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***The Legal Standard of Under Trial Prisoners'
Rights in Bangladesh: Issues and Reality***

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LETTER OF APPROVAL

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In Re: The Legal Standard of Under Trial Prisoners' Rights in Bangladesh: Issues and Reality

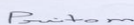
Dear Sir,

Most respectfully I beg to submit my Legal Research paper on "**The Legal Standard of Under Trial Prisoners' Rights in Bangladesh: Issues and Reality**" under your supervision. While conducting this Research Monograph, I have tried my best level to make this research woke up to the mark and standard. I hope this work would fulfil your expectations and also meet the demand of this course.

I, hereby, do solemnly declare that the paper in dissertation has been carried out by me and has not been subject to any previous publication by any institution. The work that I am presenting is authentic and does not infringe any copyright.

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Declaration

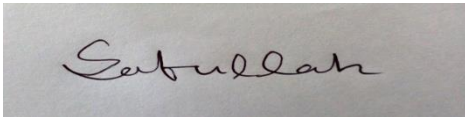
This is hereby certifying that the Research Monograph titled "**The Legal Standard of Under Trial Prisoners' Rights in Bangladesh: Issues and Reality**" has been accomplished by name in partial fulfillment of the LLM program at Daffodil International University. This Research has been carried out successfully under my supervision.

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A rectangular box containing a handwritten signature in cursive script that reads "Safiullah".

Acknowledgement

This paper is the aftermath of endless sweat, pain and hard work. I do believe that the confidence and audaciousness to complete the work has come through the divine help and generosity of some people. First and foremost, I must express my humble gratitude to the ‘Almighty Allah’ for giving me the ability to complete the task in due time.

I would like to thank my thesis supervisor for his guidance and assistance at some crucial moments when I stumbled on my pathway to complete the dissertation. He is the person who not only advised me to accomplish this arduous task, but also encouraged me to go forward and think critically about the paper from the beginning.

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ABSTRACT

If we want people to have faith in the legal system, we must be able to get them their due process quickly. Constitutional protections include the right to a fair trial and the protection of one's life and freedom from arbitrary deprivation. The Supreme Court has, on multiple occasions, stressed the importance of conducting criminal proceedings promptly. The majority, or about two-thirds, of those who are undertrial in prison are now being held there. Despite the presumption of innocence, the vast majority of undertrials remain in jail because they cannot afford to post bail, a situation that exemplifies the systemic economic bias that keeps poor people in jail. While it is common practice to treat those in jail undertrial as if they are guilty, the law clearly states that an accused person is innocent until proven guilty. The attitude towards an accused has been such that when he/she becomes a suspect of an allegation, the society starts deeming him to be a convicted person without any justification. Not only that, prison authorities also treat them worse and sometimes provide them with very inhumane treatment which leads to death at times. This will discuss the background of the undertrial prisoners, who the prisoners and undertrial prisoners, what the rights are given to them under the domestic statutes, violation of these rights, international standards and mandate.

CHAPTER 1:

Introduction

There is evidence to suggest that, among the countries in South Asia, Bangladesh has the highest prison occupancy rate as well as the highest proportion of pre-trial detainees.

Overcrowding, along with poor sanitation and hygiene, a lack of privacy, low-quality beddings, and insufficient healthcare facilities are the reasons for such deplorable conditions in South Asian prisons. This was clearly demonstrated by the discussion. Both the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) make it clear that torture and other forms of inhumane treatment are never permissible under any conditions.

The International Covenant on Civil and Political Rights (ICCPR) states, in Article 10(1), that all individuals who have been deprived of their liberty must be treated with humanity and respect for the inherent dignity of human beings. This provision, which Bangladesh has accepted as part of its commitment to the ICCPR, will ultimately determine how prisoners and those undertrial should need to be treated.

The Supreme Court of Bangladesh has, on multiple occasions, reaffirmed that our constitution guarantees fundamental rights for everyone, including those who are incarcerated. Not only that, but in the case of *Bazlul Huda v. The State*, the Appellate Division of the Supreme Court of Bangladesh provides an important observation on the topic of a prisoner's human rights by stating that "The question of basic human rights of a prisoner inside the jail ought not to be lost sight of as his conviction of a crime does not reduce him into a non-person." This is a very important observation on the topic of a prisoner's human rights.

Literature Review

The Standard Minimum Rules for the Treatment of Prisoners (1955) were approved by the Economic and Social Council in its resolutions 663C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977. These rules were adopted at the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which was held in Geneva in 1955. It's the first important document to defend the rights of prisoners and those being kept in jails and prisons without charges. In this context, "undertrial prisoners" refers to those who are in police custody or prison custody (jail) but have not yet been tried and sentenced for a criminal offense for which they were apprehended. Prisoners in police custody or in jail are referred to as "undertrial prisoners" in these regulations. prisoners who haven't been convicted of a crime should be afforded the benefit of the doubt until they are proven guilty. These prisoners are entitled to a specific regime, the essentials of which are outlined here. This is should be done without preempting legal protections for personal freedom or dictating the method to be followed with undertrial detainees. Consistent with the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights, as well as other international human rights instruments pertaining to the rights of young persons, the General Assembly acknowledges that young people, as a result of their immature stages of physical, mental, and social development, require special care and assistance. The Assembly passed this resolution in light of the fact that young people have unique requirements in these areas. The Declaration of the Rights of the Child is a testament to the importance the international community places on protecting and promoting the rights of children and young people, and it prompted us to reflect on 1985, which was named the International Youth Year: Participation, Development, and Peace. And that made me remember that 1985 was International Youth Year, with the theme "Participation, Development, and Peace."

Research Question

My research paper will try to explore the answer and solution of the following question in reference to the problem.

- i. To what extent are the present legal provisions compatible to secure the rights of the undertrial prisoners?
- ii. Do the rights of the undertrial prisoners in Bangladesh meet the standards made in the international instruments?
- iii. Is there any abuse towards the undertrial prisoners by the authority?
- iv. What are the issues that seeks to bring changes in this regard?
- v. How does the realign affect the rights of the undertrial prisoners?

Objective of the Study

The objective of this study is to identify the curren legal standard of under trial prisoners' rights in Bangladesh.

Other specific objectives are:

- i. To identify the disparities between law and practices
- ii. To know the conditions of violation of rights of undertrial prisoners in Bangladesh.
- iii. To identify the disparities between law and practices in the section of administration, treatment and rehabilitation.
- iv. To analyze the reformation in Bangladesh for the undertrial prisoners.
- v. To clarify the issues embedded in the root.
- vi. To understand the reality in connection with the international standards.

Methodology

In this paper, the title has been selected with a view to exploring the legal standards of the undertrial prisoners' right in Bangladesh, specially, issues and reality. This paper makes an attempt to give an appropriate policy recommendation. A qualitative methodology has been followed to conduct this research. The primary information to complete this study has been extracted from international conventions and agreements, domestic legislation, executive orders and case laws. The secondary information has been gathered from various literature,

journals, reports, textbooks etc. written by various writers and researchers. Issues and possible solutions that are relevant to the research questions of this paper are critically analysed here.

Scope and Limitations of the Study

Everyday things are getting changed and new problems are emerging. To keep pace with it, new rules and principles are being made in the domestic and international level. The rights of undertrial prisoners are burning issues and these are not static or stable. So information may be altered in the passage of time. Being a human, I might not be able to collect all of such information.

CHAPTER 2: GENERAL DISCUSSION ABOUT PRISONER & UNDERTRIAL PRISONERS

Background

Undertrial When someone is held in jail (judicial custody) while criminal charges against them are heard in higher courts, they are referred to as prisoners. In Bangladesh, it might take years for a case to even be heard in court, and even longer to be sentenced. Many defendants spend more time in jail under-trial than they do serving their actual sentence. This is a serious breach of human rights that cannot be tolerated.

In many nations, those who are undertrial are housed in a facility of their own. The major violation of prisoners' human rights is the delay in trial of cases. In order to prevent them from tampering with the trial in any way, including by influencing or inducing witnesses, it is necessary to keep those undertrial prisoners in custody.

