

*Law Audience Journal, Volume 2 & Issue 6, March 2021,
e-ISSN: 2581-6705, Indexed Journal, Published at
<https://www.lawaudience.com/volume-2-issue-6/>, Pages: 3 to 14,*

*Title: Indian Prisoners: A Condemned Class, Authored By: Mr. Subodh
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Publisher Details Are Available At

<https://www.lawaudience.com/publisher-details/>

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(E-ISSN: 2581-6705)

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ABSTRACT:

“COVID- 19 with epicentre in Wuhan, People’s Republic of China emerged as Global Pandemic and has the greatest impact of 21st century on every individual and India country with the second largest population is also suffering from its impact. Every wing of society is suffering and the government is taking necessary steps to protect the life of citizens and the interest of the nation socially and economically. The pandemic has become a threat to health and the government is obligated to protect the living being which also includes prisoners. The Indian prisons are already over crowded and it is pertinent to note the condition of the prison’s medical facilities even in the best time has been found ill-equipped.

This paper covers the role of central as well as state government to protect the life of prisoners during the pandemic and how the onus is on the judiciary to make sure the good health of prisoners as the prisoners are lodged under their custody only. The Indian Prisons are suffering from unhygienic condition and overcrowding which are considered as the most suitable condition for the spread of the virus and infectious disease. Pandemic COVID-19 made it more challenging for the government of state as well as central to fulfill their obligation to provide basic necessities such as maintaining cleanliness, hygiene and providing health facilities to the prisoners. The paper also elaborated the role of legislature and steps taken by them to discharge their constitutional duty and responsibility to protect the interest of living.”

Keywords: COVID-19, Prisoner, Judiciary, Legislature, Policy and Precaution.

I. INTRODUCTION:

The countries that signed and ratified International Covenant on Economic, Social and Cultural Rights,¹ are monitored UN Committee on Economic, Social and Cultural Rights has stated that, health is considered as a fundamental right that is indispensable form other existing Human

¹ International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, treaty series, vol. 993, p. 3.

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Rights.² India, a country with a population of over 1,300,000,000 has gained its status among those countries which has Fundamental Rights available universally, irrespective of Religion, race, caste, gender. These rights are given to its citizen collectively as well as individually.³ Right to health not just includes the absence of disease but also the mental, physical and social stability of a living being.⁴ The principle of democratic socialism is inbounded in the preamble of Indian Constitution and the socialist pattern of article 21 protects the right to life and personal liberty. Article 39(e), article 41 and article 42 of Indian Constitution are deeply rooted in the derivation of human dignity enshrined in article 21, therefore it must include protection of health and neither the state nor the central government has power to any action which will deprive the citizen of enjoying the right.⁵

The Apex court of India, in the Judgment of ***Paschim Bangal Khet Mazdoor Samity v. State of West Bengal***,⁶ held that it is the primary obligation of government in a welfare state to provide adequate medical facilities and assistance to its every citizen. It is paramount duty of the state to provide basic necessity related to medical assistance and Indian government are working in a progressive way but it is also pertinent to note that as cited by All India Committee on Jail Reforms in its report that, “it is extremely unfortunate that the prisoners lodged in jail are not only not given proper health care but also forced to live inhuman conditions and unhygienic condition without proper care.”⁷ The world presently suffering from the Pandemic “COVID- 19” and India with the second largest population got affected by this virus badly. As per the statistics released by WHO situation report- 160 issued on June, 28 2020 has confirmed 52,88,59 confirmed which is around 5.3% of total confirmed cases around the world.⁸

² Committee on Economic Social and Cultural Rights ‘General Comment No. 14: The right to the highest attainable standard of health’ (11 August 2000) UN Doc E/C.12/2000/4 para 1.

³ Knowindia.gov.in/profile/fundamental-rights.php.

⁴ Preamble, Constitution of WHO, the International Health Conference, New York, June 19- July 22, 1946 (off. Rec. WHO., 2, 100).

⁵ Francis Coralie Mullin v. The Administrator, Union Territory of Delhi, 2 SCR 516 (1981).

⁶ Paschim Bangal Khet Mazdoor Samity v. State of West Bangal AIR 1996 SC 2426.

⁷ All India Committee on Jail Reform, Bureau of Police Research & Development Ministry of Home Affairs, New Delhi, 2003.

⁸ Corona Disease, situation Report- 160, World Health Organization, June 28 2020.

