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RIGHT TO HEALTH OF THE INCARCERATED: A DISTANT DREAM IN REALITY

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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 Mandela

ABSTRACT:

The state is entrusted to protect the fundamental rights of the citizens of the Country which are fundamental to the very existence of the human being. The citizens of the country also include those who are incarcerated in prisons. Although some of them have committed heinous crimes but they are also entitled to the same constitutional safeguards as the common citizens except for some of the rights which are curtailed. The incarcerated meaning thereby the undertrials, detenu and the convicts are entitled to have a right to life and they should not merely have an animal existence. The convicts too enjoy the right to health which is an unenumerated right flowing directly through Article 21. The Prisons Act, 1894lays down certain provisions which ensure that the health of the inmates is taken care of but in reality the prisons do not have much means to protect the prisoners and treat them properly. Thus, what is basic to the human existence is not available to those incarcerated and therefore, their right to health has become a distant dream to achieve.

RESEARCH METHODOLOGY:

The research is a doctrinal one where as a primary source the researchers have relied upon the statutes as well as the government policies while the commentaries, news articles and research papers have been relied upon as the secondary source of research.

INTRODUCTION:

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Health, be it physical or mental is of utmost importance for the overall development of an individual. No individual can achieve optimum outcome from his personal or professional life unless he is completely healthy. Similar statement becomes correct for a nation. For a nation or country to achieve a powerful position in the world politics it needs a healthy population. The population of a country is the driving force of its progress and only when the population of a country is healthy and fit can it achieve the optimum progress for itself and its country. Health does not simply mean an absence of disease or infirmity but it is a state of complete physical, mental and social well-being[3]. This, therefore implies that a person will not be said to be healthy if he does not have a disease or infirmity but when he is physically as well as mentally fit. In order to be healthy, "an individual or group must be able to identify and realise aspirations, to satisfy needs, and to change or cope with the environment.[4]" Thus, health is seen as an asset that helps a person to lead his day to day life. The political, environmental, social and economical aspirations of a nation are dependent upon its citizens and when the citizens are healthy they not only achieve all these for themselves but in reality help the nation achieve its aspirations. The nations therefore always strive to achieve the best of the health standards for all its citizens. Health is the most important factor in national development. It is a condition of a person's physical and mental state and signifies freedom from any disease or pain. Right to health is a vital right without which none can exercise one's basic human rights. The Government is under obligation to protect the health of the people because there is close nexus between Health and the quality of life of a person.

RIGHT TO HEALTH:

The right to health of the people is of a comparatively recent origin. Health is one of the basic requirements of a human being. Physical and mental well-being of an individual is of a paramount importance for any welfare state. The State can progress only when it's people are physically and mentally healthy. Every State in the modern era has its own Constitutional framework which lays down the basic functioning of the organs of the State. The Constitution of India is the law of the land. The fundamental rule governs the relationship between State and its citizens. The very purpose behind Constitutional framework is to achieve goals set out in its Preamble. The term right to health implies a legally enforceable right to one's health. Such a right must be legally recognised and protected. The right to health is a human right

[3]Definition of Health by World Health Organisation.
[4]The Ottawa Charter for Health Promotion.

because it is fundamental to the existence of the human. It can be termed to be such a right in the absence of which a human will not be able to lead a life of dignity. The right to health is one of a set of internationally agreed human rights standards, and is inseparable or 'indivisible' from these other rights.

The right to health was first articulated in the WHO Constitution (1946) which states that: "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being…". The 1948 Universal Declaration of Human Rights mentioned health as part of the right to an adequate standard of living (article 25). It was again recognised as a human right in 1966 in the International Covenant on Economic, Social and Cultural Rights, Article 12, 'the States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health'. The Committee on Economic, Social and Cultural Rights, a body composed of independent experts in charge of monitoring the implementation of the Covenant, provided a broad interpretation of article 12 of the Covenant: 'the right to health is an inclusive right, extending not only to timely and appropriate health care, but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health'. The right to health is relevant to all States: every State has ratified at least one international human rights treaty that recognises the right to health.

