

## THE ACTIVIST ROLE OF THE SUPREME COURT IN SAFEGUARDING MENTAL HEALTH OF DEATH ROW CONVICTS IN INDIA

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*“Crime is the outcome of a diseased mind and jail must have an environment of hospital for treatment and care”.*  
-Mahatma Gandhi<sup>4</sup>

### KEYWORDS

Mental Health,  
Constitution, Death  
row prisoners,  
Fundamental  
Rights, Right to life.

### ABSTRACT:

The notion of mental health has occupied a dominant place in the national and international deliberations on the health and safety of prisoners. The mental health concept has been predominantly a western liberal concept which has come to be widely accepted by the rest of the world. Though India has got acquainted with this concept in a formal way at a later stage, it has been at the forefront in imbibing the very ethos of the concept of psychological well-being in the form of safeguarding human essence and dignity. From a sociological point of view, the psychological health concept ensures that an individual living in a society will be guaranteed the basic necessities of life including physical and mental well-being. However, for proper realization of individual rights, it is essential that the society as a whole accepts the basic norms of individual's rights and that the rule of law is guaranteed. The long incarceration periods spent by the death row convicts and the vast powers given to the police for keeping them in custody until their execution are to be exercised keeping in view the civilized norms endured for the protection of human dignity which is now inviolable and well entrenched in the Constitutional guarantee of human rights under Article 21 of the Constitution. In view of the evolving standards and the safeguards against the physical and mental health of the prisoners, the study of the subject assumes significance both for the regulation and articulation of the arbitrary exercise of power by police and for the maintenance and upholding of rights of the death row prisoners. The present research makes an attempt to analyse the role played by the Apex Court and the need for the protection of mental health of death row prisoners especially in the light of enlightened norms of fundamental rights evolved by the higher judiciary.

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### I. Introduction

Mental health is more than the mere lack of mental disorders. The positive dimension of mental health is stressed in the World Health Organization's (WHO) definition of health as contained in its Constitution:

*“Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.”<sup>5</sup>*

The classical concept of health only included physical well-being of the individual, but with the emergence of various health models, health was said to include psychological and social well-being along with physical well-being of the individual. The current concept of mental health includes subjective well-being and perceived self-efficacy. It is the basic ability of an individual to understand oneself, to be able to adjust with the societal norms and to be psychologically healthy. Mental health

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<sup>4</sup>Mohandas Karamchand Gandhi, popularly known as Father of Nation, Mahatma Gandhi (2 October 1869 – 30 January 1948) was an Indian lawyer, anti-colonial nationalist and political ethicist who employed nonviolent resistance to lead the successful campaign for India's independence from British rule.

<sup>5</sup>Constitution of the World Health Organization, 1946 w.e.f. 7 April, 1948, available at: <https://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf?ua=1>

concept is not restricted to an individual rather it has been found that the mental health of an individual also affects the health of the society.

The growing period of detention in prisons in India and the world is also evidence that despite a commendable growth in medical science, there is still something that has been ignored. The incidence of post-conviction mental illness in death row prisoners has increased in the recent past.<sup>6</sup> After being convicted, a sizable portion of the prison population developed various mental illnesses. Due to the limited availability of various healthcare services in prisons, they were initially found to be mentally healthy while committing the crime but were later discovered to be mentally ill. In the end of 2021, 9180 prisoners, or 1.7% of the overall prison population of 5,54,034 were suffering from a mental disorder or were mentally ill.<sup>7</sup> In many cases, mental illness has led to the substitution of the death sentence for death row convicts or in extreme cases, led to their release from prison as well.<sup>8</sup> As we go into the details of this aspect of health, we find that mental well-being has a crucial role in affecting the well-being of an individual. It is less fortunate that in most parts of the world, the mental health of prisoners has been given less attention. We still have a grey area that requires attention.

In this background, an attempt has been made in this paper to highlight the major contributions made by our Apex Court in safeguarding prisoners' right to mental health in India.

## II. Mental Health: A Global Overview

The exact expression of what will constitute 'mental health' has not been conclusively determined. However, in the modern times, the state has undertaken the task of affording adequate protection to the individuals and to ensure everyone the opportunity for full development of individuals' health including mental health and it is perhaps, on the universal recognition of the dignity of individual existence that the concept of mental health has been evolved.<sup>9</sup> Nonetheless, there are differences among different countries of the world in their approach to the concept of mental health and human well-being. The differences arise due to the different perceptions of fundamental rights in different states based on their varying stages of economic, social, cultural and other development, which determine the aspirations of their people. Apart from this, there are divergent ideologies surrounding the concept of mental health and different criteria has been laid down at the international, regional or national level for the determination of mental health and its protection.

