in CrPC for their bail or trial etc:** Chapter XXV of the Cr.P.C. & Sec. 328 to 339 thereunder deal with the cases of mentally unsound prisoners/persons which, in short, read as under:

(i) Sec. 328--- Procedure in case of accused being lunatic.
(ii) Sec. 329--- Procedure in case of person of unsound mind tried before Court.
(iii) Sec. 330--- Release of lunatic pending investigation or trial.
(iv) Sec. 331--- Resumption of inquiry or trial
(v) Sec. 332--- Procedure on accused appearing before Magistrate or Court.
(vi) Sec. 333--- When accused appears to have been of sound mind.
(vii) Sec 334--- Judgment of acquittal on ground unsoundness of mind.

(viii) Sec. 335--- Person acquitted on such ground to be detained in safe custody.
(ix) Sec. 336--- Power of State Government to empower officer-in-charge to discharge.
(x) Sec. 337--- Procedure where lunatic prisoner is reported capable of making his defence.
(xi) Sec. 338--- Procedure where lunatic detained is declared fit to be released.
(xii) Sec. 339--- Delivery of lunatic to care of relative or friend.

(E) **Mentally ill / lunatic prisoners & SC guidelines** : In the case noted below, the SC has issued detailed guidelines to protect the rights of lunatic undertrials or mentally ill prisoners. See.. Newsitem "30 years in jail without trial" published in Hindustan Times, in re vs. UOI,(2007) 15 SCC 18(Three- Judge Bench).

44. **Release order---preparation & sending to jail: (A) Release order issued by Magistrate [Rule 63(a) of G.R. (Criminal)]:** When an order for the release of a prisoner, on bail or otherwise, is issued by a magistrate, he shall see that it is entered in a peon book and sent to the Nazir Sadar by the time prescribed by the District Magistrate in this behalf. The Nazir shall enter in a peon book all the release orders received by him within the prescribed time and arrange to deliver them through a peon to the officer incharge of the jail by 4 p.m. in winter and 5 p.m. in summer at the latest. In exceptional circumstances the order of release may be sent to the jail in the manner laid down in sub-rule (b).

(B) **Release order issued by SJ / ASJ [Rule 63(b) G.R. (Criminal)]:** When an order for the release of a prisoner is issued by a court other than a magistrate, it shall be entered in a peon book and may be sent through one of the court peons to the officer incharge of the jail so as to reach the jail ordinarily not later than 4 p.m. in winter and 5 p.m. in summer.

(C) **Release order not to be sent to jail through private persons [Rule 63(c) G.R. (Criminal)]:** A release order should in no case be made over to private persons for delivery to the jail authorities.

(D) **Release order by post & Radiogram when accused transferred and lodged in other jail:** When an order for the release of a prisoner, who has already been transferred to another jail outside the district, is received and returned by the Superintendent of Jail to the issuing Court, with a report indicating the date of transfer and the name of the jail to which prisoner was transferred, the court shall then send the release order by post to the jail concerned and at the same time follow the procedure laid down as quoted below---

"When a release order is issued by post to a jail outside the district, the Presiding Officer of the Court shall immediately give an intimation about its dispatch by radiogram

to the Superintendent of that jail." See: C.L. No. 124 / VII-b-47, dated Allahabad, 24th October, 1979

(E) **Defective release order & correction thereof**: The Allahabad High Court, vide C.L. No. 53 / VIII-a-18-Admin 'G', dated Allahabad, 7th August, 1986, has issued directions that release orders must be prepared by the court clerks and not by the court moharrirs (police constables) and the papers relating to cases such as FIR, bail bonds, remand papers, final reports etc. must be kept in the custody of court clerks and not in the custody of court moharrirs.

Vide C.L. No. 114 / VII-b-47, dated Allahabad 7th October, 1978, it has been directed that the release orders must contain correct entries relating to case number, name of the police station, name of the accused, his father's name, age, residential address, offences, crime number, Sections of IPC and other Acts, date of conviction etc.