But it's also true that pre-trial confinement has serious repercussions. Presumed innocent defendants are often subjected to more severe restrictions on their freedom and liberty than convicted convicts. If the defendant is arrested and taken to jail, he will likely lose his work and be unable to aid in the building of his defence. Just as crucial, his innocent loved ones often bear the brunt of his incarceration. Making sure that those who are accused of crimes actually go to trial for them is a necessary part of any functioning criminal justice system. Therein can be found the historical origins of locking up those who have been accused of committing crimes. Depending on the seriousness of the crime, police can detain a suspect for up to 24 hours before requiring judicial authorization for additional detention. Everyone, except a few circumstances, should be allowed to post bail and go free.

Because of their inability to post bail, many low-income persons are incarcerated despite being accused of bailable offences. This is a major problem since, in these situations, the right to bail is at stake, and many people who are destitute wind up spending years in jail. Because police do not complete their investigations and file the chargesheet in a timely manner, many prisoners experience unnecessary hardship behind bars. This is a severe problem since these prisoners sometimes languish in jails for years before anyone even suspects that there might be a criminal case against them.

In the criminal justice system of Bangladesh, it is normal practice to hold suspects in judicial custody for extended periods of time, even if they will ultimately be found not guilty. Human rights are being grossly violated, and the poor are disproportionately affected. Unfortunately, the poor often remain mute while the powerful and wealthy seek compensation, simply because they lack the financial resources to hire a lawyer and pay the court charge.

A further cause for concern is that in Bangladesh, both convicted and undertrial prisoners share the same prison. Therefore, it is crucial that the undertrials have access to their own living

quarters. It's important to stress that prisoners with convictions shouldn't have access to or be housed near those with pending trials. prisoners who have been convicted of a crime are not permitted in the undertrial yard or block.

In reality, it has become clear that pre-trial detainees in prison are not given enough care, and their basic rights are often disregarded. Prisoners undertrial are recommended to sleep individually in separate rooms, though this may vary based on regional climate norms. prisoners undertrial have the option of paying for their own meals to be sent to the jail from the outside, either through the administration or by family and friends, so long as this is done within reasonable boundaries that do not disrupt the institution's good order. If they don't provide their own food, the government will. Experts agree that an undertrial prisoner should be allowed to wear his or her own clean and appropriate clothing. If he wears prison garb, it shouldn't be the same as what's issued to prisoners who have been convicted. It is mandatory that a pre-trial detainee be given the option, but never forced, to labor. It's only fair that he gets paid for his time if he volunteers to work. To the extent that it is consistent with the interests of the administration of justice, the security, and the good order of the institution, an undertrial prisoner should be permitted to obtain, at his own expense or at the expense of a third party, such books, newspapers, writing materials, and other means of occupation. If there is good grounds for the request and the defendant has the financial means to cover the costs, an undertrial prisoner should be allowed to see his own doctor or dentist. Undertrial prisoners have the right to notify their loved ones of their detention as soon as possible and should be provided with all reasonable facilities for communicating with and receiving visits from those closest to them, subject only to the needs of the administration of justice and the security and good order of the institution.

Article 9 of the Universal Declaration of Human Rights guarantees that no one may be arbitrarily arrested, detained, or exiled. Everyone has the right to life, liberty, and security of person, as stated in Article 5 of the European Convention on Human Rights and Fundamental Freedoms. Except in the case of arrest or detention authorized by law, no person shall be arbitrarily deprived of his or her liberty.

Equal protection under the law and safeguarding of basic human rights are also tenets of the Bangladeshi Constitution. Articles 27, 31, 33, and 35 of the Constitution of Bangladesh provide the most essential protections for those who are in jail undertrial. Article 31 states that all people have the inherent right to be treated only 'in accordance with the law,' which complements Article 27's promise of equality and equal protection of the law. According to Article 32, no one can be deprived of their life or freedom unless it's done so in line with the law. Safeguards for arrest and imprisonment are laid out in Article 33. Every defendant is entitled to a public and impartial trial in accordance with Article 35(3). Every individual accused of a criminal offence should have the right to a timely and public trial by an independent and impartial Court of law, as guaranteed by Article 35 (3) of the Constitution.

Citizens of Bangladesh have a constitutional right to personal freedom, although this right is not absolute and must be weighed against competing public interests. Therefore, the police and

other authorities dealing with undertrial prisoners have a responsibility to use extreme caution and make sure that no one's basic rights are violated in the course of their interactions with the prisoners.

Who is Prisoner

Prison comes from the Latin word for "to seize," from whence we get the English word. A jail is defined as "a location adequately fitted and equipped for the reception of prisoners who by legal procedure are committed to it for safe confinement while pending of trial and punishment" by the Oxford English Dictionary.

Someone who is incarcerated against their will is called a prisoner (also prisoner or detainee). To do this, you can either physically restrict them or keep them in a confined space. The term refers specifically to people who are currently incarcerated. Undertrial prisoners are those who are currently incarcerated or subject to involuntary restraint, detention, or custody. prisoners are classified according to whether they are serving a death or life sentence, if they are undertrial, whether they are a minor or a woman, and whether they are in protective custody, among other factors, by the Jail Code. The term "undertrial prisoner" refers to an accused individual who is being held in judicial custody pending the outcome of their case.

A civilian internee is a person held by a warring side for their own safety. They may be citizens of friendlies, neutrals, or adversaries.

To put it simply, convicts are those who have been found guilty and sentenced to prison. A federal prisoner is a person who has been convicted of a federal crime and is serving their sentence at a federal prison in the United States. Most commonly, this describes someone who has been convicted of a serious crime.

Some governments use the term "detainees" to refer to people who are being kept in custody but who do not meet the legal criteria to be considered prisoners of war or criminal suspects. The wide meaning "someone held in custody" is commonly used to describe someone who fits this description.

Prisoners held as collateral for the performance of an agreement or as a deterrence against an act of war are known as "hostages." Today, it's used to describe a victim of kidnapping by criminals.

People who are imprisoned due to their involvement in a war are known as prisoners of war (POWs). They may be bystanders who are in some way connected to the warring parties, or they may be members of the warring parties themselves acting lawfully.

The term "political prisoner" refers to anyone who has been locked up for reasons related to or arising from political activities. People in this situation question the legality of their detention. Slaves are captives who are owned and used for their labor. Forcible restraint is just one of several tactics that have been employed throughout history to keep slaves in chains.

Anyone who is incarcerated for reasons of race, sexual orientation, religion, or political beliefs is considered a prisoner of conscience.

People confined to a certain location, such as the Jews in the Warsaw ghetto, can be considered prisoners, but so can those under police detention, house arrest, in psychiatric facilities, internment camps, and so on.

Who is an Undertrial Prisoner

An accused person who is detained in judicial custody pending trial is known as an undertrial prisoner. A person in police custody will be physically held by policemen at the police station. They will be in the custody of a Magistrate in a correctional facility if they are taken into judicial custody. prisoners undertrial are in the custody of the courts, not the police. All prisoners who are undertrial ones in the appropriate court and who have not yet been found guilty of the charge(s) for which they have been incarcerated are legally believed to be innocent until proven guilty. They are supposed to be held in 'judicial custody' though they are usually held in jails.¹

As per section 436-A of the Indian Code of Criminal Procedure, 1973, an undertrial prisoner who is not accused of an offence punishable with life imprisonment or death should be released if they have been detained for half the period of imprisonment prescribed for the offence. the provisions of Paragraph 910 of the Jail Code.

Paragraph 910 of the Jail Code runs as follows:

" Under-trial prisoner shall be divided into two Divisions, viz, Division I under-trial and Division II under-trial. Division I under-trial shall include all prisoners who by social status, education and habit of life have been accustomed to a superior mode of living, while Division II under-trial shall include prisoners whose status and mode Of living are not superior to the ordinary and who are consequently not eligible for Division I. The classification of under-trial will be done by the trying Courts subject to the approval of the District Magistrate, or in the case of Calcutta, the Chief Presidency Magistrate, and the previous standard of living will be the sole erigeron.

(2) Division I under-trial shall be kept separate from Division II under- trials.

