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Access to Healthcare of Prisoner's and their conditions during Covid-19

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ABSTRACT

This research paper conceptualizes the aspects relating to the conditions of the vulnerable section of the society that is the incarcerated or the prisoners, having no access to the external world or their family amidst the chaos of Covid-19. This research paper also includes the approaches, method and measures taken by some of the countries that had been drastically struck by Covid-19 such as India, The United Kingdom, Italy and The United States of America. The incarcerated were isolated for the majority of the day unable to communicate with fellow inmates or the external world which under normal circumstances would be available to them. The Right to Healthcare has also been discussed forthwith, this right is not only pertaining to the citizen but also to the incarcerated or the prisoners irrespective of the crime committed. However, it has been noticed that most of the countries were unable to provide access to basic Healthcare to the prisoners during Covid-19 which defeats the provisions of Right to Healthcare which has not only been enumerated under the National Laws of different countries but also under the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). These international treaties have provided a dignity to prisoners and that they too have rights even if their liberty is restricted while being in custody. The ICCPR specifically provides that "all persons deprived of their liberty should be treated with humanity and with respect for the inherent dignity of the human person".

I. INTRODUCTION

The Covid-19 was declared as a global pandemic by the World Health Organization on the 11th of March 2020. While, the entire world was quarantined, the prisoners were rotting in their cells unaware about the happenings in the external world. The prison cells in most of the countries like India were suffering from

overcrowdings because of which the Covid-19 spread across at faster pace leading to the death of thousands of prisoners.

Incarcerated people were affected by the coronavirus at a rate which was five times higher and faster as compared to the nation's overall rate, according to research conducted and reported by the Journal of the American Medical

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Association in July 2020². The reported death rate of inmates was declared as 39 deaths per 100,000 which was much higher than the rate at the national level which was deemed to be 29 deaths per 100,000. The number of deaths of incarcerated people was deemed higher because of the sole and simple reason of being overcrowded and lack of healthcare in the prison. Many prison institutes did not even test the incarcerated people who died after showing symptoms of Covid-19.

The prisoner's although were convicted because of the crimes committed but during the global pandemic which led to the death of millions of people across the globe, measures of overcoming the overcrowdings in prison cells or ensuring the Right to Healthcare of prisoners must be ensured. The prisoners were the most vulnerable part of the society during the global pandemic and the inability of the State and the government of various nations led to the loss of life of the prisoners³.

The Access to healthcare for prisoners is deemed to be a fundamental right recognised internationally by The United Nations. The Standard Minimum Rules for the Treatment of Prisoners⁴ was adopted **in 2015 unanimously by the United Nations General Assembly which was also** later renamed as 'Nelson Mandela' rules to honour the legacy of the late South

African President, who spent 27 years in prison for opposing the injustice meted out to the prisoners. These rules established reflect the minimum standards which must be available to the ensure justice and safeguard the right to life and dignity of prisoners. One of the aim's was to ensure the presence of humane conditions during the term of imprisonment. There are also 'Rules of General Application' which stress upon the importance of treating prisoners or the incarcerated with dignity and humanely. It further states that "*All prisoners shall be treated with respect due to their inherent dignity and value as human beings... The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times.*"⁵

This highlights the importance attached to the right of prisoner's and one of the most basic liberty that is Right to Access to Healthcare of Prisoner's was violated at an international level.