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A country with a huge population with a low rate of cases shows the effective regulation by the government and how the government is fulfilling its sacrosanct and sacred obligation. Prevention, protection and preparedness in prison and other detention centres are the basic ways to control of COVID-19. The state is obligated to follow the guidelines but day by day the situation is getting worst and it can be argued that the government has failed to fulfill their obligation towards its citizen.⁹ The Prisons in India are around 1,412 including central as well as state jails with an average capacity of 3,80,876 and the number of prisoners is more than 4,33,003 which means the occupancy rate is around 113.7%.¹⁰

The WHO many a times through its spoke person has clarified that that social distancing is the only defense available till date to fight against Novel Corona Virus. The social distancing is a total myth inside prison and the data shows above over crowing inside the prison is not new. The prisons are considered as reformative Centre where people deprived of their liberty are more vulnerable during this pandemic duration because prisoners are bound to live together for a long period of time. It is also true and notable point that places like jail, Prison and other similar settings where people are confined inside fixed boundaries has high probability for spread of infectious diseases and act as source of infection.¹¹

The role of prison authorities and government is more challenging to stop and prevent the infection rate due to corona inside the prison as compared to other places. ***The reasons behind the same are:***

- The increase in transmission of disease in the prison will amplify the effect of Pandemic, causing community transmission which will multiply the affected people more rapidly.

⁹ https://www.euro.who.int/_data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=1 page 12.

¹⁰ Prison statistics India 2016, National Crime Records Bureau (Ministry of Home Affairs) Government of India.

¹¹ Preparedness, prevention and control of COVID-19 in prisons and other places of detention, WHO, 15 March 2020. https://www.euro.who.int/_data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=1.

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- Efforts to control such massive transmission of virus will fail if proper guidelines are being not followed inside the prison which is tougher to monitor.¹²
- Prisoners are already deprived of their liberty and if further restrictive measures are imposed on them, they may react differently.¹³

The condition or situation of Indian prisons is appalling due to overcrowding and henceforth remain absolutely not even iota of doubt that it remains a potential hub for the mass outbreak of contagious disease such as COVID-19. The prisoners are not even tested for any kind of infectious disease and so it becomes quite essential to analyze the rights of the prisoners in this pandemic situation where the government is paying a deaf year and a blind eye towards this unattended prevalent epidemic.

II. CONSTITUTIONAL PROVISION REGARDING THE MENTAL HEALTH OF PRISONERS:

The Grund Norm, Indian Constitution under article 21 grants right to life and personal liberty and the right to life does not confine to mere physical existence but to have a life with dignity which in itself includes bare necessities such as proper nutrition, clothing, shelter, clean environment and medical facilities. The basic right guarantees the highest attainable physical as well as mental health. The Apex Court of India in *Bandhuua Mukti Morcha v. Union of India*¹⁴ has held that right to live with human dignity enshrined under article 21 derives from DPSP and therefore includes protection to health.

The question of whether the right to health is an essential part of life under the ambit of article 21 though expressly provided as fundamental right has been very aptly answered by the

¹² 2019 Novel Corona virus (2019-nCoV): Strategic Preparedness and Response Plan. Geneva: World Health Organization, 2020. <https://www.who.int/docs/default-source/coronaviruse/srp-04022020.pdf?ua=1>.

¹³ UN Office on Drugs and Crime (UNODC), *Good governance for prison health in the 21st century: A policy brief on the organization of prison health*, 2013, ISBN: 978-92-890-0050-5.
<https://www.refworld.org/docid/5375e708a.html>.

¹⁴ *Bandhuua Mukti Morcha v. Union of India*, 1984 AIR 802, 1984 SCR (2) 67.

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Supreme Court of India in ***Paschim Bengal Khet Mazdoor Samity & Ors. v. State of West Bengal & Ors***¹⁵, and has emphasis on the issue that, right to health is integral part of life under the horizon of personal liberty. The interpretation of article 21 is multi directional and has special impact on the life cycle of every living person mentally and physically and the state has obligation to provide medical facilities and healthy conditions for survival.¹⁶

The intention of the judiciary, as well as legislature, is clear that the right to have medical facilities is available under article 21, but still the question arises whether the right is also available for prisoners who are also the citizen of this Nation. The answer to this question is affirmative, being convicted of an offence does not cease him to be a human being. The prisoners inside the prison are not wholly divested of their fundamental right but have limited liberty and freedoms. Prison jurisprudence states that, just because of being prisoners they should not lose all their rights. The Supreme Court of India in the landmark judgment delivered while hearing the matter between ***Charles Sobhraj v. The Supritendant Central jail, Tihar***¹⁷ that imprisonment does not spell farewell to fundamental rights. The right to medical treatment is a basic human right and is available to prisoners as well.

