

FORBIDDEN FROM THE OUTSIDE WORLD: A CASE OF SOLITARY CONFINEMENT IN INDIA

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ABSTRACT

Solitary confinement, as a form of punishment, was first introduced as a method of reformation in the 18th century in the United States at Philadelphia. In India, it was embodied in the form of cellular cells that were constructed in 1896 in the Andaman and Nicobar Islands. These prisons experienced the worst form of torture that can ever be inflicted upon human beings in modern times. Later, with the efforts of Mahatma Gandhi, the British closed down these prisons. However, solitary confinement reflecting the colonial mind-set, still haunts the Indian jails even today. Gradually, in harmony with the 'modern thinking' and international standards of human rights, the 42nd Law Commission recommended abolishing solitary confinement. Despite such recommendation, it is still awarded to the convicts. It is the most degrading form of punishment since the convicts are kept in highly deplorable living conditions that not only violate the international standards of human rights and the fundamental rights under Article 21 of the Indian Constitution but also negatively impacts the psychology and physiology of the isolated convicts. The entire exercise of isolating the convicts from the society has a lasting effect on them, which nullifies any scope of repentance and reformation. The article analyses the provision of solitary confinement in India in respect of the international conventions and the constitutional scheme of India. It further, attempts to highlight the deplorable living conditions inside the solitary cells that pose a negative impact on the psychology and physiology of the prisoner. The article, towards the end, equips the readers with recommendations of the various commission reports and eventually, rests with a conclusion that solitary confinement is a blot on humanity and hence, it should be abolished.

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INTRODUCTION

"When the door is locked against the prisoner, we do not think about what is behind it. . .

Were we to enter the hidden world of punishment, we should be startled by what we see."

-Justice Anthony Kennedy¹

The prison is a place on which the hope of the entire society rests upon; for it performs the dual purpose of reforming a deviant member of the society and of delivering justice to the victims. The prison administration of a country rests upon several variables that pertain to the socio-economic structure of a country and other practical considerations.² However, the element of humanity has always been considered by almost all the prison systems of the world.

In recent times, the human rights jurisprudence has evolved even in the context of prison reforms. Human rights are universal principles that are applicable to everybody, regardless of the person being a citizen or a foreigner to a country. Human rights of the prisoner underline the basic principle that no prisoner shall be treated with torturous and cruel, inhuman or degrading treatment. Solitary confinement, *prima facie*, violates such rights.

This article attempts to analyse the provision of solitary confinement in India in respect of the international conventions and the constitutional scheme of India. It further, attempts to highlight the deplorable living conditions inside the solitary cells that pose a negative impact on the psychology and physiology of the prisoner. Towards the end, the article, equips the readers with the recommendations of the various commission reports and eventually, it rests with a conclusion that solitary confinement is a blot on humanity and hence, it should be abolished.

HISTORICAL BACKGROUND OF SOLITARY CONFINEMENT

Solitary confinement is not defined under any law of the land. However, philosophically, the Black's Law Dictionary, 8th Edition, has defined it as "*separate confinement that gives a prisoner extremely limited access to other people.*"

¹ Justice Anthony M Kennedy, 'Speech' (*American Bar Association Annual Meeting*, 9 August 2003) <https://americanbar.org/content/dam/aba/publishing/abanews/1267822008_20_1_1_7_upload_file.authcheckdam.pdf> accessed 8 August 2018.

² Jaytilak Guha Roy, *Prisons and Society: A Study of the Indian Jail Systems* (1st edn, Gian Publishing House 1989).

The system of solitary confinement started in the 18th Century in the United States at the Eastern State Penitentiary in Philadelphia. It was based on the ideology that a prisoner would be saved from public humiliation and while living in isolation with the Bible, he would repent for his actions; and gradually, reform.