(3) Under-trial prisoners both male and female, shall be strictly segregated from convicted prisoners, and arrangements shall be made, where male under-trial prisoners under the age of 21 are confined, for separating them altogether from other prisoners and for separating those of them who have arrived at the age of puberty from those who have not. "

¹ UNDERTRIAL PRISONERS IN INDIA, Ayushi Priyadarshini & Madhurika Durge

CHAPTER 3: LEGAL RAMIFICATIONS FOR PRISONERS & UNDERTRIAL PRISONERS

Jail Code consists of the provisions of Prisons Act 1894, Prisoners Act 1900, Identification of Prisoners Act 1920, Rules made under Section 59 of the Prisons Act 1894 and Rules made under Section 60(a) of the said Act of 1894 for the superintendence and management of jails and subsidiary jails respectively.

The Prisons Act 1894

According to the definition provided by this Act, a prison is any jail or other location that is used either permanently or temporarily for the purpose of detaining convicts in accordance with the general or particular directives of the government. The Superintendent, a Medical Officer, a Medical Subordinate, a Jailer, and any other necessary officers and employees are responsible for the day-to-day operations of each and every prison. This is all done under the general control and supervision of the Inspector General of Prisons. According to the terms of this Act, prisoners are permitted entry into, removal from, and discharge from the facility, as well as disciplinary and punitive measures, employment, medical treatment, and the provision of food, clothing, and bedding.

In addition, there are laws that provide for the separation of male and female prisoners, male minor prisoners and male adult prisoners, convicted prisoners, criminal prisoners, and civil prisoners. A prisoner who has been sentenced to death must be held in a separate cell and must be kept in solitary confinement in a cell if they are a convicted criminal. The act also requires that prisoners who have been convicted of criminal offenses be kept together or in segregation. Another essential feature makes it possible for visitors, including legal counsel, to meet with criminal defendants who are undertrial and also permits visitors to meet with civil defendants. A dangerous prisoner or a prisoner who has been sentenced to life in prison may also be restrained with iron chain, fetters, or handcuffs under the provisions of this statute.

The Prisoners Act 1900

According to the Prisoners Act of 1900, the term "prison" refers to any location that the government has designated as a subsidiary jail through either general or particular decree. This Act gives the officer in charge of a prison the authority to receive and retain any person who has been legally committed to his custody by any court in the jail until such time as the person is dismissed or removed from the prison in accordance with the appropriate legal procedures. A person who is detained in such a manner in a reformatory school will be detained in a correctional facility. It is possible for a government official or the Inspector General of Prisons to issue an order to transfer a prisoner from one facility to another.

There is also a provision for the transfer of a convicted prisoner who is insane from the prison to a lunatic asylum or any other location for his safe custody and treatment, as well as a provision for his return to the prison following his treatment to serve any remaining time left on his sentence, if any, and a provision for accounting for the time spent in the asylum as a portion of the term of his detention or imprisonment ordered by the court. There are provisions for the service of process of the court on the prisoners, which requires them to appear in civil or criminal courts to give evidence or answer charges, and examine them on commission issued by the court in case the government forbids their removal from jail to give evidence before the court or abstains from doing so due to the prisoner's illness or infirmity or other reasons.

The Identification of Prisoners Act 1920

There are provisions in the Identification of Prisoners Act of 1920 that allow for a photograph and measurements to be taken of a convicted prisoner, but an under-trial prisoner is just required to have their measures taken. If a prisoner was previously arrested in connection with an investigation or proceeding, a magistrate of the first class has the authority to issue an order permitting a police officer to take measurements or a photograph of that person for the purpose of any investigation or proceeding under the criminal procedure code. The order can only be issued if the prisoner was arrested in connection with the investigation or proceeding. In addition, there is a provision that requires the destruction of any measurements or photographs taken of an under-trial prisoner following the individual's release from custody or acquittal by the court, unless the individual was previously convicted of an offense that carried a mandatory minimum sentence of one year or more of incarceration.

Rules for superintendence and management of jails

The rules that govern the supervision and management of jails divide the facilities into four distinct categories: central, district, subsidiary, and special. If a prisoner is given a sentence that requires him to be incarcerated for longer than 14 days, he is required to be transferred from the subsidiary jail to the district jail, unless the Inspector General of Prisons determines otherwise.

The District Magistrate is in charge of the overall management of the district jail, while the Superintendent is in charge of the more day-to-day operations of the jail but must follow the legitimate orders given by the District Magistrate. In the event where a central jail doubles as a district jail, the District Magistrate is the one who is responsible for maintaining order among the prisoners who are local to the district. The District Magistrate is obligated to pay a visit to the District Jail once a week, and in the event that he is unable to do so, he is expected to delegate this responsibility to one of his subordinate magistrates. The Inspector General of Prisons has the authority to exercise control over the District Magistrate in all matters pertaining to the maintenance of order within the detention facility, and the District Magistrate is required to report to the Inspector General of Prisons on all significant actions that he takes. In addition, there is a provision that allows official and non-official visitors to visit the jails and record their observations about actual facts that come to their knowledge during the course of their visits. Additionally, any suggestions made by the visitors and any action taken by the superintendent on the same are required to be recorded in the visitors' minute book.

With the assistance of the Jailer and other officers, as well as wardens and head wardens, who are to be appointed and dismissed by the superintendent, the superintendent manages the prison in all matters relating to discipline, labor, expenditures, punishment, and control. The superintendent is subject to the orders of the Inspector General of Prisons. The duties of the Medical Officer will include everything that has to do with the prisoners' health and the overall cleanliness of the prison, and they will be under the supervision of both the Superintendent and the Inspector General of Prisons. The Medical Officer will be in charge of the sanitary administration of the prison, and he or she will report to both of these authorities. It is his responsibility to alter the standard diet on a regular basis, and he has the authority to issue

dietary restrictions to those who are ill, elderly, or newborns. Every day, he goes around to see the patients who are being treated at the hospital. He also examines the prisoners who have been complaining of illness and takes them to the hospital if necessary.

The duty of the Medical Officer includes providing medical care to all of the prisoners, as well as the prisoners' families who live on the facilities of the jail. Medical subordinates provide assistance to the Medical Officer in the areas of attending to the prisoners for their treatment, maintaining cleanliness, maintaining order and discipline within the hospital, and supervising the tasks of the compounder and attendants. In addition to this, he is responsible for ensuring that the jail is clean and in good hygienic condition, as well as inspecting the food storage and kitchen on a daily basis to verify that the food is of sufficient quality.

Every prisoner receives a history ticket upon entering the facility. This document details the prisoner's background, as well as every significant event that occurred during his time behind bars and every order that was issued in relation to him. The information is arranged in a chronological fashion. There are provisions for the drafting and sending of petitions of appeal to the appellate court on behalf of the convicted prisoner by the authority of the jail, and the prisoner has the option to use this right. There are specific safeguards in place to ensure the safety of female prisoners, civil prisoners, prisoners undertrial, under-trial prisoners, and male prisoners of varying ages. There are also other specific provisions for the convicts to follow in order to keep their routines and retain their sense of order while they are incarcerated.

In the event that a prisoner commits a heinous offense while they are incarcerated, the prisoner will be sent to the court to face the consequences of their actions. The Superintendent will not be able to discipline the prisoner for their actions. There are laws about how prisoners are to be treated while they are confined to their cells. There are also provisions for ordinary remission of a portion of a prisoner's sentence for good conduct, industry, and the proper performance of his daily duty, as well as exceptional remission for unique services performed by the prisoner during their time behind bars.

CHAPTER 4: RIGHTS OF UNDERTRIAL PRISONERS

Constitutional Rights

Part II of the Constitution of People's Republic of Bangladesh ensures the fundamental rights of the citizens and persons residing in Bangladesh. Undertrial prisoners incarcerated within the border of prison are not devoid of these fundamental rights. Article 27. All citizens are equal before law and are entitled to equal protection of law. Equality cannot be curtailed in any case whether the person is free or an undertrial prisoner or convicted person. The right protection of law is another great feature of the Constitution towards its citizen and it is an inalienable right. Article 31 states-

"To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law."

