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ABOUT US

“Journal of Unique Laws and Students” (JULS) which shall provide law students, young lawyers and legal professionals to deliberate and express their critical thinking on impressionistic realms of Law. The JULS aims to provide cost free, open access academic deliberations among law students and young lawyers. The ISSUE III of Volume 1 focuses on three themes i.e. (i) Arbitration Law (ii) Competition Law, and (iii) Criminal Law.

The journal strives to contribute to the community with quality papers on a vast number of legal issues and topics written by authors from various groups that have been reassessed and revised by our editorial team to reach the highest possible standard.

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PREFACE

On looking today scenario, there are numerous issues to know about. Our journal`s Issue III of Volume 1 has work on three crucial themes namely Criminal law, Arbitrational Law and Competition law. We have tried to cover these wide topics with the relevant research and landmark judgments. We have used standard of words for the explanation, evenly attempted to clear the concepts and presented captivating writing to the readers. The works also contains some suggestions in respective fields.

The views expressed in the articles are purely and solely of the authors and the entire team of the Journal has no association with the same. Although all attempts have been made to ensure the correctness of the information published in the articles, the Editorial team shall not be held responsible for any errors that might have been caused due to oversight or otherwise. It is up to the rest of us to help make the journal a success story in the next several years.

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EDITOR'S NOTE

Unique Law was established in the month of April 2020 and cheerfully brings **Volume 1 Issue III** of **Journal of Unique Laws and Students (JULS)**. This journal has become a successful climb in reaching to our goal of gaining visibility in the academic front and becoming a great platform in education community.

The journal aims to present merit papers on the numerous legal issues and these topics are authored by various groups of individuals that have been reappraise and emended by our team of editors to attend the highest possible excellence.

We thanks to all our authors for their obedient submission to the third issue of the Journal by Unique Law and also for their productive cooperation with the editorial team to garnish their work with perfection. We would also like to express our gratitude to our diligent editorial board, whose restless support and commitment made this Journal's Issue III a success.

TABLE OF CONTENTS

Arbitrability of IPR Disputes	1
<i>Author: Aishani Navalkar</i>	
A Study of Juvenile Delinquency	15
<i>Author: Vidhika Panjwani</i>	
Competition Law: Precursors, Practice and Problems	33
<i>Author: Sathya G. Krishnan</i>	
Criminalization of Politics Challenge to Indian Democracy	49
<i>Author: Abhisena Singh</i>	
Critical Analysis of Reclusive Custody	60
<i>Author: Akanksha Kumari</i>	
Cybercrime multifaceted one	72
<i>Author: Mitali Aryan</i>	
Gender Crime in India- An Analysis under Indian Criminal Laws	95
<i>Author: Rounit Deep</i>	
International Competition Aviation: An Analysis	111
<i>Author: Vandana</i>	
Mob Lynching due to Mistaken Identities	123
<i>Author: Juhi Handique</i>	
Juvenile Delinquency and Crime Prevention	142
<i>Author: Simran Karamchandani</i>	
Matters Concerning Seat and Venue of Arbitration: Critical and Comparative Analysis	164
<i>Author: Prity Kumri</i>	
Prevention Mechanism of Youth Crime	182
<i>Author: Riddhi Rahi</i>	
Road Map of Evolution and Development of Competition Law: India ..	200
<i>Author: Jaishree Singh</i>	

Scientific Mechanisms in Crime Investigation: A Study	213
<i>Author: Anisha Tak</i>	
Sedition Law: A Friend or Foe?	226
<i>Authors: Aryan Data & Khushi Gupta</i>	
Understanding Sedition Law in India	239
<i>Author: Golak Bihari Mahana</i>	
Witness Protection Scheme, 2018- A step towards Witness Protection ..	248
<i>Author: Gargi Ojha</i>	
Witness Protection Schemes	259
<i>Authors: Madhavi Singh & Khushi Gupta</i>	
Short note: An overview of Indian Courts helping hand: Alternative Disputes Resolution	274
<i>Author: Tusharika Singh Gaharvar</i>	
Case Analysis: Bachan Singh V. State of Punjab AIR 1980 SC 898	283
<i>Author: Aarush Bharadwaj</i>	
Case Analysis: R V. MCNaughton (1843) 8t. R. 718	288
<i>Author: Sristi Bubna</i>	

