AGEING IN CAPTIVITY: UNDERSTANDING THE NEEDS OF ELDERLY PRISONERS IN INDIA

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ABSTRACT

A society functions on the wisdom of its ancestors. This wisdom, can either be used to move forward in life or it can be used to learn a lesson on what not to do if we are to move forward in life. With the growing population of the world, it is inevitable that a portion of the society would be ignored. And through the looking glass we find that the most ignored portion of the society are usually these ancestors i.e. the elderly persons of the society. What is worse is that a percentage of the elderly reside in prisons which is another ignored facet of our society.

With no specific definition for "elderly prisoners", the average consensus worldwide is that prisoners aged fifty and above fall into this category. What is not usually understood is that the problems faced by the normal prison populace are aggravated for these elderly prisoners, owing to their health issues- both physical and mental, and their daily special needs. According to reports from the Asian and Pacific Conference of Correctional Administrators and the United Nations Office on Drugs and Crime, the ageing process is accelerated by almost 10 years in prisons because their previous health problems are worsened due to the surrounding prison environment.

It is thus, essential to understand age-specific problems like acclimatisation issues, family issues, lodging issues, and health issues which are ubiquitous in all prison systems of the world. The author intends to understand which population can be categorised as elderly prisoners based on their needs and look into such issues that are faced by elderly prisoners in India.

Keywords: *Elderly prisoners, health issues, abuse, neglect.*

INTRODUCTION

"Death is inevitable, but everyone looks for a dignified exit from this world."[1]

- *Indira Jaising*

A society functions on the wisdom of its ancestors. These ancestors can either improve the society for the better, or change it for the worst. However, through introspection and learning from past mistakes, societies can navigate towards progress. With improvement in technology and medicine, the average life expectancy of human beings continues to increase[2] every year. While modern medicine continues to improve natural lifespan, there are some interventions like lifestyle changes, balanced diet, and healthy weight which may help with the same.[3] Effective steps can be taken to reduce the maladies which ail people in their twilight years. Despite such advancements, there is one segment of society that does not get to fully benefit from such changes and medical procedures, and that is the section of elderly inmates in prisons.

Although the concept of using confinement as a form of punishment has been in existence for a very long time, the concept of protection of their inherent rights as human beings has only been around for roughly the last century. One of the first international treaties to mention the protection of rights and treatment of prisoners have been the Hague Conventions of 1899 and 1901 which though did not solely emphasize the rights and needs of prisoners, but focused on the protection of victims of conflict and curbing of war crimes.[4] The rest has been an arduous journey for the protection of prisoners' rights and the acknowledgement of their existence as human beings behind the gruelling four walls of prison.

While one would think that the difficulties seem to end here, it is far from the truth. The signing of treaties and adoption of international conventions does not guarantee the protection of prisoners, mainly due to the thought process of the society. The way a society handles its prisoners can be a simple way to measure the justice it delivers. It functions on the basic principle that wrongdoers must be punished, but it rarely defines the limit of such punishment.

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[1] The Wire Staff, *Bombay HC Takes Note of Varavara Rao's Poor Health, Orders His Shifting To Hospital,* THE WIRE, Nov. 18, 2020.
[2] *Nature: Let the brain return to youth! Restarting macrophage metabolism,* MEDICAL TREND, Jan, 22, 2021.
[3] Sundeep Mishra, *Does modern medicine increase life-expectancy: Quest for the Moon Rabbit?* 68(1) INDIAN HEART J. 2016 Jan-Feb;19-27.
[4] The Hague Conventions of 1899 and 1907, https://guide-humanitarian-law.org/content/article/3/the-hague-conventions-of-1899-and-1907/

The cogitation that wrongdoers should get what they deserve seems to dominate the minds of the people which causes them to wilfully ignore the actual conditions of prison inmates. But how long? And to what end? Although the criminal justice system (as well as the prison system) is built on theories of punishment of deterrence, retribution, prevention and reformation, the purpose of these theories cannot be pigeon-holed to all sections of prison inmates, because it does not work on all prison inmates.

