Decision No. 9845

**Supreme Court, Division Bench**

**Hon'ble Justice Kedar Prasad Chalise**

**Hon'ble Justice Ishwar Prasad Khatiwada**

Date of Order: 2073|10|12 (January 25, 2017)

071-WO-1039

Case: Mandamus

Petitioner: Advocate Ajay Shankar Jha, a resident of Ward No. 34, Shankhamul of Kathmandu District, Kathmandu Metropolitan City, employed in International Legal Foundation (I.L.F) Babarmahal, et. al

V.

Respondent: Government of Nepal, Office of Prime Minister and Council of Ministers, Singhadurbar et. al

* **It is not appropriate to assume that the large number of persons living as Convicts shall by themselves enter into the Court on their own. The rights of the Convicts is also an issue of basic human rights. It is not reasonable to view it from traditional narrow confines of Locus Standii.**

**(Paragraph 3)**

* **Article 30 of the Constitution has made arrangements stating, "Every citizen shall have the right to live in a clean and healthy environment." Convicts and detainees shall also exercise the mentioned Right. Only because of being convicted, it shall not be presumed that the exercise of these Rights is restricted. It shall be the Obligation of the State to guarantee the condition of exercise of these rights by the Detainees unrestrictedly.**
* **An active and creative role is expected of the State for the Remedy of the Rights of the Convicts including the remedy of Rights of Children, Rights of Women, Rights of Senior Citizens, as the context requires.**

**(Paragraph 5)**

* **Convention against Torture has put forward the principle that the Act of implicating Torture shall be declared as a Criminal Offence by Law, the Obligation to Control systemic Torture as well as torture implicated by other means shall rest on the Member State Party to the Convention.**
* **Since, Nepal too is a State Party to the said Covenants as well as Convention and whereas in accordance to Section 9 of Our Treaty Act 2047 (1990)the provisions of Covenants as well as Conventions are applicable as good as Nepalese Laws, it is the subject of our Obligation to abide by such provisions. In such a manner, it is seen from the perusal of Laws promulgated at the International Level, the Convicted Persons too have Rights and those rights shall be mandatorily protected.**

**(Paragraph 7)**

* **State shall be able to guarantee the security of Life and human values without discriminating, irrespective of whether the Citizen is an Offender or an Innocent. This cannot be viewed as a facility to be provided conditionally in lieu of the Economic caliber of the State. By the virtue of having only a democratic State- system as well as system of governance of a modern era, confers the Primary Obligation to guarantee the security of Life of a Person and Human Values on the State.**
* **It is seen from the analysis of facts and statistics, that the Government effort to avail minimum humane services and facilities is depressing. There can be no dispute in that the Earthquake is a natural disaster. But, no escape from the Obligation to protect the Life of Citizens confined as Convicts shall be attempted accusing the Earthquake.**

**(Paragraph 12)**

* **The accountability for the death caused by Commission or by the act of Omission, except in the condition of reasonable and natural death of persons kept under captivation or control rests on the State, and the Victim shall be adequately compensated. But, in the present condition, that the Government has requisite reasonable sensitivity to have taken necessary steps to mitigate the loss of life and property due to natural disaster is not seen.**

**(Paragraph No. 13)**

* **It is seen that our Convicts and Detainees are deprived from the exercise of such Rights as the Right to Live with Respect and Dignity, Right to live in a Healthy and Clean Environment, Right against Torture, while living inside Prison. It is expedient to improve such conditions immediately.**

**(Paragraph No.14)**

* **Except some freedom related fundamental rights which cannot be or are unlikely to be reasonably exercised because of being confined inside the Prison, all other rights are inherent in the Convicts. Simply being in the Prison does not put an end to all the rights of a Person. Since, it is the Obligation of the State to not to infringe the Rights of the Convicts and Detainees, to respect, protect and fulfill such rights, appropriate arrangements for comprehensive management of Prison shall be made.**

**(Paragraph No. 15)**

* **Prisons are not Torture Houses, they shall be operated as Reform Homes. State shall not treat individuals with an attitude of Revenge. Since, Crime is a social disease or problem, the attempts of the State shall center on its cure or elimination.**

**(Paragraph No.15)**

* **The objective of the Punishment shall be primarily to ensure the feeling of justice for the Victim and the Society with security, to prevent the repetition of Crime, to identify the problem of the Criminal and socially restore by appropriately remedying the problem. For this, it is necessary to operate various types of activities along with life skill development activities within the Prison. The act of only captivating without making any effort on the Reformative Aspect, cannot be understood as fulfillment of the Obligation.**

**(Paragraph No.15)**

* **Since, the Constitution of Nepal, along with International Human Rights Instruments have conferred Right to Fair Trial to all, including Detainees and Convicts, all the concerned State agencies including the Courts shall fulfill the roles and responsibilities to protect or cause to protect Fair Trial Rights like maintaining easy access of Convicts and Detainees in the Judicial Process, providing Legal Aid as per necessity, allowing the presence before the Officer Hearing the Case during the Hearing, presenting one's Witness' and Evidence, Proving false the Witness-Evidence against oneself by Cross Examination and Rebuttal , Getting timely information about the Proceedings and Orders against One- self.**

**(Paragraph No. 18)**

* **Any kind of doubt and suspicion in that the Right to Fair Trial is a fundamental Right, even in the field of practical application, shall not prevail. If there is any kind of weakness in the protection of this Right then it shall be the duty of the Concerned Law Enforcement Official Agencies and to also rectify it after identification.**

**(Paragraph No.18)**

On Behalf of the Petitioner: Learned Advocate Surya Bahadur Pandey

On Behalf of the Respondents:

Cited Precedent:

Relevant Laws:

Order

**Justice, Ishwar Prasad Khatiwada:** A brief account of the fact of the Writ Petition filed pursuant to Article 133(2) of Constitution of Nepal, under the jurisdiction of this Court, and the Order as follows:

**Particulars of the Writ Petition:**

One, three storeyed building, among the four buildings of the *Bhadra Bandi Griha* ( Bhadra Prison Home) under Respondent Department of Prison, situated at Kathmandu has been completely causing the death of 16 Convicts; due to the Massive Earthquake dated 2072|1|12 (April 25, 2015). Among the buildings situated there, Block No. 1, having 220 persons has been completely destroyed, Block No.2 having 300 Convicts has locked up Convicts despite having cracks in the building along with the foundation. The building of the Women Prison House situated alongside *Bhadra Bandi Griha*, has cracked and foundation is in sunken condition. Prison Buildings of Districts like Rasuwa, Nuwakot, Sindupalchowk, Ramechhap, as well as the Earthquake affected districts, apart from the Kathmandu Valley are not under livable condition, due to the damage caused by the Earthquake. Various Prison have accommodated convicts exceeding their Carrying Capacity. They have not been able to use the Toilets regularly and have been deprived of basic necessities including food, water, medicine and a lack of modest place to sleep. In this way, the life of every individual living as a Convict, is exposed to me extreme vulnerabilities thereby creating a situation where they may have to succumb to death at any time.