CRITICAL ANALYSIS OF RECLUSIVE CUSTODY

Author: Akanksha Kumari*

ABSTRACT

Crime has always been a puzzling problem, knocking the human community from immemorial time. Thereby it becomes a myth of forming crimeless society. There are various punishments in crime like compensation, life imprisonment, death sentence, reclusive custody and many more. Punishment depends on the gravity of offence. Reclusive custody is detention in which a prisoner is detached from all human contact and isolated in a single cell. This punishment requires high gravity of offence. Confinement can't be implemented mannerly without prisons as it were established with the motive, to restrain criminal activities of an evil doer. In modern time, prisoner`s rights concept has been changed by the criminal justice system by utterly shifting from retaliatory to corrective approach. The long list of prisoner`s right has also owned by the judiciary, are bound on all authorities to follow. Still today, Indian jails are overcrowded. The NCRB record says that the occupancy ratio is 14% more than the actual capacity of jails. By this paper, the author attempted to investigate and acknowledge the wider concept of reclusive custody by knowing its origin, background, development and limitations. Paper traces, how this confinement has an impact on the mental and physical health of prisoner and also aimed to talk about prisoners right and contrasting effect of isolative restrain. There is a discussion on the destruction of reclusive custody as punishment. The author concludes the paper, considering all key words of the research.

Keywords: *Psychological disorders, Circadian rhythm, Inhuman condition, Speedy trial, Undertrial prisoners*

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RESEARCH OBJECTIVE

The paper has a motive to emphasize the attention of readers on one of the ignored areas of the jail, that is reclusive custody. This study wants to make everyone aware about the prisoner's condition in such custody and also make us known to the prisoner's rights. Tried to emphasize the lacking of a judicial system and the suffering of prisoners because of that.

RESEARCH QUESTION

These are the questions which I will bid to answer through my research ---

- How the post-isolation effect, impacts the body of the prisoner?
- How this custody affects the prisoner's mental and physical health?
- How does lack of speedy trial amounts to double jeopardy to the prisoners?
- How the destruction of reclusive custody is the need of society?

LITERATURE REVIEW

1. J.Sneha, K.Roja, "A *STUDY ON SOLITARY CONFINEMENT AS A PUNISHMENT*", International Journal of Pure and Applied Mathematics, 2018, Vol. 120 No. 5, PP. 863-878.

The author of the research paper focuses on the punishment of solitary confinement. He emphasizes the stressful condition of the prison and its physiological and mental impact on inmates. Via paper author want to aware us about the prisoner's rights and attempted to explain the flaws of such a harsher punishment. He also supported his arguments with some landmark judgements of reclusive custody. Along with arguments some research results had been presented to conceptualize the facts that why solitary confinement should be abolished as punishment.

2. Cyrus Ahalt, Craig Haney, Sarah Rios, Matthew P. Fox, David Farabee, "*Reducing the use and impact of so confinement in corrections*", International Journal of Prisoner Health, march 2017, vol 13 no. 1, pp. 41-48.

Researchers have made a evidential approach in this research paper. They have given the background of reclusive custody. And argued to limit these confinements in only

those cases which is violent, destructive and threatening in nature. They believe this functioning will improve the safety and helps in achieving the motive o isolation, i.e. away from social contact. The paper overviews and evidently supports the policies of USA for solitary confinement. they placed there keywords as criminal justice system, health or prisoners, public health and correctional health care. They placed research internationally and taken the references of many other countries like Finland, Sweden, Norway and Netherlands. They continues with human rights and talked about the confinement reforms.

3. Sharon Shalev and Monica Lloyd, “*Detention : Solitary Confinement*”, ResearchGate.net, December 2016.

The article inspects about a recent study which was done over a year on the prisoners of Colorado State Penitentiary to know the psychological effects during reclusive custody. In the study they attempted to answer the generalized questions like isolative custody is harmful or not? How harmful? On which they are more harmful? etc. They also place other researches for strengthening their arguments. The paper is focused on the methodological criticisms Colorado study. Authors had given thematic review on prison service policy and also about the practice for HM Inspectorate of prisons. Supermax prison is one of the keywords of this research, it has been pointed in the reference of segregation from the *Sourcebook on solitary confinement*. whole writing believe that solitary confinement is not a natural state for any social creature who are meant for contact of humans. They wanted, system should come over the drawbacks and emphasize on increasing sympathetic contact with prisoners.