In India, right to health finds its origin in the Preamble as well as the Part III and IV of the Constitution of India. This right is not a specifically enumerated right in India but finds its source in Article 21 and the various judgments pronounced by the Hon'ble Apex Court. Article 21 of the Constitution of India enumerates the right to freedom of a person. It states that, no person shall be deprived of his life and personal liberty except according to 'procedure established by law'[5]. Immediately after the Constitution became effective, the question of interpretation of the words 'procedure established by law' arose in the famous Gopalan Case[6] which was a case challenging the Preventive Detention Act. The Supreme Court ruled that the expression 'procedure established by law' meant procedure as laid down in the law as enacted by the legislature and nothing more. A person could thus be deprived of his "life" or "personal liberty" in accordance with the procedure laid down in the relevant

[5]Article 21 of the Constitution of India
[6]A.K Gopalan v. State of Madras AIR 1950 SC 27

law. This case held the field for almost three decades i.e. 1950 to 1978. In 1978, in Maneka Gandhi case[7], the Hon'ble Apex Court established a nexus between Article 14[8] and Article 21 of the Constitution of India. The Court further held that the expression 'procedure established by law' must mean that the procedure is fair, just and reasonable. Post the decision in Maneka Gandhi, Article 21 has become the source of many substantive rights and procedural safeguards to the people. Article 21 assures every person right to life and personal liberty. The term 'life' has been given a very expansive meaning. The term 'personal liberty' has been given a very wide amplitude covering a variety of rights which goes to constitute personal liberty of a citizen[9]. The Hon'ble Supreme Court gave Article 21 such a wide interpretation that a variety of fundamental rights not enshrined in the Constitution directly were interpreted to be a facet of Article 21 and therefore a fundamental right. In Bandhua Mukti Morcha[10], the Apex Court ruled that the right to life means the right to live with human dignity, free from exploitation. It includes protection of health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and human conditions of work and maternity relief. In another case the Supreme Court while dealing with Article 21 has held that the need for a decent and civilised life includes the right to food, water and decent environment[11]. Theright to livelihood has now been implied out of the right to life in Article 21[12]. Thus it can be seen that by interpreting Article 21 the Hon'ble Apex Court has protected social, economic as well as environmental rights of the citizens which form the very basis of human existence. It is from this interpretation that the right to health found its way in the fundamental rights in India.

Part IV Articles 36 to 51 contain the Directive Principles of State Policy. The idea to have such principles in the Constitution has been borrowed from the Irish Constitution. The leaders of India's freedom movement visualized that in the new dispensation following political freedom, the people should have the fullest opportunities for advancement in the social and economic spheres and that the state should make suitable provisions for ensuring progress. The Directive Principles of State Policy, embodied in Part IV of the constitution, are

[7]Maneka Gandhi v. Union of India, AIR 1978 SC 597.
[8]Right to Equality.
[9]Indian Constitutional Law, M. P. Jain, 7th Edition, Lexis Nexis.
[10]Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802.
[11]Chameli singh v. State of Uttar Pradesh, AIR 1996 SC 1051.
[12]Olga Tellis v. Bombay Municipal Corporation, 1985 (3) SCC 545.

directions given to the central and state governments to guide the establishment of a just society in the country. The Directive Principles commit the State to promote the welfare of the people by affirming social, economic and political justice, as well as to fight economic inequality. According to the constitution, the government should keep them in mind while framing laws, even though they are non-justiciable in nature. If the Preamble is the key to understanding of the Constitution or to open the mind of its makers, the Directive Principles of State Policy as enshrined in part IV, are its basic ideal. It is here that the Constitution makers poured their mind by setting forth the humanitarian socialist principles which epitomized the hopes and aspirations of the people and declared them as fundamental in the governance of the country.