There is no security of life of each Person detained in each Detention Center of the Earthquake affected Districts, under the Respondent Police Head Office, due to the lack of appropriate Accommodation. After the damage of the Building of Metropolitan Police Circle, Hanumandhoka, the administrative activities that used to be carried out from that place, are being carried out from behind the premises of the Building of National Trading Center at Teku and the Detainees are kept at the Big Hall of the Police Club at Exhibition Road, handcuffing them with each other throughout the twenty- four hours. In other Earthquake Affected Districts too, the Police Office has kept Persons Detained in the dilapidated buildings in some places, and in strict surveillance, handcuffing one with the other, thereby preventing the fulfillment of even the basic needs, under the open sky in some other. This has created a breeding ground for illness, and those who have fallen sick shall die. Consequently, Detainees and Convicts- Prisoners have been deprived of exercising the Rights conferred by the Constitution, Laws and the International Law. Their basic human dignity is also not found to have been protected.

Therefore, in order to reduce the number of Convicts –Detainees in the Prison of the Earthquake affected Districts, let the Order of Mandamus be issued to send Prisoners sentenced for three or less years of imprisonment , to Community Service, pursuant to Section 10(a) of Prison Act 2019 (1963), in order to serve the remaining term of imprisonment and to make necessary arrangements for allowing persons sentenced for more than 3 years to be sent to the Open Prison, for serving the remaining term, pursuant to Section 10 (b) of the same Act and to transfer the Convicts of the Earthquake affected Districts, who cannot be sent to the Open Prison pursuant to Section 10 (c), to other safe Prison Centers; Let the Order directing the construction of new Prison , as per the pith and substance of the Act, in pursuance of the conditions mentioned in Section 6 of the Act, also be issued. Let the Directive Order to carry out activities such as the dispatch of notice issued in the name of the Convicts, availing Witness' and Evidence within the stipulated time, as well as an Order to monitor, if such Order is implemented or not, be issued. Except in conditions described in Number 123 of Chapter on Court Management of the Muluki Ain, the release on Bail (Dharaut) or presence (Tarekh), let the Directive Order be issued for the study of international norms and Best Practices regarding the types of effective remedy to be immediately provided, in case of natural disaster induced grave danger in the Detention; and thereby to enact new Law or to amend the existing one. For the immediate security of life of the Convicts- Detainees, let and Order be issued for their relocation to other safe place, without delay. In the case of Detainees in the Police Custody, Let the Order be issued in the name of the Respondents, to prioritize the investigation of cases of generic nature and to present the Charge sheet without further delay , in cases of persons who need to be prosecuted; and to issue the necessary Directive in cases of persons who need not be prosecuted, pursuant to Section 11 of the Government Cases Act 2049 (1992) as well as Rule 21 of the same Act, is the Particular of the Writ Petition.

**Show Cause Notice:**

The Order of the Court dated 2072|3|22, stating that, let the Notice in the name of the Respondents be issued, for presenting Written Response, clarifying what happened in this, why the Orders as demanded by the Petitioner not be issued, and let this case be presented with priority at the Hearing.

**Particulars of the Written Response:**

The Written Response of the Department of Prison Management with the particulars, Alternative provisions of the Tarpaulin, Tin, Sheds, have been immediately arranged for the Convicts and the Detainees of the Prison, unfit for accommodation, due to the damage caused by the Massive Earthquake. The act of providing facilities as per Laws is being carried out. As no activity depriving any of the Convicts- Detainees of the services and thereby violating the fundamental rights of the Citizens is being carried out by this Department. This Writ Petition is to be quashed.

Written Response of the Police Head Office with the Particulars, that where and how are the Convicts to be kept, when they are to be transferred, are the matters under the responsibility of Prison Administration. Police Administration has been working for the security of the Convicts and Detainees. Since, Custody Rooms, are placed only in the Rooms held safe, after examination by designated Officials of Government of Nepal, immediately after the Massive Earthquake and the Daily Activities too have been carried out, Let, the Writ Petition filed by making the Police Head Office a Respondent be quashed.

Written Response of the Secretariat of the Legislative with the Particulars, the Petitioners have not clarified as to which Act of the Speaker of the Legislative Parliament has infringed the fundamental rights of the Convicts and Detainees. As, the Legislative is a Law Making Body , the Writ Petition that makes the Speaker of the Legislative Parliament, a Respondent is not based on facts. Let the Writ Petition be quashed.

Written Response of Ministry of Home Affairs, with the Particulars, that the Ministry of Home Affairs, has as far as possible, relocated the Convict- Detainees of destroyed and dilapidated buildings to safe places and it shall continue the relocation in the coming days too. Government of Nepal, has to the best of its caliber carried out the Construction of New Prisons and repaired and maintained the existing ones, In the Programs and Policies of this Year, it is mentioned, "A separate Work Plan for the Reform of the Prisons shall be prepared and implemented and the necessary amendment of the prevailing laws shall be made." The Ministry of Home Affairs is committed to the same. For, the implementation of the concept of Open Prison, Preliminary procedures have been completed after the acquisition of the Land in the Banke District, and the suggestions obtained from the Prison Reform Commissions, shall be progressively implemented. Nepal Police, has, as far as possible, been performing Acts such as dispatching the summon issued by the Court, in the name of the Detainees detained in the Prison Office, within the limitation provided by law, providing Witness and Evidences. Since, the Writ Petitioner has not been able to state what type of Act of this Ministry has violated the rights of Convicts and Detainees, this Writ Petition is bound to be quashed.

Written Response of Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs, with the Particulars, The Government of Nepal to the best of its caliber, has made necessary arrangements, for the protection of life of the individuals from the Natural Disaster; and has been making arrangements for the captivated Convicts-Detainees. Let this Writ Petition be quashed, as in the condition where additional reformative provisions for the safety of the life of the Convicts and Detainees is necessary , it can be done through the Policy Decision of the Government of Nepal and it is not deemed necessary to amend any law for the same.

Written Response of Office of Prime Minister and Council of Ministers, with the Particulars, Government of Nepal is committed to making new well- facilitated and safe Prison Buildings progressively, for the protection of life and property of Convicts- Detainees. In the Policies and Programs of the Government of Nepal of the Year 2072/73(2015/16), it is mentioned, "Work plan regarding present reconstruction will be implemented because of the unequal ratio of number of prisoners and the capacity of prisons across the country and dilapidated conditions of the prisons and the damages caused by the earthquake. Construction works for the proposed central prison in Nuwakot and regional prison in Banke will be started. By amending the current laws regarding prisons, new concepts of prison management such as open prison and rehabilitation house will be implemented." The Government is actively and progressively implementing the various recommendations. The Writ shall not be issued

**Order of this Court to form a Study Team:**

An Order dated 2073|3|22(July 6, 2016,) issued by this Court, stating A Study Team has been formed by this Order, in the leadership of the First Class Gazette Officer of this Court, and two other members, chosen at his desire, for studying how the Convicts- Detainees are staying, after the Massive Earthquake, whether the place is safe or not, and according to the Act, Rules, Constitution as well as International Treaties and Declarations, to present a Report along with the Opinion and Recommendation after the Site Visit of Prisons, Police Office and Police Stations, of the Earthquake affected Districts. The Case be presented for Hearing, as per the Rules, after the obtainment of the Report subsequent to the Inspection by the Team The Study Report submitted by the team formed in coordination of Joint Registrar, Bipul Neupane, on 2073|10|11 (January 24, 2017), is seen to have been adduced with this file.

