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Mental Health of the Persons Behind Bars

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ABSTRACT

“It is said that 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 Mandela³

Human rights are rights of the humans by virtue of their being human beings. They are the basic rights which are equally guaranteed to the persons behind bars. Studies indicate the condition of prisons in India and the worsening physical & mental health of the prisoners. The prisons are heavily overcrowded with minimum facilities and limited medical infrastructure. This adds to the plight of prisoners who are mostly poor, jobless, neglected by family and community. Thus, they develop mental illness over time which mostly is diagnosed when the symptoms become noticeable. Mental health of both the under trial and convicted prisoners pose a major challenge for the government and the judiciary when it comes to interpretation before courts. The term “mental illness” is defined under the Mental Health Care Act 2017 which covers within its ambit different conditions of mental illness. The researcher through this paper highlights the causes of mental illness, the legislations, judicial approach and also mentions some of the suggestive measures which should be adopted for the mentally ill prisoners.

Keywords: *Mental illness, Prisoner, Correctional systems, Mental Healthcare Act 2017.*

I. INTRODUCTION

The once neglected mental health issues, both of the general population and the vulnerable group like prisoners and migrants have started gaining a lot of attention today. The researcher specifically attempts to throw some light on the mental health of the persons behind the bars. Correctional systems are essential for law enforcement and to manage prisoners humanely who are in conflict with law. These systems also help them reform and unite with the society again.⁴ There are various national and international instruments playing an important role towards the

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⁴ WILLIAM J. CHAMBLISS, CORRECTIONS-KEY ISSUES IN CRIME AND PUNISHMENT 6 (William J. Chambliss ed, 2011).

rights of the prisoners and the humane treatment which should be provided to them.

Despite the efforts by the government and the prison authorities, Indian prisons remain overcrowded with increase in the crime percentage. There are many causes seen behind this alarming increase in crime like most of the prisoners are poor, homeless, convicted for crimes which they have not committed, they are disconnected from families and communities and mostly have suffered physical and sexual abuse. These factors have immensely affected their mental well-being. The meaning of “**Mental illness**” can be well interpreted from **Section 2 (s) of the Mental Healthcare Act 2017**. The definition covers various conditions of mental illness but it is not an exhaustive definition.

There is clearly a lack of people and infrastructure required to look after the mental health of prisoners. The PSI 2019 recorded a total of 60,787 prison staff as against a sanctioned strength of 87,599 – a deficit of over 30%. Prisons lack visits from mental health professionals like psychiatrists, counselors, and social workers. Such scenario leads to developing destructive and exploitative tendencies amongst prisoners. The mental health problems suffered by them only get noticed when the symptoms become prominent but even after that their pleas are often ignored.⁵ A lot has been seen to be done through legislative enactments and measures by prison authorities with regard to the mental illness of the prisoners but India still struggles to promote mental health and wellbeing of persons behind the bars.⁶

II. FACTORS AFFECTING MENTAL HEALTH OF PRISONERS

The Tihar Jail and the prisons in Maharashtra have recorded several suicide cases in the past one year since the pandemic started. The National Crime Records Bureau and the Prison Statistics India (PSI) reports of 2019 record a steady increase in the number of suicides by 51%⁷. There were many reasons recorded for the increasing suicides like suspension of court hearings and restriction on meetings with relatives or lawyers. This possibly has been thought to have deteriorated the mental health of the prisoners.

Studies show that people under detention go through a lot of trauma during their trial and majorly when they face conviction. According to the PSI 2019⁸, most of the prisoners are illiterate, poor or belong to minority communities. They do not have jobs, official documents,

⁵ Penelope Tong & Vijay Raghavan, *Mental Health in Prisons-A long neglected crisis*, The Citizen (Jan 10,2021, 11:24 PM), <https://www.thecitizen.in/index.php/en/NewsDetail/index/15/19859/Mental-Health-in-Prisons-a-Long-Neglected-Crisis>

⁶ Harrendorf S, Heiskanen M, Malby S, *International Statistics on Crime and Justice*, European Institute for Crime Prevention and Control, Affiliated with the United Nations (2010).

⁷ *Id.*

⁸ Prison Statistic India, 2019, National Crime Records Bureau, Ministry of Home Affairs (India).

and security for families which constitute the reasons behind their criminal acts. A glimpse into the historical events indicates the non-provision of social and economic safety nets that could have prevented their entry into prosecuted crime. This is where the reformative practices are needed to be adopted for such criminals rather than practicing retribution.