4. Sarah R. Zivoloski, B.S., “*Impact of and Alternatives to Solitary Confinement in Adult Correctional Facilities*”, Mater of Social Work Clinical Research Papers, May 2018.

The work scrutinized the use of reclusive custody as adult correction facility and places the impact that comes from its use. It is a qualitative research, through the lens of professionals who are working with offenders. There is the working definition of isolative custody. Prominent theme of discussion in the paper was the alternatives to use solitary confinement. And alternatives consists of training & coordination of staff specialty units and programming for culprits. They have also discussed the positive

aspect of solitary confinement but not successful in providing strong arguments. The paper is about the opinion of four participants.

5. Jayne Leonard, “*What are the effects of Solitary Confinement on health?*”, MEDICAL NEWS TODAY, June 2020.

The article identified reclusive custody as a common practice in jails across the worldwide. It presented the report of the Bureau of Justice Statistics (BJS), almost 20% of accused people of U.S. had experienced solitary confinement from 2011-2012. Effects of confinement are discussed along with criticism. Criticism was on ‘Mandela Rules’ which prohibits the use of such confinement for prolonged period. And also prohibits the segregation of disabled prisoners. the research also said such punishment as not cost effective and argued that the prisoners are developing more violent nature and becoming unpredictable.

INTRODUCTION

Humans are social butterflies and can't live alone because of this norm, placing any person isolated in a room is being used as a method of punishment. Reclusive custody “is a sort of detainment inside which a detainee is disengaged from any human contact, more often than not except for individuals from imprisoning specialists, for 22–24 hours day by day, with a sentence beginning from days to decades.”¹ Since from pre-independence era, the Indian criminal justice used to practice sermonize restrain. Most of the time restrain of prisoners had the intention to bar them from the struggle for independence. Currently, these confinements are done not only in response too dangerous behavior, but also for the violation of prison rule and the safety of other jailbird or the staffs. In *Kishore Singh Dev V. State of Rajasthan*² supreme court defined the reclusive custody in it`s basic meaning using segregation and isolation as keywords.

¹J.Sneha, K.Roja, “A *STUDY ON SOLITARY CONFINEMENT AS A PUNISHMENT*”, International Journal of Pure and Applied Mathematics, 2018, Vol. 120 No. 5, PP. 863-878, <https://acadpubl.eu/hub/index.html>, last visited (Sep. 1, 2021, 4:12 PM).

²Kishore Singh Dev v. State of Rajeshthan, AIR 1981 SC 625

Visualize yourself locked in a room that is not much longer than a walk in that place. Even there was no way out and the time when you will come out is also not in your hand. You have to eat sleep and toilet within that small cell. Envision your body's reaction in such a condition. You must feel despairing, disquieted, miserable, sleepless, or caged under such confinement. To most, this custody is seen as 'inhuman' and 'embarrassing'. But still there are many illuminations for the implementation of reclusive custody. Impacting individual's minds is the physiological effect of these orders and this impact made the punishment a most heinous one. Even after the man survives, he became abnormal and unfit in the society.

ORIGIN AND EVOLUTION

Reclusive custody finds its origin in the United States in 1800. It was started as an experiment. They assume that prisoners will use such isolation to regret on their misdeed. Whatever they hoped for and the results were opposite or negative. There was the development of mental illness in the prisoner's physiology. In 1890, the supreme court of the US cognize the harm of reclusive custody on the prisoner's health. Afterward, it gradually moved away.

Section 73 under Indian Penal Code, 1860 deals with reclusive custody and states

“Whenever any person is convicted of an offence for which under this Code the Court has the 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.”

Indian Penal Code (IPC) 1860, has categorized imprisonment into the way-

- Rigorous imprisonment
- Simple imprisonment

Hard labour punishment in which hard work was given to the sentenced person in the jailhouse, and they were provided low wages for such work, that is called Rigorous imprisonment. But simple imprisonment is opposite from rigorous one. It is the lighter version of imprisonment.

Now, it is clear from the statement of Section 73 that, only those offenders are kept in solitary confinement who had committed a crime and court had awarded the rigorous punishment.

RECLUSIVE CUSTODY LIMITS

Limits of reclusive custody are given under *Section 74* of IPC, it states as

“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.”

As reclusive custody causes a serious effect on the body and mind of the prisoner who goes through the protract span of segregation, that`s why legislators have made the provision that no prisoner will be kept in reclusive custody for more than 14 days at a time.