**Pleadings of the Legal Practitioners:**

In the present case, listed in the Weekly Cause list, and thereby presented for Hearing after being listed in Today's Cause list, Learned Advocate Surya Bahadur Pandey, present on behalf of the Writ Petitioner, pleaded arguing that the act of the Respondents, including keeping the Convicts- Detainees in the Buildings dilapidated , cracked by Earthquake, have been kept in open space by handcuffing with each other, and keeping Detainees and Convicts, exceeding the Carrying Capacity of the Buildings has deprived the Detainees and Convicts of the exercise of the fundamental rights. They have not been treated even with the minimum human values-norms. Therefore, let the Rights and Interest of the Convicts be protected by issuing the Order including to arrange necessary arrangements for transferring Detainees and Convicts in safe places, to not to keep Detainees and Convicts more than the Carrying Capacity of the Prison Buildings, as well as other appropriate Orders as demanded in the Writ Petition.

**Issues to be Decided:**

Now, the following issues need to be decided:

1. Whether or not the Petitioners have the *Locus Standi* to enter into the Court with the Writ Petition of Public Interest?
2. Whether or not the Rights of the Detainees as well as the Convicts, guaranteed by the Constitution and the Laws, has been violated or not? Whether or not, the Weaknesses in the implementation of provisions, mentioned in the Prison Act 2019 (1963) and Rules; has the Rights of the Detainees been adversely affected or not?
3. Whether or not, the Writ Order, must be issued as demanded by the Petitioners or not? In case, the Writ shall be issued, then what type of Order shall be issued?

**Basis and the Rationale for Issuing the Order- *Ratio Decidendi***

2. In purview of the Decision, it is appropriate to firstly consider the first question related to whether the Petitioners have the Public Interest or not? This Court has in numerous times interpreted and analyzed the issue of Public Interest Litigation and propounded principles thereto. The interpretation done in the Case filed by Advocate Radheyshyam Adhikari [[1]](#footnote-2)and it is deemed necessary to cite some portion of the interpretation done in the context of the Writ filed against the animal sacrifice offered in the *Gadimai Mela* of Bara District, by this Court, as well:[[2]](#footnote-3)

* " It is understood by the Dispute of the Public Interest or Concern, that is not limited to any particular individual or individuals , but a dispute related to the general people or a dispute related to group right or interest of any community of people. When the Government of Nepal or any public agency or official does not perform any act mandated by the Constitution and the Law, or performs any act which is not to be performed, due to which the Rights, welfare or interest of the general public gets adversely affected, becomes a subject of public rights and interest. While determining whether a subject is of Public Interest or not, it shall not be settled by head count. Based on the tendency, nature and character, that particular dispute shall be differentiated as Personal Dispute or a Public Dispute. Generally, various matters related to national security, governance system, public order, social peace, education, health and morality of general public, the economic state of the country, social justice, environmental justice, as the context requires, becomes the matter of public interest. The subject of public interest cannot be determined objectively and mathematically by creating a List. It is seen to be settled on a case to case basis based on the factual context of the dispute; however, while interpreting about the Public Interest Litigation to be settled by the Court; it is to be interpreted in relation to the Rights guaranteed by the Constitution and the Laws.
* Public Interest Litigation, in some instances, is even taken as the voice of the voiceless. In some instances, this Public Interest Concept has been proved to be a boon for the protection of rights, welfare and interest of the socio-economically backward weaker communities. But, this does not mean that any person can file a Complaint, Case, or Writ in any types of issues of Public Interest. The applicant or complainant shall have meaningful relation and substantial interest in the subject matter of the Writ, and it is necessary that the Court must be content that he/she has adequately represented the subject matter.
1. While purviewing the concept of Public Interest Litigation as well as the Precedents propounded by this Court, in the context of disputes, it is seen that in the condition where there is a meaningful relation between the Writ Petitioner and the subject matter of the dispute; there is substantial interest and the rights guaranteed by the Constitution and Laws, which is to be settled by the Court, then the Entry into the Court by dragging the issue of Public Interest Litigationis seen. In the present case, there is no doubt, that all Petitioners are the Advocates actively associated with the International Legal Foundation (ILF), the organization working for the protection of the rights and interest of the Convicts- Detainees. It is seen that eight Advocates associated with the Organization, established with the objective to provide Legal Aid to the Convicts and Detainees, have entered the Court, raising the question of the remedy of the Rights of the Convicts-Detainees, conferred by the Constitution and Laws. No reason sustains that the Applicants do not have substantial interest and meaningful relation with the subject matter of dispute is seen. No reason, warranting the non-satisfaction that they shall not be able to adequately represent the Cause is seen. Therefore, the argument of the Respondent, that the Applicants do not have Locus Standi to enter the Court in the present Case, cannot be accepted.
2. Now, therefore, it is seen that the Second question as to whether or not the Rights of the Convicts and Detainees, guaranteed by the Constitution and the Laws have been violated or not needs to be settled. In order to settle this question, it is necessary to firstly mention some of the available facts about the condition of the Convicts- Detainees. It is seen that to ascertain the factual details, it is necessary to take into cognizance, the factual description mentioned in the Writ Petition, the Counter- Arguments made in the Written Response and the Facts mentioned in the Study Report submitted by the Study Team on 2073|10|11 (January 24, 2017), formed in accordance to the Order of this Court dated 2073|3|24 (July 6, 2016.)

**Facts Included in the Writ Petition:**

One, three storeyed building, among the four buildings of the *Bhadra Bandi Griha* ( Bhadra Prison Home), situated in Kathmandu has been completely causing the death of 16 Convicts; due to the Massive Earthquake dated 2072|1|12 (April 25, 2015) Out of the buildings situated there, Block No. 1, accommodating 220 people; has been completely ruined; Despite having cracks on the foundation of Block No. 2 accommodating 300 people, Convicts have been kept there. Building of the Women Prison House is also in cracked and sunken state. The Prison House of the Earthquake affected Districts including that of Rasuwa, Nuwakot, Sindupalchowk, Ramechhap have also been destroyed making them unfit to live, apart from the Valley. Convicts- Detainees, exceeding the Carrying Capacity, have been kept in various Prisons. They have not been availed with the place for regular use as Toilets and a modest place to Eat, Drink, Medicate, as well as Sleep. They have been deprived of basic necessities. The Detainees detained in the Detention Centers lack appropriate shelter. Detainees have been kept in the same Center throughout the twenty –four hours, by handcuffing with each other. The provision of Prison Act like causing to serve the Sentence by sending to the Community Service and causing to serve the Sentence by sending to the Open Prison has not been implemented. Obstacles have been seen even in the right to participation in the judicial process and effective defense. The system of Monitoring and Evaluation is seen to be weak. Consequently, the Convicts- Detainees have been deprived of exercising the rights guaranteed by the Constitution and the Laws. Their basic human dignity is not seen to have been protected.

