Right to Health: A Case Study of Political Prisoners in Kashmir

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Abstract: This research paper is based on the primary study that researcher has carried out in Kashmir with the political ex-prisoners. The paper is focused on the different aspects of health issues of the political prisoners with respect to their basic human rights of health available in laws. The main objectives of this research paper are to study the impact of imprisonment on health of a political prisoner during the imprisonment and also to know post imprisonment health issues. Similarly another objective of this paper is to know the medical care facility available to the political prisoners during the imprisonment/detention period. This paper is an attempt to reflect the lived experiences of the political prisoners who had experiences of imprisonment/detention in Kashmir with respect to their health issues they faced and the ill treatment they met with during imprisonment or detention. The paper will deliver on the main issues related to the health of the political prisoners in Kashmir and in conclusion researcher will highlight that how political prisoners have been deprived of their right to life by depriving them the proper medical care and health care facility by the authorities in Kashmir with relevant examples from the field.

Introduction:

There is a growing idea that public health is a big concern for the incarceration. And the concept of justice and rights of prisoners is inextricably linked with the incarceration and health. Earlier it was considered that imprisonment is a matter of crime and punishment but now the ideas have got changed. Health care facility to prisoners is considered as one of their basic human right. Health of prisoners and Public health approach within the prisons are gaining much importance in the contemporary times.

Health in prisons is a part of public health because Prisons cannot be considered isolated from the society. As we know there are millions of prisoners around the world and there are enormous numbers of inmates as well suffering from the several types of illness and diseases inside the jails. Many of the prisoners suffer from different types of illness that ranges from less severe to more or chronic types illness and similarly many are also there that either suffers from communicable or non-communicable diseases like Tuberculosis, malaria, HIV etc.

As far as this topic “Right to Health and Political Prisoners in Kashmir” is concerned, this paper is an attempt to reflect the life experiences of the political prisoners in Kashmir with respect to their health issues they have faced due to the imprisonment and the ill treatment they met with during imprisonment or detention. Researcher has selected this topic because Kashmir is an armed conflict ridden zone since more than two decades and time and again Kashmir has witnessed rampant arrests of those people who have different political ideologies or simply those who are against the establishment. There has been many reports of the ill treatment met with the political prisoners inside the jails and detention centers and there after negative consequence as a result of that ill treatment.

One of such example was reported in Kashmir by the Physicians for Human Rights and Asia Watch (1993) that there is a prevalence of a serious disease that has been diagnosed as rhabdomyolysis among the political prisoners in Kashmir. In this disease the kidney may get damaged due to the acute renal problems. Doctors have given main reason of this disease among political prisoners as the interrogation and torture techniques like in which leg muscles are crushed and therefore a secretion of dead muscle fibers is produced that reaches into the blood stream damages the kidneys. Although if quick intervention is done the better results can be achieved and due to lack of medical attention it can prove serious. According to the report doctors have observed 37 cases of rhabdomyolysis since 1990 among many ex-political prisoners in which
three patients died of this disease and almost ten required dialysis.

Prisoners are also like other people living outside the walls of the prison. Therefore like other people, prisoners are also entitled to all the rights enshrined in different laws within the limits of prison. This research paper is focused on the different aspects of health issues of the political prisoners with respect to their basic human rights of health available in national and international laws. As the main focus of this research paper are to study the impact of imprisonment on the health of a political prisoner during the imprisonment and also the post imprisonment health issues. Similarly the researcher has also attempted to know the medical care facility available to the political prisoners during the imprisonment period.

**Research Methodology:**

This research paper is based on the primary study that researcher has carried out in Kashmir with the political ex prisoners who had got arrested for the charges of their involvement in activities against the establishment. As for as the research methodology adopted for this research paper is concerned. In this study the convenient type of sampling has been utilized to reach to the respondents. Researcher selected the political ex-prisoners as the target population for conducting the study researcher has selected twelve (12) respondents as the size of sample. The respondents have remained in different place of detention and imprisonment. Mainly respondents have been arrested more than one time and few of the respondents have served several years in prison. In this study the conditions of both imprisonment/detention has been included.

Researcher has framed an interview schedule with all the open ended questions as the tool for data collection in order to conduct the interviews of respondents about the health issues they have experienced inside the jails and detention centers as well as post imprisonment and detention issues with respect to several health related issues they have been facing after release. Here, it is important to mention that the study is that of a qualitative type and exploratory in nature. In this paper researcher would begining a conclusion by analyzing the findings of the study qualitatively under different headings and will also give few suggestions on the basis of findings of the study.