The world community recognised the mental health of a man through the Charter of United Nations Organisations in the form of Universal Declaration of Human Rights, 1948 (UDHR).<sup>10</sup> This was followed by two important covenants, i.e. International Covenant on Civil and Political Rights, 1966 (ICCPR) and the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR). The civil and political rights were perceived to guarantee the people participation in the governance of the country. However, the economic and social rights challenged the global issue of mental illness and aimed at promoting the mental well-being of an individual.<sup>11</sup> In India, subject to certain reservations, both ICCPR and ICESCR were ratified. Apart from this as a legislative measure to protect the mental health of an individual, the Mental Health Act, 1987 was promulgated. The primary objective of this legislation was to provide care and treatment to mentally ill persons.<sup>12</sup> Of course, this was done under tremendous pressure with a purpose to oust the earlier law of 1912, the act provided for the care,

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<sup>6</sup>Prachi Bhardwaj, Post-Conviction Mental Health and Its effect on Sentencing: SC issues Directions, SCC Online, 17 April 2019, available at: <https://www.scconline.com/blog/post/2019/04/17/post-conviction-mental-health-its-effect-on-sentencing-sc-issues-directions/>

<sup>7</sup>National Crime Records Bureau, Prison statistics India, 2021, Ministry of Home Affairs (August 2022).

<sup>8</sup>Navneet Kaur v. State of NCT of Delhi & Anr, Curative Petition (Criminal) No. 88 of 2013.

<sup>9</sup>C. L. Narayan and Deep Shikha, "Indian Legal System and mental Health" 55(Suppl 2) *Indian Journal of Psychiatry* S177-S181 (Jan 2013), available at: <https://doi.org/10.4103/0019-5545.105521>

<sup>10</sup>UDHR, 1948, art. 25(1).

<sup>11</sup>International Covenant on Economic, Social and Cultural Rights, 1966, art. 12(1)- "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."

<sup>12</sup>The Mental Health Act, 1987, Act No. XIV of 1987, w.e.f. 22 May 1987.

treatment, and rehabilitation of persons with mental illness and contained provisions for their treatment and protection of individuals' rights. Nonetheless, the most important method of protecting individual rights in any politically organised society is through the legal order. The Constitution of India has given excellent expression of fundamental rights and legal order which is struggling to attain better realisation of the constitutional aims.<sup>13</sup> Another aspect is that India accepted Constitutional governance ruled by law. The basic idea of the rule of law taken in its broadest sense means that people should obey the law and be ruled by it. The UDHR, 1948 declares that human rights should be protected by the rule of law so as to avoid the man resorting to rebellion.<sup>14</sup> Thus, the spirit of human rights have been recognized in the Indian constitution. Other international conventions including the International Convention on the Elimination of All Forms of Racial Discrimination, 1965 (ICERD),<sup>15</sup> Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW),<sup>16</sup> Convention on the Rights of the Child, 1989 (CRC),<sup>17</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 (ICMW),<sup>18</sup> Convention on the Rights of Persons with Disabilities, 2006 (CRPD)<sup>19</sup> encourages protection of mental health on global upfront.

The world Health Organisation's (WHO) "World Mental Health Report: Transforming Mental Health for All" also support the protection of mental health. The report claims that some people, such as convicts, people who have been forcibly displaced, people who live in long-term care facilities, and victims of domestic violence, are more susceptible than others because of the pre-existing shortcomings in human rights and legal protections.<sup>20</sup> Prisoners are significantly less likely to have their mental health needs acknowledged and receive the care and assistance they require, despite the fact that serious mental health issues are much more common there.<sup>21</sup> WHO encourages all nations to move quickly with the action plans and contends that concentrating on three "paths to transformation" will enable all nations to make significant advancements towards improving the mental health of their citizens.<sup>22</sup>

### III. Mental Health Behaviour of Prisoners Confined in Prisons

Mental psychology has much to contribute to our understanding of those factors that affect the health and personal well-being of an individual.<sup>23</sup> Growing evidences suggests that health is a biopsychosocial process because it is governed by a complex interaction among genetic, psychological and social factors. Biological factors such as genetic predisposition to a particular disease, psychological factors such as the experience of stress and social factors such as the amount of social support one receives from family and friends tend to interact with each other and have an impact upon the health of a person. Various researchers have suggested that there is a very strong link between the lifestyle of a person and his health and illness.<sup>24</sup>

In addition to lifestyle, there are several factors that contribute to our mental health. Mental psychologists have concentrated upon some factors that add to our total stress quotient. The most important of these are major stressful life events such as the death of a spouse, long jail term, death of

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<sup>13</sup> V. D. Sebastian, "Legal Education: Friend or Foe of Human Rights in India" 3 *Bangalore Law Journal* 241 (2008).

<sup>14</sup> UDHR, 1948, Preamble.

<sup>15</sup> International Convention on the Elimination of All Forms of Racial Discrimination, 1965, art. 5.

<sup>16</sup> Convention on the Elimination of All Forms of Discrimination against Women, 1979, art.12.

<sup>17</sup> Convention on the Rights of the Child, 1989, art. 24.

<sup>18</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990, art. 28, 43.

<sup>19</sup> Convention on the Rights of Persons with Disabilities, 2006, art. 25.