**The Counter Argument Presented in Written Response:**

The Respondents in their respective Written Responses have, by stating particulars like they have been fulfilling their respective responsibilities , attempts have been made to carry out some of the works, oneself is not be held accountable have made ritualistic defense. The logical and factual defense based on facts and factual analysis is not seen. This shall be interpreted as consequently accepting the facts and statistics mentioned in the Writ Petition in an implied manner. In the Written Response presented on behalf of the Council of Ministers, the details have been revealed by stating that in the Policy and Programs of the Fiscal Year 2072/73(2015/16), it is mentioned that ,"Work plan regarding present reconstruction will be implemented because of the unequal ratio of number of prisoners and the capacity of prisons across the country and dilapidated conditions of the prisons and the damages caused by the earthquake. Construction works for the proposed central prison in Nuwakot and regional prison in Banke will be started. By amending the current laws regarding prisons, new concepts of prison management such as open prison and rehabilitation house will be implemented." This means that, there are Obstacles to the Prison Management, has been accepted in totality. But, facts related to the improvement have been made in the fiscal year 2072/73 (2015/16), has not been presented even in the process of Hearing.

**The Particulars included in the Report submitted by the Study Team formed by the Order of this Court dated 2073|3|22 (July 6, 2016) on 2073|10|11 (January 24, 2017):**

The Prison Office of the Kavrepalanchowk was constructed in 1960 B. S(1903 AD), as a Horse Stable, the building is dilapidated and the stay of the Convicts- Detainees is challenging. The Prison of Ramechhap, Rasuwa, Dhading are unsafe; irrespective of the Red Sticker, declaring it unsafe has been pasted, the Convicts-Detainees have been kept in the same building exceeding the Carrying Capacity. The building of Prison Office, Dillibazar where the Convicts are staying, in 1970 and the Prison Building of Jagannath Deval was constructed in 1967 B.S and has been damaged by the Earthquake at present. One of the buildings, of the Bhadra Bandi Griha of the same Prison Office had been completely destroyed causing the death of 17 Convicts.[[3]](#footnote-4)The Jagannath Deval Prison House, in the Capital City, itself has been keeping Convicts exceeding the Carrying Capacity, despite being dilapidated by the Earthquake. It is found that the Male Cell having the capacity of 30 persons has 182 persons and Female Cell having the capacity of 8 people has 14 people; Gorkha Prison, having the capacity of 45 people has 99 people and Female Cell having the capacity of 10 people has 16 people. Whereas, it was seen that the Rasuwa Prison with the capacity of 25 people has 94 people and the Male Cell of Nuwakot Prison with the capacity of 80 people accommodates 159 Detainees. Whereas, the total capacity of the three blocks of Kavrepalanchowk was determined as 61 people, but 236 people have been kept, Dolakha Prison having the capacity of only 18 people has kept 70 people. Whereas, the capacity of the Male Block of Ramechhap Prison is 50 people, 221 Detainees were seen to have been kept. It was seen that the Prison in the capital City have kept Convicts- Detainees, at least three times the capacity of the Prison. Toilets are insufficient and difficulties and inconveniences due to the excessive pressure of number of Convicts is faced. It has been found that the capacity of the Building is insufficient, inappropriate from the security and facility perspective and not human rights friendly; the daily life has been harsh due to the difficulty in sleeping, eating and staying and attention has not been to the management, cleanliness, maintenance etc. The Convicts- Detainees have been provided with 700 grams of Rice and Rs. 45 cash, on a daily basis; the facility is very low in comparison to the present Market Price, are the particulars mentioned in the Report. No remarkable program for improvement has been seen. It is seen that no significant problem is seen in the obtainment of Notice, Warrant and the representation in the judicial process, is clearly stated in the Report.

No appropriate reason for disagreeing with the facts or disbelieving it is seen .

In addition to this, from the particulars mentioned in the Mandamus, issued by this Court, about the Present state of Prison, in the Case of Charles Gurumukh Shobraj, the present state of management of Convicts and Detainees can be clarified. It is mentioned in the Order, **"While purviewing the Report submitted by the Appellate Court after the inspection of 64 Prisons, to the Supreme Court, in the Fiscal Year 2072/73, it is seen that, in most of the Prisons, Prisoners exceeding the Carrying Capacity are kept and the state of facilities and services is not satisfactory. The Prisons of Nepal with the capacity to keep 6,416 Detainees, presently accommodate approximately 15,000 Convicts- Detainees. From the Report submitted by the Judges, the situation of Prisons is seen to be pitiable"**.[[4]](#footnote-5) From the purview all the mentioned comprehensive facts and statistics, it is seen that the situation of Convicts- Detainees, in Our Prison is seen to be mismanaged and pitiable. And the basic minimum human necessities have not been fulfilled.