At the first instance, it is important to understand the reasons behind a person's becoming a criminal. Offences that were unintended, committed under dilemma or duress, impulsively, or as a reaction to violence — there is a high chance of emotional disturbance that can lead to issues of mental health. Criminal proceedings mostly affect people who face it for the first time, those who feel falsely accused, humiliated by the experience of police arrest, court productions and difficult interrogations done to them and their family members. These reasons slowly target the mental health of the prisoners which they fail to cope up with time. This even intensifies as they face family and community ignorance. People under trial are in a persistent state of anxiety, insecurity and uncertainty while convicted prisoners resign to their fate, feel socially detached or develop strong sentiments against the system and society. The women prisoners feel even more marginalized as their needs are essentially compromised in prisons. Even after their release prisoners face a lot of challenges like regaining respect in society, employment and acceptance by family etc. Frequent visits by the police, summoning them to station for enquiries and re-arrest as a preventive measure worsens the situation for the prisoners after their release.

Indian prisons clearly lack the infrastructure required to provide care and support for the betterment of the mental health of the prisoners which can be evidently seen from absence of health professionals like psychiatrists, counselors and social workers in the prison service.

III. LEGISLATIVE FRAMEWORK

The mental health issues of the prisoners have been addressed through various legislations in India. The Mental Healthcare Act of 2017 is an important piece of legislation in this regard. Section 31(2) provides that mandatory training should be provided to all medical officers in prisons to provide basic and emergency mental healthcare. Under Section 103(6) the Act also mandates each state government to set up mental health care establishment in the medical wing of at least one prison in the state.⁹ Though the act provides for provisions concerning the mental health of prisoners, the implementation of the act has failed miserably owing to lack of adequate infrastructure and qualified staff.

⁹ The Mental Healthcare Act, 2017, No.10, Acts of Parliament, 2017 (India).

The Model Prison Manual issued by the Ministry of Home Affairs in the year 2016 gives us a better understanding of the situation inside prisons. Such manuals are released by the Government of India as suggestive guidelines for the states. Chapter VII¹⁰ of the Manual is a provision about medical care which suggests for a minimum of one psychiatric counselor in each type of prison. While the manual deals extensively with aspects like mental health and rehabilitation of prisoners, it is unfortunate that most of the states have failed in its successful implementation.¹¹

Sections 328 & 329 of the CrPC¹² are provisions dedicated to accused on unsound mind. The provisions deal with providing bail to the accused even in cases of non-bailable offences if the accused is identified as lunatic. Additionally, Sections 330 & 331 give the magistrate the right to order detainment of the accused in safe custody and resume the trial when the concerned person ceases to be of unsound mind. The Indian Penal Code deals with the defense of insanity under Section 84 and Criminal Procedure Code deals accused persons of unsound mind under Chapter 25 of the code in Sections 328 to 338 but unfortunately these provisions are often abused.

Chapter VIII of the Prisons Act of 1894¹³ mentions that the jailer has to call medical subordinate for any prisoner who is ill physically or mentally and requires to see a doctor and thereafter requires to give effect to instructions given by such medical officer. Further, *Section 38 of the Act* mentions that a day to day record of all the directions given by a Medical Officer stating whether or not those instructions were complied with, has to be maintained. The Act also requires that every prison should have a separate and proper place for sick prisoners. The Act failed due to lack of proper implementation. The legislations in India seem to be a ray of hope for the persons behind the bars but its inadequacy, proper implementation, lack of infrastructure and personnel remain to be major challenges faced by the country.

IV. MENTAL ILLNESS & THE JUDICIARY

There has been a number of instances where the judiciary has played an active role regarding the right of prisoners but their implementation in the prisons still remain a challenge. The Supreme Court through its judgments have repeatedly stated that the prisoners have basic

¹⁰ Model Prisons Manual, 2016 (India).

¹¹ Rashika Bhardwaj & Prasoona, *Mentally Ill prisoners & their Rights*, THE CRIMINAL LAW BLOG NLUJ (Sept 10, 2020, 11:20 AM) <https://criminallawstudiesnluj.wordpress.com/2020/09/10/mentally-ill-prisoners-their-rights/>

¹² The Code of Criminal Procedure, 1973, No.2, Acts of Parliament, 1973 (India).

