

## **VIOLATION OF CONSTITUTIONAL RIGHTS OF PRISONERS IN ORISSA PRISONS DURING COVID-19**

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### **ABSTRACT**

Standardized healthcare and right to health are rights which the constitution of India confers upon every person residing in the country. These rights include not only the precautionary and curative health care measures but also the measures which ensure that fundamental factors of health like adequate sanitisation, nutrition and housing are also made accessible. The rights though applicable to everyone including the prisoners are constantly being violated in the prisons of Orissa. The major factors behind these violations are the under-funded, under-staffed and negligent prison administration. This ignorance of basic fundamental rights of these prisoners pose a much greater threat on the right of these prisoners due to the pandemic. Even though the Indian judiciary and the state government have taken measures to ensure the implementation of these rights but the rate at which these steps are being implemented and with the inefficiency that they are being conducted raise some serious questions and concerns on the effectiveness of these measures. In view of the various constitutional rights, legal principles and international treaties safeguarding the rights of the prisoners and the urgent need for action in the situation it is imperative that the state takes necessary actions into the matter.

The month of March saw an outbreak of the Covid-19 virus, which was declared as a pandemic by The World Health Organisation. What has since followed has been a chain of unprecedented events and a host of uncertainty. A large variety of steps have been taken both at the national and international level to control its spread. These steps also include publication of Guidelines, by the concerned authorities, which safeguards the rights and health of prisoners during this pandemic. The closed, overcrowded spaces and the inadequate healthcare facilities in the Indian prisons greatly increase the chances of the prisoners to catch the infection.

In light of these guidelines and increasing number of covid-19 cases, the Supreme Court of India directed measures to all States and Union Territories to constitute high powered committees to come up with lists of prisoners who could be released on interim bail, parole, or furlough and the categories for such release so that the problem of overcrowding could be tackled head on.<sup>i</sup>

Following the orders of the Supreme Court the Odisha government constituted a high-powered committee which issued guidelines for decongestion of jails for convicted and undertrial prisoners. These guidelines for decongestion stated that all convict prisoners sentenced for imprisonment of 7 years or less, convicts already on parole and convicts above the age of 65 years must be considered for parole or extension of parole at the discretion of the competent authority. These directives for decongestion in prisons were issued by this committee to maintain order in prisons to contain the spread of the infection.<sup>ii</sup>

As of data collected on 13-07-2020, a total of 43 individuals<sup>iii</sup> were infected putting approximately 17,000 inmates at risk.<sup>iv</sup> This report comes after a total of 955 prisoners were released on bail dropping the occupancy rate of the prisons in the state only by 5%.<sup>v</sup> Odisha originally had an occupancy rate of 86.1% with over 16501 prisoners in 91 prisons.<sup>vi</sup>

This strikingly high number of infected cases in the state has raised questions regarding the safety and rights of the prisoners in Odisha. As per the protocol laid down under the standard operating procedure<sup>vii</sup> framed by the high -powered committee, it is necessary for every arrested individual to undergo a Covid-19 test before being taken into custody. However, recent incidents have highlighted gross negligence and inefficiency in the implementation of these protocols resulting in a more vicious spread of infections inside the prisons. These outbreaks have put the lives of prisoners at a dangerously risky stake, and has even caused an

infringement of their fundamental rights.<sup>viii</sup> An urgent letter was written to the Chief Minister of Odisha by the Jan Adhikari Manch<sup>ix</sup> elaborating on the violation of human rights that these prisoners are being subjected to. These violations included inadequate living conditions in the prisons, in-equipped e-mulakat facility, inadequate implementation of standard operating procedure, which subsequently imposes a threat to the health of prisoners, both physical and mental, all of which are a direct violation of Articles 14 and 21 of the Constitution of India.

Article 14 guarantees to every person within its territory equality before the law and equal protection of the law,<sup>x</sup> and Article 21 guarantees to every person the right to life and personal liberty.<sup>xi</sup> The latter explicitly clarifies that it's applicable not only to free persons but also the prisoners. Various rights for prisoners such as right to health, right to shelter, right to bail, right against cruel and unusual punishment, right to meet friends and family members, etc. fall under its purview.

The Constitution casts an obligation on the State to preserve life.<sup>xii</sup> In the case of *STATE OF A.P. V. CHALLA RAMKRISHNA REDDY*,<sup>xiii</sup> the Supreme Court of India held that prisoners are entitled to their fundamental rights irrespective of whether they are under trial or convicted. The court stated that a prisoner does not cease to be a human being behind the prison walls and thus is entitled to his fundamental rights. This legal principle was further established by the Supreme Court of India in the case *D.B.M PATNAIK V STATE OF ANDHRA PRADESH* where the court asserted that mere detention could not deprive the convicts of all the fundamental rights enshrined in our constitution.<sup>xiv</sup> It was also held in the case of *RAMA MURTHY VS. STATE OF KARNATAKA* that inadequate conditions in the prisons and threat to the safety of prisoners is a violation of fundamental rights.<sup>xv</sup> In the Charles Sobraj case it was held that Court could intervene in the functioning of prison administration if constitutional rights or statutory prescriptions were being transgressed to the injury of a prisoner.<sup>xvi</sup>

Article 32 of the Indian constitution confers upon individuals the right to move to the supreme court if their fundamental rights are violated. These rights can also be enforced by the high court by way of article 226.<sup>xvii</sup> This article empowers the high court to issue directions, orders and writs to any person, authority or government on violation of fundamental rights.