<sup>20</sup> WHO "World Mental Health Report: Transforming Mental Health for All" 241 (World Health Organization, 2022).

<sup>21</sup> *Ibid.*

<sup>22</sup> WHO "Comprehensive Mental Health Action Plan 2013-2030" (World Health Organization, 2021).

<sup>23</sup> S.E. Taylor *et al.*, *Social Psychology* (Pearson, 11<sup>th</sup> edn., 2002)

<sup>24</sup> Glanz *et al.*, *Health Behaviour and Health Education: Theory, Research and Practice* (Wiley & Sons, San Francisco, 2002).

members of the family, personal injury or illness and so on.<sup>25</sup> The little frustrations, delays, irritations, minor disagreements and annoyances add to the hassles of daily life and accelerates the stress quotient. Other collateral factors such as poverty, family structure, and environmental hazards also affect stress.<sup>26</sup> The close examination of the above factors indicates that the long incarceration in Indian prisons bears testimony to the belief that the mental health of the prisoners is affected and unregulated. However, in a more specific sense, the prisoners who are victimised are more fearful to be harmed.

All these negative emotions witnessed a negative effect on the prisoners, who tended to have a very accurate memory of the event itself but less accurate memories of what happened before and after the event. For example, an individual, who was convicted for violent attack and murder and awarded the death penalty for his actions, taken to the gallows and then brought back to the cell, is likely to have accurate memories of the gallows, but less accurate memories of what he did while killing the individual. In fact, prisoners very often make mistakes partly because intense emotions tend to exert effects on their behavioural patterns. Such effects often occur when convicts are also the victims of the criminal justice system. Several other studies have confirmed the fact that strong emotions often contribute to distortions.<sup>27</sup>

Another aspect contributing to this is *memory construction*. Human memory that stores unlimited moments of information for years and decades is far from perfect and is subjected to many kinds of error. The most important of such errors is memory construction, that is, the formation and development of memories for events that the person never experienced. One basic question here is- from where these false memories, that is, the memories for events that were never experienced, do come from? The most common answer is that such memories are somehow planted unintentionally in the minds of prisoners by the words or actions of others. In some situations, such memories may also be the result of deliberate efforts to create them.<sup>28</sup>

There are several ways through which false memories can be created. One obvious way is to simply imagining about an event. One recent research has shown that simply imagining an event can generate false memories about it.<sup>29</sup> Another factor that generates false memories is actively making up information about some event by trying to answer a question about it.<sup>30</sup> When the persons make up information about an event or experience that never took place, they somehow come to believe it. The surprising fact here is that the person comes to believe it or accept it as true even when he is forced to confabulate or told to make up answers to questions about things or events that have never occurred.<sup>31</sup> In fact, there are numerous cases in Indian prisons where prisoners complain about the creation of false memory and illusions by others.<sup>32</sup>

Thus, it becomes pertinent here to talk about the conditions of prisoners under the present criminal jurisprudence and its impact on the prisoners.

#### IV. Conditions of Prisoners under the Indian Prison System

According to statistics released in 2021, there were more than 5.5 lakh inmates housed in Indian prisons out of which 472 prisoners are death row convicts.<sup>33</sup> Prisoners come from a variety of socio-

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<sup>25</sup> T. H. Holmes & R. H. Rahe, "The Social Readjustment Rating Scale" *Journal of Psychosomatic Research* 11(2) 213-221 (1967).

<sup>26</sup> Arun Kumar Singh, *Social Psychology* (PHI Learning Private Limited, Delhi, 2015).

<sup>27</sup> G.L. Wells, *et al.*, "Maximizing the Utility of Eyewitness Identification Evidence" 3(6) *Current Directions in Psychological Science* 194 (1994).

<sup>28</sup> See Project 39A, Deathworthy (National Law University, Delhi, 2021).

<sup>29</sup> G. Mazzoni & A. Memon, "Imagination can create False Autobiographical Memories" 14(2) *Psychological Science* 186-188 (2003).

<sup>30</sup> J. K. Ackil & M. S. Zaragoza, "Memorial consequences of forced confabulation: Age differences in susceptibility to false memories" 34(6) *Developmental Psychology* 1358-1372 (1998).

<sup>31</sup> M.S. Zaragoza *et al.*, "Interviewing Witnesses: Forced Confabulation and Confirmatory Feedback Increase False Memories" 12(6) *Psychological Science* 473-477 (2001).

<sup>32</sup> *Supra* note 16.