Prisoners cannot be put in reclusive custody for more than three months and in the odd cases the imprisonment does exceed three months period then they shall not be put in reclusive custody for more than 7 days in a month. These are also the limitations stated in the same section.

EFFECTS OR IMPACTS ON PRISONERS

Many of us believe that loneliness and aloneness are the same but it`s not. There is a difference between both the term. As loneliness is the effect of perceived isolation or of imposing social isolation but the aloneness is choice of yourself to be alone. And in the conditions brain reacts differently. Aloneness won`t affect more as it is your choice but loneliness causes the more serious effect on inmates such as depression, and other mental disorders.

Inmates suffer from serious neurological health consequences as reclusive custody is a torturous punishment. In confinement, there is the experience of multiple psychological effects, that includes cognitive, emotional and psychosis-related symptoms. It restrains from social contact, which is a necessity of human beings to be healthy and functioning.

These custodies have a considerable impact on the perceptual isolation of prisoners. Perceptual isolation importantly contributes to the health damages, biological cycle functioning and circadian rhythm. The term *circadian rhythm*³ is the natural cycle considering mental, physical, and behavioral change of the body. The body cycle which is of 24 hours means a whole day. Light and darkness mostly affect this as in reclusive custody this body's clock was devastated. The research says that the prisoner became oversensitive to normal stimuli, like opening or closing door sounds, the sound of walking and others. Even these stimuli create difficulties in sleeping too. An increase of such thoughts in prisoners makes their return more difficult in the simple imprisonment. And these effects evolve with time and develop new psychological disorders.

The trauma that a prisoner suffers when they go through these all conditions have a numerous effect too beside the mental one, like shuddering, sweaty palms, severe wooziness and heart trembling. For the first three months of the reclusive custody, they face troubles in eating, digesting and sleeping. The silence of whole isolation corrupts the mind of the prisoner and cause chronic fatigue syndrome. Depression, visual and hearing defects, feeling of fear or rage, insomnia, risk of suicide and oversensitivity of noise and touch are adverse effects. They even suffer from anxiety and panic attacks too. This leads to more suicide or self-harm cases in confined inmates than the simple prisoners.

In many of the researches, a confined prisoner reported more memory loss, and several prisoners reported being confused or not have a mental state to make a certain decision or loss of cogent thoughts. These people are suffering from illusions or are not conscious. And all the effects don't rest the prisoner normal for his future life. They even suffer from post isolation effect. They faces difficulty in socializing, sleeping and for every daily chore.

INMATES RIGHT'S

Inmates have certain basic or essential rights. The Indian constitution has some articles that render the privileges, that includes the rights and other disciplinary subjects. Some specific rights have been given to the prisoners. Such rights have given in, THE PRISONS ACT, 1894.

³ Saurav Vinod and Preema Safi, Solitary Confinement, All India Legal Forum, <https://allindialegalforum.in/?s=solitary>, last visited (sep. 8,2021, 8:30 AM)

THE PRISONS ACT, 1894:

It is the first Indian legislation on the regulation of prison. It mainly focuses on the rehabilitation of prisoners. Section 29 of the Act talks about solitary confinement, and said: “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.”

RIGHT TO LEGAL AID :

An arrested person has the right to legal aid under Article 22(1) of the Indian constitution. This states that any arrested person shall not be denied from consulting the legal professional of his choice. Under Section 303 of the **Code of Criminal Procedure, 1973** every person either the offender or the defender has the right to approach any counsellor of his choice. *M.H. Hayawadanrao Hoskot V. Territory of Maharashtra 1978⁴*, the ruling of the court was, right to legal aid is one of the important components of a rational system.

RIGHT FOR SPEEDY RESOLUTION OF TRIAL :

Every person has their liberty. And speedy trial comes under such liberty. Speedy trial is one of the essential of the justice system. It gives justice and reduces the burden of cases too. Article 21 of the Indian constitution emphasizes the idea of the right to life and the principle of liberty and said, one person can be denied his life and individual freedom following the law. A system that could not provide the quick trial then it can not be regarded as fair, absolute and rational, because of this it comes under the scope of Article 21. This concept came from a case of the year 1961, *Kartar Singh V. State of Punjab⁵*, hon`ble Supreme court had made the speedy trial as the element of personal liberty in its judgment.