Vide C.L. No. 124 / VII-b-47, dated Allahabad, 24th October, 1979 & C.L. No. 42 / VII-b-47, dated Allahabad 28th April, 1978, it has been directed that the remand order and the release orders passed by the courts of Magistrate and Judges must contain their full name, clear signature, designation and seal of the court as required under Rule 9, G.R. (Criminal).

44-A. **Photographs & measurement etc. of prisoners:** Under Sections 3, 4, & 5 of the Identification of Prisoners Act 1920, measurements and photographs of even convicted persons can be taken. Magistrate has powers to grant permission to the investigating officer to take measurement and photograph of the accused in the prison. See: State of M.P. vs. Devendra, AIR 2009 SC 3009 (Three-Judge Bench)

45. **Hunger strike by prisoners**: Security of prisoners in U.P. is governed by U.P. Security of Prisoners Rules, 1944. Prisoners going on hunger strike in jail commit an offence under rule 43 of the 1944 Rules r/w. para 742 of the U.P. Jail Manual r/w. Sec. 52 of the Prisons Act, 1894. Previous sanction of the Inspector General of prisons for prosecution of such prisoners is not necessary. Refusing to take food when offered by the jail authorities is an offence punishable u/s. 45(1) of the Prisons Act read with paragraph 806(17) of the rules framed u/s. 50 of that Act. The prisoners cannot, however, be punished twice u/s. 52 of that Act and also under Art. 20(2) of the Constitution. Formal warning by the Superintendent of jail is one of the punishments provided by S. 46(1) of the Act. See:

1. State of U.P. vs. Nirmal Singh, AIR 1955 NUC 1519 (All)
2. Lakshmi Narayan vs. State of U.P., AIR 1959 All 164
3. State of U.P. vs. Chandra Bali Singh, AIR 1960 All 124 (D.B.)

46(A). **Torture of accused/prisoners in custody or jail**: (A) Prison torture is not beyond the reach of the Supreme Court in its constitutional jurisdiction. And on materials placed if there is ground enough, it can exercise its exceptional jurisdiction to ensure some manner of social hygiene in prison. When police and prison torture is escalating courts owe a duty to society not to ignore such a dangerous reality. Torture of an accused in police custody, custodial deaths and atrocities on prisoners in jails have also been one of the major area of concern as regards the human rights. The Hon'ble Supreme Court has in a plethora of cases (noted below) clarified that if a person in the custody of police is subjected to any torture, inhuman treatment or violence or custodial death takes place then courts can not only take appropriate action against the responsible police officer but can also provide compensation to the dependents of the deceased or the victim of the illegal torture or violence:

1. Ravindra Nath Awasthi vs. State of U.P., 2010 (68) ACC 61 (All—D.B.)
2. Shakila Abdul Gafar Khan (Smt.) v. Vasant Raghunath Dhoble, (2003)7 SCC 749
3. Raghbir Singh v. State of Haryana, (1980) 3 SCC 70
4. Gauri Shankar Sharma v. State of U.P., AIR 1990 SC 709
5. Bhagwan Singh v. State of Punjab, (1992)3 SCC 249
6. Nilabati Behera v. State of Orissa, AIR 1993 SC 1960
7. Pratul Krishna v. State of Bihar, 1994 Supp. (3) SCC 100
8. Kewalpati v. State of U.P., (1995) 3 SCC 600
9. Inder Singh v. State of Punjab, (1995) 3 SCC 702
10. State of M.P. v. Shyam Sunder Trivedi, (1995)4 SCC 262
11. D.K. Basu v. State of W.B., (1997) 1 SCC 416
12. Sheela Barse v. State of Maharashtra, (1983) 2 SCC 96
13. State of Maharashtra v. Christian Community Welfare Council, (2003) 8 SCC 546
14. Sube Singh v. State of Haryana, 2006(54) ACC 873 (SC)
15. Rakesh Kaushik vs. B.L. Vig, Superintendent, Central Jail, New Delhi, AIR 1981 SC 1767 (Three Judge Bench)