It is hard to believe that there is intersectional neglect in an already neglected part of society. While stigma, political priorities, poor resource allocation, and lack of public knowledge cause the prisons to become extremely overlooked and poorly managed institutions, the brunt of it is born by members who are lesser in number or who find it difficult to speak up. These members include women prisoners, and elderly prisoners. Sometimes these categories overlap. When majority of research and efforts are put into the general management of prisons, individual needs are often ignored- either deliberately or accidently. It is simple- less people, lesser noise, more people, more noise. Since these individuals are lesser in number, and often have resigned themselves to the perpetuity of poor prison conditions, they do not always speak up. And the worst part is, speaking up does not necessarily guarantee being heard. Hence, there develops a permanence to their substandard state.

It is important to understand the effects that prison has on each type of prison inmate. A young and first-time offender is likely to become accustomed to offences inside prison, if he is not kept in appropriate settings. An older prisoner may become more susceptible to stress in prison owing to his surroundings. The detrimental effects of ageing are accelerated in prison-[5] on comparison of older prisoners and non-prisoners, prisoners seem to experience the compounded effect of old age. Although the functionality of prisons is dependent of the constraint of liberty, the ignorance of older prisoners' needs and the similarity of their treatment to the younger prison population may result in damaging effects to their quality of life.[6]

This paper will examine which demographic can be categorised as elderly prisoners and the challenges faced by such prisoners in India. It will delve into the rights owed to elderly prisoners and the implementation and violations of such rights. With examination of the

[5] Hasan, S. M. K., Fahim, A., Suhling, J. C., Hamasha, S., & Lall, P. *Evolution of the Mechanical Behavior of Lead Free Solders Exposed to Thermal Cycling* (2019).
[6] John Williams, (2010*),"Fifty - the new sixty? The health and social care of older prisoners"*, 11(3) QUALITY IN AGEING AND OLDER ADULTS, 16 - 24

prisoners' issues, this paper will make recommendations as to how elderly prisoners can be treated in a better manner.

WHICH PRISONERS CAN BE CATEGORISED AS 'ELDERLY'?

There is no consensus as to which demographic of prisoners can be categorised as elderly. Although it is not defined in most countries, the general understanding is that prisoners over the age of fifty can be considered as older prisoners with countries like the U.K. and India, dividing the prisoner demographic as below and above 50 years of age.[7][8] The definitional problem is obviously problematic for comparative research and can hinder the establishment of a solid body of evidence regarding the characteristics of older inmates and the drawing of broad conclusions about associated issues like the kinds of offences committed, the recidivism rate, and prison administration problems.[9] However, the concept of old age in prisons is geared towards acceleration, owing to the stressful and restrictive environment and subpar prison conditions. Hence, it is difficult to determine if a person above 50 years of age would have the same issues as a prisoner above 50 years of age.

The number of elderly people who break the law and end up in prisons is rising.[10] This creates challenges for correctional facilities in terms of providing health care and other necessities, as well as mental, social, and physical health issues for the prisoners.[11] It is no news that the healthcare needed by an older person is much more augmented than the healthcare facilities required by a young person. A young person can stay fit and avoid hospital visits just by leading an active lifestyle and keeping a healthy diet. This however, is not true for older persons. Despite keeping a healthy lifestyle and diet, a more than occasional visit to the hospital is necessary to lead a long and healthy life. This effect is exacerbated in a prison environment which is closed from the outside world, taking a more than manageable toll on a prisoner's physical and mental health. A prison, which is already burdened with catering to the general