Another landmark judgement in this is *Hussainara Khatoon And Ors. V. Home Secretary, State of Bihar, 1979⁶* court held that if the trial will not be conducted speedy then the procedural law becomes void. Court realized, “what faith can these lost souls have in the judicial system which denies them a bare trial for so many years and keep them behind bars, not because they are guilty, but because they are too poor to afford bail and the courts have no time to try them”.

⁴M.H. Havawadanrao Hoskot V. Territory of Maharashtra, AIR 1978 SCC 1548, (1978) 3 SCC 544

⁵ Kartar Singh V. State of Punjab, 1994 SCCC (3) 569

⁶Hussainara Khatoon V. Home Secretary, State of Bihar, 1979 SCR (3) 552

⁷The court held that speedy trial is a constitutional right and cannot be denied by the state. After this judgement almost 40,000 under trial inmates were set free. In *Raj Dev Sharma li v. State of Bihar 1999*⁸, the court held that if the offense judged is punishable by a prison sentence of more than 7 years, whether the defendant is in prison or not, the court stops the evidence against him after three years from the date of the date of recording of the accused`s plea on the charge formulated. Whether or not the prosecution has heard all the witnesses within the said time limit and the court can proceed to the next stage provided by law for the trial of the case, except for every exceptional reason to be recorded and in the interest of justice the court considers it necessary to allow additional time for the prosecution to produce evidence beyond the aforementioned time limit. In another case of *Rudul Sah V. State of Bihar 1983*⁹, under this case Rudul Sah was detained for 14 years after his acquittal. The court found all the facts are false and unjustified on which basis the appellant was detained. It said the confinement was illegal. The court set him free and also grant him power to get ancillary relief.

India believes in a phrase “innocent until proven guilty” and an innocent was confined for 14 years in prison only because not having a proper trial at a time means lack of speedy trial. An innocent was placed between criminals for such a long period can also develop him into a criminal. Social contact for normal people is different from a prisoner then the confinement of such innocent people can also be related to solitary confinement as they were kept far from his social contact and let him suffer in the jail house. They have jailhouse food, water and toilets too. They even had faced mental and physical stress after being innocent only because of not having a speedy trial of their cases.

The convicts are kept in reclusive custody for numerous years even after getting death sentences only due to lack of speedy trial. This causes an extra burden on the Indian economy. There is no gain in keeping such hardcore criminals in isolative confinement, their cases should be resolved faster in course of justice. In the case of *Union of India V. Dharam Pal 2019*¹⁰, the supreme court observed that, being a death convict the respondent had experienced confinement for 25 years and out these 18 years in reclusive custody during the deciding time of mercy petition by the hon`ble president. In these years he was kept in various isolated jails,

⁷Rajeswari Rajesh, Case Analysis: *Hussainara Khatoon and Ors. V. Home Secretary, State of Bihar (1979)*, Legal Bites Law and Beyond, <https://www.legalbites.in/case-analysis-hussainara-khatoon-1979/>, last visited (Sep. 3,2021, 9:45AM)

⁸Raj Dev Sharma li V. State of Bihar, 1999 Criminal Miscellaneous Petition no. 2326 of 1999 in Criminal Appeal no. 1045 of 1998

⁹ Rudul Sah V. State of Bihar, 1983 AIR 1086, 4SCC 141

¹⁰ Union of India V. Dharam Pal, criminal appeal no. 000804-000804/2019

which is like an additional unlawful punishment that is not sanctioned by the law. In another case of *State of Uttarakhand V. Mehtab, Sushil, and Bhura 2018¹¹*, The High Court ruled that the practice of keeping the convict in solitary confinement / reclusive custody before the weariness of his constitutional, legal and basic rights is unconstitutional. He subsequently overturned keeping death row inmates in solitary immediately after sentencing, and the High Court declared solitary confinement as a "lawless and ruthless practice that can cause enormous torment, agony and anxiety" to the prisoners. The High Court ruled that solitary confinement violates article 21 of the constitution which guarantees the protection of life and personal liberty.

This custody amounts to the extra punishment charged for the same offence or the punishment for an offence awarded more than once which is the violation of Article 20(2) of the Indian constitution. Under Article 20(2) every person has protection against double jeopardy that is no one can be prosecuted twice for the same offence. Authorities keep the sentenced prisoners segregated in the reclusive custody which restrains them from all type of contacts from other prisoners. The system should try to keep the prisoners in isolation for the shortest possible time. The inhuman treatment causes extensive harm and violates the right of prisoners. These cases are not so old they the recent one and it shows what is the condition of our judicial system in the 21st century. We stop the practice of keeping death convicted in reclusive custody after the sentence was pronounced.