46(B). **State Government is bound to implement the order of the National Human Rights Commission awarding compensation to the dependents of the under trial prisoner having died due to medical negligence of the jail authorities :** State Government is bound to implement the order of the National Human Rights Commission awarding compensation to the dependents of the under trial prisoner having died due to medical negligence of the jail authorities. See : **State of UP Vs. NHRC, 2016 (4) ALJ 98 (All)(DB).**

46(C) **Blinding of prisoners & legal aid**: Where 18 prisoners in different Jails of State of Bihar including Bhagalpur Jail were blinded, the Supreme Court on their petition filed under Art. 32 of the Constitution, directed not only for the medical treatment of the blinded prisoners in Dr. Rajendra Prasad Eye Hospital, New Delhi but also directed the State of Bihar under Art. 39-A of the Constitution to provide legal aid to these blinded prisoners. See: **Khatri vs. State of Bihar, AIR 1981 SC 928.**

46(D). **Inquiry report alongwith evidence collected to be sent to DIG, Prisons (C.L. No. 2/2010 dated 7.1.2010):** Vide C.L. No. 2/2010/Admin.(G-II) dated 7.1.2010, the Allahabad High Court has directed the CJMs/ACJMs/JMs of the State of U.P. that the powers of enquiry on death during custody as provided u/s. 176 of the Cr.P.C. be exercised by the Chief Judicial Magistrates, Chief Metropolitan Magistrates, Addl. Chief Metropolitan Magistrates, Addl. Chief Judicial Magistrates and the Judicial Magistrates and copy of the enquiry report alongwith the list of evidence collected therein be sent to the DIG, Prisons of the region concerned to take necessary action.

47. **Classification of prisoners by courts as professional or non-professional accused:** Quoting Sec. 59(17) of the Prisons Act, 1894, para 286-C of the U.P. Jail Manual, Appendix 'F' of the General Rules (Criminal), 1977, C.L. No. 21/1970 dated 24.2.1970, C.L. No. 72/1982 dated 10.11.1982, the Allahabad High Court vide C.L. No. 21/2009 dated 30.4.2009, has directed the judicial officers of the State of U.P. to classify the prisoners (as professional or non-professional accused) alongwith their conviction warrants which is resulting into difficulty to dispose of matters wherein consideration is to be made of their release prior to the end of the term of punishment awarded.

48. **Classification of prisoners & Art. 14 of the Constitution**: (A) The Supreme Court has held (in relation to the rules under Punjab Jail Manual) that separation of prisoners for maintenance of jail discipline is not violative of Art. 14 of the Constitution. See--- Ranbir Singh vs. State of Punjab, AIR 1962 SC 510 (Five- Judge Bench)

(B) **State competent to formulate prison policy and effect classification amongst prisoners**: State has power to formulate prison policy as distinguished from sentencing policy and while doing so it has power to make classification of convicts on the basis of gravity of offence but the classification must be non-discriminatory and the policy must treat all the convicts calling within its ambit equally so as not to be violative of Art. 14 of the Constitution. Further, executive instructions conveying the policy decision cannot supersede the statutory rules laying down parameters within which convicts would be entitled to be considered for remission of sentence u/s. 433 and 433-A Cr.P.C. See: State of Haryana vs. Mahender Singh, (2007) 13 SCC 606

49. **Trial of hardened criminals inside the jail premises**: The Hon'ble Allahabad High Court, vide C.L. No. 13/2008 dated 19.5.2008, has directed all the Sessions Judges of the State of U.P. that they are supposed to take decision in their discretion in the matter

of trial of hardened criminals inside the jail premises in consonance with the provision made in Sec. 9(6) of the Cr.P.C. as amended by U.P. Act. No. 1 of 1984 which provides that where it appears expedient to do so for consideration of internal security or public order, the Court of Sessions may hold its sitting in a particular case at any place in the sessions division without consent of the prosecution and the accused and only in case of not being convinced of there being any security threat involved, should they refer the matter to the Hon'ble Court for consideration and decision.

