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## PERILS AND DEMURS OF INDIAN PRISONERS

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### ABSTRACT

In Jail there are different types of Prisoners such as under trial prisoners, convicts, detainees<sup>931</sup>, women and other genders these people are also victim of prison life in India, they face harassment and exploitations which are hellacious on human life. There has been great advantage and disadvantage of Article 22 in India. Such as, Article 22 states that it has right against arrest and detention. Whereas, its own clause 3 paves way for illegal detention in India provoking ill-mannered, felonious and unlawful acts towards the prisoners and accused. Today the deprived living of Prisoners inside the Jail is the indicia that the constitutional provisions are turn about to be unconstitutional facing custodial rape, abuse, torture, death, unhealth, overcrowding of prisoners in Jail. All prisoners are entitled to basic fundamental rights and dignity inside the jail anybody acting against this need to be effectively punished and revived to Prisoners to live with decency. We need to create awareness and voice out so that we can create better society with free bird and other citizens commonly for our generation.

### I. INTRODUCTION

A prison is a facility for the isolation of people who have been held in custody (allowed to hold) in prison by a legal power or have been bereft of their liberty after being convicted of a crime. A person convicted of any crime or offences may be sentenced to prison.

Geographically, Prison is a constructed place where criminals stay as punishment. Prison have been defined in various ways stating its visibility in one sided eye. In Jail there are different types of Prisoners such as under trial prisoners, convicts, détentes<sup>932</sup>, women and other genders these people are also victim of prison life in India, they face harassment and exploitations which are hellacious on human life. Truly, these Prisons are place where Police Brutality happens without and with much discrimination where innocents are treated hard, where Criminals uncommonly treated, where the challenges and hardships are mysterious in one eye whereas another eye is blood teared. These prisoners are doesn't get a social life, and yes, it is well known that they are being punished so deprived from social life then what about their social rights? such as health, family, pay and specially the real meaning of article 21<sup>933</sup>? The Indian Prisoners are the most deprived one in the Globe. Even Prisoners are human they need to be treated in rightful manner and humanity. There is the most impeccable incident took place in prison life of this Great Leader, aftermath from his release prison of Nelson Mandela which showed the world prison life is too hard to a human to any living organism in the earth. It is where one human is treating another legal person without any humanity and loss of rights. This incident took place in middle of 20<sup>th</sup> century proves Prisoners life globally. But whereas in India the situation is much worsen than being imaginable. The prisoners regardless of any gender are losing respect and pride day by day. Nowadays, there are these NGO's and organizations who predominantly care for the basic humanism and prisoners in India and fight on law for the same. The harsh truth is even these exploitations cannot be addressed in court of law as sometimes basically they lack accountability of lawful persons and sometimes they lack awareness in law. There are Various

<sup>931</sup>BATES, S: "Prison Administration," Ann. Amer. Acad. 157: 53-61 (Sept., 1931).

<sup>932</sup>Anderson, Clare (2008 (published online: 2015)): The Politics of Punishment in Colonial Mauritius, 1766-1887. In: Cultural and Social History 5 (4), pp. 411-422. DOI: 10.2752/147800408X341622.

<sup>933</sup>Indian constitution, Article 21.

situation states these harassment and exploitation in different states of India. Some of the Indian states Prisoners life are hellacious and deathful. There is one thing that need to be digged deeper that, "Not all prisoners are Convicts<sup>934</sup>" there are some accust, there are some innocent stucked in law due to lack of awareness and may be due to all humanity failure. This is the Situation where it clearly shows the Fundamental failure of Indian Administration and failure of its Effective working. Prisoner deserve all basic human rights and deserved to be treated with pride and respect. It is the duty of the Indian Government to ensure its functionality as ensured in case of DBM Patnaik v. State of Andhra Pradesh<sup>935</sup> and, Sunil Batra v. Delhi Administration that<sup>936</sup>, " It must be clearly understood that a prisoner is a human being in addition to a natural person or a legal person. The act of being found guilty of a crime does not make a person a non-person whose rights may be taken away at the discretion of the jail administration. Because of this, the imposition of any severe punishment within the jail system is dependent upon the existence of legal protections".