[7] *Older prisoners: Fifth Report of Session 2013–14, Volume I: Report, together with formal minutes, oral and written evidence,* 8, (House of Commons Justice Committee).
[8] AGE-GROUP-WISE PERCENTAGE SHARE OF CONVICTS TO TOTAL CONVICTS AS ON 31ST DECEMBER, 2022, NATIONAL CRIMES RECORD BUREAU, INDIA.
[9] *See* Megha Shree and Honey Aggarwal, *Rights of Elderly Prisoners: A Study in Tihar Central Prison*, *in* INDIAN PRISONS: TOWARDS REFORMATION, REHABILITATION AND RESOCIALIZATION (K. Jaishankar, Tumpa Mukherjee, Priti Bharadwaj, Megha Desai Asher eds., 2014).
[10] AGE-GROUP-WISE PERCENTAGE SHARE OF CONVICTS TO TOTAL CONVICTS AS ON 31ST DECEMBER, 2021, NATIONAL CRIMES RECORD BUREAU, INDIA. As per the prison statistics reports provided by National Crime Records Bureau in 2022 (latest) and 2021, the number of convicts above 50 years of age has increased by approximately 2000 in the last two years.
[11] SHREE, *supra* note 6.

needs of prisoners on a low budget, becomes overburdened when the problems of older prisoners knock on the door, mainly because it's a long and expensive battle, difficult for the authorities and the budget to bear. The older prisoners are a low-risk, high-cost demographic that can act as a critical release valve for an overburdened system.[12]

For the purpose of understanding this demographic, one needs to understand as to who can come under the category of older prisoners. Elder prisoners can be categorized into these groups:

1. Older inmates; indicative of an individual who was given a lengthy prison term at an early age and has completed a significant amount of time behind bars.

2. Prisoners with convictions during old age; these are people who were found guilty of a crime when they were older and given a prison sentence.

3. Senior recidivists with a history of multiple incarcerations.[13]

The handling of each type of these prisoners needs to be different, not only due to the obvious factor of their old age, but also their mental health in response to all three of these conditions. The first category needs more care in comparison to the other two because of the years they have spent metaphorically rotting away in prison- with or without outside support of their families or loved ones. Their physical and mental health always suffers as a result of the harsh prison rules and lack of communication with the outside world, not to mention the stress and machinations that are an inevitable part of being a prisoner.

The second category consists of prisoners who have been convicted during old age, and therefore need more time and support to adjust to prison conditions. Some of these prisoners (either convicted or undertrial) suffer from debilitating illnesses which need constant monitoring. If such prisoners are not provided with the appropriate support, they are pushed towards a painful and undignified death. A classic example of such a case is the death of

[12] Turley J. (2003) *California's Ageing Prison Population*, Washington, D.C.: George Washington Law School, as read in, Megha Shree and Honey Aggarwal, *Rights of Elderly Prisoners: A Study in Tihar Central Prison*, *in* INDIAN PRISONS: TOWARDS REFORMATION, REHABILITATION AND RESOCIALIZATION (K. Jaishankar, Tumpa Mukherjee, Priti Bharadwaj, Megha Desai Asher eds., 2014).

[13] Thomas, D.L., Thomas, J.A., & Greenberg, S. (2005). "The graying of corrections: The management of older inmates" as read in, Megha Shree and Honey Aggarwal, *Rights of Elderly Prisoners: A Study in Tihar Central Prison*, *in* INDIAN PRISONS: TOWARDS REFORMATION, REHABILITATION AND RESOCIALIZATION (K. Jaishankar, Tumpa Mukherjee, Priti Bharadwaj, Megha Desai Asher eds., 2014).

Reverend Stan Swamy who was detained and accused of involvement in the 2018 Bhima Koregaon violence, as well as having ties to the Communist Party of India (Maoist), by the National Investigation Agency under the Unlawful Activities (Prevention) Act.[14] He was suffering from Parkinson's disease and had repeatedly requested bail on medical grounds, but his requests had been denied. His health declined at an accelerated rate, and he later passed away. It is apparent that the healthcare that can be provided in a proper hospital facility is not the same that can be provided in prison facilities. And sometimes that is the difference between a live and a dead prisoner.

For a prisoner of the third category, there is a need to understand the basic problems causing their recidivism at such an old age. Specialized programmes aimed at addressing these issues have to be set up, looking into their specific and generalized problems and focusing on how these can be overcome.

While the categories may differ, it is important to understand that elderly prisoners coming to prison, or ageing in prison require special support, more than the average prisoner.