50. **Period of detention in jail (para 413):** The Superintendent shall satisfy himself by examination of the warrant, that, except in cases of persons committed for trial to a court of session, no under-trial prisoner is detained longer than fifteen days without a fresh remand, as this is contrary to the provisions of section 344 of the Code of Criminal Procedure, 1898.

51. **Authorities other than court may also authorize detention in jail:** Under Section 3 of the Prisoners Act, 1900, authorities other than courts (in this case Speaker of the U.P. Legislative Assembly) if competent in law to do so, may authorize the detention of an accused in jail. See--- Keshav Singh vs. Speaker, Legislative Assembly, U.P., AIR 1965 All 349 (D.B.)

52. **Presence of under-trial prisoner before Magistrate on date of remand not always necessary:** There is nothing in law which requires the personal presence of the prisoner before Magistrate because that is a rule of caution for Magistrates before granting remands at the instance of the police. However, even if it be desirable for the Magistrate to have the prisoner produced before him when he recommits him to further custody, a Magistrate can act only as the circumstances permit. See: Raj Narain vs. Superintendent Central Jail, New Delhi, AIR 1971 SC 178 (Seven -Judge Bench)

53(A). **Child in the lap of female accused & the duty of courts:** Directions issued by the Supreme Court in writ petition (C) No. 559/1994, R.D. Upadhyay vs. State of A.P. & others, AIR 2006 SC 1946 and circulated by Allahabad High Court amongst the Judicial Officers of the State of U.P. vide C.L. No. 34/2006 dated 7.8.2006 mandates that female prisoners shall be allowed to keep their children with them in jail till they attain the age of six years. In such cases the courts must issue directions to the jail authorities for proper feeding, medication and over all well-being of the infants/children in jail. These

directions from the Apex Court are aimed at protecting the valuable human rights of the infants/children who are in jails with their prisoner mothers.

(B) **Child in the lap of female accused & the duty of courts:** Directions issued by the Supreme Court in writ petition (C) No. 559/1994, **R.D. Upadhyay vs. State of A.P. & others, AIR 2006 SC 1946** and circulated by Allahabad High Court amongst the Judicial Officers of the State of U.P. vide **C.L. No. 34/2006 dated 7.8.2006** mandates that female prisoners shall be allowed to keep their children with them in jail till they attain the age of six years. In such cases the courts must issue directions to the jail authorities for proper feeding, medication and over all well-being of the infants/children in jail. These directions from the Apex Court are aimed at protecting the valuable human rights of the infants/children who are in jails with their prisoner mothers

54. **Duration & meaning of "imprisonment for life":** (A) There is no provision of law whereunder a sentence for life imprisonment, without any formal remission by appropriate Government, can be automatically treated as one for a definite period. Section 57 does not say that transportation for life shall be deemed to be transportation for twenty years for all purposes; nor does the amended section which substitutes the words "imprisonment for life" enable the drawing of any such all embracing fiction. A sentence of transportation for life or imprisonment for life must prima facie be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life. Sentence of imprisonment for life is for indefinite period. Government alone can remit sentence. Remission earned by convict are of little help. See--- ....

1. Gopal Vinayak Godse vs. State of Maharashtra, AIR 1961 SC 600 (Five- Judge Bench)--- Known as Mahatma Gandhi murder case:
2. State of Haryana vs. Balvant Singh, AIR 1999 SC 3333
3. Chatar Singh vs. State of M.P., AIR 2007 SC 319: Where interpreting Section 31 CrPC, it has been held that where the accused was convicted for several offences and 20 years aggregate sentence was consecutively awarded by the M.P. High Court, the same was illegal as u/s. 31 Cr.P.C. the convict/accused could not have been sentenced to imprisonment for period longer than 14 years and sentence of 20 years rigorous imprisonment was set aside.