¹³ The Prisons Act, 1894, No.9 of 1894, Acts of Parliament, 1894 (India).

human rights like the other people which cannot be taken away from them for the criminal acts done by them. Like in the case of ***D. Bhuvan Mohan Patnaik vs. State of Andhra Pradesh***¹⁴ held that the convicts should not be deprived of their fundamental rights just by mere reason of their conviction. The Court also said that prisoners are already deprived of many rights like right to move freely and right of profession by virtue of them being convicts.

In the case of ***Sheela Barse vs State of Maharashtra***¹⁵, the Supreme Court stressed upon the need to form a mechanism to provide legal assistance and the other required aids to prisoners in jail. It was directed that a notice should be provided at prominent places in jail that prisoners can meet the persons from legal aid committee when they come to the prisons on specific days. In this decision the Supreme Court through a commission identified the poor status of mental healthcare facilities in the prisons. The court also gave direction that the male and female prisoners to be kept separately in different prisons.

Supreme Court's decision in case of ***D.K. Basu vs. State of West Bengal and Ors***¹⁶ reinstated measures to prevent infringement of fundamental rights. The court gave directions to install CCTV cameras in kitchens, main gates, working areas etc. so that the activities of the prisoners can be effectively monitored.

Also, there are many reports which demonstrate the plight of prisoners who have been languishing in prisons for more than 25 years. The case of ***Mrs. Veena Sethi vs State Of Bihar And Ors***¹⁷ was the result of one such report published in Indian Express. These were the mentally ill prisoners who were sent to prisons as the mental asylums were overcrowded. The jail authorities had failed to produce records of these prisoners to the State government stating the conditions of these prisoners. The judgment deeply criticized the inhumane way in which the jail administration and in some cases the Magistrate and various departments handled these cases but it failed to address the issue of improving the conditions of prisons for mentally ill prisoners.¹⁸

Similar was the case of ***Rama Murthy v. State of Karnataka***¹⁹ wherein the Judge made a recommendation that the mentally ill patients to be treated by the authorities of National Institute of Mental Health and Neuro- sciences on request by prison authorities but the said recommendation was not effectively notified.

¹⁴ D. Bhuvan Mohan Patnaik v. State of Andhra Pradesh, A.I.R. 1974 S.C. 2092 (India).

¹⁵ Sheela Barse v. State of Maharashtra, (1988) 3 J.T. 15 (India).

¹⁶ DK Basu v. State of Bengal, A.I.R. S.C. 610 (India)

¹⁷ Veena Sethi v. State of Bihar, A.I.R. 1983 S.C. 339 (India)

¹⁸ Rashika, *supra* note 9.

¹⁹ Rama Murthy v. State of Karnataka, A.I.R. 1997 S.C. 1739 (India)

After several such decisions whose implementation failed, the case of *Charanjit Singh v. State and Ors*²⁰ finally led to the framing of set of guidelines issued for mentally ill prisoners. In this case, a petition was filed by NHRC²¹ for a mentally ill prisoner Charanjit whose trial was put on hold after having discovered that he was of unsound mind and then he was sent to prison in absence of surety. Over this his condition in the prison worsened. In the judgment, the court said that if it is seen that there is no scope for the mentally ill prisoner to become normal again, he cannot be left in the prison to die in paucity of surety as it would be a violation of his fundamental right under Art 21 of the Constitution. As it was also held in the case of *Maneka Gandhi v. Union of India*²² that right to life includes the right to live with dignity.

Finally, in a recent landmark judgment of *Accused X v. State of Maharashtra*²³ the Supreme Court declared mental illness to be ground for revoking death penalty for death row prisoners. The court laid down law governing post- conviction mental illness in case of impending execution. In this case the accused 'X' was convicted for the brutal rape and murder of two minor girls making it the "rarest of rare" case. The Supreme Court confirmed the death penalty granted to the accused. Later, in the reopened review petition, it was argued by defense that he had been waiting for death penalty for 17 yrs now and has developed acute mental illness and so his death sentence should be commuted owing to his illness. According Court, in order to have a fair sentencing mechanism, the judges must be given the discretion to choose the punishment from the legislatively prescribed range.²⁴ The court made three significant observations in this regard-

Firstly, Article 20(1) of the Constitution mandates that the convict must have the knowledge of the crime committed by him and he/she must be communicated the purpose of death sentence. Therefore the court believes that if person develops mental illness post conviction, his inability to understand the purpose of his execution defeats the very reason of granting him punishment.