The Hon'ble Apex Court with a combined reading and interpretation of the preamble of the Constitution, Article 21 and Part IV of the Constitution could ensure that the social, economic, political rights of the people are protected and Part IV directions gets its meaning when Article 21 is conjointly read with it. In India, different facets of right to health have been enumerated in various judicial pronouncements. In Parmanand Katara v. Union of India[13], immediate medical aid to victims of accidents was considered to be a fundamental right. In another case, adequate medical facilities for the people were considered to be the primary duty of the government[14]. In Consumer Education and Research Centre v. Union of India[15], the Supreme Court held that right to health, medical aid to protect health and vigour of a worker while in service or post-retirement is a fundamental right under Article 21, read with the directive principles in Articles 39 (1), 41, 43, 48(A) and all related Articles and fundamental human rights to make the life of the workmen meaningful and purposeful with dignity of person. The catena of the decisions of the Hon'ble Apex Court sufficiently proves that India recognises the right to health to all the people.

WHO ARE THE PRISONERS ?

A prisoner is a person deprived of liberty and kept under involuntary restraint, confinement or custody[16].

[13]1989 (4) SCC 248.
[14]Paschim Banga Khet Majdoor Samiti v. State of West Bengal, AIR 1996 SC 2426.
[15]1995 (3) SCC 42.
[16]MerriamWebster Dictionary

The Prisons Act, 1894 defines -

“criminal prisoner” means any prisoner duly committed to custody under the writ, warrant or order of any Court or authority exercising criminal jurisdiction, or by order of a Court-martial

“convicted criminal prisoner” means any criminal prisoner under sentence of a Court or Court-martial, and includes a person detained in prison under the provisions of Chapter VIII of the Code of Criminal Procedure, 1882, (10 of 1882) or under the Prisoners Act, 1871 (5 of 1871)

“civil prisoner” means any prisoner who is not a criminal prisoner

The Union Government has enacted the Model Prison Manual, 2016. It aims at bringing in basic uniformity in laws, rules and regulations governing the administration of prisons and the management of prisoners all over the country. The Model Prison Manual, 2016 defines a prisoner in varied terms which includes the following :

1. Adult prisoner : Any prisoner who is more than 21 years of age.
2. Casual Prisoner : A prisoner other than a habitual offender.
3. Civil Prisoner :Any prisoner who is not committed to custody under a writ, warrant or order of any Court or authority exercising criminal jurisdiction, or by order of a court martial and who is not a detenue.
4. Convict : Any prisoner under sentence of a Court exercising criminal jurisdiction or court martial and includes a person detained in prison under the provisions of Chapter VIII of the Code of Criminal Procedure of 1973 and the Prisoners Act of 1900.
5. Detenue : Any person detained in prison on the orders of competent authority under the relevant preventive laws.
6. Geriatric prisoner : A prisoner who is 6o years of age and above and medically unable to manage his/her daily affairs independently without assistance.
7. Habitual Offender : A prisoner classified as such in accordance with the provisions of the applicable law or rules.
8. High risk offender : A prisoner with high propensity towards violence, escape, self-harm, disorderly behaviour and likely to create unrest in the jail and threat to public order. Also includes persons intermittently suffering from suicidal tendencies, and

persons with substance – related and addictive disorders suffering from intermittent violent behaviour.

9. Remand prisoner : A personwho has been remanded to a prison custody pending investigation by police.
10. Undertrial prisoner : A personwho has been committed to judicial custody pending investigation or trial by a competent authority.
11. Young Offender : A prisoner who has attained the age of 18 years and not the age of 21 years.

Thus, it can be seen that the definition of prisoner has undergone much change and exhaustive list of the types of prisoners has been given in the new model prison manual.