1. In the context of the facts and statistics mentioned above, it is now necessary to analyse the rights of the Detainees- Convicts. Article 16 (1) of the Constitution of Nepal, has provisions stating, " Every person shall have the Right to Live a Dignified Life. In Article 20, some of the basic matters related to the Right to Fair Trial have been included. Article 22 (1) has conferred Right against Torture stating "No person who is arrested or detained shall be subjected to physical or mental torture or to cruel, inhuman or degrading treatment."Article 30 of the Constitution has made arrangements stating, "Every citizen shall have the right to live in a clean and healthy environment."Convicts and detainees shall also exercise the mentioned Right. Only because of being convicted, it shall not be presumed that the exercise of these Rights is restricted. It shall be the Obligation of the State to guarantee the condition of exercise of these rights by the Detainees unrestrictedly. An active and creative role is expected of the State for the Remedy of the Rights of the Convicts including the remedy of Rights of Children, Rights of Women, Rights of Senior Citizens, as the context requires.
2. The Prison Act 2019 (1963), has stated provisions related to Prison Management along with the procedures to be adhered to while keeping Detainee or Convict in the Prison. Section 6 of the Act has stated that the Male and the Female shall be kept in the separate portions , those above and below 21 years are to be kept in separate places, those with Civil and Criminal charge to be kept in separate places, Sick to be kept separated, and Lunatic and Mad to be kept in separate places. According to Section 7 of the Prison Act 2019(1963), "No Detainee or Convict, except those who have been arrested after absconding the prison, or those who have committed serious crimes related to the Prison,[[5]](#footnote-6)other Convicts shall not be handcuffed."[[6]](#footnote-7)The Act also has provisions like taking care of the infants in the Prison[[7]](#footnote-8),no person shall be forced to work against his/her will, except for his/her health, economic prosperity, and for reformation.[[8]](#footnote-9)The Second Amendment of the Prison Act 2019(1963), introduced in 2064 (2007), has made provisions for allowing Community Service to the people sentenced for up to 3 years in Prison[[9]](#footnote-10); except for the 9 types of Offences[[10]](#footnote-11),and those who have been sentenced to more than three years and have already served 1/3 of the Sentence in Prison may be permitted to live in Open Prison.[[11]](#footnote-12)But, despite the passage of 10 years of enacting the amended provision, it is not seen to have been implemented yet. Section 11 is seen to have the provision of Medical Treatment of the Convicts and Detainees. The Act has also included provisions related to the management of Prison and the facilities and social security to be provided to the Convict-Detainees kept in the Prison. It is seen that the Prison Rules 2020 (1964), has made procedural provisions keeping or sending to Open Prison or Community Service, the management of Prison and other Welfare Provisions of Detainees- Convicts. It is mandatory to appropriately implement the provisions mentioned in the Constitution and the Laws.
3. In the present context, it is necessary to review the provisions of some of the International Human Rights Instruments. Article 6 of International Covenant on Civil and Political Rights 1966, has provision stating, every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.[[12]](#footnote-13)Article 7 has provisions related to Right against Torture. [[13]](#footnote-14)In Article 10 of the same Covenant it is mentioned that every individual deprived of liberty shall be treated with dignity. [[14]](#footnote-15)The UN Human Rights Committee has elaborated and thus interpreted Article 10 of the ICCPR stating Detainees must not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment."[[15]](#footnote-16)Convention against Torture[[16]](#footnote-17) has put forward the principle that the Act of giving Torture shall be declared as a Criminal Offence by Law, the Obligation to Control systemic Torture as well as torture implicated by other means shall rest on the Member State Party to the Convention. Since, Nepal too is a State Party to the said Covenants as well as Convention and whereas in accordance to Section 9 of Our Treaty Act 2047 (1990)the provisions of Resolutions as well as Conventions are applicable as good as Nepalese Laws, it is the subject of our Obligation to pursue such provisions. In such a manner, it is seen from the perusal of Laws promulgated at the International Level, the Convicted Persons too have Rights and those rights shall be mandatorily protected.
4. UN Standard Minimum Rules for the Treatment of Prisoners[[17]](#footnote-18) has determined the Standards for the management of Prison and Detainees and Convicts, including separately keeping Children and persons who have attained Majority, appropriately managing the space for sleeping and living, having provisions of health and cleanliness, Provision for drinking and treatment. Likewise, Basic Principles for the treatment of Prisoners, in Principle 1 has provision mentioning, "All prisoners shall be treated with the respect due to their inherent dignity and value as human beings."[[18]](#footnote-19) Its Principle 5, emphasizing on the safeguard of the rights of the Detainees has mentioned, "Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations Covenants".

These Standard Minimum Rules and Basic Principles are regarded as Soft Laws. However, being a Member State of the United Nations as well as a State Party to UN Human Rights Instruments, it also becomes our Scared Obligation to pursue the Principles mentioned in the said Rules and Principles.