II. POSITION IN INDIA

India has formulated a Prisoner's Act of 1894⁶ which defines the term 'Prison' as jail or place used permanently or temporarily under a state government's general or special orders to detain prisoners. The act includes the term 'criminal prisoner', 'convicted criminal prisoner' and 'civil prisoner' within the ambit of prisoner or the incarcerated. This act has also enumerated the roles and duties of the medical officers that are

² Equal Justice Initiative Covid-19's Impact on People in Prison (October 22, 2021) <https://eji.org/news/covid-19s-impact-on-people-in-prison/>

³ SHIVAM SINGH, FARHAD R. UDWADIA, SHAYAN Sadeghieh, J. Wesley Boyd "The Role of Medical Personnel in Improving Prisoner Rights and Health in India" (October 21,2021) <https://bioethics.hms.harvard.edu/journal/prisoner-rights>

⁴ Standard Minimum Rules for the Treatment of Prisoners, 1955

⁵ The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) 1955

⁶ The Prisoner's Act ,1894 Sec 3 (India)

affiliated with prisons, under Section 13 of the said Act⁷, the medical officers are duty bound to ensure sanitation and hygiene. This concern was not only highlighted during the Covid-19 but also during the All-India Committee on Jail Reforms 1980-83. Although, Indian prisons continued to violate the provision made by the Legislature and the prisons were unhygienic and medically unsafe. When the Covid-19 cases started to rise among the civilian's and the incarcerated, the highest rate was of the women inmates because of the lack of sanitation and hygiene which is an essential element for a woman especially during pregnancy or menstruation.

During the hit of Covid-19 all the States and Nations were required to maintain adequate hygiene and sanitation which included the prisons. But, in India even before the hit of Covid-19 the prison conditions were not up to the required standards as established by the World Health Organization. In the year 2020, Dr. Kafeel Khan described the Mathura jail as "living hell" because of the fact that there was only one toilet that had to be shared by more than 20 inmates.

The Right to life as enumerated under Article 21 of the Indian Constitution⁸ is a right enjoyed by every person irrespective of their race, religion, caste or sex and therefore, is available to the prisoner's as well. The Fundamental rights of the prisoners cannot be swept away by the State which was held in the case of *Charles Sobraj v. The Suptd., Central Jail Tihar*⁹. The prisoners enjoy all of their Fundamental Rights except a few such as freedom of movement or profession

because of their crime for which they have been convicted.

A bold step was taken by the Supreme Court on 23rd March 2020 after the guidelines issued by the World Health Organization regarding the spread of the Pandemic. The Supreme Court took *Suo moto* cognizance and observed that due to that overcrowding of the prison cells and the imperative need to preserve Right to Life as enumerated under Article 21 of the Indian Constitution, the court directed the State and the Union Territories to provide medical assistance to prisoners. Furthermore, the court directed all the State and the Union Territories to form 'high-powered committees' to assess the crimes of the prisoners in order to determine the class of prisoners that could be granted release on interim bail or parole. Therefore, according to the class of crime committed by the convict he or she was granted interim bail or parole however, this was only for some time as and when the cases dropped the prison authorities, courts and the Chief Justice Delhi High Court DN Patel directed and declared that the inmates must surrender¹⁰.

The second wave of Covid-19 struck India and there was a rise in the cases yet again during March 2021 which led to the worsening of the conditions of the prisoners and the vulnerable condition of such prisoners include women, children and convicts above the age of 50 which is the People's Union for Democratic Rights (PUDR) wrote to Chief Justice Delhi High Court DN Patel diverting the attention towards the incarcerated. On the 7th of May, 2021 the

⁷ The Prisoner's Act, 1894 Sec 13 (India)

⁸ Indian Constitution, 1949 Art 21 (India)

⁹ 1979 SCR (1) 512

¹⁰ *Suo Moto* Write Petition (CIVIL) No(s).3/2020

Supreme Court revised the order passed on 23rd March 2020 and the Learned Senior Counsel Mr Colin Gonsalves had pleaded that all prisoners released in the year 2020 must be released on regular bails. He prayed that the court must grant an additional 90-day parole to prisoners who had been on parole in the previous year to avoid overcrowding and to ensure safety of prisoners¹¹.

Even after such an extreme situation which led to the deaths of a large number of inmates there are no prevalent legislation in order to control a similar future event and therefore is the need of the hour since. The prisoners although convicted for their crime are still part of the society and the reason for sentencing them according to their crimes committed is for reformation and rehabilitation in the society therefore, they were not given enough medical care and assistance which they should have been granted by the Indian Government.