<sup>33</sup> *Supra* note 2.

economically disadvantaged backgrounds. Research, particularly from India, reveals a significant prevalence of mental illnesses among prisoners, including suicides, post-traumatic stress disorder (PTSD), depression, substance misuse, psychotic disorders, anxiety, sleep issues, and more.<sup>34</sup> The National Crime Records Bureau (NCRB) claims that a total of 150 prisoners in Indian jails have committed suicide in prisons due to stress, anxiety, mental distress or other reasons.<sup>35</sup> There is generally less research on the mental health of prisoners. Lack of acknowledgement and acceptance of mental health as a major problem is one of the key causes of this. The present court system is concerned with the mental state of the offender, particularly in two circumstances, i.e. one to determine the mental state at the time of the commission of the crime and the other to determine fitness to stand trial and punishment.<sup>36</sup> There is very less evidence of empathy towards prisoners especially when they are ill-treated or tortured after the pronouncement of their sentence of incarceration.<sup>37</sup>

Nevertheless, the most disturbing features of the long incarceration and widespread inhuman torture have directed prisoners to lose their mental balance, suffer from severe insomnia and are becoming paranoid. The prisoners who are given electric shocks to the head during the interrogation are suffering from intense headaches, memory lapses, incoordination of thought and action, visual disturbance and are having various weird symptoms. Prisoners who are physically tortured, especially those who are kicked, trampled upon or beaten with blunt lathis are having severe muscle and joint pain, blood vomiting; passage of black-coloured stool or melaena; passage of blood in urine; inability to use one or more arms, forearms, fingers, legs, etc. and damaged reflexes and other neurological features. Those who have been tortured in genitals are developing loss of libido, impotency and other sexual abnormalities. These all diseases or abnormalities cause great distress to the prisoners along with long stays in prison.<sup>38</sup>

Although the majority of prisons do have resources to address fundamental physical health issues, mental health services provided in prisons in India are in a very primitive level. Several prisons have visiting psychiatrist services available, but not permanent ones. A psychiatrist is often only consulted if a prisoner or convict shows any signs of mental illness.<sup>39</sup> Regular evaluations for mental problems or substance use are rarely conducted. The absence of routine assessments of mental status in those who are facing the death penalty is another grave problem.

#### **V. Post-Conviction Onset of Mental Illness in Death Row Prisoners**

The issue worth consideration in this research is the mental illness that developed over the period of time during the convict's stay on death row. Prior to 2019, there were no guidelines on the subject of mental illness manifested during detention and throughout the appellate process. The Supreme Court of India in a landmark case filled this vacuum by holding that the advent of significant mental illness after conviction would be a mitigating element leading to a commutation of the death penalty.<sup>40</sup> The word itself implies that the offender only developed such disease after being found guilty. It is a universally known reality that jails are challenging environments to be in. The World Health Organisation and the International Red Cross submitted that a number of factors, including overcrowding, different types of violence, forced solitude, a lack of privacy, subpar medical facilities, worries about family, etc., can

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<sup>34</sup> VR Syed Rabiya, "An E-Counselling Platform Helping Those dealing with Anxiety, Depression and Other Concerns" 34 *Indian J Soc Psychiatry* 193 (2018).

<sup>35</sup> *Supra* note 2.

<sup>36</sup> Refer *Prakash Nayi @ Sen v. State of Goa*, Criminal Appeal No. 2010 of 2010.

<sup>37</sup> See Project 39A, Deathworthy (National Law University, Delhi, 2021). According to the report, 62.2 % of death row inmates interviewed had a mental disorder, and 11 % had an intellectual disability. The percentage of those on death row who have mental illness and intellectual disability is significantly higher than the percentage in the general population.

<sup>38</sup> Graham Durcan and Jan Cees Zwemstra, "Mental Health In Prison" in *Prisons and Health*, Stefan Enggist, Lars Moller (eds.) (World Health Organisation, 2014)

<sup>39</sup> Model Prison Manual, Rule 825 and 826.

<sup>40</sup> *Accused X v. State of Maharashtra*, (2019) 7 SCC 1.

have an impact on a prisoner's mental health.<sup>41</sup> The general lack of information about such matters leaves the convicts helpless, and their mental health continues to deteriorate on a day-to-day basis.<sup>42</sup> As a result, they are driven to commit suicide or deliberate self-harm. The National Human Rights Commission has recently issued an advisory to mitigate the self-harm and suicide attempts by the prisoners. This is done considering the incidence of suicides in custody and preventing avoidable loss of life.<sup>43</sup>

Penologists or criminologists who had given different theories of crime have shown concern for these inmates proposing that the death penalty should not be applied to them since it is obvious that doing so will impair their ability to comprehend the nature, intent, and justifications of their punishment. The Hon'ble Supreme Court's decision in *Shatrughan Chauhan v. Union of India*,<sup>44</sup> which dealt with the execution of death row prisoners after their mercy petition is rejected, calls for consideration of mental illness during the appeals process in a way that is consistent with the framework for death penalty sentencing. The Court has gone to the point of quoting that the pain and suffering of the death row prisoner need not be proved rather than presumed due to the uncertainty in execution.<sup>45</sup> The Supreme Court in *Accused 'X' v. State of Maharashtra* upheld the individual's right to live with dignity and assessed the inclusion of post-conviction mental illness as a determining factor to disqualify as the 'rarest of rare' case.<sup>46</sup>

Thus, it is nevertheless vital to consider mental health from the perspective of justice and dignity in punishment. While the concept of imprisonment as a punishment inherently accepts loss of liberty and other accompanying deprivations, the onset of mental illness while a person is incarcerated or waiting to be executed is neither legislated nor a desired result of punishment. This added burden undermines the prisoners' right to live in dignity while in state custody, especially when they are on death row.