In India, during the British rule, solitary confinement was embodied in the concept of cellular prisons constructed in 1896 in Andaman and Nicobar Island that were known with the notorious name of 'Kala Paani'. It was constructed for the dual purposes of breaking the spirit of the political prisoners and for accommodating the large number of them who flooded the limited jails on the mainland. The imprisonment in these cellular prisons was the most severe form of punishment with several inmates committing suicide and dying due to unhealthy conditions. Later, with the efforts of Mahatma Gandhi and Rabindranath Tagore, it was closed down in 1937-38. However, the provision of solitary confinement is still prevalent under the Indian laws.

The solitary confinement is believed to serve three-fold purposes:

1. To act as a deterrence for the gravest of offences,
2. To ensure the inescapability of the dreaded criminals, in the interest of the national security of the country, and;
3. To prevent the illegal killing of high-profile prisoners.

SOLITARY CONFINEMENT UNDER THE INDIAN LAWS

Solitary Confinement is a punishment awarded under Section 73 and 74 of the Indian Penal Code, 1860 (hereinafter the IPC):

SECTION 73 OF THE IPC

"Solitary confinement – Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say – a time not exceeding one month if the term of imprisonment shall not exceed six months; a time not exceeding two months if the term of imprisonment shall exceed six months and 1[shall not exceed one] year; a time not exceeding three months if the term of imprisonment shall exceed one year."

SECTION 74 OF THE IPC

"Limit of solitary confinement. – In executing a sentence of solitary confinement, such confinement

shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods; and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods."

Further, Section 29 of the Prisons' Act, 1894 deals with the conditions that need to be fulfilled while keeping a prisoner in solitary confinement.

SECTION 29 OF THE PRISONS' ACT

"Solitary confinement. – No cell shall be used for solitary confinement unless it is furnished with the means of enabling the prisoner to communicate at any time with an officer of the prison, and every prisoner so confined in a cell for more than twenty-four hours, whether as a punishment or otherwise, shall be visited at least once a day by the Medical Officer or Medical Subordinate."

The Prisons' Act is the first legislation that regulates the prison conditions. However, Dr. Amarendra Mohanty observed the following:

"This Act was largely based on deterrent principles reflected mainly the British policy on the subject. The legislators took little pains to look into the other side of the problem. They were concerned more with the prison working than with treatment of the prisoners. This Prisons Act remained unchanged for last one hundred years except very minor change."³

DEPLORABLE LIVING CONDITIONS INSIDE THE SOLITARY CELLS

The Lawyers Collective Society in Bombay was permitted by the court's order to visit the prison cells and to give the account of the living conditions. They recorded:

"The lock-up is a bare room with no piece of furniture at all... It is almost always a very poorly ventilated room... There is never a fan in the cell. The lock-up is also poorly lit, usually by just one bulb for the whole room, which is never switched off. There is normally no commode – just a pot in a corner which is cleaned out occasionally. The water supply is unpredictable and intermittent at best. The stench is unbearable and flies abound."⁴

The living conditions inside the general prison cells are so deplorable that it compels

³ NK Chankraborty, *Administration of Criminal Justice; The Correctional Services*, vol 2 (Deep and Deep Publications 1997) 35.

⁴ Anand Grover, 'Policing Lock-up Conditions' 7 *The Lawyers*, Bombay (September 1987).

one to imagine how worse the condition of solitary cells would be. In an RTI filed to seek the information about the condition inside the solitary cells, it was revealed that metal and an unbreakable glass sheath covered the cells. The bulb inside the cells remains switched on throughout the day so that the prisoner inside the cell does not know whether it is a day or a night. The cell is devoid of any window and the supply of air is extremely limited. Further, there is a small trapdoor, which allows the prison guards to pass food to the prisoner.⁵ These conditions transgress the United Nations Standard Minimum Rules for Treatment of Prisoners (SMR), Rules 14(a) and 43 (1)(c):⁶

RULE 14(A)

“The windows shall be large enough to enable the prisoners to read or work by natural light and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation.”

RULE 43(1)(C)

“Placement of a prisoner in a dark or constantly lit cell.”