The apex Court in ***Parmanand Katara v. Union of India & Ors.***¹⁸ held that the state has an obligation to preserve the life whether he is an innocent person or criminal. The jail authorities should take proper care of availing convicts and the jails should be equipped with ICCUs, pathology lab, expert doctors, sufficient staffs and the latest instrument for medical treatment.

Thus, the prisoners under article 21 of the Constitution of India reading in consonance with article 39(e) and Article 47 under part IV of the Constitution are entitled to the right to life including proper medical and health care facilities. The prisoner continues to enjoy all his fundamental rights of life and personal liberty which includes clean atmosphere, living

¹⁵ Paschim Bangal Khet Mazdoor Samity v. State of West Bangal, AIR 1996 SC 2426.

¹⁶ State of Punjab v. Mohinder Singh Chawala, Civil appeal no. 16979 of 1996.

¹⁷ Charles Sobhraj v. The Supritendant Central jail, Tehar, 1978 AIR 1514.

¹⁸ Parmanand Katara v. Union of India & ors, 1989 AIR 2039.

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condition and hygiene. Apart from the constitutional aspect, there are various other legislations that provide for the proper health of prisoners. Section 4 of the Prisons Act, 1894 enumerates the concept of proper sanitary accommodation to prisoners. While reading other provision of the same legislation enactment,¹⁹ it gives a clear procedure in case of outbreak of epidemic diseases. It states that, shelter and safe custody to the prisoners in a situation of outbreak of any epidemic disease. Overcrowding shall be controlled and hygienic condition should be developed.

The statute provides for the appointment of medical officers in the prison under section 13 to section 15 of the legislation. The medical officer shall have record of the person who is ill; what type of illness he/she has; when was he/she admitted to the hospital and so on. Henceforth there is a clear provision which states that prisoner's health is equally important. Chapter VIII of Prison Act, 1894 contains provisions relating to health of prisoners. There shall be hospital in every prison for sick and infected prisoner and also the medicines and various other facilities should be provided by medical officer to the prisoners'.

The Prison manual²⁰ came in the year 2016 which provide guidelines specifically related to the condition and measures during the time epidemic crisis. Rule 13.73 of Model Prison Manual, 2016, is the best possible document which provides elaborate guidelines to be followed by the prison authorities. As per the guidelines, there shall be a permanent separate shed for every infected prisoner so that social distancing is carried out effectively. Overcrowding in the prison should be monitored and in case the infection starts spreading in the prison premises. The isolation wards should be constructed and proper treatment should be provided by the respective authorities as far as possible. The infected prisoners should be kept in a separate building with care been taken that it is at a distanced from other inmates and proper treatment should be provided to them, clothes should be changed regularly, barracks should be sanitized

¹⁹ Prison Act, 1894, § 7.

²⁰ Model Prison manual for the Superintendence and Management of Prison in India 2016, Ministry of Home affairs, Government of India, 2003.

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and disinfected regularly. In addition to physical health, Rule 15.03 of the manual²¹ provides for safeguarding the mental of the prisoners, a psychiatrist should be arranged to prisoners in case of need. It is very apt to note that Section 103(6) of the Mental Healthcare Act, 2017 requires mental health should be established in medical wing of at least one prison of the respective State and UTs. But these are only enlisted provision there is no practical applicability of this because these are often ignored.

III. COVID-19 AND INDIAN PRISON SYSTEM:

The impact of Covid-19 can be determined to form the fact that only in India the cases are increasing rapidly with a rate of 35,000 every day and the prisons are also not untouched from the effect. The Novel Coronavirus has raged throughout Indian Prisons and jails, where prisoners are living together in close quarters and the opportunity of social distance is a myth and the condition of prisons are not that good due to one or other reason that a there are lack of basic sanitary supplies and high rates of chronic disease.

The Apex court of India in the case In Re: Contagion of Covid-19 Virus in Prisons by taking suo moto cognizance considering the seriousness of the matter has proposed certain guidelines during this Pandemic time. The Supreme Court has directed all the states and union territories to take considerable measures to protect the interest of prisoner.²² Indian Judiciary as well as of different state governments are mainly focusing on the issue of isolation ward, quarantine of prisoners who has symptoms of infection, availability of medical assistance to the infected prisoners, scanning of prisoners and other service providers such as supply of masks and most importantly sanitisation and cleanliness exercise of prison campus and wards including supply of masks. The Indian Prisons' are considered as over crowded as comparison with other systems of the world due to huge population. Prisoners continue to be human being even if imprisoned

²¹ Id.