Secondly, the concept of dignity under Article 21 of the Constitution includes 'the capacity to understand' which is inherent to all human beings. Therefore, executing a convict who is suffering mental illness after conviction violates his or her right guaranteed under Article 21

²⁰ Charanjit v. State, (2005) 1 I.L.R. 760.

²¹ National Human Rights Commission (India).

²² Maneka Gandhi v. Union of India, A.I.R. 1978 S.C. 597 (India)

²³ Accused X v. State of Maharashtra, (2019) S.C.C 543 (India).

²⁴ Utkarsh Krishna, *Accused X v. State of Maharashtra: Decoding the complex relationship between Crime, Punishment and Mental Illness*, Manulawskills (Dec 26,2019, 12:00 AM), <https://blog.lawskills.in/2019/12/26/accused-x-v-state-of-maharashtra-decoding-the-complex-relationship-between-crime-punishment-and-mental-illness/>.

as the convict can no longer understand the purpose of his execution. The same court has also cited in *Navtej Singh Johar v. Union of India*²⁵ that Article 21 of the Constitution protects the right to human dignity in all its shades and colors.

Thirdly, the Court held that if at any point before execution, a convict is diagnosed with mental illness that takes away his ability to understand the purpose of his punishment, and then the death penalty cannot be imposed and the rarest of rare doctrine stops applying. Thus, any convict who develops mental illness after being convicted, his execution should not be permitted.

The court has also realized that the judgment can be misused by the death row prisoners. To prevent such misuse, the court provided the “test of severity” for testing the severity of mental illness of the convict. The onus of proof for proving the severity of mental illness would lie on the defense and not the prosecution. The apex court also laid down some instructing guidelines in this regard.

V. CONCLUDING REMARK

A study of various reports, recommendations from judiciary and the legislative steps shows that India has been sensitive towards the rights of the prisoners. Articles 14, 20, 21 have been evoked many times in cases against prisoners. But, unfortunately the journey of the rights of mentally ill prisoners has just evolved on paper and not in practice. Despite the guidelines for the physical and mental health of the prisoners their implementation remains a challenge due to the lack of infrastructure, trained medical staff, ignorance of the jail authorities towards such issues face by prisoners and the laid back attitude of authorities regarding implementation. Mental health still remains an ignored issue and therefore short term solutions would not be sufficient to overcome this problem. Law has to make a shift in the way it looks at this section of the society. Instead of a threat, these are just less privileged people and have all the right to enjoy basic human rights like any other citizen.

VI. SUGGESTIVE MEASURES

As clear from the above reading, the need for better mental health care services for prisoners has been highlighted in many studies. The judiciary seems to have played a significant role in giving directives regarding the physical and mental health of prisoners but due to lack of infrastructure, paucity of trained medical personnel and failure by government in its implementation the results are quite disappointing. No wonder it's high time the legislature and

²⁵ Navtez Singh Jauhar v. Union of India, (2018) 1 S.C.C 791 (India).

the judiciary need to work in co-ordination to achieve the above goal. Some of the suggestive measures could be the following:

1. Proper mentoring, counseling and understanding of the problems of the prisoners and their mental illness by the prison staff and authorities can help overcome the problem of delayed diagnosis of mental illness of prisoners.
2. Dedicated mental health clinics, availability of psychiatrist, medical professionals and other health facilities should be established in every prison with effective monitoring and prompt action should be taken for the prison having mental illness at preliminary stage.
3. All mental ill patients should be kept in separate barracks.
4. The condition of the mentally ill patients should be reported to the doctor from time to time and the judicial officers should be sensitized towards the mentally ill prisoners.
5. Need for a national legislation specifically for the mentally ill prisoners which includes special provisions for mentally ill women and child inmates.
6. It should be strictly monitored by the court that no person with unsound mind should be sent to the prison and the prisoners who face mental illness after conviction should be immediately treated and should not be sent back to the prisons after they become sound again.
7. State should take responsibility of mentally ill prisoners who do not have family as they are as such many a times neglected and boycotted by the community.
8. The prison authorities should conduct regular counseling, meditation exercises, awareness camps and other motivational activities inside the prisons for maintaining a healthy and peaceful environment inside the prisons.
9. Modification of the prison environment should be done as to nurture positive mental health of the prisoners.
10. Effective implementation of the laws and directives given by the judiciary would help the country tackle the increasing problems related to the mental health of prisoners.