The undertrial prisoners are entitled to the right to life which includes a bunch of rights i. e. right to health, right to leisure, right to access to health etc. This right cannot be violated. Article 32. No person shall be deprived of life or personal liberty save in accordance with law. Article 33 deals with Safeguards as to arrest and detention. The article states-

"(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the Court of the magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply to any person—

(a) who for the time being is an enemy alien; or

(b) who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorise the detention of a person for a period exceeding six months unless an Advisory Board consisting of three persons, of whom two shall be persons who are, or have been, or are qualified to be appointed as, Judges of the Supreme Court and the other shall be a person who is a senior officer in the service of the Republic, has, after affording him an opportunity of being heard in person, reported before the expiration of the said period of six months that there is, in its opinion, sufficient cause for such detention.

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order:

Provided that the authority making any such order may refuse to disclose facts which such authority considers to be against the public interest to disclose.

(6) Parliament may by law prescribe the procedure to be followed by an Advisory Board in an inquiry under clause (4)."

Article 35 lays the right as to Protection in respect of trial and punishment.

"35. (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than, or different from, that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) Every person accused of a criminal offence shall have the right to a speedy and public trial by an independent and impartial Court or tribunal established by law.

(4) No person accused of any offence shall be compelled to be a witness against himself.

(5) No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.

(6) Nothing in clause (3) or clause (5) shall affect the operation of any existing law which prescribes any punishment or procedure for trial."

The Supreme Court of India reiterated this in *Motilal Saraf vs Jammu & Kashmir*² and observed that

"The right to speedy trial begins with actual restraint imposed on arrest and consequent incarceration and continues at all stages, namely the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality can be averted. Right to a speedy trial: they have a constitutional right to a speedy trial as well as a fair trial."

They have a right to not be tortured or subjected to any other cruel treatment, and to be treated with respect. Therefore, unless there are good grounds, they cannot be handcuffed during the transport from jail to court.

When a person is being held in jail before trial, they have the right to seek legal counsel. Anyone who cannot afford legal representation is entitled to free representation upon application to the court.

² AIR 2007 SC 56

The right to visitation ensures that a detainee's loved ones are notified of their detention and given the opportunity to see them behind bars, subject to reasonable security precautions.

All prisoners whether they are convicted or undertrial prisoners are entitled to all of the rights guaranteed to all citizens in Article III of the United States Constitution. Article 35's safeguards against unfair prosecution and punishment are also applied here.

The Penal Code, the Code of Civil Procedure, and the Code of Criminal Procedure all have provisions pertaining to prisoner incarceration, sentencing, and appeals that are referenced in the Bengal Jail Code.

There is a gross disregard for the detainees' human rights. Everyone has these rights simply by virtue of being born a human being; no one can take them away from you. All humans, regardless of their gender, social status, culture, language, etc., are held to have these inalienable rights.

The Supreme Court in the case of *Sharif Bai v. Abdul Razak*³ held that such detention will be unlawful if the accused individual is not brought before the magistrate within the allotted time. Additionally, the apprehended suspect cannot be held in custody by a police officer without first disclosing the reason for the arrest. He will also be made aware of his legal right to post bail. The chance to ask for bail and to timely prepare any other defense is provided by this right to the detained person.

In *State of Rajasthan V. Balchand alias Baliay*⁴, the Supreme Court has ruled that if the accused's appearance in court can be guaranteed in another way, there is no need to hold them in custody. The court further ruled that bail rather than prison should be the standard.

According to the Universal Declaration of Human Rights, "all human beings are born free and equal in dignity."⁵ Furthermore, it states: "No one shall be subjected to torture or cruel, inhuman, or degrading treatment or punishment"⁶

³ 10AIR 161 Bom 42

⁴ 1977 AIR 2447

⁵ Universal Declaration of Human Rights, article 25

⁶ Universal Declaration of Human Rights, article 4

Ideally, human rights are the naturally occurring birthrights of every individual, without exception to any bias. All human beings have certain basic human rights by virtue of being part of the human race. Prisoners, including those in custody or facing trial, also deserve respect. Generally, prisoners are divided into convicted criminals and under-trials. The fact remains that the person is a human being even if he is incarcerated or undertrial. Thus, every person in prison or detained enjoys the right to life and liberty regardless of their status as an prisoner.

P.V. Varavara Rao and Ors. Vs. National Investigation Agency and Ors⁷ stated that

"Article 21 of the Constitution of India, which guarantees right to life and personal liberty, has been interpreted over the years in various judgments of the Hon'ble Supreme Court and High Courts to read rights of prisoners in the said Article. It has been held that merely because a prisoner is confined within the four walls of the prison, it cannot be said that he stands denuded of the rights guaranteed under Part III of the Constitution of India. Although, the prisoners stand confined within the prison and, to that extent, stand deprived of their liberty as per procedure established by law, it cannot be said that they cannot invoke myriad shades of rights guaranteed under Article 21 of the Constitution of India."

People who are in custody are included since everyone has the right to human rights. Nothing can exempt a person from some human rights safeguards, which is a fundamental element of international human rights law. Perhaps some people aren't as deserving as others. Some people who are imprisoned according to the law and in a proper manner may lose many of their rights. The fundamental rights to life, health, fairness and justice, humane treatment, dignity, and protection from abuse or torture nevertheless continue to exist. There is a minimal standard for how a state should treat its citizens, regardless of who they are. Nobody ought to slip below it.

No matter how heinous their past behaviors, treating prisoners as the human beings they are, rather than as objects, will show an unwavering dedication to upholding human dignity. In the end, any effort to change jail cultures will be fundamentally supported by that dedication to human dignity.

Abdul Rehman Antulay and Ors. v. R.S. Nayak and Anr⁸ while keeping a swift trial going at all times is right, According to Article 21, if the right to a speedy trial is violated, a higher court

⁷ CRIMINAL WRIT PETITION NO.64 OF 2021

⁸ (1992) 1 SCC 225

may order that the proceedings end within a certain amount of time rather than quashing them. The pending trial in the first case and the appeal in the second case may be resolved within six months, which concludes the current appeals.

It was reiterated in *Ex. Captain Harish Uppal v. Union of India*⁹ that

The High Courts may issue directions to subordinate courts that bail applications be disposed of normally within one week; Magisterial trials, where Accused are in custody, be normally concluded within six months and sessions trials where Accused are in custody be normally concluded within two years; Efforts be made to dispose of all cases which are five years old by the end of the year; As a supplement to Section 436A, but consistent with the spirit thereof, if an undertrial has completed period of custody in excess of the sentence likely to be awarded if conviction is recorded such undertrial must be released on personal bond. Such an assessment must be made by the concerned trial courts from time to time; The above timelines may be the touchstone for assessment of judicial performance in annual confidential reports. The High Courts are requested to ensure that bail applications filed before them are decided as far as possible within one month and criminal appeals where Accused are in custody for more than five years are concluded at the earliest. The High Courts may prepare, issue and monitor appropriate action plans for the subordinate courts; The High Courts may monitor steps for speedy investigation and trials on administrative and judicial sides from time to time.

⁹ (2003) 2 SCC 45

Rights under the Code of Criminal Procedure, 1898

Bail is not given to liberate the prisoner; rather, it releases him from detention by placing him in the care of the sureties, who are obligated to deliver him to the court at the appointed time and location upon order. Section 499 of the CrPC contains detailed requirements on bail bonds and sureties. The court may grant bail or, in lieu of taking bail, may discharge the accused upon his execution of a bond without sureties for his appearance as allowed under section 496 in cases where the crime is one that is subject to bail. Section 496 states-

"496. When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail: Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided:

Provided, further, that nothing in this section shall be deemed to affect the provisions of section 107, sub-section (4), or section 117, sub-section (3)."

Again, according to Section 497 of the Code of Criminal Procedure, if a person is accused of committing an offence for which bail is not an option, then that person may be released on bail; however, if it appears that there is reasonable ground of the accused being guilty of an offence that is punishable with death or imprisonment for life, then that person will not be released. If, after further investigation, inquiry, or trial of the person accused so, it is believed that the accused did not commit a non-bailable offence or if further investigation is needed to such guilt, then the accused pending such inquiry shall be released on bail or by the execution of a bond without sureties for his appearance. Alternatively, if further investigation is needed to such guilt, then the accused shall be released on bail or by the execution of a bond without sureties for his appearance. Section 497 states as follows-

"497.(1) When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or transportation for life:

Provided that the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail.