WHAT ARE THE CHALLENGES FACED BY THE ELDERLY WITHIN THE CONFINES OF PRISON?

The basic challenge for elderly prisoners lies in their invisibility to the appropriate authorities. The UN Minimum Standard Rules for the Treatment of Prisoners, the Prisons Act, the Prisoner's Act, the Mullah Committee report, and the Prison Manuals do not grant elderly inmates any particular recognition.[15] This lack of visibility in the eyes of the law causes problems for those elderly prisoners who need special help and who cannot survive without specific individual support.

This rudimentary problem mainly arises due to the “sameness” principle. The "sameness" principle, states that ageing and decreased mobility are not acknowledged or recognised as justifications for prisoner flexibility. The same time constraints apply to older inmates as to other inmates.[16] The understanding that no two prisoners should be treated differently reflects

[14] Kamaljeet Kaur Sandhu, *This is what NIA’s Bhima Koregaon chargesheet says about Stan Swamy*, INDIA TODAY, Oct. 13, 2020.
[15] SHREE, *supra* note 6.
[16] Crawley E., & Sparks R., (2005). “Older men in prison: survival, coping and identity” as read in, Megha Shree and Honey Aggarwal, *Rights of Elderly Prisoners: A Study in Tihar Central Prison*, *in* INDIAN PRISONS: TOWARDS

badly on older prisoners who clearly need different treatment. That is not to say their punishment is of any less significance than younger prisoners. People find themselves within prisons not as a means of punishment, but rather experiencing incarceration as the punishment.[17] The prison system includes restrictions on freedom, but the idea of "sameness" violates the legal rights of the senior inmates.[18]

The housing facilities of prisons are itself a huge part of the problem. One would think that a facility made to house a large number of people would be made in a manner which is conducive for all of them, but it is seldom true. The Basic Activities of Daily Living (BADL) which include personal hygiene or grooming, dressing, toileting, transferring or ambulating, and eating[19] are important for an older prisoner to maintain basic mobility and quality of life. If the prisoner is unable to maintain the same, they should be considered for assistance. Since these activities are difficult and time-consuming, the prisoners are forced to rely on the prison staff and their fellow prisoners for support. Certain elderly prisoners may find it particularly difficult to perform routine prison tasks like heading to the dining hall, getting in and out of bunks, and reacting to alarms and head counts. Facilities thus, have to choose whether to accommodate existing living arrangements or give inmates who are physically fragile or whose cognitive function is deteriorating the option to transfer to specialised facilities with nursing care.[20]

Stress has an impact on ageing inmates. They mask their emotions by denying and suppressing them, putting on a façade of adaptation.[21] This causes their health to deteriorate faster as healthcare facilities find it difficult to reach the root of their problem. The situation is worsened while dealing with chronic illnesses. Such illnesses like dementia, Parkinson's, cancer, arthritis, and osteoporosis, not to mention diabetes, hypertension, and kidney diseases prove it difficult for them to continue their lives normally. Compared to their counterparts outside prisons, they are more likely to suffer from falls, incontinence, have trouble doing daily tasks like dressing or taking a shower, hearing impairment, and several concurrent illnesses.[22] To deal with such

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REFORMATION, REHABILITATION AND RESOCIALIZATION (K. Jaishankar, Tumpa Mukherjee, Priti Bharadwaj, Megha Desai Asher eds., 2014).

[17] *See* Megha Shree and Honey Aggarwal, *Rights of Elderly Prisoners: A Study in Tihar Central Prison*, *in* INDIAN PRISONS: TOWARDS REFORMATION, REHABILITATION AND RESOCIALIZATION (K. Jaishankar, Tumpa Mukherjee, Priti Bharadwaj, Megha Desai Asher eds., 2014).

[18] WILLIAMS, *supra* note 3.

[19] Peter F. Edemekong, Deb L. Bomgaars, et al., *Activities of Daily Living*, STATPEARLS [INTERNET], June 26, 2023.