²² Suo motu writ petition civil no.1/2020). In the order dated 23.03.2020, the court has directed the State/UT Governments to constitute a High-Powered Committee (HPC) to determine the category of prisoners to be released on parole or interim bail to address the risk of transmission of COVID-19 especially due to overcrowding in prisons.

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by the court order and enjoy fundamental rights such as right to life and have medical assistance, the Bombay High Court on the same reasoning while disposing the bunch of PILs filed by various social workers NGOs and Advocates like PUCL, senior Counsel Mihir Desai directed the state government that active steps should be taken by the related authorities by following the guidelines provided by the International organisations and central government.

The different legal system has already taken various steps to protect the interest of prison and similarly the Indian legal system by taking progressive measures for the welfare and protection of prisoners and the prison staff. Unlike Maldives government which has passed the government Regulation that if any prisoners have cold or other symptoms should not be taken to court,²³ the Indian legal system has developed itself that even in emergency time the basic fundamental right can't be curtailed and emergency court will run to dispose the matter of great importance such as matter related to writ of habeas corpus.²⁴ During the period of lockdown, the focus of government was highly appraisable regarding controlling the spread of corona, guaranteeing good surviving condition and right to health to all, working on bringing the economy back on track but what is worthy to note and is unpleasant to hear is that government attention towards the prisoner conditions and prisoners right to health and other facilities.

IV. PREVENTIVE MEASURES:

During the time of pandemic circumstances, every individual is vulnerable because till date no Country claimed 100% results of vaccine to cure and prevent coronavirus. The condition of prisoners detained in prison is at high risk owing to confined four walls of prison and it is misconception that in prison there is possibility of social distancing.²⁵ The Apex Court of India in suo moto writ petition In Re: Contagion of COVID-19 Virus in Prison,²⁶ issued the direction

²³ COVID-19: Government commences work to clean, disinfect Maafushi Prison. <https://avas.mv/en/79630>.

²⁴ Additional District magistrate of Jabalpur v. Shiv Kant Shukla, (1976) 2 SCC 521.

²⁵ COVID - 19 and Prisons in the Commonwealth, Ensuring an Effective Response, CHRI 2020. <https://www.humanrightsinitiative.org/download/1586326581COVID%2019%20and%20Prisons%20in%20the%20Commonwealth.pdf>

²⁶ In Re: Contagion of Covid 19 Virus in Prison, Suo Motu Writ Petition (Civil) No. 1/2020.

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to different government of states to consider releasing of prisoners on parole or on interim bail to prisoners who are undergoing imprisonment extending up to seven years of jail term to decongest prisoners in this pandemic. To which almost all the states and UTs have turned up and released a large no. of prisoners on parole on interim bail for a period of 4 to 6 weeks. The condition before releasing the prisoner from jail is that he should be serving an imprisonment of less than or up to seven years. Parole and interim bail should be granted to decongest prisoners for a period of 4 to 6 or 8 weeks.

Though the different state prisons following the order have released a large no. of prisoners but it is pertinent to note that how these released prisoners are reaching their homes, whether the government is taking any necessary steps in this regard. It has been found various prisoners are in such sorry state that they cannot reach their home due to lack of money or their family members are not able to come and pick them up. So, what is the point of releasing them from prisons when they cannot reach their respective homes? The State should consider this issue of prisoners.

Apart from this, the Government of Home Affairs Ministry of India issued a mandatory notice dated March 12, 2020 subjected to Precautionary measures in Prison during COVID-19 Pandemic.²⁷ The Home Ministry wide the notice said it has affected a large part of the country's population and currently it is at its height of spike of spread and there is not even an iota of doubt that prison is one of the most vulnerable places where this pandemic can outburst and take into glitches large no. of prisoners and so it is high time to considering taking necessary precautionary measures to avoid this pathetic condition. It further said that most effective measures are regularly cleaning hands, taking proper care to cover the mouth while coughing and maintain social distancing. It has asked to take various steps to reduce the movement of prisoners to minimal including their production in courts to ensure social distancing. The courts are having Video Conferencing set up so that they can appear virtually in courts. The system

²⁷ Advisory 'Precautionary measures in Prisons in view of COVID-19 Corona virus scenario' March 12, 2020. Ministry of Home affairs, Government of India, No. 17013/17/2020-PR.