#### **VI. Legislative Developments to Safeguard Mental Health in India**

The discussions on mental health started gaining momentum in 20<sup>th</sup> century. To understand the genesis of mental health, one needs to locate it, within the framework of the British rule in India.

The British had a considerable influence on India's mental health laws during 1900s. The purpose of the Lunatic Removal Act, 1851 was to make it easier for mentally ill British criminals to return home. Three more pieces of legislation were introduced in 1858: the Indian Lunatic Asylum Act, the Lunacy (Supreme Courts) Act, and the Lunacy (District Courts) Act. The Military Lunatic Act was added to these in 1877.<sup>47</sup> The Indian Lunacy Act, which primarily referenced the English Lunatics Act, 1845, merged these pieces of legislations in 1912. With the introduction of Indian Lunacy Act in 1912,<sup>48</sup> the criminal lunatics were accorded care and treatment in asylums. The Act governed the care and treatment of individuals with mental illnesses.<sup>49</sup> The act established procedures for the admission of individuals to asylums and set standards for their treatment. It also introduced the concept of legal guardianship for those deemed "lunatic".<sup>50</sup> The failure of the 1912 Act eventually followed by more modern mental health laws and regulations that focus on protecting the rights and well-being of individuals with mental illnesses while promoting appropriate care and treatment. The Mental Healthcare Act, 1987 far superior

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<sup>41</sup> Supra note 35.

<sup>42</sup> *Ibid.*

<sup>43</sup> The National Human Rights Commission, NHRC has issued an advisory dated 19<sup>th</sup> June 2023, to mitigate deliberate self-harm and suicide attempts by prisoners. The same can be accessed from [https://nhrc.nic.in/sites/default/files/NHRC%20Advisory%20on%20DSH%20and%20Suicide%20attempts%20by%20prisoners\\_2023.pdf](https://nhrc.nic.in/sites/default/files/NHRC%20Advisory%20on%20DSH%20and%20Suicide%20attempts%20by%20prisoners_2023.pdf)

<sup>44</sup> (2014) 3 SCC 1.

<sup>45</sup> *Union of India v. V. Sriharan @Murugan* (2014) 4 SCC 242 (21).

<sup>46</sup> (2019) 7 SCC 1.

<sup>47</sup> Richard M. Duffy and Brenden D. Kelly "History of Mental Health Legislation in India" *India's Mental Healthcare Act, 2017: Building Laws, Protecting Rights* 51-59 (2020), Springer, Singapore, available at: [https://doi.org/10.1007/978-981-15-5009-6\\_4](https://doi.org/10.1007/978-981-15-5009-6_4)

<sup>48</sup> Indian Lunacy Act, Act No. IV of 1912.

<sup>49</sup> See Indian Lunacy Act, 1912, Chapter III, care and Treatment.

<sup>50</sup> *Id.*, Sec. 71.

to the earlier laws in that it prioritised care and treatment over incarceration, protected human rights, and placed a strong emphasis on managing the property of mentally ill individuals.<sup>51</sup> Additionally, it gave instructions for hospital admittance under unique conditions. Eventually it got its criticism and fell short of expectations. The Act severely restricted these peoples' freedoms, which was a grave violation of their human rights, and it offered no assistance to patients who were on treatment and rehabilitation regimens after being discharged from hospitals.

In 2017, the Government of India enacted the new Mental Healthcare Act which was wider in scope and importantly, comprehensively discusses the mental health in India. The Act was based on the United Nations approach under the United Nations Convention on the Rights of Persons with Disabilities (CRPD). It repealed the Mental Health Act, 1987 and introduced several progressive reforms, including the right based approach, advance directives, mental health review boards and community based care. The act prioritizes the rights of individuals with mental illnesses, ensuring their dignity, autonomy, and non-discrimination. The Act is a step in the direction of giving people with mental health issues compassionate, evidence-based care. It requires the state to provide care, prevent suicide, promote mental health, train mental health professionals, and mandates a wide range of services, including community rehabilitation. The present act ushers in a significant shift in the law on decisional capacity for persons with mental illness in respect to (i) admissions into mental health facilities, (ii) access to support for exercising decision-making capacity for mental health care and treatment decisions, and (iii) giving informed consent for treatment and care options in accordance with one's will and preferences.<sup>52</sup>

## VII. Prisoners' Right to Mental Health under the Indian Constitution

The Constitution of India guarantees every person the right to life as a fundamental right under Article 21. Initially, the Indian Constitution does not provide the right to health as a fundamental right. It is provided under Articles 39(e) and 42 which are part of the Directive Principles of State Policy regarding the health of individuals. The Directive Principles of State Policy, enshrined under Part IV of the Constitution, further promotes the programme of public health and welfare. Article 47 of the Constitution provides that the State shall regard the improvement of public health as among its primary duties. But the above provision is not enforceable before the Court. However, the Supreme Court in *Consumer Education and Research Center v. Union of India*,<sup>53</sup> held that the right to health and medical care is an integral part of the right to life provided under Article 21. Examples of significant cases illustrating the value of the right to health include *CESC Ltd. v. Subhash Chandra Bose*.<sup>54</sup> The Supreme Court ruled in this decision that the right to health extended beyond simply being free from disease. The court believed that medical facilities not only protect people from various illnesses but also guarantee steady manpower for the nation's development. The Supreme Court observed that enjoying a healthy life and being adequately provided for it is a form of social security.