HEALTHCARE & THEPRISONERS :

The Prisons Act 1894 is one of the oldest piece of legislation in India dealing with laws enacted in relation to prisons in India. This Act was enacted on 22nd March, 1894 and enforced on 1st July, 1894.This act contains 62 sections and XII Chapters and it is an exhaustive act which contains law relating to smooth functioning of prisons. Chapter VIII of the Act lays down provisions pertaining to the prisoners health. The Act also gives directions as to taking care of health of prisoners within the prison premises. Prisoners shall be subject to regular medical check-up and sick prisoners shall be provided with proper medical care and attention. In the state of Maharashtra under the aegis of the Prisons Act, 1894 the Maharashtra Prisons (Prison Hospital) Rules, 1970 were enacted and the same came into force on 1st July 1970. The rules specifically lay down the appointment of the various officers to the prison hospital as well as their duties while taking care of the health of the prisoners. The Union Government introduced the Model Prison Manual, 2016 in the month of January 2016. This new prison manual for the first time has defined a “geriatric prisoner” which is a new era in the prison jurisprudence as the prisoners suffering from old age and medical problems have been made a class in themselves. The Central Government has confirmed that all 22 States and 8 Union Territories have adopted the new Model Prison Manual 2016.

A prisoner is sent to the prison to undergo punishment but looking at the current situation in the Indian prisons being inside the prison has in itself become a punishment. The National Crime Report Bureau (NCRB) has released its latest Prison Statistics India report for 2024.

The report reveals that while the national prison occupancy rate fell to a decade-low of 112.7%, overcrowding remains a chronic structural crisis across the country. The prisons are overcrowded with the undertrials accounting for almost 80% of the prison population[17].Incarcerated individuals are entitled to fundamental protections as under the Constitution of India. In the case of Sunil Batra v. State of NCT of Delhi[18]it has been held by the Hon'ble Apex Court that incarcerated individuals do not lose their status as persons and have similar fundamental rights as those of the free persons except for those which are obviously curtailed due to their imprisonment. A recent Apex Court judgment[19] has reiterated that the incarcerated have the right to live with dignity. In the case of Lalji Singh & Ors v. State of M.P.[20], the Madhya Pradesh High Court has called upon the states to set up PHCs (primary health centers) in prisons and while dealing with the request of a convict for suspension of his sentence so that he gets good medical care for his ailments has come to the rescue of all the prisoners by upholding their right to health. Although there are enumerable provisions ensuring that the right to health of the prisoners be protected and they be given basic human treatment the situation on ground has not changed much. In the overcrowded prisons, the facilities provided to prisoners are unhygienic and detrimental to their health and well-being. Indian prisons have been consistently criticized for their deplorable conditions by human rights activists who cite widespread unsanitary conditions, including a shortage of toilets and urinals, dirty drinking water, lack of nutritious or hygienic food (in some instances meals were even infected with insects), shortages of sanitary napkins for women, and generally unhygienic living quarters. All of these factors directly and adversely affect the physical and mental well-being of prisoners, and the health complications that arise as a result of these conditions are almost innumerable. It is not surprising that incarcerated individuals in India are subject to a plethora of health conditions, ranging from communicable diseases to mental health disorders. Overcrowded and unsanitary conditions have made Indian prison environments extremely susceptible to the transmission of infectious diseases, including sexually transmitted diseases, such as hepatitis B, hepatitis C, and HIV-AIDS, as well as diseases such as tuberculosis. Studies have found rates of HIV prevalence in Indian prisons ranging from 0.5 percent-6.9 percent depending on the location. A more recent

[17]Prison Statistics India Report 2023(accessed at https://www.ncrb.gov.in/uploads/files/PSI-2023.pdf) (last seen on 20/08/2026)
[18](1980) 2 SCR 557
[19]Sukanya Shantha v. Union of India 2024 INSC 753
[20]Criminal Appeal no. 5559 of 2017 (Gwalior Bench)