## II. PERSECUTING PERILS & DEFIANCING DEMURS

India's crime is relatively higher than criminals which is relatively higher than the Jail and prison spaces. Such dangerous peril is Over Crowding in prison. Generally the real area of Tihar Jail is 400 acres with capacity of 10,026 members but it's today prisoners count is 30,000 and plus which results in threat to human capacity on its geographical existence. Prison is a place for punishment and not for death or murder. The authorities have claimed that the major victims of this Overcrowding are the under trail prisoners. But this Overcrowding can be avoided when the Police and Court

system work together effectively and efficiently. The three wings of Criminal Justice such as Police, judiciary and corrections need to work together amicably. The rudimentary reason for the prolonger under trial prisoners are these " Adjournments<sup>937</sup>" this word has created a new culture in the justice system extending the wait of justice and fulfillment. Under trial prisoners need to be heard and respected exponentially in the Court of law to free bird them if innocent. Overcrowding is like over population in certain area with extensive human presence. Technically this overcrowding in jail had created strong connection of market on drugs and supply of illegal items inside jail, recent statements has even revealed that mere supplies on drugs and items are from and via the jail from state to state accordingly. This overcrowding creates other presecutions such as increased physical contact, poor hygiene, lack of privacy, unhealthy living and most importantly training and rehabilitation programs are affected due to this Overcrowding as result of space lessness. In 1995, one of the famous business man died due to insanity in prison causing health hazards. We can prevent overcrowding by systematic prevention and appointments of new jails atleast. Second peril, Corruption it is the both inside the jail and outside the jail destroying and unconstitutional element present in the society enabling punishment as pleasure inside the prison. Bribes are given in order to get special treatment from the guard and permit Prisoners more they are permitted. Even there are more prisoners in jails there are no equal or more adequate staff and jailer to regulate the prisoners in jail in India which threatens the discipline to be carried inside by the prisoners this may even threat the majority strength in jail and leading in inadequate jail programs. Thirdly, unequal treatment which always remains the regular discrimination in whole India, this unequal treatment doesn't reduce crime or correct the prisoners it only influence

<sup>934</sup>Shestack, J.J. "The Philosophical Foundations of Human Rights" in Symonides, J. (Ed) (2000) Human Rights: Concept and Standards, Dartmouth: Ashgate Publishing.

<sup>935</sup> D. Bhuvan Mohan Patnaik &Ors vs State Of Andhra Pradesh &Ors on 9 September, 1974,1974 AIR 2092, 1975 SCR (2) 24

<sup>936</sup> Sunil Batra vs Delhi Administration on 20 December, 1979: 1980 AIR 1579, 1980 SCR (2) 557

<sup>937</sup> The International Bar Association's Task Force on International Terrorism (2003) International Terrorism, Legal Challenges and Responses, New York: Transnational Publishers Inc, p. 99-101

them to bribe the staffs or jailer. Fourthly, Insufficient legal aid which prolongs the stay of innocent in jail and destroy and punish the innocent. Legal aid is the most fundamental right given to the Prisoners constitutionally. In fact, it's really useful to women and juveniles. There are several legal provisions are available in codes but the prisoners are not aware about the same due to lack of awareness. Ideally, only the rich and upper class has he access to better lawyers even though the Government provides the legal aid their access to the same are struggled by barriers. There are several women prisoners who are illiterate and struggling for legal aid, later get benefited with this legal aid and become a free bird. Fifthly, the Abuse of prisoners which is more disrespect to any human and prisoner. Each gender and each type of prisoner undergo different kind of abuse which hellacious in life. Prisoners are beaten unnecessarily which become integral part of prisoner's life. Where women are prone to custodial sexual abuse<sup>938</sup>. Women and girls are raped and sexually harassed inside the jail, men are brutally and violently beaten and there is no doubt that even men are sexually harassed by the jailers, staffs and police. For women Custodial rape is integral part of prisoner life. These rapes are not at all known or reported only few are lighted. The silence remains noise for the victim and the rapists alone due to shame and pride. As happened in case of Padmini, actually Padmini was not even any convict she just visited to give food to her custodial husband but was brutally raped by the police men and others inside the cell. Women need police to save her from rapist what if the police become rapists even inside the jail? The women has little or no opportunity at all to outcry her rape, where did the power of Doctrine Audi Alteram Partem<sup>939</sup> in administrative law in India exist? . Sixthly, the other element of peril is custodial death and