RECLUSIVE`S CONTRASTING EFFECTS

In contrast to the impacts of solitary confinement as described by researchers, which is normally provided as there is the existence of psychological and mental disorders. *In 2014, Samantha San also discovered in her study of prisoners that they suffer from a variety of effects in such isolative custody.*¹²The study was the comparison between the prisoners of reclusive custody and of simple imprisonment to know about the health impacts on them. Across the worldwide survey, the study was examining the suffering of segregated inmates.

¹¹ State of Uttarakhand V. Mehtab, Sushil and Bhura, Criminal Reference no.. 1 of 2014 on April 27, 2018.

¹² Diganth raj Sehgal, *Right against solitary confinement: a detailed study*, **ipleaders** intelligent legal solution, December 16, 2020, <https://blog.ipleaders.in/right-solitary-confinement-detailed-study/>, (last visited oct. 7.2021, 1:14 pm)

Another research was conducted by *Zinger and Wichmann in 2001*¹³. This research also has the same motive but the results were contrasting from other reclusive custody researches. According to this, there was no major difference in the health of either of the prisoner, the isolated one, or of simple imprisonment. There was only one trouble, the confidentiality of the participants was not fully shared only limited information was revealed. This causes suspicion, might the prisoners be at risk or not that much safe in this.

DESTRUCTION OF RECLUSIVE CUSTODY AS PUNISHMENT

Earlier there was no any concept of punishment. society use to ignore the wrongful acts. Afterward they start punishing the wrongdoer by stone-pelting, etc. In the 10th century the concept of bot came for punishment. What was the motive of bringing punishment into the system? The answer will be - to make the wrong doer realise it`s fault and deter them from doing it again. The wrong doer should learn from their wrong. Now it is the 21st century and the motive of punishment remains the same but the only difference is that the moral punishment is changed into a stressful punishment. Prisoners were mentally and psychologically affected and the impact is at par level that they suffer for their rest of the life even after the isolative confinement. People request the judiciary to revoke such punishment. We have many type of research against reclusive custody for its destruction.

Brodsky and Scogin (1988, p 279) had identified negative mental impact is the major effect of social segregation or the confinement in a single cell. An experiment was conducted by Brodsky on 69 inmates who are asked to be in isolation completely. The motive was to study their mental conditions. He found a variety of illnesses like 45% of inmates are suffering from anxiety, chronic psychosis affected 36% of them and two-third were with a psychiatric disorder.

Another name that comes in this was Danold O.Hebb (1951). He had shown the impact of isolative confinement on the sensory and proved it also. The suggestion of all the researchers was to abolish such confinements.

¹³ J.Sneha, K.Roja, "A STUDY ON SOLITARY CONFINEMENT AS A PUNISHMENT", International Journal of Pure and Applied Mathematics, 2018, Vol. 120 No. 5, PP. 863-878, <https://acadpubl.eu/hub/index.html>, last visited (Sep. 1, 2021, 4:12 PM)

CONCLUSION

India, a nation with huge population has the requirements of effective and proper functional judicial system to fruitfully run the country. Reforms are needed specially the reforms for the prisoners. Measures should be taken to initiate or bring the upgradation in Indian management of jails with time to time, so that the law and justice would be able to work perfectly. There are a number of problems which require urgent consciousness of the authorities which incorporates prison's physical structure, prisoners care and condition, prison personnel training and re-orientation and speedy trial.

Overcrowding of inmates is an important issue and should be resolved faster. Prisons contain the population of both convicted and undertrial inmates. Speedy trials by special fast track courts, special courts, and by video conferencing too. But justice should not be forgotten, no one should be pleaded guilty forcefully.

After a certain period, the hon`ble supreme court needs to address the undertrial cases and also to supervise the lower courts for the speedy redressal of cases. NHRC recommended the restructuring of the criminal justice system in its the yearly report. The system of Indian jails needs more manpower for better management and the securities of jails. We need trained officers to work effectively. Management should improve prisons condition to make it a better place to live, also attached to the cause of reforms and rehabilitation of deviant part of the society.

Reclusive custody is a damaged system and impacting our system severely. However, in 1800 it was considered to be ineffective and harmful then after why it is still in use!