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is user friendly and can be operated on Smartphones too. Due care may be taken to handle prisoners including foreign nationals and visitors to Prisons. The Ministry further stated that states and UTs are requested to engage with their Health Department and arrange screening devices and COVID-19 testing kits for screening prisoners and their inmates. It is requested that possible measures should be taken to avail the facility of video conferencing to encourage the meeting of prisoners with their relatives i.e., E-mulaqat.

Following the letter of the Home Ministry, the state governments and Union territories have ensured that proper precautionary measures are being taken to control the spread of COVID-19 in Prisons. The Odisha government has taken brilliant steps regarding this and various states including Uttar Pradesh, Assam, Madhya Pradesh, Rajasthan, Maharashtra and others have taken similar steps too. The Commonwealth Human Rights Initiative has formed a checklist with the aim to monitor and assist State prison departments in periodic monitoring of prisons and ensuring that effective measures are in place to effectively manage COVID-19 in prisons.²⁸

The recommendations of the report are as follows:

- Extreme care should be taken in handling prisoners and visitors and social distancing should be followed.
- Screening devices and testing kits should be availed and used in prisons
- All the newly admitted prisoners shall be properly scanned and sanitized thoroughly at the point of entrance.
- All the admitted prisoners should be kept under close supervision of medical officers.
- All meetings should be temporarily suspended for the safety purpose.
- E-mulaqat facility should be availed as far as possible.
- Proper hygienic condition should be maintained like washing hands regularly.
- All types of visits to educational institution, NGOs, etc. Should be temporarily suspended.

²⁸ CHECKLIST FOR MONITORING PRISONS 2020, Commonwealth Human Rights Initiative.
<https://www.humanrightsinitiative.org/publication/checklist-for-monitoring-prisons-based-on-the-ministry-of-home-affairs-standard-operating-procedure-sop-for-handling-arrested-persons-detainees-and-inmates-during-the-pandemic>.

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The situations in the prisons are getting worst day by day and some strict steps are needed to stop the spread of virus within the four walls of prison. The Ministry of Home Affairs, Government of India has issued the advisory dated May 2, 2020 to all concerned authorities to curtail the spread of virus and instructed to take various measures²⁹, such as:

- Social distancing should be followed strictly
- Segregation cells should be maintained
- Security of inmates should be considered strictly
- Proper Health monitoring
- Minimum movement of prisoners in prisons should be followed
- Careful screening of all inmates shall be conducted and suspected one should be tested for Covid-19.
- The inmates returning from parole or furlough should be lodged in separate cell and shall be regularly screened.
- If there is large outbreak of covid-19 in a prison, a temporary prison should be created.
- The staffs should be properly masked, face-shielded, use gloves, thermals scanning equipment and sanitizers and whole building shall be sanitized daily.
- Group activities should be completely stopped.
- Gloves, eye protection and face mask should be used while physically handling the prisoners.

V. CONCLUSION:

Paterson, a well-known British prison Commissioner in a conference gave his own version that, prisoners are sent to Prison as punishment, and not for Punishment. The prison was considered as the laboratories of torture where the rights related to liberty such as freedom of movement are curtailed by the authorities as part of the punishment in the confined environment.

Considering the health of Prisoners and inmates including both mental and physical, the condition of healthy environment is quite devastating and the health is compromised. Apart

²⁹ Advisory “Management of COVID-19 in Indian Prisons- Guidelines and Protocol”, Ministry of Home affairs, Government of India, No. 17013/17/2020-PR.

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from the steps taken by the authorities for betterment of prison and jails the prisoners are also working and giving their efforts during the time of pandemic. The Kerala Prison and correctional department with the help of inmates have manufactured 1 million masks and 15,000 litres of sanitizer which helps in generating income for the prison and also gives a way out which will to pass during quarantine.

The Indian judiciary issued various guidelines but it is on state governments to implement to protect the interest and their rights as per the constitutional framework. The Indian prisons are already unable to match the standard recommended by International organizations and the factors like health and hygiene are only in black and white but no practical application of regulations due to one and other reason. The pandemic COVID-19 has emerged as the biggest challenge of the century for every state and India till now has suffered in both economically and socially.

The pandemic fetches the attention of every concerned towards the inhuman and unlivable conditions inside the prison. Prison health is the part of public health and closing the eyes is not a solution but an invitation to the disaster. A part of public health response every state government along with the support of central government should follow and implement the guidelines in its best possible way to ensure preparedness, prevention and control of COVID-19 in prisons and other detention centres.