Further, the National Human Rights Commission (hereinafter NHRC) while probing into the case of torture of 8 SIMI men, attested that these prisoners were kept in solitary confinement which inflicted upon them mental torture.⁷ The report by NHRC, further, revealed that the men were kept in a cell measuring 5*8 sq. feet with no fans, from where they were allowed to leave for only 10-15 minutes in a day. Moreover, they had to give ‘khairiyat’, a form of indication in every one or two hours, meaning that they are present inside their cells; thus, depriving them of their necessary sleep.⁸ The conditions violate Rule 13 of the UN Standard Minimum Rules that stipulates:

⁵ ‘The Dreaded Cell of Jundal, Solitary Confinement’ *The Frontline* (8 January 2016) <www.frontline.in/cover-story/the-dreaded-cell-of-jundal/article8017729.ece> accessed 6 August 2018.

⁶ UN General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules GA Res 70/175 (January 8, 2016).

⁷ Shruti Tomar, ‘SIMI Operatives in Bhopal Jail being Physically and Mentally Tortured’ *The Hindustan Times* (Bhopal, 31 March 2018) <www.hindustantimes.com/bhopal/nhrc-finds-signs-of-mental-and-physical-torture-of-alleged-simi-operatives-in-bhopal-central-jail-director-general-jail-dubs-report-as-one-sided-and-bereft-of-truth/story-NWJeQFp055dxX688TTDm7K.html> accessed 10 August 2018.

⁸ Milind Ghatwai, ‘NHRC Report Out, Backs Torture Claims of SIMI Men in Bhopal’ *The Indian Express* (Bhopal, 1 April 2018) <<https://indianexpress.com/article/india/after-jailbreak-encounter-simi-activists-tortured-in-mp-jail-national-human-rights-commission-5118709/>> accessed 10 July 2018.

RULE 13

“All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.”

The living condition inside the solitary cells is so deplorable that it directly casts a blot on the person’s dignity and integrity.

TAKING INTO ACCOUNT THE HEALTH ASPECT OF THE PRISONER

The solitary confinement is a transgression to the natural instinct of man. Since primordial times, man has an inclination towards gregariousness. This basic instinct of man is given a deadly blow by the solitary cells. Very prolonged solitude gives rise to insanity. The mental and physical condition of the prisoners deteriorates to the point that it equivalent itself with slow death.

PSYCHOLOGICAL ASPECT

A report of the Halle prison, Germany in 1854 observed that *“prolonged absolute isolation has a very injurious effect on the body and mind and seems to predispose to hallucinations”* and should, therefore, be immediately terminated.⁹ The report termed it as ‘Prison Psychosis’ among isolated prisoners.

Benjamin & Lux stated that *“evidence overwhelmingly [indicates] that solitary confinement alone, even in the absence of physical brutality or unhygienic conditions, can produce emotional damage, a decline in mental functioning and even the most extreme forms of psychopathology such as depersonalisation, hallucinations and delusions”*.¹⁰

Harvard psychologist, Stuart Grassian, who has been studying the impact of solitary confinement for two decades, recorded an account of a prisoner who was isolated as: *“the cell walls start wavering... everything in the cell starts moving; you feel that you are losing*

⁹ P Nitsche, F M Barnes and K Williams, *The History of the Prison Psychoses* (first published 1913, Wentworth Press 2016) 13.

¹⁰ TB Benjamin and K Lux, ‘Solitary Confinement as Psychological Punishment’ (1977) 13 California Western Law Review 265.

your vision".¹¹

The summary of the negative impact on the psychology of the prisoner can be listed as¹²

Anxiety	Cognitive Disturbances	Perceptual Distortions	Depression	Anger	Paranoia and Psychosis
Persistent low level of stress	Short Attention span	Hypersensitivity	Hopelessness	Poor impulse control	Paranoid ideas - often persecutory
Irritability or anxiousness	Poor concentrate-on	Distortions of sensation (e.g., walls closing in)	Social withdrawal	Unprovoked anger	Psychotic episodes or states
Fear of impending death	Poor memory	Depersonalisation	Emotional flatness	Irritability and hostility	Psychotic depression
Panic attacks	Confused thought process	-	Major depression	Hallucination	Schizophrenia