(B) "**Life imprisonment" does not mean 14 or 20 years:** Interpreting the provisions u/s. 53, 53-A, 55, 57 of the IPC, the Supreme Court has held that the expression "life imprisonment" is not equivalent to imprisonment for 14 years or 20 years. "Life imprisonment" means imprisonment for the whole of the remaining period of the

convicted persons natural life. There is no provision either in IPC or in Cr.P.C. whereby life imprisonment could be treated as 14 years or 20 years without their being a formal remission by the appropriate government. See: Mohd. Munna vs. Union of India, (2005) 7 SCC 417

(C) **Sentence of Life imprisonment not to be reduced below 14 years**: If the accused has been awarded life imprisonment, he has to undergo imprisonment for atleast 14 years. Actual period of imprisonment may stand reduced on account of remissions earned u/s. 432, 433, 433-A Cr.P.C. But in no case, sentence of life imprisonment can be reduced below 14 years except under Art. 72 of the Constitution by the President of India and under Article 161 by the Governor. See: Ramraj vs. State of Chhatisgarh, 2010 (68) ACC 326 (SC)

55. (A) **Speedy trial of the cases of under-trial prisoners**: Right to speedy trial is a fundamental right of an accused/prisoner under Art. 21 of the Constitution. Speedy trial is the essence of criminal justice. Accused cannot be denied speedy trial on the ground that he himself had not demanded a speedy trial of his case. Right to speedy trial flows from Art. 21 of the Constitution and is available to an accused/prisoner at all stages namely the stage of investigation, inquiry, trial, appeal, revision and re-trial. See:

1. Hussainara Khatoon vs. State of Bihar (1st, 2nd & 3rd), AIR 1979 SC 1360, 1369, 1377 (Three- Judge Bench)
2. Abdul Rehman Antuley vs. R.S. Nayak, AIR 1992 SC 1701 (Five -Judge Bench)
3. Kadra Pahadia vs. State of Bihar, AIR 1982 SC 1167

(B) **Priority to be given to the trial of undertrial prisoners**: The Allahabad High Court, vide various Circular Letters quoted below, has issued directions to the judicial officers of the State of U.P. to give priority to the trial of the cases of such undertrial prisoners who are languishing in jail for long period of time:

(i) C.L. No. 54/2007Admin(G), dated 13.12.2007
(ii) C.L. No. 114/VIIb-3, dated 5.9.1975
(iii) C.L. No. 28/VIIIh-13, dated 7.3.1979
(vi) C.L. No. 90/VIIIg-38 Admin.(G), dated 1.12.1980
(v) C.L. No. 59/VIIIg-38Admin(G), dated 16.9.1981
(vi) C.L. No. 18/VIII-b-Admin.(G), dated 19/21.4.2000

(C) **No unnecessary adjournments by courts:** Where the case was posted for cross-examination of witnesses but the Magistrate granted numerous adjournments on mere asking by the counsel for the accused and incalculable inconvenience and sufferings were caused to witnesses, the Supreme Court expressed its displeasure but refrained from recommending any disciplinary action against the Magistrate as the Magistrate had just

started working as regular Magistrate and was a novice in judicial service. See: N.G. Dastane vs. Shrikant S. Shivade, AIR 2001 SC 2028

(D) **Witnesses present in court not to be returned un-examined**: If a witness is present in court, he must be examined on that very day. In convenience of counsel is not a "special reason" to adjourn the case u/s. 309 Cr.P.C. without examining the witnesses who are present in the court. Adjournment should not be granted without a valid cause otherwise it would lead to miscarriage of justice. Courts in India are unduly sympathizing with the Bar by granting adjournments of cases when lawyers are on strike,See:

1. State of U.P. vs. Shambhu Nath Singh, AIR 2001 SC 1403
2. Swaran Singh vs. State of Punjab, 2000 (ii) U.P. Criminal Rulings 1 (SC)
3. Roman Services Pvt. Ltd. Vs. Subhas Kapoor, JT 2000 (Suppl. 2) SC 546
4. Bal Krishna Pandey Vidur vs. State of U.P., 2002 (1) JIC 332 (SC)

(E) **No time limit can be prescribed for conclusion of a criminal trial:** Explaining and clarifying the concept of right to speedy trial of an accused/under-trial prisoner, the Supreme Court has laid down that no court can prescribe a particular time limit or time frame for the conclusion of a criminal trial. Prescription of such time limitation would amount to judicial legislation which is not permissible. See:

1. P. Ramachandra Rao vs. State of Karnataka, (2002) 4 SCC 578 (Seven- Judge Bench)
2. Abdul Rehman Antuley vs. R.S. Nayak, AIR 1992 SC 1701 (Five- Judge Bench)

56. **Hand-cuffing and fetters etc. of accused/prisoners and duty of Courts:** Putting hand-cuff or bar-fetters on the person of the accused or the prisoners, keeping the prisoner into solitary confinement or subjecting them to any barbarous treatment or any other sort of inhuman treatment has also been deprecated by the Supreme Court as being violative of the fundamental rights under Article 21 of the Constitution and various guidelines have been issued in this regard to the effect that without the prior permission of the courts no authority including jail authorities would hand-cuff or fetter the prisoners. Any violation of the guidelines issued by Hon'ble Supreme Court to that effect has been declared punishable as contempt of court in the following cases:

1. Altemesh Rein Advocate, Supreme Court of India v. Union of India, AIR 1988 SC 1768
2. Prem Shanker Shukla v. Delhi Administration, AIR 1980 SC 1535
3. State of Maharashtra v. Ravikant S. Patil, (1991) 2 SCC 373
4. Sunil Batra v. Delhi Administration, (1978) 4 SCC 494
5. Sunil Gupta v. State of MP, (1990) 3 SCC 119
6. Citizen for Democracy through it's President v. State of Assam, AIR 1996 SC 2193
7. D.K. Basu v. State of W.B., (1997) SCC 416
8. A.K. Jauhari v. State of U.P., (1997) SCC 416
9. In re; M.P. Dwivedi and others, AIR 1996 SC 2299
10. R.P. Vaghela v. State of Gujarat, 2002(2) JIC 951 (Gujarat) (FB)

11. Charles Shobraj vs. Superintendent, Central Jail, Tihar, New Delhi, AIR 1978 SC 1514
12. Kishor Singh vs. State of Rajasthan, AIR 1981 SC 625

57. **Duty of Magistrate when accused/prisoner produced handcuffed in court**: A duty has been imposed upon the courts that no undertrial prisoner is produced before the courts hand-cuffed or fettered. In the case of M.P. Dwivedi & others, AIR 1996 SC 2299, a judicial magistrate who had failed to take suitable action against the police constables producing the accused hand-cuffed in his court, was summoned by the Supreme Court and was severely reprimanded for not having observed the guidelines issued by the Hon'ble Supreme Court in relation to the hand-cuffing of the accused persons. The judicial magistrate, in this case, was being sent to jail by the Supreme Court but on request having been made by the senior advocates of the Supreme Court then present in the court room and looking into the fact that the concerned judicial magistrate was a new entrant in the judicial service and was not aware of the pronouncements of the Hon'ble Supreme Court on the subject, was spared with the warning not to commit such omissions in future and the court strongly disapproving his conduct and directed the observations of the Supreme Court to be kept on his personal service record.