Subsequently, the Courts in India by their successive judgements have liberally interpreted this Article 21 to include various subsidiary rights which are necessary to enjoy the right to life. Right to life is not mere vegetable life; but includes the right to live with dignity and honour.<sup>55</sup> The Constitution guarantees even to a prisoner all his fundamental rights. The fundamental rights of the prisoner are not denuded except to the extent that lawful incarceration by its own compulsion has the effect of limiting those rights. The imposition of the punishment of torture caused to the prisoner does affect his right to life during his confinement.<sup>56</sup>

<sup>51</sup> The Mental Healthcare Act, 1987, Chapter 8.

<sup>52</sup> S. Pathare and A. Kapoor, "Decisional Autonomy and India's Mental Healthcare Act, 2017: A Comment on Emerging Jurisprudence" in M. Stein, F. Mahomed et. al. (eds.), *Mental Health, Legal Capacity, and Human Rights* 155-170 (Cambridge University Press, Cambridge, 2021).

<sup>53</sup> (1995) 3 SCC 42.

<sup>54</sup> AIR 1991 SC 573.

<sup>55</sup> *Kharak Singh v. State of U.P.*, AIR 1963 SC 1295; *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi and Ors.*, AIR 1981 SC 746.

<sup>56</sup> *Ibid.*

The Supreme Court in its reported decisions in *Sunil Batra v. Delhi Administration*,<sup>57</sup> has held:

“When the rights of a prisoner either under the Constitution or under other law are violated, the power of the Court can and should run to his rescue. The Court processes cast the convict into the prison system and the deprivation of his freedom is not blind penitentiary affliction but a belighted institutionalisation geared to social good. The Court has a continuing responsibility to ensure that the constitutional purpose of the deprivation is not defeated by the prison administration.”

Additionally, the Covenant on Economic, Social and Cultural Rights under Article 12, Para 1<sup>58</sup> recognised the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Furthermore, a special law i.e., the Mental Health Act, 2017 was enacted to regulate mental healthcare and services in order to protect the right to the mental health of individuals. This law is enforced by the respective central and state government authorities created under the statutory provisions. The act provides that “every person with mental illness shall be protected from cruel, inhuman or degrading treatment in any mental health establishment and shall have the following rights including safe and hygienic environment, adequate sanitary conditions, privacy, proper clothing so as to protect and maintain individual’s dignity, etc.”<sup>59</sup>

On top of all, there is an undoubted right to the human dignity of every individual including the prisoners as held in a catena of cases of the Apex Court, reference to which is not deemed necessary. Mention may only be made of the further leaves added to this right. These consist of orders for equality and non-discrimination of mentally ill prisoners, transfer of the prisoners to the mental healthcare institution, living conditions in health establishments, right to medical treatment and community living<sup>60</sup> and order for the release from prisons and prohibition for carrying out the death sentence.<sup>61</sup>

#### VIII. State Liability for Mental Illness on Death Row

The Prison Act, 1894<sup>62</sup> and the Prison Statistics India, Annual Report of National Crime Records Bureau (NCRB)<sup>63</sup> did not mention mental illness in any way, leaving this problem unaddressed. The National Crime Records Bureau’s prison statistics do not have any information about these prisoners. Any type of mentally ill prisoner is not handled in the way that is expected of them. The health-related responsibility of the prison authorities does not end with the mere pronouncement of the sentence. It continues with the authorities until the sentence of the prisoner is successfully executed. The Mental Health Care Act of 2017 has, nevertheless, provided some clarification regarding prisoners’ mental illnesses. Sections 103 to 105 of this law contain measures for inmates who suffer from mental diseases.<sup>64</sup>

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<sup>57</sup>1980 Cri LJ 1099.

<sup>58</sup>It provides: “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.”

<sup>59</sup>The Mental Health Act, 2017, s. 20.

<sup>60</sup>See *Id.* Chapter V.

<sup>61</sup>*Navneet Kaur v. State of NCT of Delhi & Anr.*, Curative Petition (Criminal) No. 88 of 2013.

<sup>62</sup>The Prison Act, 1894, Act IX of 1894.

<sup>63</sup>Supra note 4.