III. COMPARATIVE ANALYSIS

The Covid-19 severely struck countries all over the world however, some of the countries had undertaken measures and steps in order to prevent the spread of Covid-19 among prisoners and ensured their Right to Healthcare.

Position in Italy

Italy was drastically struck by Covid-19, it detected 4,707,087 cases however, the Italian Ministry of Justice and that of Health established two strategies to limit and restrict the spread of Covid-19 in prisons. One of which was

progressive isolation of the prisoners from the outer world which is similar to the concept of quarantine which the entire country was directed to do by the World Health Organization and the second strategy was to adopt practices by which possible cases could be identified, detected and therefore, they could treat the infected prisoners¹². The situation in Italy is made all the more severe because of endemic overcrowding. As of April 3, 2020, there were 56,830 prisoners in institutions meant for a maximum of 47,000 people, an occupancy level of 121.75%¹³ which exceeded the actual occupancy which led to overcrowding, making the incarcerated more prone to Covid-19. This particularly fragile environment called for timely and appropriate provisions to contain COVID-19 infections.

The Italian prisons also faced the issue of grave overcrowding making it substantially impossible to put into the social distancing practice and similar measures to contain the spread of COVID-19, even though the World Health Organization (WHO) guidelines of March 23, 2020, warned that the global effort is the need of the hour to tackle the spread of disease which may fail without proper attention to infection control measures within prisons¹⁴ The Council of Europe's Commissioner for Human Rights (2020) stated that

“The decrease of the prison population is indispensable across Europe to ensure the effective implementation of the sanitary regulations and to ease the mounting pressure on

¹¹ Suo Motu Writ Petition(C) No.1/2020

¹² Mariano Cingolani, Lina Caraceni, Nunzia Cannovo and Piergiorgio Fedeli “The COVID-19 Epidemic and the Prison System in Italy”(2021)

¹³ Garante nazionale, 2020

¹⁴ WHO, 2020c, para 3

prison personnel and the penitentiary system as a whole"¹⁵

Position in the United States of America

Like every other country, the United States was also struck by Covid-19 and reported more than 350 positive cases from the incarcerated and staff members during early April 2020 and this was reported only in Cook County jail in Chicago, other Jails and similar institutes also reported various deaths and positive cases which called for serious measures in order to protect the life of such incarcerated people. The major reason for the spread of Covid-19 among the prisoners was lack of social distancing because of obvious reasons such as lack of larger infrastructure and increase in the number of criminals over the years. However, there were a few prisons in the United States which were able to develop appropriate health care systems and create 'sick cells' for the infected in order to quarantine them and separate them from the non-infected ones with the aim to prevent spreading of this deadly virus.

Although the United States Constitution guarantees a right to health care for people who are incarcerated, the access to medical care greatly varied depending upon the status or pecuniary aspect of the patient without due regard to access and quality and services have been challenged by the increased needs of the aging prison population¹⁶. Moreover, when

incarcerated persons do seek medical assistance, they were often faced with issues like long wait times for visits. The costs of such medical assistance granted by the prison systems were a disincentive to referrals for which several states had been scrutinized in order to substandard hospital-level care within their correctional systems¹⁷. The issues such as the quality and the payment of such hospital care were higher during the spread of Covid-19. Although, US developed measures and ensured the quarantine of infected prisoners they however, failed to provide equal access to healthcare amidst the Covid-19.¹⁸

Position in The United Kingdom

The United Kingdom Ministry of Justice and the United Kingdom Health Security Agency issued guidance and measures for preventing and controlling the outbreak of Covid-19 in prisons¹⁹. These measures would not only assist the custodial, detention and healthcare staff amidst the Covid-19 in any prison or a place of detention as established, it would also operational recommendations to assist the staff, local Public Health England Health Protection Teams and other stakeholders when and if an incident or outbreak of COVID-19 is reported in a prison or a place of detention. The Ministry along with the Health Security Agency gave recommendations and demarcated the time period of quarantine for a prisoner that has tested positive for Covid-19 such as the prisoner that had been fully