PHYSIOLOGICAL ASPECT

Grassian and Friedman¹³ have studied the impact of solitary confinement on the physiology of the prisoners. They list the physiological deterioration of the prisoners as follows:

1. Heart palpitations (awareness of strong and/or rapid heartbeat while at rest)
2. Diaphoresis (sudden excessive sweating)
3. Insomnia
4. Back and other joint pains
5. Deterioration of eyesight
6. Poor appetite, weight loss and sometimes diarrhoea
7. Lethargy, weakness
8. Tremulousness (shaking)

¹¹ S Grassian, 'Psychopathological Effects of Solitary Confinement' (1983) 140(11) American Journal of Psychiatry 1450.

¹² Sharon Shalev, *A Sourcebook on Solitary Confinement* (Greater London Group 2008).

¹³ S Grassian and N Friedman, 'Effects of Sensory Deprivation in Psychiatric Seclusion and Solitary Confinement' (1986) 8 International Journal of Law and Psychiatry 49.

9. Feeling cold
10. Aggravation of pre-existing medical problems.

PERMANENT EFFECT OF SOLITARY CONFINEMENT

Solitary confinement poses a threat to the mental and physical state of the prisoner not only till the time he remains in the cell but until his death.

“Although many of the acute symptoms suffered by inmates are likely to subside upon termination of solitary confinement many [prisoners], including some who did not become overtly psychiatrically ill during their confinement in solitary, will likely suffer permanent harm.”¹⁴

SOLITARY CONFINEMENT IS CONTRARY TO THE INTERNATIONAL STANDARDS OF HUMAN RIGHTS

UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948)¹⁵

ARTICLE 1

“No one should be subjected to torture or cruel, inhuman or degrading treatment or punishment.”

ARTICLE 3

“Everyone has the right to life, liberty and security of person.”

ARTICLE 5

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (1966)¹⁶

The covenant was introduced in 1966 and comes under the aegis of UN Human Rights Committee (HRC).

¹⁴ S Grassian, ‘Psychiatric Effects of Solitary Confinement’ (2006) 22 Washington Journal of Law and Policy 325.

¹⁵ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)).

¹⁶ International Covenant on Civil and Political Rights (adopted 16 December 1966), GA Res 2200 A (XXI), 999 UNTS 171.

ARTICLE 7

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment ..."

The Human Rights Committee has interpreted Article 7 to mean¹⁷:

"The aim of the provisions of Article 7 is to protect both the dignity and the physical and mental integrity of the individual...The text allows no limitation; even in time of public emergency...no justification or extenuating circumstances may be invoked to excuse a violation of Article 7 for any reason."

The terms cruel, inhuman or degrading treatment or punishment, "should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time."¹⁸ Solitary Confinement amounts to inhuman treatment.¹⁹

ARTICLE 10

"All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person...the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation".

Solitary Confinement deprives the prisoner of its basic rights by barring him from any social contact and human interaction and hence, runs contrary to the principle stipulated in this Article.

Further, Human Rights Committee stipulated that²⁰:

Article 10(1) imposes on state parties a positive obligation ... thus, not only may persons

¹⁷ UN Human Rights Committee, 'CCPR General Comment No 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment', HRI/GEN/1/Rev 9 (vol I), para 2.

¹⁸ UN General Assembly, 'Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment' A/RES/43/173 <<http://un.org/documents/ga/res/43/a43r173.htm>> accessed 27 August 2018.

¹⁹ H Reyes, 'The Worst Scars are in the Mind: Psychological Torture' (2007) 89(867) International Review of Red Cross 591.

²⁰ UN Human Rights Committee, 'CCPR General Comment No. 21: Article 10 (Humane Treatment of Persons Deprived of Their Liberty)' HRI/GEN/1/Rev 9 (vol I), para 3.

deprived of their liberty not be subjected to treatment that is contrary to Article 7...but neither may they 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 that of free persons.