<sup>64</sup>The Mental Health Act, 2017, s. 103. “Prisoners with Mental Illness- An order under section 30 of the Prisoners Act, 1900 (3 of 1900) or under section 144 of the Air Force Act, 1950 (45 of 1950), or under section 145 of the Army Act, 1950 (46 of 1950), or under section 143 or section 144 of the Navy Act, 1957 (62 of 1957), or under section 330 or section 335 of the Code of Criminal Procedure, 1973 (2 of 1974), directing the admission of a prisoner with mental illness into any suitable mental health establishment, shall be sufficient authority for the admission of such person in such establishment to which such person may be lawfully transferred for care and treatment therein: Provided that transfer of a prisoner with mental illness to the psychiatric ward in the medical wing of the prison shall be sufficient to meet the requirements under this section: Provided further that where there is no provision for a psychiatric ward in the medical wing, the prisoner may be transferred to a mental health establishment with prior permission of the Board.”

The government offers very little assistance in dealing with these mentally ill prisoners. The most popular approach for the court is to deem such prisoners mentally unfit and hence unfit for execution and transfer them to a mental healthcare institution.<sup>65</sup> The reality, however, differs from what is written down or theoretically possible. The convict continues to live in the police's judicial custody while suffering from a mental disorder. When the case is ultimately resolved by the court years later, the convict is ultimately sent to an asylum. This directive is also not truly applicable because the jail administration takes its time before acting. The prisoner endures pain during this brutal procedure.<sup>66</sup> It was decided by the Hon'ble Apex Court that even while in detention, convicts retain their fundamental rights including the right to health, constitutionally protected under all circumstances though some shrinkage may be allowed and it is the responsibility of the state to cater for their medical needs.<sup>67</sup> No doubt, lock-up torture leads to a clear violation of Article 21 of the Constitution, yet the Apex Court through its leading judgements sought to grant compensation or release from jails. There are numerous cases where the Supreme Court and the different High Courts have shown a lot of judicial awareness towards the protection of individual rights and liberties. In the light of the above discussion, the various points that need consideration are as follows:

- a) The Constitution does not guarantee the right to compensation for violation of human rights. Such a right should be specifically incorporated into the Constitution.
- b) In many cases, the States have sought liability by seeking refuge under the doctrines of 'Sovereign Immunity in torts'. It is submitted that this outdated distinction between sovereign and non-sovereign functions of the State should be done away with and the State should not be exempted from liability in such situations.
- c) Physical and mental torture should be defined and made a crime inviting stringent punishment under IPC.
- d) Who is to pay compensation – The State or the guilty police official- one view is that the delinquent police officer should be made personally liable and the State should be finally resolved.

### IX. Mental Illness and Social Action Litigations in Supreme Court of India

Subnormal mental capacity, whether arising from an inmate's mental defect or deficiency or from mental disorder or illness has long presented legal problems, of care and custody, of responsibility for such person's rights, of their capacity for legal acts, of responsibility for wrongs and crimes, and of liability to punishment. At various times, a wide variety of terms have been used, such as frenzy, madness, *non compos mentis*, idiocy, lunacy, insanity, and others, but have any clear or fixed connotations. Since long, a prisoner may be admitted to the mental hospital or detained compulsorily on medical recommendations.

The Courts are now entertaining social action litigation initiated by means of writ petitions or even letters, telegrams addressed by the social activists, lawyers, journalists, law academicians and social action groups and using their Constitutional powers of intervention with a view to ameliorating the miseries of the prisoners, arising from repression, governmental lawlessness and administrative deviance. The Supreme Court of India just recently conceded to the fact that the existing criminal law is unable to account for "broad-spectrum" mental diseases, leading to the large-scale incarceration of people with mental illness.<sup>68</sup> The Court made comments on the "reality within prison walls" and other

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<sup>65</sup> See *Navneet Kaur v. State of NCT of Delhi & Anr.*, Curative Petition (Criminal) No. 88 of 2013 and *Shatrugan Chauhan v. Union of India*, 2014 (3) SCC 1.

<sup>66</sup> Supra note 25.

<sup>67</sup> *Re-Inhuman Conditions in 1382 Prisons* (CWP (civil) 406 of 2013, decided in 2017); *Sunil Batra v. Delhi Administration (II)* (1980) 3 SCC 488; *Ajay Singh Kuvar Singh Dahiya v. State of Maharashtra*, CWP (Crl.) 5301 of 2017.