¹⁵ The Council of Europe's Commissioner for Human Rights 2020 para 4

¹⁶ Andrews J. THE CURRENT STATE OF PUBLIC AND PRIVATE PRISON HEALTHCARE Penn Wharton: PUBLIC POLICY INITIATIVE (2017)

¹⁷ Rusts PC. PRISON HEALTH CARE: COSTS AND QUALITY (2017)

¹⁸ Lurye R. Connecticut shelters rapidly moving people to hotels to prevent COVID-19 outbreaks; homeless individual tests positive in Hartford. *Hartford Courant*. (March 30, 2020).

¹⁹ HM Prison and Probation Service COVID-19 Official Statistics Data to 31 March 2021 Ministry of Justice Published 16 April 2021

vaccinated and yet came in contact with a person that had tested positive are not subjected to self-isolate whereas, a prisoner that had been partially vaccinated or not undergone vaccination would have to self-isolate for a period of ten days, in case such a prisoner came in contact with a positive tested case²⁰. There were similar provisions available for the staff and visitors as well which granted clarity and quick action could be taken by the concerned authorities. One of the great initiatives taken by the people of United Kingdom was setting up the project “The Prison Project-CAPPTIVE” to provide an opportunity to the prisoners and their family members to hear from one another and to ensure that the prisoners, their voice and their rights does not get faded because of the chaos caused by the outbreak of Covid-19²¹.

Right to Access to Healthcare of prisoners under International Law

The Universal Declaration of Human Rights was a milestone document implemented to protect and safeguard their human rights. Human rights are the rights which are inherent in nature and are available to all persons irrespective of their, nationality, race, religion or gender under Article 5 states that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment”²² which implies that every person must have access to healthcare and medical assistance if

and when required as it come within the ambit of humane treatment and the Right to Life.

The International Covenant on Civil and Political Rights (ICCPR) under Article 6(1) states that “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”²³ Such a right is also applicable upon the incarcerated. Article 10²⁴ of the said covenant has also enumerated the need of treatment of prisoners with humanity and with dignity. However, during Covid-19 such provisions were clearly violated as the basic access to medical assistance and healthcare was violated.

IV. CONCLUSION

The prisoners or the incarcerated were the most vulnerable part of the society which were prone to Covid-19 other than they were kept isolated for about 23 hours a day, visitation rights were suspended and there was also a delay in providing access to healthcare and medical assistance. Most of the countries across the globe have adopted by the Reformative Theory of Criminal Justice which revolves around the core idea of rehabilitation of the prisoner back into the society and therefore, this theory recognizes the rights of such prisoners and one of the most basic right that should have been available to them was Right to Healthcare and medical assistance which was not readily available amidst the

²⁰ POSITION PAPER COVID-19 preparedness and responses in prisons 31 March 2020 https://www.unodc.org/documents/justice-and-prison-reform/UNODC_Position_paper_COVID-19_in_prisons.pdf (October 22 ,2021)

²¹ <http://www.prisonreformtrust.org.uk/PressPolicy/Ne>

ws/Coronavirus

²² The Universal Declaration of Human Rights 1948 Article 5

²³ The International Covenant on Civil and Political Rights (ICCPR) 1966 Article 6(1)

²⁴ The International Covenant on Civil and Political Rights (ICCPR) 1966 Article 10

Covid-19 outbreak. The incarcerated or the prisoners also faced challenges because of lack of information as to the measures, symptoms or preventing steps that could be taken by the prison authorities²⁵.

²⁵ What happens to prisoners in a pandemic? A February 2021 thematic review by HM Inspectorate of Prisons