preliminary study by the National AIDS Control Organization found that 2.5 percent of prisoners across 15 prisons were HIV positive, compared to a national HIV prevalence in the general population of 0.32 percent in males and 0.22 percent in females. High rates of HIV among incarcerated Indians are thought to be driven by the frequent sharing of needles for drug usage and by acts of unprotected sex between prisoners.Upon finding that homosexual sex was prevalent among almost 90 percent of male prisoners at one jail in India, the Indian Council of Medical Research recommended providing condoms to prisoners.But because acts of homosexuality are considered illegal under Indian law, the provision of condoms to those who are incarcerated was neither accepted nor practiced as an AIDS prevention measure until 2018, even though stigma and homophobia remain rampant in India.Screening and treatment services for tuberculosis (TB) are also not optimal in the context of Indian prisons. According to the World Health Organization, prison populations are a 'tuberculosis risk group', which should receive systematic screening for protection.A 2017 study conducted in 157 Indian prisons found that only 50 percent of prisons screened new inmates at time of entry and only 59 percent carried out regular or periodical screening.The same study also found that 19 percent of those screened had TB symptoms and nearly 8 percent were diagnosed with TB on microscopy. A 2013 cross sectional study of a South Indian jail found that nearly 10 percent of inmates suffered from acute upper respiratory tract infections, 18 percent had ascariasis, and 84 percent had anemia.Rates of mental health disorders are also substantially higher amongst Indian prisoners than the rest of the population. One study found that 23.8 percent of convicted individuals suffered from psychiatric illness excluding substance abuse, and 56.4 percent had a history of substance abuse or dependence prior to incarceration.A survey by the National Institute of Mental Health & Neuro Sciences found that rampant negligence by prison staff, in conjunction with other human rights violations, have led to an increase in the incidence of mental instability amongst prisoners in India. According to a statement by the Indian home ministry in 2016, 11 percent of prisoners died of unnatural causes, such as "suicide, execution, murder by inmates, . . . deaths due to negligence/excess by jail personnel and others." The number of unnatural deaths varies according to which prison system is being considered. On the worst end of the spectrum, Odisha prisons reported an increase of 1,367 percent in unnatural deaths over a period of four years.

Torture is also common in Indian prisons, the effects of which are strongly linked to a host of adverse psychological and physical sequelae, including death.A landmark report released by

the Asian Centre for Human Rights collated evidence of 1,504 deaths in police custody and 12,727 deaths in prison over a 10-year period, and stated "99 percent of deaths in police custody can be ascribed to torture and occur within 48 hours of the victims being taken into custody.""Torture remains endemic, institutionalised, and central to the administration of justice and counter-terrorism measures," the Asian Centre for Human Rights said. In one particular facility, Cellular Jail (Port Blair), punishment routinely included working in chains. If inmates objected, they were made to stand handcuffed to the wall for 7 days.Reports from Tihar Jail (Delhi) detail the mass beating of inmates during regular inspections, often resulting in severe injuries needing surgical attention.A case in Byculla Jail (Mumbai) garnered national attention, wherein a woman who complained about food was brutally beaten and raped by prison guards, and eventually died. Prisoners on death row are routinely subjected to torture, with inmates recalling experiences "being hung by wires, being forced to drink urine, being placed on a slab of ice, having a leg broken, forced anal penetration, and extreme stretching, being tied in a sack of chillies and beaten with the butts of police guns." The upshot from all of these reports is that torture in Indian prisons by prison authorities is omnipresent, extreme, and particularly harmful to the health and well-being of incarcerated individuals[21]. A recent incident from Taloja Jail has brought to the fore the issue of the potable water not being provided to the prisoners. The Bombay High Court stepped in and directed the prison authority to ensure clean potable water for all the prisoners which should be provided separately from the water being given for other uses. All these incidents therefore raise a serious question upon the healthcare facilities being provided to the incarcerated.