[20] Garrido M, Frakt AB, *Challenges of Aging Population Are Intensified in Prison*, JAMA HEALTH FORUM, 2020, https://jamanetwork.com/journals/jama-health-forum/fullarticle/2761533.

[21] WILLIAMS, *supra* note 3.

[22] EDEMEKONG *supra* note 16.

problems, the World Health Organization has recommended the "multimorbidity model of care" for prisoners in European countries.[23] The multimorbidity care model prioritises the chronic medical conditions that have the greatest impact on each person's health status and quality of life, as opposed to concentrating on a single disease.[24]

While all of this holds true, there is still a problem of overcrowding in prisons. With prisons filled more than capacity, and not enough prison staff to go around, it is difficult for correctional facilities to look into needs of each and every prisoner, let alone an older prisoner whose illness are probably the tip of the iceberg. This was proved in the case of Varavara Rao,[25] who was also arrested in 2018 in relation to the Bhima Koregaon case. Suffering from dementia, the legal counsels and kin, not to mention Rao himself had to go through a long and hard battle to be given medical bail, when his condition made it difficult for him to even recognise his wife. This was especially worsened due to the effects of COVID-19 in prisons,[26] which virtually served as a black hole of contagion from which it was difficult to come out. Inadequate medical care is not acceptable as "part of the punishment" in prison.[27]

WHAT ARE THE DIGNITIES DESERVED BY THE ELDERLY WITHIN THE CONFINES OF PRISON?

The basic rights of elderly prisoners in India are the same as elderly civilians, barring those restrictions that are a part of their punishment. The Constitution of India itself provides rights to all the citizens, irrespective of age. The most important such article is Article 21, which provides that "*no person shall be deprived of his life or personal liberty except according to procedure established by law*."[28] This article acts as an umbrella for all such implicit rights which are inherent to a human being, such as right to live with dignity,[29] right to die with dignity,[30] right to fundamental freedoms under Article 19(1),[31] protection against torture,[32]

[23] Deblina Dey*, Law's temporality and the construction of death-worlds: Custodial neglect of older prisoners in India,* 13(2) JINDAL GLOBAL LAW REVIEW, 2022, 307–327.
[24] Prisons and Health, (World Health Organization), 2014.
[25] Dr. Varavara Rao v. NIA and Others, Criminal Appeal No. 52/2020.
[26] In Re: Contagion of Covid19 Virus in Prisons, Suo Motu WP(C) No. 1/2020.
[27] WILLIAMS, *supra* note 3.
[28] Article 21 of the Constitution of India.
[29] Maneka Gandhi v. Union of India (1978).
[30] Common Cause v. Union of India (2018).
[31] RC Cooper v. Union of India (1970).
[32] Inderjeet v. State of Uttar Pradesh (1979) AIR 1867.

protection against custodial violence,[33] etc. The case of *Sunil Batra v. Delhi Administration*[34] was one such milestone case concerning the significant ideas for defending the privileges of the detainees, in which it was held that prisoners must not be made devoid of those basic rights which they would otherwise possess had they not been in prison.

According to Article 41 of the Constitution of India, *"the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want."*[35] In consonance with this Article of the Constitution, the Government of India came up with the *Maintenance and Welfare of Parents and Senior Citizens Act, 2007*. This act allowed the respective state governments to establish old age homes and provide medical support for senior citizens. It considered the fact that old people cannot care and provide for themselves owing to their age, and are hence in need of external assistance. Proper housing according to their age and facilities for treatment of chronic or even terminal diseases were the basic rights provided to citizens of old age. The rights provided in this act also permeate the walls of prisons. An older prison inmate deserves to be treated with the dignity and respect that is due to any human being.

With old age, a person needs more support from their family and loved ones-be it mental or physical. If physical support is not possible in prisons because of apparent reasons, frequent communication and visitation should be allowed to keep their spirits high. It is also possible that towards the end of their lives, people tend to incline towards their religious beliefs, so access to religious services should be allowed.