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable

offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) An officer or a Court releasing any person on bail under sub-section (1) or sub-section (2) shall record in writing his or its reasons for so doing.

(4) If, at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

(5) The High Court Division or Court of Session and, in the case of a person released by itself, any other Court may cause any person who has been released under this section to be arrested and may commit him to custody."

It was held in the State Vs Faisal Alam Ansari¹⁰ that Article 32 and 33 –Constitution Of Bangladesh that where there is a reasonable ground for believing that a person guilty of an offence punishable with death or imprisonment for life should not be granted bail. Section 497 is a Procedural law and the accused having alleged to have committed a substantive offence or murder his liberty is curtailed and as such violation of the fundamental right cannot be accepted in the facts of the instant case as law permits of such arrest and detention in custody. The power to direct bail or reduction of bail under section 498 of CrPC has been to the High Court Division or the Court of Session. Section 498 is the inherent power of the court and under this power, the court may give anticipatory bail.

Indian prison prisoners fall essentially in two categories – those convicted of offences and serving a sentence, and the presumptively innocent who bide their time undertrial. India's largest such prison is Delhi's infamous Tihar, which houses an astounding 17,500 such 'undertrials'.¹¹

In the Gudikanti Narasimhulu case (1978), Justice V.R. Krishna Iyer equated the unjust denial of bail with the grossest violation of an individual's right to personal liberty. He termed the liberty of an accused "fundamental." According to him the deprivation of personal freedom,

¹⁰ 20 BLD (AD) 289

¹¹ In the Time of Coronavirus, the Right to Bail is Part of an Undertrial's Right to Life, Jai A. Dehadrai, <<https://www.thewire.in/article/law/in-the-time-of-coronavirus-the-right-to-bail-is-part-of-an-undertrials-right-to-life/amp>>

(if) “ephemeral or enduring, must be founded on the most serious considerations relevant to the welfare objects of society, specified in the constitution.” To his dying day, Iyer remained a steadfast champion of personal liberty and wrote extensively about the negation of prisoner rights in India.

In a similar spirit, Chief Justice Y.V. Chandrachud delivered an influential opinion on the significance of bail while speaking for the constitution bench of the Supreme Court in the case of Gurbaksh Singh Sibbia (1980). In his ruling, he examined the history of personal liberty and came to the conclusion that the granting of bail was the norm, while its denial was the exception. Even forty years ago, Justice Chandrachud understood, unlike many others in his position today, that the purpose of bail was to ensure that the accused person appears in court during the trial, and that denying bail as a form of punishment was an unjustifiable act of cruelty. This understanding has not changed. In circumstances like these, the severity of the punishment is merely increased.

The Prisons Act 1894

This act's sections 4, 7, 13, 27–39 are principally concerned with providing adequate amenities for convicts, segregating different types of prisoners' quarters, providing jobs for prisoners, and providing medical facilities.

According to Section 4, the government must provide adequate accommodations in prisons in accordance with the law, particularly in light of the Act's request that convicts be separated.

According to Section 27(1), female convicts must be housed in separate buildings or areas of the same buildings so they cannot view, interact with, or have any sexual relations with male prisoners. Male convicts who are under 21 years old or who have not yet reached that age must be kept apart from other prisoners, according to section 27(2). Separated from the other prisoners who have reached puberty are those who have not yet reached puberty. The jail administration is responsible for separating civil detainees from criminal detainees.

According to Section 29, a cell may only be used for solitary confinement if it is equipped with a system that allows prisoners to contact a prison officer or other authority at any time. If prisoners are held in solitary confinement for longer than 24 hours, the medical officer or other medical subordinates must visit them at least once per day, whether as a form of punishment or not.

According to Section 33(1), the Superintendent is required to give all civil prisoners and criminal prisoners who have not been found guilty with the appropriate clothing and bedding. But only those who are unable to give him enough clothing and bedding are granted this right. As stated in Section 33(2), the expense of the clothing provided to the convicts belongs to that person or his representative.

According to Section 37, the officer immediately in charge of any prisoner who seeks medical attention or has a representative appear before the authorities on his behalf must inform the jailer of the prisoner's name.

The Prisoners Act 1900

If the government determines that a prisoner is insane or unsound of mind, it may order his transfer to a mental hospital under Part IV of this act. Every person housed in a lunatic asylum is subject to the provisions of the Lunacy Act.

The Special Benefit for Women Convicted in Prisons Act 2006

In accordance with this Act, a prisoner who has served more than half of their term is eligible for special privileges, including concessions. Any prisoner's release on conditions, the Department of Social Services' provision of follow-up services for the social rehabilitation of a select group of individuals who received training in a variety of trade courses while incarcerated, and vocational education in fields like block printing or batik, embroidery, hair cutting, bamboo and cane work, tailoring science, fabric production, etc. will be viewed as special benefits for women prisoners.

In general, this is how prisoners are handled. No civilization, nation, or time period is exempt from crime. Since the Earth's creation, criminal activity has existed on the planet. We shall be digitalized, but the question is: Can a nation be upgraded or digitalized without taking into account the prisoner society?

According to Section 3(1) of the Prisons Act, 1984, a "prison" is defined as any jail or location used for the permanent or temporary imprisonment of prisoners pursuant to general or special directives of the government, including all lands and buildings appurtenant thereto. According to Section 1 of the Prison Security Act of 1992, a person who is currently imprisoned because of a court order or any legal obligation to be held in custody is referred to as a "prisoner." Therefore, a prisoner is a person who is ordinarily detained in a jail or prison pursuant to a valid order of a court or tribunal of competent jurisdiction for the violation of any applicable law of the area.

According to the Ministry of Home Affairs report on Bangladesh's current prison rate, which was published in February 2020, the total prison population in Bangladesh, including pre-trial detainees and remand prisoners, is close to 88084, and the prison population rate per 100,000

of the national population is close to 52, based on an estimated 169.76 million people in the country at that time.

CHAPTER 5: RIGHTS OF THE UNDERTRIAL PRISONERS IN THE DIFFERENT COUNTRIES (USA, UK)

United States of America (USA)

In several U.S. jurisdictions, convicted criminals were regarded legally deceased until quite recently.¹² Conditions of confinement and other facets of institutional life were entrusted to the unrestricted discretion of prison administrators.¹³ However, only a handful of states employ such a severe kind of humiliation. The majority of states, however, deny guilty men some civil rights.¹⁴ Depending on his place of residency, he may be deprived of the right to vote, the right to testify as a witness or serve on a jury, the right to ruihi an office, the right to enter into a contract, etc.¹⁵ While incarcerated, prisoners will not be permitted to keep or enjoy an infinite number of personal belongings.

Historically, American courts were hesitant to acknowledge prisoners' rights.¹⁶ This hesitation has led to the dehumanizing circumstances that have persisted in their prisons. The impulse for jail reform was judicial involvement into prison circumstances.¹⁷ It prevented penitentiary authorities from abusing their discretionary powers. In conclusion, it highlighted the ties between the community and the perpetrator.¹⁸ Also developed was the notion that prisoners have a place in society. Realization of these ideals would necessitate a humanistic perspective, a reappraisal of the prisoner as a person with rights and responsibilities. Despite the promised benefits of this idea of prisoner's rights, a number of circumstances have converged to impede its growth and extension.¹⁹ In the United States, courts have adhered to a "hands-off" stance respecting prisoners' rights throughout the majority of this century. In effect, the judiciary abdicated its responsibilities as interpreters of the constitution and transferred authority of all jail activities to the correctional authorities. The courts were hesitant to impose hurdles to the correctional process since the judges lacked the essential knowledge to operate a prison. Their main concern was that a judicial order would in some way undermine prison discipline and safety. Aside from this, courts typically invoked the separation of powers concept, which made the operation of the penal system the duty of the legislative and executive branches of

¹² James Inciardi, *Criminal Justice* (1987), p.592.