tortures. All types of prisoners undergo violent beatings, harassments, abuses, exploitations, threats which many times leads to death of prisoners. Which constitution article give power to impinge the right to life from the prisoner does Section. 302 of IPC is effective in India? If yes, why still the custodial death prevails in India? This is because even there are these things happenings the police themselves destroy the evidence available and declare themselves acquittal this happens from state to state, police stations and jails. Are government appointing police for administrative security purpose or for destroying the welfare of people. These kinds of police brutality exist even outside jails even unwarranted women and mens are prone to these kinds of police violence and brutal. Even these things may voice out for light immediately the Police and others influence the records and imprison the unwarrantedly stating Article 22, Constitution of India.

### III. VIOLETION OF CODES IN INDIA AND ABSENCE OF AUTHORITIES

Every prisoners are entitled to right to privacy<sup>940</sup>, right to prisoners and their spouses, right against solitary confinements and bar fetters<sup>941</sup>, right to life, right to personal liberty<sup>942</sup>, right to live with human dignity<sup>943</sup>, right to health, right to medical treatment<sup>944</sup>, right to speedy trials<sup>945</sup>, right to legal aid<sup>946</sup>, right against inhuman treatment<sup>947</sup>, right to education<sup>948</sup>, right to get books and magazines, right to publication<sup>949</sup>, right to practice any religion, right to speech, rights to access courts and counsels, right to humane conditions, right to sanitation and right to meet family under article 21. And all

<sup>940</sup> indian constitution, article 19.

<sup>941</sup> sunil batra vs delhi administration on 20 december, 1979: 1980 air 1579, 1980 scr (2) 557

<sup>942</sup> kharak singh vs the state of u. p. & others on 18 december, 1962: 1963 air 1295, 1964 scr (1) 332

<sup>943</sup> state of andhra pradesh vs challa ramkrishna reddy &ors on 26 april, 2000.

<sup>944</sup> rasikbhai ramsingh rana andanr. vs state of gujarat and ors. on 21 july, 1998: 1999 crij 1975, (1999) 1 glr 176

<sup>945</sup> A.R. antulay vs R.S. nayak &anr on 29 April, 1988: 1988 air 1531, 1988 scr suppl. (1) 1

<sup>946</sup> constitution of india, article 39a.

<sup>947</sup> kadra pehadiya and ors. vs state of bihar on 17 december, 1980 : air 1981 sc 939 b, 1981 (29) bljr 300, 1981 crij 481, (1981) 3 scc 671

<sup>948</sup> mohammad giasuddin vs state of andhra pradesh on 6 may, 1977: 1977 air 1926, 1978 scr (1) 153

<sup>949</sup> prabhakar pandurang sanzgiri vs state of maharashtra on 2 december, 1985 : 1986 (1) bomcr 272

<sup>938</sup> anoushka mukherjee, investigating the legal orientation towards suicide in cases of women with battered woman syndrome, indian journal of legal review, 2 Jan 2023, <file:///c:/users/prashant/desktop/v2i41.pdf>

<sup>939</sup> florén, a. & ägren, f. (1998) historiska undersökningar grunder i historisk teori, metod och framställningssätt, lund: studentlitteratur, pp. 14-15, p. 26