The Supreme Court as well as the High Courts of the various States and Union territories interfere from time to time and bat for the right to health of the prisoners. The Gujarat High Court ruled in Rasikbhai Ramsing Rana vs. State of Gujarat[22] that petitioners incarcerated in the Central Prison, Vadodara, who were suffering from serious illnesses, were denied sufficient and prompt medical care due to a lack of jail escorts necessary to transport them to the hospital, and that the court held negligent officers personally accountable. The Gujarat High Court granted directives to the state government in 2005 in a suo moto writ suit to

[21]The Role of Medical Personnel in improving Prisoner Rights and Health in India :Shivam Singh, Farhad R. Udwadia, Shayan Sadeghieh, J. Wesley Boyd April 1, 2021 Social Justice (https://bioethics.hms.harvard.edu/journal/prisoner-rights#_edn10) (last seen on 3/08/2026)

[22]1997 Cr LR (Guj) 442

guarantee that all Central and District prisons were equipped with an ICCU, pathology lab, expert physicians, sufficient staff including nurses, and the most up-to-date medical treatment devices. In Sanjay V. State[23], the Delhi High Court ordered the Tihar Jail administration to offer meditational therapy and counselling to convicts[24].In one case[25] the Hon'ble Supreme Court has held that the States and the Union Territories are obliged to establish mental health establishment in medical wing of state prison.

CONCLUSION &SUGGESTIONS :

It is submitted that the recent Model Prison Manual 2016 has laid down a ratio of one doctor for every 300 inmates but in reality this number is far less. The prisons in India are running on vacant posts for medical personnels. There is an average of one doctor for every 775 to 797prisoners in India, with reports showing a national 43% vacancy rate among prison medical officers. Past official statistics (such as the *Prison Statistics India*) recorded around 658 medical officers serving over 5.5 lakh inmates nationwide, resulting in less than half a doctor per prison facility on average. So far as mental healthcare is concerned the crisis is far more acute withonly about 25 to 35 psychologists are available for the entire inmate population nationwide[26]. The undertrials languishing for long period of time in jails awaiting trial are put to double punishments as they cannot secure bail due to lack of financial capacity and absence of education. The data reveals that the prisoners inside jails contract communicable diseases and STDs only by being inside the jails. The number of inmates afflicting disability is also very high due to clashes in jail. The data reveals that the prisoners do not get timely and adequate treatments inside the jails and resultantly many prisoners die.

The States need to adopt a pragmatic approach and consider the situation from a humane perspective. The torture in the Indian prisons need to be done away with. It is the need of the hour to understand that the prisoners are inside the prisons for punishment and not inside as a punishment. They too are humans and their health needs to be protected. Accessibility to healthcare facilities can be improved by appointing more medical staff in jails and improving the doctor to prisoner ratio in Indian jails. The State governments can encourage monthly or

[23] CRL.A. no. 600 of 2000
[24]Healthcare of Prisoners in India : Tanisha Agarwal https://blog.ipleaders.in/healthcare-prisoners-india/ (last seen on 1/08/2026)
[25]X v. State of Maharashtra (2019) 7 SCC 1
[26]https://timesofindia.indiatimes.com/india/over-300-prisons-running-at-twice-their-capacity/articleshow/128408756.cms

weekly medical camps so that healthcare professionals can reach and provide treatments atleast to the undertrial prisoners. This will ensure the prisoners receive timely treatment and the medical staff from the prison also is not overburdened. The State can also encourage private hospitals to work in tandem with the government and encourage their involvement in treating the prisoners. This can again be done by providing medical camps, timely medical tests, bodily check-ups etc. The State also needs to increase the budget allocation to the prison. At the current rate the state spends only Rs. 100/- per prisoner which is very low in order to ensure a dignified life to a person. The Stategovernments have not yet formally adopted the Model Prisons and Correctional Services Act, 2023 which has replaced the Prisons Act, 1894 and shifted the focus towards inmate welfare. The state governments must therefore think about adopting such an Act which focuses on reformation, rehabilitation, social integration and welfare of the inmates. The inmates also suffer a lot due to mental illnesses the jail authorities should make some provisions relating to keeping the inmates occupied so that they do not encounter suicidal thoughts. Meditation, counselling therapies, even prayer groups can help the prisoners achieve a healthy mental state.