The Human Rights Committee in *Polay Campos v Peru*²¹ found that publicly displaying the prisoner and solitary confining him for 23 hours a day with only 10 minutes of sunlight is a violation of Article 7 and 10 of the ICCPR.

UN CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (1984)²²

The Convention was adopted by the UN General Assembly in 1984 and came into force in 1987.

For the purpose of this Convention, the term "torture" means any act by which severe pain or suffering whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person....

Solitary confinement inflicts upon the prisoner mental suffering by depriving him of any human interaction and the basic human rights.

UN SPECIAL RAPPORTEUR ON TORTURE²³

The UN Special Rapporteur on Torture advocated the abolishment of solitary confinement by the international communities on a whole. The UN Special Rapporteur cautions "the use of solitary confinement increases the risk that acts of torture and other cruel, inhuman or degrading treatment or punishment will go undetected."

In *Ensslin Baader and Rapse v Germany*,²⁴ it was recognised by the European Court that "complete sensory isolation coupled with complete social isolation can no doubt ultimately

²¹ *Polay Campos v Peru* 1997 Communication No 577/1994.

²² United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, (adopted 10 December 1984 GA Res 39/46) 1465 UNTS 85 (1984).

²³ UN Human Rights Council, 'Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment', 1 February 2013, A/HRC/22/53.

²⁴ *Ensslin v Germany* App no 7572/76 (ECHR, 8 July 1978).

destroy the personality; thus, it constitutes a form of inhuman treatment."

Although many conventions are not ratified by India and therefore, not binding on India in a technical sense; practically, they still bind India to follow such accepted international principles. Prohibition of torture has attained the status of *jus cogens* or peremptory norms that must be followed by all the nations whether the State has ratified it or not. The principle of *jus cogens* flows from Article 53 of the Vienna Convention on the Law of Treaties, which has a forceful impact on international customary law and domestic law.²⁵ Further, the *jus cogens* give rise to *erga omnes* (owed to and by all States), thus, empowering the States to take action against those States that tortures or inhumanly treats its prisoners. The deviation from these principles is not permitted under any circumstances, even not during the times of war or emergency. Hence, the torturer, who is treated as an international criminal finds 'no safe haven'.²⁶

SOLITARY CONFINEMENT IS CONTRARY TO THE CONSTITUTIONAL SCHEME OF INDIA

Solitary Confinement is a blot on the Constitutional ethos of India as it clearly transgresses the fundamental right of the prisoners to live their life with dignity under Article 21 of the Indian Constitution.

Article 21 envisages that 'every person' shall have the right to life and personal liberty. In *Kharak Singh v State of UP*,²⁷ the Supreme Court interpreted 'life' under Article 21 to not be that of a 'mere animal existence' but the right to live with human dignity.²⁸ Further, Article 21 is available to every 'person', implying, thereby, that even the prisoner, whether a foreigner or an Indian, comes within its ambit.

Solitary Confinement is a violation of Article 21 of the prisoners as it degrades the person by inflicting upon him not only physical torture but also mental torture. In *Nandini Satpathy v PL Dani*,²⁹ the Court acknowledged mental torture as a form of mistreatment and held that "*not only physical threats or violence but psychological torture, atmospheric pressure, environmental coercion, tiring interrogation by police is violation of law*", and all these conditions are essentially present in solitary cells. In a recent case of

²⁵ Erika de Wet, 'The Prohibition of Torture as an International Norm of Jus Cogens and its Implications for National and Customary law' (2004) 15 EJIL 97.

²⁶ *Regina v Bartley and the Commissioner of Police for the Metropolis, ex p Pinochet* [1999] UKHL 17.

²⁷ *Kharak Singh v State of UP* AIR 1963 SC 1295.

²⁸ *Maneka Gandhi v Union of India* [1975] 1 SCR 778.

²⁹ *Nandini Satpathy v PL Dani* AIR 1978 SC 1025.