fundamental rights are entitled by all the prisoners in India regardless of any type. Guaranteed by the International Human rights Law, UN Charter, International Bill of Rights, Universal declaration of human rights, The international covenants of on civil and political rights, 1966, UN Core conventions and specific instruments.<sup>950</sup> And in India it is guaranteed by the constitution, The prisons act, 1894, The prisoners act, 1990, The transfer or Prisoners act, 1950, the Prisoners (attendance in court) act, 1955 followed by various policy and schemes to prevent and protect prisoners in India but these are not even inculcated in jail administrations in India. These codes are established to ensure to lead and live reasonable way of life to the prisoner being human. In spite of these available of codes and restrictions the authorities have guts to break them and torture the prisoners as they want. "Prisoners are imprisoned persons on punishment not slaves" this need to be deeply remembered by the authorities. Their mental health is declining day by day. Incarcerated people living with mental health conditions commit suicide and threaten the life of other jail prisoners inside the prison place. Hence, new areas with new codes and procedures need to be constructed for these people with adequate mental health counselling and other regulations. These mentally ill people need to be given further more importance and care not further ill treatment and exploitations inside the Jail.

#### IV. JUVENILES PRISONERS

The next level deteriorated prisoners are these little citizens and young future of India, Juvenile prisoners. As already stated supra, all these exploitations and abuse are same to all prisoners from jail to jail irrelevant of age and type of prisoners. Such as Harassments and mistreatments from the guard, sexual abuse, sexual victimization, physical abuse, physical punishment, isolation used as discipline, excessive restraints, staff allowing violence

between juveniles, not even minimum access to mental health services, inadequate and inappropriate school support and services, misdiagnosis of disabilities which leads to attribution of problematic behavior of willfulness, zero tolerance procedures which impact the students to learn, educate which specifically affects the social wellbeing destroying youth colour, leading to this high rate of suspension and expulsion in juveniles inside school which again influence delinquent behavior of the juveniles. Juvenile prisons even have all the above mentioned perils and demurs regardless of any lesser. In spite they are even more prone to it. Delay in trial by the judiciary is one of the most important factors deteriorating the life of prisoner in jail. Following neglected health and hygiene, there is even lack of basic clothing and food which is inadequate inside the jail which causes health hazards and is prone to diseases. These cannot even be questioned on his or her rights by the prisoner as the prison vices are merely cruel all time and followed by the staffs delinquently. Prison vices need to be developing and progressing one not any destroying or demoralizing one. These principles need to be followed by the administrative procedures to evolve free country and domination less country. The communication deficiency inside the jail is another important matter which is left unnoticed in the prison by common people. Prisoners are not even allowed to communicate liberally with their family or relatives in the visit area or given basic respect on privacy for the same. Some of the basic things like basic infrastructures, open air areas, playground, and other extra activities need to be enhanced regularly and monitored by the Government authorities, more than the juveniles, those staffs and jailers are more importantly need to be monitored to ensure proper staffing and management which flourish the new life of juveniles in the prison for future.

#### V. CONCLUSION

The prison system in India consists high quantum of perils and demurs, and each and

<sup>950</sup> anoushka mukherjee, investigating the legal orientation towards suicide in cases of women with battered woman syndrome, indian journal of legal review, 2 Jan 2023, <file:///c:/users/prashant/desktop/v2i41.pdf>

every day the quantum increases and the flow of justice decreases. India have been a country of privilege and liberty to human persons regardless of citizens and non – citizens. Whereas while narrowing down its behavior towards its own prisoners being its own citizens had created uproar over Human rights and humanity. However, there has been great advantage and disadvantage of Article 22 in India. Such as, Article 22 states that it has right against arrest and detention. Whereas, its own clause 3 paves way for illegal detention in India provoking ill-mannered, felonious and unlawful acts towards the prisoners and accused. Today the deprived living of Prisoners inside the Jail is the indicia that the constitutional provisions are turn about to be unconstitutional facing custodial rape, abuse, torture, death, unhealth, overcrowding of prisoners in Jail. By implementing new management strategies and educating the prison personnel on our constitutional responsibility to prisoners, we resolve to enhance our prison system. As the day follows the night, rest would come next. Let the gloom that has been draped over the majority of prisoners' faces fade under the rising sun, and let a fresh awakening seep through every prison wall. Keep in mind that "there is a way where there is will" If there is a will, a method will be found. All prisoners have the guarantee to be protected against cruelty and inhuman treatment. All prisoners are entitled to basic fundamental rights and dignity inside the jail anybody acting against this need to be effectively punished and revived to Prisoners to live with decency.

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