Although most international conventions do not mention elderly prisoners explicitly, the rights provided in *Universal Declaration of Human Rights, 1948, International Convention on Civil and Political Rights, 1967, United Nations Standard Minimum Rules for Treatment of Prisoners (Nelsen Mandela Rules), European Convention for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment, 1987*, and *United Nations Basic Principles for Treatment of Prisoners, 1990* should be used accordingly to provide such prisoners with their rights.

[33] DK Basu v. State of West Bengal 1997 (1) SCC 416.
[34] Sunil Batra v. Delhi Administration AIR 1978 SC 1675.
[35] Article 41 of the Constitution of India.

The most recent development on protection of elder rights has been the UNECE Ministerial Conference on Ageing, 2022, which discussed the promotion of active and healthy ageing throughout one's life.[36]

RECOMMENDATIONS AND CONCLUSION

Whether they are incarcerated or not, elderly people are a valuable resource to the country.[37] Prison staff frequently lacks the specialised training necessary to properly care for ageing inmates.[38] Either they should be trained to deal with the problems of older prisoners, or special prison staff must be recruited to especially deal with their problems. In order to provide care and rehabilitation programmes, prisons should have access to psychologists and counsellors who have received specialised training in geriatrics.[39] Instead of being proactive, healthcare [in prisons] is frequently reactive. The way chronically ill older adults are managed outside of prison should be the same inside prison.[40] A volunteer can be tasked with becoming companions with an elderly inmate,[41] to make them feel heard and cared for.

Elderly inmates must be placed within the current justice system but with the implementation of the "least restrictive alternatives which keep in mind those special problems of elderly persons at each stage of criminal processing."[42] Older inmates may suffer from the physical design of prisons.[43] Prison cells should be designed in a manner which is not restrictive for older inmates, in which they can move freely and slowly as they like, and open enough for them to enjoy their recreational time without the worry of running into younger inmates.

The country's ageing population and high incarceration rates have created a system that is more like a network of "nursing homes" than a criminal justice system. States ought to consider whether it is a wise use of their limited financial and human resources to continue locking up

[36] UNECE Ministerial Conference on Ageing (UNECE), June 15-17, 2022.
[37] SHREE, *supra* note 6.
[38] Caroline M. Upton*, A Cell for a Home: Addressing the Crisis of Booming Elder Inmate Populations in State Prisons*, 22 ELDER L.J. 289 (2014).
[39] SHREE, *supra* note 6.
[40] WILLIAMS, *supra* note 3.
[41] Ruth Shonle Cavan, *Is Special Treatment Needed for Elderly Offenders?,* 2 CRIM. JUST. POL'y REV. 212 (1987).
[42] Newman, Evelyn and Donald J. Newman 1984 Public policy implications of elderly crime. In Newman, Newmanand Gewirtz, eds., Elderly Criminals. Cambridge, MA: Oelgeschlager, Gunn and S. Hain. 225-242, as read in Ruth Shonle Cavan, *Is Special Treatment Needed for Elderly Offenders?,* 2 CRIM. JUST. POL'y REV. 212 (1987).
[43] CAVAN *supra* note 37.

people who are sick and elderly.[44] At the very least, a consideration should be made of compassionate release of such prisoners who are infirmed and unable to care for themselves. Keeping them in state funded hospital facilities should be a better use of state's money than keeping them in infirmaries of underfunded prison facilities. This release programme should work on the foundation of both the prisoners' health and age (preferably for non-violent offenders) and should be decided on a case to case basis. A choice should also be given to prisoners who are close to death to spend their time in the hospital or with their loved ones at home.

It is important to understand that the handicap of old age does not absolve them or reduces their responsibilities for their crimes. It just makes them eligible for appropriate treatment for their age and age-related problems. Afterall, *how frail should the prisoner be to be provided with a medically safe environment and care?*[45]

[44] UPTON, *supra* note 34.
[45] Deblina Dey*, Law's temporality and the construction of death-worlds: Custodial neglect of older prisoners in India,* 13(2) JINDAL GLOBAL LAW REVIEW, 2022, 307–327.