Uttarakhand High Court, *State of Uttarakhand v Mehtab*,³⁰ the court abolished solitary confinement relying on the constitutional scheme of India and the international precedents. It concluded that:

"This reluctance of inmates in solitary confinement is a response to the perception that such confinement is an overt attempt by authorities to 'break them down' psychologically, and in my experience, tends to be more severe when the inmate experiences the stringencies of his confinement as being the product of an arbitrary exercise of power, rather than the fair result of an inherently reasonable process."

While attempting to re-humanise the jail atmosphere, the Supreme Court in *Sunil Batra v Delhi Administration*,³¹ Justice Krishna Iyer opined that the "confinement of a person to a prison, his or her human rights could never be sent for a holiday, by locking out the judicial process from the jail gates." Right to life, which is one of the basic human rights, is available to all human beings irrespective of them being a convict, a detenu or under trial.³² Justice Iyer, in *Sunil Batra* further, re-iterated that: "Civilised consciousness is hostile to torture within the walled campus. We hold that solitary confinement, cellular segregation and marginally modified editions of the same process are inhuman and irrational."

In *Francis Coralie Mullin v Administrator, UT of Delhi*³³, the Supreme Court observed:

"...any form of torture or cruel, inhuman or degrading treatment would be offensive to human dignity and constitute an inroad into this right to live and it would, on this view, be prohibited by Article 21 unless it is in accordance with procedure prescribed by law, but no law which authorises and no procedure which leads to such torture or cruel, inhuman or degrading treatment can ever stand the test of reasonableness and non-arbitrariness: it would plainly be unconstitutional and void as being violative of Articles 14 and 21."

Following the principle laid down in *Francis Coralie Mullin*, even though solitary confinement is provided by law, it leads to torture, cruelty and inhuman treatment and hence, it can never stand the test of reasonability and hence, would "plainly be unconstitutional and void of Article 21".

Solitary confinement is degrading to entire humanity and protection against it is 'supreme'. It cannot be justified on the ground that individual rights must yield to the national security. Latin maxim, *salus populi est suprema lex* - the safety of the people is

³⁰ *State of Uttarakhand v Mehtab* 2018 SCC OnLine Utt 391.

³¹ *Sunil Batra v Delhi Administration* [1978] 4 SCC 409.

³² *State of Andhra Pradesh v Chalaram Krishna Reddy* [2000] 5 SCC 712.

³³ *Francis Coralie Mullin v UT of Delhi* AIR 1981 SC 746.

supreme law; and *salus reipublicae suprema lex* - the safety of the State is the supreme law, exist simultaneously.³⁴

SOLITARY CONFINEMENT IS CONTRARY TO THE REFORMIST IDEOLOGY OF INDIA

India has shifted the prison ideology from retributive to a reformist one in consonance with the international practices. However, solitary confinement fails to accommodate itself with this ideology even in the remotest sense.

While living in solitary confinement in isolation from the outside world, the prisoner loses his senses, partially or totally. Social Learning theories have also concluded that withdrawal from the society leads to a loss of individual's sense of 'self' and observed that social environment facilitates the formation of "*perception, concepts, interpreting reality and providing support.*"³⁵ Under such circumstances, it is almost impossible for the prisoner to contemplate upon his actions and repent. While experimenting on prison isolation in a New York Prison in 1931, Alexis de Tocqueville wrote, "*This absolute solitude, if nothing interrupts it, is beyond the strength of man. . . . It does not reform, it kills.*"³⁶

RECOMMENDATIONS OF VARIOUS COMMISSIONS

LAW COMMISSION 42ND REPORT (1971)³⁷

The Law Commission in its 42nd Report recommended that solitary confinement should be abolished and it should be omitted from the IPC as it is regressive and contravenes the international standards of Human Rights. The relevant portion reads as:

"3.80: Sections 73 and 73 provide for solitary confinement. We are of the view that this punishment is out of tune with modern thinking and should not find place in the Indian Penal Code as a punishment to be ordered by any Criminal Court."

³⁴ Law Commission of India, *Implementation of 'United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment' through Legislation* (Indian Law Com No 273, October 2017).

³⁵ Mehtab (n 30).