¹³ *ibid*

¹⁴ Barnes and Teeters, *New Horizons in Criminology* (3rd E:d.), pp.544-545

¹⁵ *ibid*

¹⁶ James Inciardi (1987), p.586.

¹⁷ Gianni F.Vito and Judith Hails Kachi, "Hands on or Hands Off? The use of Judicial Intervention to Establish Prisoner's Rights" in Nicoletti Parisi (Ed.), *Coping with Imprisonment* (1982), p.78 at p.79.

¹⁸ Hard P.Vogelman, "Prison Restrictions - Prisoner Rights" in Leon Radzinowicz and Marvin E.wolfgang (Ed.), *The Criminal in Confinement* (1971), p.5

¹⁹ Gennaro F.Vito and Judith Hails Kachi, "Hands On or Hands Off? The use of Judicial Intervention to Establish Prisoner's Rights" Nicoletti Parisi (Ed.), *Coping with Imprisonment* (1982), p.79 at p.80.

government. Conformity with these reasons has permitted the judiciary to defer to the discretionary authority of corrections administrators.

There are significant pronouncements by the U.S. Supreme Court that clarify various aspects of prisoner rights there. The decision of the U.S. Supreme Court in *Lanza v. New York*²⁰ suggests that none of the private property rights associated with life outside of prison are likely to apply to prison life. The prisoner's right to privacy is diminished to a certain extent when he is incarcerated. Mr. Justice Stewart of the U.S. Supreme Court stated that the right to privacy is nearly impossible to obtain in prison, as it is evident that a jail possesses none of the privacy characteristics of a house, car, office, or hotel room.²¹ In prison Traditionally, government surveillance has been the norm. In the same case, the importance of a comprehensive prisoner search was highlighted. Access to and custody of personal items must be severely restricted to ensure prison safety.²²

Prisoners maintain several fundamental rights despite being convicted of crimes and legitimately deprived of many of them. True, prisoners lose many civil rights when they are properly imprisoned, but they do not lose all civil rights. prisoners in jails, prisons, or mental institutions have essential privacy rights: they are not like animals in a zoo that can be watched and photographed at will by the public or by media reporters, no matter how "educational" the process may be for others. In order to defend these rights, the Supreme Court has acknowledged that convicts have a constitutional right to access the courts. This access right includes access to legal counsel.²³ In *Bounds v. Smith*, this was demonstrated beyond a reasonable doubt. *Bounds* ruled that prisoners have a constitutional right to either access to law libraries or assistance from competent legal professionals.²⁴ This case also acknowledged that by imposing a duty of assistance on the state, certain hurdles to access, whether in jail restrictions or court rules and regulations, could be abolished.²⁵ In *E v. Wolfish*, the U.S. Supreme Court explicitly acknowledged the fundamental nature of prisoners' right to privacy.²⁶

Under American law, an individual's rights are paramount and may only be infringed upon through due process.²⁷ A basic tenet of correctional philosophy is that penal law and correctional treatment have two consistent purposes: treatment of the offender and public protection. Individualized treatment of the offender, that is, treatment that is tailored to the offender's needs, is another prevalent idiom. Thus, it is evident that beginning in the 1960s and gaining momentum in the 1970s, the U.S. Supreme Court was receptive to prison lawsuits. Currently, prisoners can petition the judiciary to have their rights enforced.²⁸ The fact that

²⁰ 370 U.S. 139 (1962)

²¹ *ibid*

²² *ibid*

²³ *Houchins v. K.Q.E.D.Inc.*, 438 U.S.I. (1978)

²⁴ 430 U.S. 817 (1977) at 821

²⁵ *Bell v. wolfish*, 441 UIS. 520 (1979), at 557.

²⁶ 441 u.s. 520 (1979) at 557.

²⁷ Eighth Amendment of U.S. Constitution.

²⁸ Gennaro E' Vito and Judith Hails Kachi, "Hands On or Hands Off? The use of Judicial Intervention to Establish Prisoner's Rights", in Nicoletti Parisi (Ed.), *Coping with imprisonment* (1982), p.79 at 89.

prisoners are incarcerated and the legitimate interests of the penal administration, however, necessitate that their rights be limited.²⁹

²⁹ Douglas W. Dunham, "prisoners' Rights and the Privatisation of Prisoners", 86 Columbia Law Review, p.1476

England

Prisoner rights law has been gradually developed in England as well, and it has only lately been recognized as a distinct right. Initially, after a criminal was found guilty, it was assumed that all of his rights had been lost. In the name of punishment and correction, it was widely believed that almost anything could be done to an offender.³⁰ Prison officials and their personnel had the prisoner at their mercy. Whatever conveniences, benefits, or privileges the offender enjoyed were a gift from the jail staff. Nobody was concerned for a very long time about the violence occurring inside the jails. Many systems have allowed cruel situations and behaviors to evolve and persist. Since the beginning of this century, a progressive movement in this regard has been apparent. Regarding prisoners' rights, a new perspective emerged. In the beginning, it was deemed unlawful for the court to meddle with the terms of a person's punishment. Memematically, civil liberties were lost. Only if the automatic loss of rights helps the defendant or the public in some way that is universally beneficial can it be justified.

Currently, a prison sentence in England automatically revokes every prisoner's rights.³¹ All legal restrictions placed on convicted criminals in both the public and private spheres have been eliminated, with the exception of their inability to vote while serving their sentences.³² The seat of a member of the House of Commons who becomes disqualified by virtue of such sentence is vacated.³³ In the United Kingdom, anyone who receives a sentence of more than a year in prison is prohibited from serving in the House of Commons.

Prisoners and prison staff are governed by regular civil and criminal law, with the exception of any particular legislative rules controlling correctional facilities and their prisoners. Despite being imprisoned, a convicted prisoner is nevertheless entitled to all civil rights that have not been expressly or inescapably taken away.³⁴ Prisoners are subject to a unique regime and have a unique status, yet they nonetheless enjoy residuary rights that are related to the circumstances of their confinement.³⁵

Situations where damage to prisoners may come from the wrongdoing of other prisoners may occur. Prison authorities were not liable for any damages if a prisoner experienced inconvenience and harm as a result of a rule violation.³⁶ A timing rule violation by itself does not give rise to any civil responsibility. A prisoner has a legal obligation that he must uphold in order to file an action for violation, and a rule violation cannot be used to create or sustain a claim.³⁷ Because of this, it was established law in England that a prisoner could not sue for damages when the rules were broken. Even this previous assertion has been modified. Courts have adopted an alternative stance. They have maintained that they do have the authority to

³⁰ Paul F.Cromwell, *Jails and Justice* (1976), p.267.

³¹ 37 Halsbury's *Laws of England* (1982)! P-746.

³² Criminal Justice Act 1948, s.7o.

³³ 37 Halsbury' *Laws of England* (1982)! P-747.

³⁴ *Raymond v. Honey*, [1982] 1 All E.R. 756 at 759.

³⁵ *R v. Board of visitors of Hull Prison ex parte Germain*, T1979] Q1B. 425

³⁶ *Arbon v. Anderson*, [1943] K.B. 252.