1. The increasing density of Convicts and Detainees is taken as a universal problem. The problem is also believed to be prevalent in America and Europe. It has been observed, evaluated based on the Standards set in the respective context. The European Court of Human Rights, has interpreted that the weak or improper management of Prisoners leads to the infringement of the human rights of a person[[19]](#footnote-20); and appropriate legal remedy has been provided thereto, such that the issue of Prison Management has been given due importance in Europe. The basic minimum facilities to be provided in the Prisons of the countries of the European Community has been determined. There needs to be the provision for separate room for sleeping at night, for a person, a space of 6mtrs × 6mtrs, apart from the Latrine, is to be separated, or if two persons are to be kept in the same room, a Section of (4×4)mtrs shall be made available to each, a wall of at least 2 mtrs shall be constructed for separating both of them. The standard of (10×10) mtrs for two persons, and (14×14) mtrs for three persons is set, for three persons, for the purpose of the Prison to be newly constructed. It is found that the standards set in such a manner that the Convicts shall not be able to engage in violent behavior, or construction shall be carried out in appropriate manner, in a way so as to obtain clean air and ventilation. Reviewing the size of the place (Room) provided to the Convicts and Detainees, it is seen that in Britain, 6×8 ft in average and in America 6×9 ft. is determined. In France, which has adopted approximately similar standards, heavy criticisms are being made, because of having the presence of 116% more Convicts than the adopted standards. Remembering the criticism done in France, for having kept 116 persons instead of 100,it is expedient to think of the example of Nepal, where in a Prison prescribed for only 25, 175, i.e. up to 700% more Convicts and Detainees are being kept.
2. In India, various attempts to reform the Prison as well as to protect the Rights and interest of the Convicts, so as to secure justice. The Indian Supreme Court has played a pivotal role for the remedy of the rights of the Prisoners. In recent years, the process of interpreting the rights of the Convicts under the separate branch of 'Prison Justice' has commenced. In the Indian Context, the interpretation and the principles propounded in the case of Maneka Gandhi , pushed forward the process of development of modern jurisprudence related to the "Prisoner's Rights."The practice of discriminating between the Convicts, based on their differential economic status and handcuffing them is regarded discriminatory and such practices have been declared as contrary to Personal Liberty. The Indian Supreme Court has issued Order, to the effect of punishing the Concerned Official, if the Detainee is found to have been handcuffed while taking to and from the Court.[[20]](#footnote-21) The Opinion of the Indian Supreme Court is such that the Convicts and Detainees shall be given the liberty to meet and talk to the family, friends, legal practitioners; if any kind of strict control is adopted, then it leads to the violation of Right to Life.[[21]](#footnote-22)
3. In the cases of Maneka Gandhi[[22]](#footnote-23), Sunil Batra,[[23]](#footnote-24)M.H. Hoskot[[24]](#footnote-25) and Hussainara Khatoon,[[25]](#footnote-26) the Indian Supreme Court opined that the Rights enshrined in Part 3 must be given the widest possible interpretation. Keeping both in solitary confinement as well as in a crowded space with lack of place to live and sleep are regarded as an inhumane behavior adversely affecting the rights of the Convicts. Handcuffing or keeping in chains throughout the day and night is considered to be cruel, inhumane and torturous behavior.[[26]](#footnote-27) It is seen that the Court has provided remedy by stating that tyrannical behavior as attacking upon human respect and dignity, implicating torture, treating humans like animals, infringes upon right to live with human dignity.[[27]](#footnote-28)
4. Prisons shall be operated as Reform Homes. They shall not be transformed into Torture Houses. If the basic minimum facility like eating two meals a day in full stomach, going to toilet as per necessity and using them, being able to sleep in a place designated for oneself could not be fulfilled and if the condition is maintained, then it is certain that the Prison shall be transformed to Torture Houses. This is not a situation suitable for the modern welfare as well as accountable governance system. It is the Obligation of the State to provide suitable amenities like shelter for the sustenance of the Convicts- Detainees as well as to provide the guarantee of health, entertainment, creative skill development. The State cannot refrain from fulfilling these Obligations. Convicts and Detainees, alike can exercise the right to a Dignified Life. By the virtue of being a Convict or a Detainee it is natural that there are limitations to freely stroll, carry out the profession of ones' choice. However, all other rights guaranteed by the Constitution still is inherent when the person is in prison and it shall be exercised unrestrictedly. [[28]](#footnote-29)The attention of the State must be centered on keeping the limitation to person's rights and interest at minimum unavoidable. The prevalent situation whereby the persons kept in captivation or control of the State are bound to be at death's door , is by itself an ironic rhetoric of modern democratic state system. The State shall be capable of guarantying the security of Life and human values irrespective of differentiation whether a Citizen is an Offender or an Innocent. These matters are extremely considerable and relevant seen from the perspective of our system of Prison Management and the protection of the Rights of the Convicts – Detainees.
5. Whereas, it is seen from the analysis of the facts and statistics reviewed in the context of this dispute, that the Government efforts for providing basic humane services and facilities inside the prison is depressing. There is no dispute in that the Earthquake is a natural disaster. But, no escape from the Obligation to protect the life and the limb of the Citizens convicted by the State shall be made. It is seen that 17 Convicts had died, during the 2072(2015) Earthquake. The 17 people had died because of keeping the Detainees/Convicts more than the Carrying Capacity, in old, dilapidated buildings and not adopting pre-cautionary and security measures. The accountability for the death caused by Commission or by the act of Omission, except in the condition of reasonable and natural death of persons kept under captivation or control rests on the State, and the Victim shall be adequately compensated. But, in the present condition, that the Government has reasonable sensitivity to have taken necessary steps to mitigate the loss of life and property due to natural disaster, is not seen.
6. It has been our bitter fate that the condition of most of our Prisons have pitiable physical condition and there is no effective plan and program being implemented for its reform. The Governmental Plans have been limited to sweet, attractive, abstract puzzle of words expressed during the Budget Speech. Certainly, some Prisons have been made and their capacity determined. But, there is no factual basis to believe that the determination of the capacity has been done in the pursuance of International Standards through the adoption of Reformative Approach. It is seen that the determination of the capacity of our Prisons is guided by the thought "*Yenakena Prakarena Kaamchalau" meaning Adhocism. Since the capacity of the Prison is deteremined in an Adhoc basis, the density of the Prison being 5 /6 times greater than its Carrying Capacity, is not only an exception. The Prison not having Convicts more than the Capacity are being held as an exception.* From this, it can be naturally concluded that Our Prisons are not oriented towards Reform House but oriented towards Torture House. The condition of the availability of the amenities such as the availability of clean drinking water, arrangements of toilets, sanitary conditions and other minimum human necessities are also not found to be in satisfactory condition. Consequently, the Convicts are deprived of the enjoyment of the Right to Live with Dignity, Right to live in a Healthy and Clean Environment, Right against Torture, that are to be enjoyed while in Prison. It is therefore expedient to immediately reform the situation.
7. There are two main dimensions of Modern Prison Management. **First dimension** Except the naturally limited rights by the virtue of being a Convict- Detainee, that cannot be exercised due to inability or unsuitability(For example: Right to Stroll in the Place of Ones' Choice, the Right to adopt the profession or employment of one's choice), all other kinds of Rights are vested in the Convicts- Detainees. Simply being in Prison does not put an end to all the Rights of a Person. Since, it is the Obligation of the State to create a conducive environment for the non- infringement of the Rights of the Convicts, and to respect, Protect and fulfill the Right, necessary arrangements for the comprehensive management of Prison shall be accordingly made.

**Second Dimension** Prisons are not Torture Houses; they shall be operated as Reform Homes. State shall not treat individuals with an attitude of Revenge. Since, Crime is a social disease or problem, the attempts of the State shall center on its cure or elimination. The objective of the Punishment shall be primarily to ensure the feeling of justice for the Victim and to provide the Society with the feeling of security, to prevent the repetition of Crime, to identify the problem of the Criminal and to restore by appropriately remedying the problem. For this, it is necessary to operate various types of activities along with life skill development activities within the Prison. The act of only captivating without making any effort on the Reformative Aspect, cannot be understood as fulfilling the Obligation. It is seen that it shall be the primary and pivotal Obligation of the Prison Management to implement or to get both the aforementioned dimensions transformed, implemented in practice.

1. **Writ Order Issued:**

Now, the third question, whether the Writ as demanded by the Petitioners need or need not be issued? If it is to be issued then what types of Orders are to be issued, is to be considered. From the analysis done in the aforementioned paragraphs, the situation of Nepalese Prisons at present is not seen to be human rights friendly as well as according to the principles of Criminal Justice and purposes of Punishment. The tendency of transformation of Prisons to Torture Houses, is seen. The Government has not properly behold the Reformative aspect. There has been unwillingness to implement the Act that has been in force for years together. While, the serious attention of the concerned State Agencies is deemed necessary, it is not existent. Therefore from the comprehensive analysis of the matters mentioned above, it is seen appropriate to issue the following Orders:

**Order of Mandamus:**

It is held that the Writ of Mandamus shall be issued in the name of the Respondents Ordering to do or to get done the following in the following matters:

1. The practice of getting to serve the sentence by sending the individuals held as Offenders to the Community Service or Open Prison, as per necessity, is found to have been adopted in various other countries. It has also been supposed to be an useful apparatus. Since, it is necessary and useful , the Lawmakers included the Provision of sending to Community Service and Open Prison , by adding Section 10 a and 10 b to the Prison Act 2019 (1963), through the Second Amendment in 2063 (2007). Despite the passage of ten years of the Amendment of the Act, the provision is not seen to have been implemented. The Act enacted by the Legislature must be implemented. The act of not implementing the enacted law, cannot be presumed to be a responsible conduct. It is a matter of grave concern from the perspective of Rule of Law, that the Government itself does not obey the law. Therefore, let the provision of sending for Community Service and Open Prison, mentioned in Section 10a and 10 b of the Prison Act 2019 (1963) be implemented or get to be implemented by preparing necessary Plans, Strategies, and Programs as soon as possible;
2. It is seen that the Convicts-Detainees, are handcuffed in the Prison, contrary to Section 7 of the Prison Act 2019 (1963). This kind of conduct shall not be done from the perspective of human rights, fundamental rights, and legal provisions. Therefore, let the Act of handcuffing inside the Prison contrary to the Law, not be carried out, let such type of Act be checked and immediately controlled and the rights of the Convicts- Detainees thus be protected;
3. It is seen that in the Case of Som Prasad Luitel,[[29]](#footnote-30) this Court has issued Mandamus, approximately 9 years ago, ordering to keep Detainees and Convicts in separate Prisons. And if that is not possible, to keep the Detainees and Convicts in separate places by separating them. But, the arrangements to keep the Detainees- Convicts according to the Provision of Section 6 of the Prison Act 2019 (1963) has not been arranged for yet. This type of indolence and apathy shall not prevail. Therefore, immediately make arrangements for or get the arrangements made for keeping the Convicts –Detainees in accordance to the Provisions of Section 6 of the Prison Act 2019 (1963);
4. Make necessary arrangements for effective implementation of the basic minimum humane facilities mandated by the Prison Act and Rules including taking care of the infants, employing Detainees and Convicts, Arrangements for Medicine and Treatment, Clean Drinking water and Necessary Toilet Facilities as well as Sanitation of the Premises of the Prison and thereby protect the related Rights of Detainees and Convicts;
5. Necessary programs be prepared and cause to be implemented in matters including life-skill development, income generation as well as motivate to become dutiful Citizens;
6. No any Convicts or Detainees be kept in places in the condition that expose the life and body of the Convicts- Detainees to risk even at the slight tremor of the Earthquake by being demolished or dilapidated. Let the Convicts and Detainees not be kept in old, debilitated and weak physical structures. the Convicts- Detainees kept in such vulnerable places be immediately relocated to the appropriate alternative arrangements;
7. The periodic monitoring and inspection of the Comprehensive aspect of the Prison Management including whether the physical condition of the Prisons and Detention Centers is in accordance to the prescribed standards or not, whether or not the Rights and Interest of the Detainees- Convicts have been protected and if not protected if there is any grievance, whether appropriate steps for its solution has been taken or has not been taken, be monitored and inspected and the effective arrangement for timely reform made thereto;

**Directive Order:**

Problems in various aspects of Prison Management is seen. A cursory look reveals that the causes including the unavailability of physical means and resources and the lack of skilled human resources to the necessary quantity have led to the problem. The pressing need to reform various aspects of Prison through the implementation of Plans and Programs after their formulation is seen. Therefore, Directive Order in the name of the Respondents is issued, to form a Working Group/Study Team , comprising of the Renowned and Skilled Subject- Experts, Human Rights Activist, Security Expert, Jurists, Philanthropist, to study and present a report regarding the management of Prisons according to modern conception and international standards, to guarantee a situation of safeguarding the rights and interest of Detainees – Convicts, and to operate Prisons as Reform Homes, and to study and present a Comprehensive Report in consideration of issues like in what manner shall a reform be introduced in order to operate Prisons as Reform Homes? By adopting what type of International Standards and of what capacity and in which places hall the Prisons be constructed?; through the study of exemplary International Best Practices, as well as considering whether or not it shall be appropriate to adopt practices of other places in our context, as well as various other aspects in relation to the international standards to be adopted, practices as well as our ground realities and the suggestions forwarded by prior Committees on Prison Reform. , after the perusal of Comprehensive Aspects and prepare and implement without delay the Master Plan for Prison Reform and the Strategic Programs thereto, after having a look at the Recommendation .

1. It is the claim of the Petitioners that whereas the Convicts- Detainees are provided with Rs. 45/ cash and 700 grams of Rice daily, which is very minimal compared to the present Market Price. Objectively, the Claim is apt too. It is hereby seen that the expenses and amenities provided to the Detainees- Convicts is very minimum compared to the continuing inflation. Therefore while considering whether any Writ Order needs to be issued in the present context, it is seen that this Court has already issued a Mandamus in the case of Charles Gurumukh Shobraj on 2073|4|26 (August 10 , 2016) , ordering to hike the amount of Rice to be provided to as well the Money to be provided to the Detainees, Convicts as well as to cover the minimum necessity of Detainees, Convicts as well as their Dependents considering the Recommendation of National Human Rights Commission; Direction of Parliamentary Committee and the Report of Department of Prison Management. [[30]](#footnote-31)The Bench approves of the principle forwarded and adopted by the Order, regarding the amenities to be provided to the Convicts-Detainees. As it is not necessary to issue the Order again, in the same subject matter, further mention of the matter is not deemed necessary.
2. The International Covenant including the Constitution of Nepal has guaranteed the Right to Fair Trial of Convicts and Detainees. Since, the Constitution of Nepal, along with International Human Rights Instruments have conferred Right to Fair Trial to all, including Detainees and Convicts, all the concerned State agencies including the Courts shall fulfill the roles and responsibilities to protect or cause to protect Fair Trial Rights like maintaining easy access of Convicts and Detainees in the Judicial Process, providing Legal Aid as per necessity, allowing the presence before the Officer Hearing the Case during the Hearing, presenting one's Witness' and Evidence, Proving false the Witness-Evidence against oneself by Cross Examination and Rebuttal , Getting timely information about the Proceedings and Orders against One- self. Any kind of doubt and suspicion in that the Right to Fair Trial is a fundamental Right, even in the field of practical application, shall not prevail. If there is any kind of weakness in the protection of this Right then it shall be the duty of the Concerned Law Enforcement Official Agencies and to also rectify it after identification. In the context of the Present Case, while considering the question raised by the Petitioners that the Right to Fair Trial is not being enjoyed by the Detainees and Convicts, it is seen to have mentioned in the Report submitted by the Committee formed by this Court that no significant problem is seen in matters like Obtaining Notice, Warrant, Adducing Evidence, and participating in the judicial process. The prudent facts regarding the infringement of Right to Fair Trial or the maintenance of control over it is not seen from the document adduced in the Case File. Any reasonable cause for the issuance of Order in this Regard is presently not seen. Therefore, since, the condition of prohibition of Right to Fair Trial is not seen, any Order regarding the matter is deemed not to be issued.
3. All the Respondents be informed and Respondent, Department of Prison Management be informed to implement this Order and to present a Report of the condition of Implementation in 6/6 months to the Court, through the Office of Attorney General, along with the attached copy of this Order.
4. The Monitoring and Inspection Division of the Supreme Court as well as Judgment Execution Directorate are hereby directed by this Order, to regularly monitor the state of implementation of this Order. Let 1/1 Copy of this Order be sent to the said Division and Directorate.
5. Let the Case File be submitted in pursuance of the Rule, after striking off the record of Registration of the present Writ Petition.

I concur to the aforementioned Opinion,

Justice Kedar Prasad Chalise

Bench Assistant: Yaduraj Sharma.