³⁶ Ruth Marcus, 'Why Are We Subjecting Our Youths to Solitary Confinement?' (*The Washington Post*, 16 October 2012) <http://articles.washingtonpost.com/2012-10-16/opinions/35501106_1_solitary-confinement-new-york-prison-adult-facilities> accessed 10 August 2018.

³⁷ Law Commission of India, *Indian Penal Code* (Indian Law Com No 42, 1971).

RECOMMENDATION BY THE NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION (2002)³⁸

The National Commission to review the Working of the Constitution was set up in 2002 by the Law Ministry. It specifically recommended the “*prohibition of torture and cruel, inhuman or degrading treatment or punishment*” as a supplement to Article 21 of the Indian Constitution. This was based on the *dicta* as laid down by the Supreme Court while dealing with the rights guaranteed under Article 21 of the Indian Constitution. It recommended in its Volume I adding “*prohibition of torture and cruel, inhuman or degrading treatment or punishment*” as Article 21(2) of the Indian Constitution.³⁹

The portion of the Commission Report also found its place in the 273rd Report of the Law Commission (2017), stated in Volume II⁴⁰, where it acknowledged international conventions to supplement Article 21.

Though Solitary Confinement does not specifically find its mention in the report, it constitutes an integral part of it since Solitary Confinement clearly violates Article 21 of the Indian Constitution. It is a form of ‘torture and inhuman, degrading and cruel treatment’ of the prisoners.

NATIONAL HUMAN RIGHTS COMMISSION REPORT, VOLUME I, 2013⁴¹

The National Human Rights Commission in volume I of its report in 2013 acknowledged the principle as laid down in the *Sunil Batra case*. The NHRC also concluded that everyone has a right to human dignity, right to communication with the outside world and the right to fulfilment of the basic minimum needs. All the rights of the prisoners acknowledged by the NHRC are denied in solitary confinement.

LAW COMMISSION 273RD REPORT (2017)⁴²

The Law Commission in its 273rd report recommended ratifying the Convention against

³⁸ National Commission to Review the Working of the Constitution, *Enlargement of Fundamental Rights* vol II (11 May 2001) (Enlargement).

³⁹ Government of India, *Fundamental Rights, Directive Principles and Fundamental Duties* (22 February 2000).

⁴⁰ Enlargement (n 38).

⁴¹ National Human Rights Commission of India, *Living Conditions and Human Rights of the Inmates: Status of 18 Prisons of Four States in Southern Region* vol I (December 2013).

⁴² United Nations Convention (n 34).

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and further proposed the Prevention of Torture Bill, 2017. The Commission further recommends to *“providing for punishment for torture, other cruel, inhuman or degrading treatment inflicted by public servants or any person with the consent or acquiescence of any public servant”*.

The implication of such ratification tacitly means to abolish Solitary Confinement as it is against the UN Convention of Torture.

SUGGESTIONS

1. Solitary confinement is a blot on humanity and hence, it should be abolished.
2. The prisoners should instead be segregated. The convicts who pose threat to the national security should be segregated from even the hardened criminals and must be kept under tight security but with livable conditions inside the prison cells.
3. Further, complete isolation which is the rationale of solitary confinement should never be followed. Regular interaction with immediate family members and a psychiatrist (if required) must be allowed under strict vigilance.

CONCLUSION

“No one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.”

-Nelson Mandela

While imprisonment involves severing certain liberties to add a punitive and deterrent approach in the interest of public justice and justice to the victims, certain principles of humanity can never be neglected under any circumstances. Life of a prisoner would never be similar inside the prison as that in a free world but even then, his personhood cannot be stripped away. Law shall always strive for achieving a balance between the public interest and the interest of the prisoner. While too much liberty to the prisoner in the name of human rights can never be justified; but certain reasonable limitations must be imposed on the quantum of punishment awarded.

The solitary confinement casts a dark shadow on humanity and hence, under no circumstances must it be permitted. Instead, an alternative measure that complies with the human rights must be adopted to keep the civilisation intact and to prevent it from degrading into barbarism.