³⁷ *ibid*

declare what the "real meaning" of the Prison Rules is, and they are prepared to carefully examine the Prison Rules in order to ascertain if the activities of the prison officials are lawful.³⁸ It has even been claimed that a certain rule gives a prisoner a right. According to Article 10 of the Civil Rights Covenant, prisoners must be treated with regard for their inherent human dignity and with humanity. Prisoners still enjoy these rights, unless those rights are explicitly limited or impliedly limited in some other way.³⁹ Therefore, the government is required by law to take reasonable precautions to ensure the security of the detainees.⁴⁰ The prison authorities are responsible when a prisoner suffers harm at the hands of another prisoner as a result of their careless oversight.⁴¹ The prison administration also owes a duty of care to the general public, and when prisoners destroy property as a result of the administration's negligence, there will be grounds for legal action. A person's ability to file a lawsuit for crimes committed against him while they are imprisoned is still valid. They are just as efficient as anyone who works outside of bars. Since his property is vested in the crown by statute, he is barred from suing for damages to it. This is founded on the idea that even a prisoner is still the Queen's subject and does not instantly turn against her for breaching the law.⁴² In England, the idea of prisoner's rights is relatively a recent development.⁴³ It is the end product of court officers' practical approach, which has been highly affected over the years by the American prisoner's rights movement and certain human rights accords. Due to judicial activism, the courts have given prisoners there a minimal level of protection even if there are no official pronouncements of their rights. In addition, receiving fair treatment will increase the likelihood of rehabilitation. The Gladstone Committee advocated for improved post-release care for prisoners.⁴⁴

³⁸ *Hancock v. Prison Commissioners*, [1959] 3 All E513 at 516

³⁹ *ibid*

⁴⁰ *Ellis v Home Office* 1953 2 All E.R. 149 at 153

⁴¹ *Home Office v. Dorset Yacht Co. Ltd.*, [1970] 3 All E.R. 294

⁴² B.S.Sinha, *Law of Torts* (1976), pp.115, 116.

⁴³ "But the philosophy of" prisoner rights is an ancient concept. Julius Stone says: "A first group of reforms in a line descending through Montesquieu and Beccarie to Bentham, was in criminal law' and administration resulting in the elimination of many unnecessary cruelties or in Benthanis terms unnecessary pain. They included the beginnings of prison reforms, of reform of lunacy laws, laws in the protection of children and animals and for the emancipation of slaves"

⁴⁴ Jackson, "Prison Administration", 10 *Cambridge Law Journal*, 32 at 36.

CHAPTER 6: STANDARDS SET IN INTERNATIONAL INSTRUMENTS

The primary international documents pertaining to human rights make it abundantly clear that prisoners and those undertrial have their human rights protected. Both the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (hereinafter, the Torture Convention) make it clear that no exceptions or derogations are allowed for the prohibition of torture and other cruel, inhuman, or degrading treatment or punishment. In addition, the International Covenant on Civil and Political Rights (ICCPR) stipulates in Article 10 that "[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." In addition to this, it mandates that "the reform and social readaptation of prisoners" be an "essential aim" of the incarceration process.

The human rights of persons who are deprived of their liberty are expanded upon in a number of additional international documents, which also offer guidance to governments on how they can comply with the international legal obligations that are placed on them. The United Nations Standard Minimum Rules for the Treatment of Prisoners (also known as the Standard Minimum Rules), which were adopted by the United Nations Economic and Social Council in 1957, are the guidelines that cover the most ground and are the most comprehensive of their kind. Although the Standard Minimum Rules are not legally binding in and of themselves, they do serve as an authoritative guide to the standards that are required by legally binding treaties.

Article 8 of the Standard Minimum Rules for the Treatment of Prisoners enumerates separation of categories. This Article states-

"8. The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus,

(a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate;

- (b) undertrial prisoners shall be kept separate from convicted prisoners;
- (c) Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence;
- (d) Young prisoners shall be kept separate from adults."

Each detainee is required to spend each night in his own cell or room if that is the type of housing provided, as stated in Article 9. It is not preferable to have two prisoners share a cell or chamber, yet the central prison administration may have to make an exception if temporary overcrowding becomes a problem.

"Undertrial prisoners" refers to those who have been arrested or incarcerated on criminal charges but have not yet been tried and sentenced.⁴⁵ This includes those who are currently being held in police custody or in prison custody (jail). Prisoners who have not been convicted are automatically considered innocent.⁴⁶ Both juvenile and adult prisoners who have yet to stand trial must be housed in separate facilities.⁴⁷ Prisoners undertrial must sleep individually in separate rooms, though this may vary depending on regional climate norms.⁴⁸ New prisoners have the option of paying for their own food supply, which can be sent in through the prison's administration or their loved ones.⁴⁹ A suspect in custody without trial may wear his own clothes if they are clean and appropriate.⁵⁰ An undertrial prisoner must be given the option to work, but never forced to do so, and must be compensated if he does so.⁵¹ Books, newspapers, writing supplies, and other forms of entertainment may be purchased by an prisoner undertrial at his own expense or at the expense of a third party.⁵² In the absence of a trial, a prisoner has the right to be seen by a medical professional of his choosing, provided he can demonstrate a need for the visit and can afford to pay for the necessary care.⁵³ Undertrial prisoners have the right to inform their loved ones of their detention as soon as possible and to use all reasonable means to stay in touch with and receive visits from their loved ones.⁵⁴ An undertrial prisoner has the right to seek and receive free legal aid for his defense, if it is available; he also has the right to meet with his legal counsel in order to prepare his defense and receive confidential instructions from his counsel.⁵⁵ He will be given access to writing supplies for this purpose if he requests them. Officials from the prison or police can see the prisoner and his lawyer, but they are not allowed to listen in on their conversations.⁵⁶

⁴⁵ Article 84, the Standard Minimum Rules for the Treatment of Prisoners

⁴⁶ *ibid*

⁴⁷ Art86. the Standard Minimum Rules for the Treatment of Prisoners

⁴⁸ Art86. the Standard Minimum Rules for the Treatment of Prisoners

⁴⁹ Art. 87, the Standard Minimum Rules for the Treatment of Prisoners

⁵⁰ Art. 88, the Standard Minimum Rules for the Treatment of Prisoners

⁵¹ Art. 89, the Standard Minimum Rules for the Treatment of Prisoners

⁵² Art. 90, the Standard Minimum Rules for the Treatment of Prisoners

⁵³ Art. 91, the Standard Minimum Rules for the Treatment of Prisoners

⁵⁴ Art. 92, the Standard Minimum Rules for the Treatment of Prisoners

⁵⁵ Art. 93, the Standard Minimum Rules for the Treatment of Prisoners

⁵⁶ *ibid*

CHAPTER 7: THE REALITY OF THE UNDERTRIAL PRISONERS' CONDITION

The existing state of our correctional facilities is inconsistent with the laws, rules, and conditions in place in our nation. Food supply, accommodation, communication system, health service, cloths supply, harsh mental and physical torture, punishment carried out by jail authority not consistent with the sentence handed down by the court, corruption and other malpractices by jail authority, criminally-minded prisoners in prison, death in jail custody, children staying with their detained mothers in jail, detention of the prisoners without trial, and a lack of pity are a few of the numerous problems tainting the prison system.

There are a total of 68 prisons in Bangladesh, with 13 serving as central prisons and 55 serving as district jails. When February 2020 rolls around, the official capacity of the jail system will be 40944. (report published by the ministry of home affairs). The Bangladesh Society for the Enforcement of Human Rights reports that each day there are between 1,150 and 1,200 prisoners entering and exiting the system. These numbers were derived from statistics.

But the numbers don't tell the whole story by any means. According to Md. Zakir Hasan, a former Inspector General of prisons in Bangladesh, the total prison population in Bangladesh is approximately 86,100, which is 3.5 times greater than the maximum prison capacity of the country. This number includes those who are in jail waiting for trial but does not include those who are detained in the police station.

The Deputy Inspector General (DIG) of prisons, Bazlur Rahman, stated to the Independent News that they have submitted a request to the Home ministry for the purpose of boosting the allocation of special day meal after conducting an analysis of the ordinary market price. Breakfast for the prisoners consists of 87 grams of bread and 14 grams of jaggery, which is an extremely difficult combination for a human being to consume. Rice, one piece of fish or meat, and vegetables totaling 247 grams make up the lunch menu, while rice, vegetables, and lentils make up the evening meal. These foods are not adequately prepared, served, or sufficient for a person to live a healthy and fulfilling life, and this is especially true for a pregnant woman.

In addition, there is a mental harassment for money system in place for those who are incarcerated in every single institution. In exchange for payment, new prisoners are given a minimal option for release, provided they do not communicate with the facility's security personnel. In prison, money plays a significant role. Because they have no money, they are treated inhumanely, subjected to mental harassment, subjected to physical torture at the hands of prison security or by authority, and even threatened with being accused of terrorism.