<sup>68</sup> Dr Anup Surendernath, "A Chasm in Need of a Bridge: Criminal Justice System and Mental Health" *Mariwala Health Initiative and Project 39 A* (2022).

aspects of jails that influence inmates' mental health negatively and may exacerbate mental diseases, such as overcrowding, a lack of privacy, and poor medical facilities.<sup>69</sup>

It was for the first time in India in *Shatrughan Chauhan judgement*,<sup>70</sup> the Apex Court of India laid down that under Article 21 of the Constitution, the procedure prescribed by law should be reasonable and fair and no convict who is mentally ill or suffering from mental disorder can be deprived of his right to life by carrying out his execution. Soon after this dictum, the Apex Court in *Navneet Kaur v. State of NCT of Delhi & Anr*,<sup>71</sup> handed down one of the most remarkable judgments in the history of the Supreme Court. The Court acceded to the fact that keeping the convict in custody for unreasonable period results in unwanted stress and trauma to him. The Court accepted that the prisoner was suffering from schizophrenia and thus was incapable of being executed. The Court further asserted that the State would violate the statutory provisions by allowing the execution of mentally ill and unwell convicts.<sup>72</sup>

The welcome feature of Bhullar's case is not just the bar on the execution of mentally ill convicts but the mental health report of the death row convicts that cannot be overlooked under the Indian criminal justice system. The Apex Court of India has not looked beyond from the day of the historic judgement of Devender Pal Singh Bhullar uptil now and virtually incorporated this by way of *stare decisis*. This is a welcome step since the judiciary is only a hope to correct the present-day system which is denied due to political or other reasons. Since the day of Bhullar's judgement, the Apex Court has done a lot of judicial activism and expanded the scope of all the fundamental rights by reading the right to mental health in the express provisions of the Constitution. Virtually, every aspect, which affects the quality of life and human dignity has been covered under Article 21 of the Constitution.

Relying on the Bhullar's case, later on, the Supreme Court held in *Manoj v. State of M.P.*,<sup>73</sup> that the present system of hearing and sentencing in cases attracting the death penalty is improper and laid down for the first time new and more liberal norms consistent with fundamental rights of the prisoner. The Court held that the physical and psychological evaluation of the prisoner is mandatory before imposing the sentence of death which will help in establishing the proximity between the accused's frame of mind at the time of the commission of the offence and at the time of punishment. It was observed that this psychiatric and psychological evaluation will also serve as the baseline for the appellate courts in drawing a comparison between the accused's progress towards reformation during his incarceration period.

Similarly, in *Prakash Vishwanath Darandale v. The State Of Maharashtra*,<sup>74</sup> the Supreme Court held that the psychiatric assessment of death row inmates has recently been a focus of the Court. The Court further held that the mitigation specialists must be given access to the death row prisoners to dig out any information that might be useful to the Court during the appeal. Anything missed or overlooked in instances involving the death sentence would result in irreparable injury to both the prisoner and society.<sup>75</sup>

The Court's unusual self-reflection shows a growing awareness of the flaws in the criminal justice system. The Courts are now through social action litigation forcing the pace of socio-economic change and compelling the governments and their instrumentalities to discharge their Constitutional duties of protecting the inmates against social and economic injustices and ensuring the realisation of basic fundamental rights. The judiciary has for the first time come out in the services of the death row prisoners in India. It is an innovative step taken by the Apex Court of India which is the guardian of fundamental rights. Such innovation was desirable keeping in view that the majority of the prisoners are mentally ill, unstable or suffering from mental disorders. Their fundamental rights would have been

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<sup>69</sup>*Ibid.*

<sup>70</sup>*Shatrughan Chauhan v. Union of India*, 2014 (3) SCC 1.

<sup>71</sup>Curative Petition (Criminal) No. 88 of 2013.

<sup>72</sup>*Ibid.*

<sup>73</sup>*Manoj v. State of M.P.*, Criminal Appeal Nos. 248-250 of 2015.

<sup>74</sup>*Prakash Vishwanath Darandale v. The State Of Maharashtra* Criminal Appeal Nos. 425-426 of 2020.

<sup>75</sup>*Ibid.*

meaningless to them if there was no one to fight for them in the Courts against the grave injustice done to them.

#### **X. Conclusion**

On a larger canvas, the right to life includes everything which gives meaning to life and makes it wholesome and worth living. It means much more than survival or animal existence. Article 21 of the Constitution in its expanded horizon embraces a medley of concepts including any aspect of life, which makes life dignified. It is needless to stress that a man's life in prison would be a continuing disaster if not regulated. The protection of prisoners from oppression and abuse by the police and other law-enforcing officials is indeed a major concern and prime interest in a free society. Therefore, the State must provide means to the citizens including the prisoners to live a life of dignity and worth living. Failure of the State to provide such a life negates Article 21 of the Constitution.

Further, the Mental Healthcare Act, 2017, a comprehensive piece of legislation, includes measures under section 31(2) and mandates basic and emergency mental healthcare training for all medical personnel working in prisons. The state government in each state is required to create a mental health facility in the medical wing of at least one jail in the state under section 103(6) of the Act. The Act surely addresses the concern of mental health, however, it is lacking in its implementation process. It is necessary to declare mental health issues as a serious problem in cases of prisoners and basic training should be imparted to all the prison personnel in regard to prevalent mental illness and suicide prevention for the welfare of the prisoners.

To conclude, it can be said that whenever we talk of upholding the rule of law, we visualize a system of justice which accepts and respects the basic rights of individuals. *If a society fails to evolve an effective machinery for protecting rights its edifice of democracy will suffer cracks and in the long run, a 'Rule of Jungle' will operate to perish it.*