Done on the 12th Day of Month of Magh of the Year 2073, Wednesday (January 25, 2017)

1. Advocate Radheyshyam Adhikari V. HMG, Cabinet of Ministers, N.K.P 2048, D.No 4430, P. 810. [↑](#footnote-ref-2)
2. Arjun Prasad Aryal V. Government of Nepal, Secretariat of Council of Ministers et. al , 2073-WO-0371, Certiorari Mandamus, Date of Decision : 2073/4/20 (August 4, 2016) [↑](#footnote-ref-3)
3. It is seen that the Writ Petitioners have mentioned the number of persons dead as 16. However, as the Study Team of the Responsible Officers of the Court, designated by the Court has mentioned that the number of Persons dead as 17, in the Report, on the basis of the Site Visit, the number of Persons dead is presumed to be 17, for the purpose of this Dispute. [↑](#footnote-ref-4)
4. Charles Gurumukh Shobraj V. Secretariat of the Prime Minister and Council of Ministers et.al, N.K.P 2073, D.No 9722,P.2204. [↑](#footnote-ref-5)
5. Those who have committed Crimes pursuant to Section 22, Sub- Section (2) of the Prison Act, 2019(1963). [↑](#footnote-ref-6)
6. Seen from the perspective of the values of Human Rights and the Fundamental Right to Live a Dignified Life; disagreement regarding the provisions of handcuffing pursuant to Section 7 of the Prison Act 2019 (1963) can be questioned, however. But, since, the settlement of the such type of issue is not required, no further analysis of the matter is done. [↑](#footnote-ref-7)
7. Section 8 of the Prison Act, 2019(1963). [↑](#footnote-ref-8)
8. Section 10 of the Prison Act, 2019 (1963). [↑](#footnote-ref-9)
9. Section 10(a) of Prison Act, 2019 (1963). [↑](#footnote-ref-10)
10. Section 10 ( c) of the Prison Act 2019 (1963) has provisions of not sending the Offenders, of Human Trafficking and Transportation, Rape, Absconding from the Prison, Custom and Smuggling, Drug Transaction, Espionage, Offences Related to Protected Wildlife and Cases related to the Objects of Archeological Importance, to Community Service or Open Prison. [↑](#footnote-ref-11)
11. Section 10 of the Prison Act 2019 (1963). [↑](#footnote-ref-12)
12. Article 6, International Covenant on Civil and Political Rights (1966), "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." [↑](#footnote-ref-13)
13. ICCPR, Article 7," No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation." [↑](#footnote-ref-14)
14. ICCPR, Article 10, " All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." [↑](#footnote-ref-15)
15. UN Human Rights Committee, Comment 21 runs:" Detainees must not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a

closed environment." [↑](#footnote-ref-16)
16. UN Convention against Torture and other Cruel, Inhumane and Degrading Treatment or Punishment, 1984. [↑](#footnote-ref-17)
17. Adopted by First United Nations Congress on the Prevention of Crime and Treatment of Offenders, held at Geneva in 1955 and approved by the Economic and Social Council by its Resolution. [↑](#footnote-ref-18)
18. Adopted and Proclaimed by General Assembly Resolution 45/11 of 14 December 1990. [↑](#footnote-ref-19)
19. The Case of Aranyosi and Caldararu decided by CJEU, can be cited as an example of this. (Source: [http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/583113/IPOL\_BRI(2017)583113\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/583113/IPOL_BRI%282017%29583113_EN.pdf))cited from the Article entitled , Prison Conditions in the Member States:Selected European Standards and Best Practices. [↑](#footnote-ref-20)
20. Prem Shankar Shukla V. Delhi Administration, 1980 AIR 1535,1980 SCR (3) 855; Judgment delivered by V.R Krishna Iyer, R.S Pathak and Chinnappa Reddy, on 29 April, 1980. [↑](#footnote-ref-21)
21. Francis Coralie Mullin V. W.C Khambra & Ors (1980)AIR 849, 1980 SCR (2) 1095 (27 February 1980) /Dharambir V.State of U.P (1979) AIR 1595, Judgment delivered On: 16 July 1979. [↑](#footnote-ref-22)
22. Maneka Gandhi V.Union of India, 1978, AIR 597. [↑](#footnote-ref-23)
23. Sunil Batra V.Dehli Administration, 1980, AIR 1579. In the context of this Case, Justice Chandrachud has opined , "Convicts are not by the mere reason of Conviction denuded of all the fundamental rights which they otherwise possess, which is upheld by Justice Iyer and has further stated, "No solitary or punitive cell , no hard labor or dietary change as painful additive, no other punishment or denial of privileges and amenities, no transfer to other prisons with penal consequences, shall be imposed without judicial appraisal of Session Judge and where such intimation, on account of emergency is difficult, such information shall be given within two days of the action. " [↑](#footnote-ref-24)
24. Madhav Hayawadanrao Hoskot V. State of Maharastra, 1978 AIR 1548. [↑](#footnote-ref-25)
25. Hussainara Khatoon and Ors V. Home Secretary, State of Bihar, 1979 AIR 1360. [↑](#footnote-ref-26)
26. Prem Shankar Shukla V.Delhi Administration (1980) AIR 1535, In this case, the Indian Supreme Court has propounded the principle that handcuffing is a violation of fundamental rights and has thus stated, "Handcuffing is prima facie inhuman and, therefore, unreasonable, is over harsh and at the first flush, arbitrary. Absent fair procedure and objective monitoring to inflict "irons" is to resort to Zoological strategies repugnant to Article 21"[of the Indian Constitution]. [↑](#footnote-ref-27)
27. This has been interpreted by the Indian Supreme Court in the Cases of Raghubir Singh & Others V. State of Bihar, 1987 AIR 149, 1986 SCR (3)802 Judgment Delivered on 19 September 1986, Kishor Singh V. State of Rajasthan , AIR 1954 Raj 264, Judgment Delivered on 26 October 1953. [↑](#footnote-ref-28)
28. The Opinion expressed by Justice Krishna Iyer in this regard is worth considering. He expresses, "Fundamental Rights do not flee the prison as he enters the prison although they may suffer shrinkage necessitated by incarceration…whether inside prison or outside, a person shall not be deprived of his guaranteed freedom save by methods right, just and fair…"(Sunil Batra V. Delhi Administration 1978 SCC 409) [↑](#footnote-ref-29)
29. Som Prasad Luitel V. Office of Prime Minister and Council of Ministers, Writ No. 0646 of the Year 2063 (2007), Date of Decision 2065|01|04(April 16,2008). In the settlement of this Case, this Court by citing the case of Bharat Mani Gautam V. Office of Council of Ministers, a Writ Petition of 2055 (1998) stating , " It is necessary to operate the Prison in a well-managed way by providing the Convicts- Detainees with the facilitative building by reconstructing the dilapidated Prison buildings" thereby is also seen to have clarified the context of the issuance of the Directive Order to implement Section 6 of the Prison Act 2019 (1963). [↑](#footnote-ref-30)
30. Charles Gurumukh Shobraj V. Cabinet Secretariat et. al , NKP 2073, D.No 9722, P. 2204. [↑](#footnote-ref-31)