The gross negligence and inefficient implementation of the required measures by the prison authority not only violates the fundamental rights and the legal principles established by the

courts but also violates the obligations of the various treaties the state is bound by. Directive principles of state policy enshrined in part four of the Indian constitution directs the state to respect treaty obligations in order to promote international peace and security.<sup>xviii</sup> The failure on part of the prison authorities to implement these treaty obligations results in violation of various treaties like the ICCPR.

Standardized healthcare and right to health are rights which the constitution of India confers upon every person residing in the country. These rights include not only the precautionary and curative health care measures but also the measures which ensure that fundamental factors of health like adequate sanitisation, nutrition and housing are also made accessible. The rights though applicable to everyone including the prisoners are constantly being violated in the prisons of Orissa. The major factors behind these violations are the under-funded, under-staffed and negligent prison administration. This ignorance of basic fundamental rights of these prisoners pose a much greater threat on the right of these prisoners due to the pandemic. Even though the Indian judiciary and the state government have taken measures to ensure the implementation of these rights but the rate at which these steps are being implemented and with the inefficiency that they are being conducted raise some serious questions and concerns on the effectiveness of these measures.

The prison administration of the state of Orissa has been under constant scrutiny in the past years for the violation of fundamental rights of the prisoners to which the state has paid little or no attention. However, such violative ignorance and inefficient conduct on the part of the jail authorities in the implementation of preventive mechanisms in these critical times can very easily become a matter of life and death for these prisoners. In view of the various constitutional rights, legal principles and international treaties safeguarding the rights of the prisoners and the urgent need for action in the situation it is imperative that the state takes necessary actions into the matter.

## ENDNOTES

<sup>i</sup>Supreme Court guidelines on formation of High Powered Committees for decongestion of prisons during Covid-19 pandemic, [https://main.sci.gov.in/supremecourt/2020/9761/9761\\_2020\\_1\\_1\\_21537\\_Order\\_16-Mar-2020.pdf](https://main.sci.gov.in/supremecourt/2020/9761/9761_2020_1_1_21537_Order_16-Mar-2020.pdf)

<sup>ii</sup>Minutes of the meeting of the High-Powered Committee under the chairmanship of Hon'ble Kumari Justice Panda, Judge, Orissa High Court and Executive Chairperson, Odisha State Legal Services Authority with regard to release of prisoners for decongestion of jails in view of spreading of covid-19 disease over telephonic conversation. (June 21,2020), <https://oslsa.nic.in/wp-content/uploads/2020/05/Minutes-of-the-Meeting-dtd.-21.05.2020-1.pdf>.

<sup>iii</sup> State/UT Wise Prisons Response To Covid 19 Pandemic in India, CHRI. <https://www.humanrightsinitiative.org/content/stateut-wise-prisons-response-to-covid-19-pandemic-in-india>.

<sup>iv</sup>OB Bureau, *Corona Fears In Jail : 4 Jails Infected in 2 months; 17,000 Inmates At Risk*, Disha Bytes (July 22, 2020), <https://odishabytes.com/corona-fear-in-jails-4-jails-infected-in-2-months-17000-inmates-at-risk/>.

<sup>v</sup> CHRI, *Supra* note 3.

<sup>vi</sup> CHRI, *Supra* note 3.

<sup>vii</sup>Directions regarding precautionary in prisons in view of Covid-2019 Corona Virus Scenario, Directorate of Prisons And Correctional Services, Odisha (March 17, 2020), <https://health.odisha.gov.in/pdf/Precautionary-Prisons-Covid19.pdf>.

<sup>viii</sup>Express News Service, *Odisha Police Ignore SOP on Arrest, Pose Risk For Coronavirus Spread in Jails*, The New Indian Express (July 26, 2020, 08:20

AM), <https://www.newindianexpress.com/states/odisha/2020/jul/26/odisha-police-ignore-sop-on-arrest-pose-risk-for-coronavirus-spread-in-jails--2174977.html>.

<sup>ix</sup>Jan Adhikar Manch, *33 Prisoners and 10 Staff of Odisha Jail Test Positive For COVID-19*, Countercurrents.org (July 23,2020), <https://countercurrents.org/2020/07/33-prisoners-and-10-staff-of-odisha-jail-test-positive-for-covid-19/>.

<sup>x</sup> INDIA CONST. art. 14.

<sup>xi</sup> INDIA CONST. art. 21.

<sup>xii</sup> Pt. Parmanand Katara v. Union of India, A.I.R. 1989 S.C. 2039 (India).

<sup>xiii</sup> *State of A.P. v. Challa Ramkrishna Reddy*, A.I.R. 1989 A.P. 235 (India).

<sup>xiv</sup> D.B.M Patnaik v state of Andhra Pradesh, A.I.R. 1974 S.C. 2092 (India).

<sup>xv</sup> Rama Murthy v. State of Karnataka, A.I.R. 1997 S.C. 1739 (India).

<sup>xvi</sup> Charles Sobraj v. The suptd., Central Jail A.I.R. 1978 S.C. 1514 (India).

<sup>xvii</sup> INDIA CONST. art. 226.

<sup>xviii</sup> INDIA CONST. art. 51, cl C.