Merchandise that is consumed on a daily basis is being sold at a premium to the market price. If anyone dares to protest, their life will be made into a living nightmare by the authorities. In addition, the dominant prisoners' gang abuses its influence in an illegal manner by humiliating and torturing the new prisoners. On a regular basis, male authorities are violently harassing and assaulting women. Women are subjected to higher rates of sexual assault and acts of inhumane torture.

According to the jail authority, the number of prisoners in November 2006 stood at 66,778, which exceeded the capacity of jails by 2.5 times.⁵⁷ The number of prisoners recorded in October 2006 was even higher at 72,013, which could have been because of the large number of arrests at political rallies and demonstrations.⁵⁸ Sixty four per cent of the total number of prisoners were undertrial.⁵⁹ The number of women prisoners was 2,219 against the capacity of 1,131. There was a decrease in under trial prisoners and detainees between 2005 and 2006.⁶⁰

Reportedly, 71 prisoners died in 2006 as compared to 86 in 2005 and 104 in 2004.⁶¹ According to the jail authorities 35 died of illness and 11 of heart attack.⁶²

With an average of 81.3%, Bangladesh also has the highest rate of pretrial imprisonment. The main cause of this congestion is thought to be a delay in the administration of justice. Concerningly, many prisoners in pretrial confinement may be innocent individuals who are being forced to coexist with seasoned criminals. More worrisome are the appallingly subpar

⁵⁷ Rights of Prisoners, Mohammed Tipu Sultan, <<https://www.askbd.org/ask/rights-prisoners/>>

⁵⁸ *ibid*

⁵⁹ *ibid*

⁶⁰ *ibid*

⁶¹ H.Hossain (ed.), Human Rights in Bangladesh 2005 , ASK, 2006, p 108 and Human Rights in Bangladesh 2004 , ASK, 2005, p 62-63

⁶² *ibid*

living and medical conditions in jails. According to Ain o Salish Kendra data, at least 61 convicts have perished in jails across the nation in the past eight months. 40 of the deceased were undertrial, and 21 were found guilty. prisoners lost 75 lives in 2020 compared to 58 in 2019. Another gruesome feature of jails is the abuse of prisoners. prisoners' return to regular life after release is reportedly made more difficult by the absence of rehabilitation programs in prisons.

CHAPTER 8: RECOMMENDATIONS & THE WAY FORWARD REGARDING UNDERTRIAL PRISONERS

RECOMMENDATIONS

- 1) Those who are still undertrial should be housed in a facility that is distinct from that of those who have already been convicted. Even among those undertrial, there should be a proper and scientific classification system to prevent the contamination of first-time offenders and minor offenders into full-fledged and serious criminals.
- 2) They should not be entrusted in the care of someone who have been convicted of a crime under any circumstances.
- 3) The facilities that are designed to house pre-trial detainees have to be located in close proximity to the courts whenever this is at all possible.
- 4) The provisions of Section 167 of the Criminal Procedure Code should be rigorously implemented by both the police and the courts when it comes to the time limit for police inquiry in the case of accused undertrial detainees.
- 5) There must be a stop to the practice of automatically extending remands, which are likewise provided only for the sake of the convenience of the authorities. The constitutional protections outlined in Article 32 can't be sidestepped simply because it's more convenient for the authorities.
- 6) All detainees who are currently undertrial should be effectively brought in front of the magistrates who are presiding over their cases on the dates of their hearings.
- 7) The possibility of producing prisoners at various stages of investigation and trial in shifts ought to be investigated. This ought to be done in stages.
- 8) There should be more support for the use of video conferencing between detention facilities and courts.
- 9) The District Magistrate should establish a committee to be comprised of representatives from the local police, judiciary, prosecution, district administration, and the prison department at a fairly high level. This committee's responsibility would be to visit the Sub jails that fall

under their jurisdiction at least once per month in order to investigate any instances of delays in the cases of prisoners and to come up with solutions to the problems that have been identified.

10) The functions of the police force ought to be split up into investigation and law and order duties, and sufficient manpower ought to be allocated so that investigations are finished on time and delays are avoided.

11) In order to give effect to the right to a rapid trial, the criminal courts shall make use of all of the tools that are available to them under the Criminal Procedure Code. It is possible, in appropriate circumstances, to invoke the jurisdiction of the High Court Division under Section 491 of the Criminal Procedure Code and Articles 102 of the Constitution of India in order to seek proper relief or directives for dealing with and preventing delay in cases.

13) If a prisoner's fundamental rights were violated in any way, the state should compensate the victim in an appropriate manner in the event that this occurred.

12) The only time adjournments should be allowed to convicts who are undertrial is when they are really essential.

14) There must to be a huge and progressive. Decriminalization of offenses would mean that many wrongs, which are today accorded the status of felonies, would be treated as compoundable torturous wrongs that might be remedied by filing a claim for compensation.

15) The list of offenses that can be settled out of court under the Penal Code of 1860 and any other applicable legislation should be expanded.

16) The use of non-incarceration-based punishments should be tested and considered for inclusion in the penal code.

17) Remand orders should be self-limiting and indicate the date on which undertrial prisoners would automatically be entitled to apply for bail. This would be in accordance with point 17 of this article.

18) The administration of criminal cases should be computerized, and with the assistance of the Statistics Bureau of Bangladesh, programs should be developed to assist in the management of the pendency and delay of various types of cases. The High Court Division ought to take an energetic interest in assisting lower courts in their efforts to expedite case processing.

19) There must to be an immediate rise in the number of judges and magistrates, and this growth ought to be carried out in some kind of relation to the total population.

The Way Forward

It is believed that a portion of the funds that the government transfers to the concerned department for the developmental work of the same should be set aside and kept to meet the bail amount for undertrials who belong to the particular area. These funds come from the various programs that the government operates for rural employment, loans to farmers, and other similar things. The elected leaders of the society would be in charge of deciding how this fund is used, and the representative of the district collector and district magistrate would be a part of the system. This would go a long way toward securing freedom for a large number of individuals. These individuals would then be able to contribute to society, thereby playing an important role and becoming a part of the national mainstream. A situation like this one will have the effect of easing the strain of excessive crowding in prisons and jails.

Setting up separate jails for undertrials and convicted prisoners, or at the very least isolating them from one another, would stop hardened criminals from having a negative influence on those who are still undertrial. A policy of such segregation would also change the attitude of the authorities who run the jail as well as society in general towards those who are undertrial.

People currently facing charges who have been accused of committing minor offenses have the option of being placed in rehabilitative homes instead and being required to perform community service until they are released on bail. Those who are going through the legal process and are unable to read or write should have access to elementary education facilities. As a result, I am of the opinion that the benefit of bail should not only be in the hands of a select few, but rather it should be made available to the masses, including those who do not have the financial capability to afford it. Not only that, humble and humane behaviour will tend to decrease the stress of the undertrial prisoners. Mental desk will operate as a beneficial task to overcome this problem.

BIBLIOGRAPHY

1. The Mess We're In: Five Steps Towards the Transformation of Prison Cultures by Lynn S. Branham, Indiana Law Review
2. James Inciardi, Criminal Justice (1987)
3. Barness and Teeters, New Horizons in Criminology
4. Raymond Y. Lin, 'Wk Prisoner's Constitutional Right 'to Assistance
5. B.S.Sinha, Law of Torts (1976)
6. Jackson, "Prison Administration"
7. UNDERTRIAL PRISONERS IN INDIA, Ayushi Priyadarshini & Madhurika Durge
8. In the Time of Coronavirus, the Right to Bail is Part of an Undertrial's Right to Life, Jai A. Dehadrai
9. Halsbury's Laws of England (1982)
10. Hard P.Vogelman, "Prison Restrictions - Prisoner Rights" in Leon Radzinowicz and Marvin E.wolfgang (Ed.), The Criminal in Confinement (1971)
11. Gianni F.Vito and Judith Hails Kachi, "Hands on or Hands Off? The use of Judicial Intervention to Establish Prisoner's Rights" in Nicoletti Parisi (Ed.), Coping with Imprisonment (1982)
12. The Constitution of People's Republic of Bangladesh, 1972
13. The Code of Criminal Procedure, 1898
14. The Standard Minimum Rules for the Treatment of Prison
15. The Universal Declaration of Human Rights