58. **Wages to prisoners**: Interpreting the provisions of Art. 23 of the Constitution and Sec. 59 of the Prisons Act, 1894, the Supreme Court has held that prisoners are entitled to equitable wages for work done by them. See: State of Gujarat vs. Hon'ble High Court of Gujarat, AIR 1998 SC 3164 (Three- Judge Bench)

59. **Publication of autobiography of condemned prisoner**: In the matter of publication of the autobiography of a condemned prisoner, namely Auto Shankar, who had committed six murders and was sentenced to death, it has been held by the Supreme Court that publication of autobiography of a condemned prisoner based on public records is permissible. Neither government nor its officials have right to impose prior restraint upon the editor or publisher of the magazine (Tamil Weekly Magazine Nakkheeran) in so far as it appears from public records, even without consent or authorization by prisoner and not beyond that. The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Art. 21. It is a "right to be let alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters. None can publish anything concerning the above matters without his consent—whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of

the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy. See: R. Rajagopal vs. State of T.N., AIR 1995 SC 264

60. **Hanging by rope not violative of Articles 14 & 21 of the Constitution**: (A) The Supreme Court has held that the execution of death sentence by method of hanging by rope does not violate provisions of Art. 14 & 21 of the Constitution. See:

1. K.V. Umre vs. Smt. Venubai D. Gage, AIR 1983 SC 1154 (Three- Judge Bench)
2. Deena vs. Union of India, AIR 1983 SC 1155 (Three -Judge Bench)

(B) **Delayed execution of condemned prisoner:** Undue long delay in execution of the sentence of death will entitle the condemned person to approach the Supreme Court under Art. 32 but the Supreme Court will only examine the nature of delay caused and circumstances ensued after sentence was finally confirmed by the judicial process and will have no jurisdiction to re-open the conclusions reached by the Court while finally maintaining the sentence of death. The Supreme Court, however, may consider the question of inordinate delay in the light of all circumstances of the case to decide whether the execution of sentence should be carried out or should be altered into imprisonment for life. No fixed period of delay could be inexecutable. See; Smt. Triveniben vs. State of Gujarat, AIR 1989 SC 142 (Five- Judge Bench)

61. **Solitary confinement of prisoners**: It has been held by the Supreme Court that the solitary confinement of a prisoner and putting fetters on him can be resorted to only in rarest of rare cases for security reasons. Human dignity of the prisoner must be maintained flimsy grounds like “loitering in the prison”, “behaving insolently and in an uncivilized manner”, “tearing off his history ticket” cannot be the foundation for the torturesome treatment of solitary confinement and cross-bar fetters. See: Kishor Singh vs. State of Rajasthan, AIR 1981 SC 625

62. **Suggestion of model new All India Jail Manual:** (A) The Supreme Court has emphasized the need to replace century old Prisons Act, 1894 & Framing of model new All India Jail Manual. See--- Rama Murthy vs. State of Karnataka, AIR 1997 SC 1739 (Three-Judge Bench)

(B) **States competent to make laws for prisoners**: If it is assumed that the laws of remission and short-sentencing by States are enacted under Entry of List II of the Constitution, the States’ competency to enact cannot be challenged. After all, even in

prison-prisoner legislation, there may be beneficent provisions to promote the habilitative potential and reduce warder-prisoner friction by stick-cum-carrot strategies. Offer of remission, paroles, supervised releases, opportunities for self-improvement by family contacts, time in community work centres and even meditational centres, can properly belong to prison legislation. Rewards by remissions, like punishments by privations are permissible under Entry 4 of List II. Even so, the power of the State is subject to Art. 246(1) and (2) and so Parliamentary legislation prevails over State legislation. Moreover, Art. 254 resolves the conflict in favour of Parliamentary legislation. If a State intends to legislate under Entry 2 of List III such law can prevail in that State as against a Parliamentary legislation only if Presidential assent has been obtained in terms of Art. 254(2). See--- Maru Ran vs. Union of India, 1980 CrLJ 1440 (SC) (Five-Judge Bench)

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