**Objectives of Study:**

1. To study the impact of imprisonment/detention on health of a political prisoner during the term of imprisonment/detention.
2. To study the post imprisonment health problems of ex-political prisoners
3. To study how health care facility was provided to the political prisoners during imprisonment/detention.

**Literature Review:**

World Health Organization (WHO) 1946 came with a definition that “health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”. WHO has also given an operational definition of health, according to which the concept of health has been defines as “a condition or quality of the human organism expressing the adequate functioning of the organism in given conditions, genetic or environmental” as cited by (Gidey, Taju, &Hagos, 2006) The authors have further elaborated the different dimensions of health as given by the WHO like physical, mental, and social aspects are the three specific dimensions of health and few more dimensions may be included to health like spiritual and emotional.

The Physical Health- is concerned with anatomical integrity and physiological functioning of the body. It means the ability to perform routine tasks without any physical restriction. E.g., Physical fitness is needed to walk from place to place.

Mental Health- is the ability to learn and think clearly and coherently. E.g., a person who is not mentally fit (retarded) could not learn something new at a pace in which an ordinary normal person learns.

Social Health- is the ability to make and maintain acceptable interaction with other people. Such as to celebrate during festivals; to mourn when a close family member dies; to create and maintain friendship and intimacy, etc.

Emotional Health - is the ability of expressing emotions in the appropriate way, for example to fear, to be happy, and to be angry. The response of the body should be congruent with that of the stimuli. Emotional health is related to mental health and includes feelings. It also means maintaining one’s own integrity in the presence of stressful situation such as tension, depression and anxiety.

Spiritual Health - Some people relate health with religion; for others it has to do with personal
values, beliefs, principles and ways of achieving mental satisfaction, in which all are related to their spiritual wellbeing.

Coming to the health vis-à-vis Prisons, according to a report compiled by (World Health Organization, 2007) it says that People who are in prison have the same right to health care as everyone else. It also includes right to give humane treatment and proper medical care. It clearly says that it is prison administration that has a responsibility to ensure that prisoners receive a proper health care facility and it stresses upon that the public health care should be closely linked with the prison health care.

(Marshall, Simpson, & Stevens, 2000) have given certain general feature for the needs of health care of Prisoners. According to them Prisoners also have same needs as there are needs in General populations. Prisoners also require health care needs which may be the consequences of imprisonment. There are losses of family network due to imprisonment. Sometimes the atmosphere in prison may be violent and overcrowded as well. Therefore, while incarceration prisoners may suffer emotional deprivation due to which it is possible that prisoners may become drug abusers or develop mental health problems. Within the prison the health care needs may be more complicated than outside and therefore sometimes management of chronic diseases like diabetes and epilepsy gets more complicated. The author has also talked about some requirements that prison system itself should carry out like to assess the prisoner’s health status for instance medical checkup or screening should be done on the arrival at prison and similarly fitness should be determined to appear in the court.

According to the (World Health Organization, 2013) report prisons and the communities are linked with each other. Majority of the Prisoners eventually leave prison and reintegrate into the society and also the prison personal use to oscillate between the prison and the community therefore it is evident that in wider communities prisons affect public health. Mostly the qualified health care personal in prisons are less and the prison health services remain much inferior to the public health services. It speaks of the aggravated atmosphere by the frequently prevailing unhealthy conditions in prisons like lack of fresh air, space, light, inadequate nutrition, lack of sanitary good facilities and violence.

Legal back ground:

Like all persons, prisoners are entitled to enjoy the highest attainable standard of health. Better health care is a right of every person and therefore a prisoner also, according to the Indian Prison Act of 1894, there are given few legal provisions in order to make sure that prisoner’s health will be given due importance by the authorities. The Indian Prison Act stresses upon that if any prisoner is ill and wants a medical attention he must be immediately shown to the doctor. It is necessary for the state that there should be some hospital of jail and at least there should be a medical officer in every jail who can, monitor the health concerns like the sanitary administration of jail.

Article 21 of Indian constitution guarantees right to life which also includes right to health for all persons including prisoners without any kind of discrimination. Similarly there are Jail Manuals for every state that also provides many rights to prisoners with respect to their right to better health care services. If we talk of Jammu and Kashmir, in the Manual for superintendence and Management of Jails, several provisions are mentioned for prisoners’ personal hygiene, cleanliness and other different medical facilities in order to provide a better overall health care system for a prisoner. The manual says that the object of medical administration in prisons is mainly to restore and maintain the physical and mental health of prisoners and to keep up the general sanitation and hygiene of the institution to a satisfactory standard. Under few of its provisions related to medical facilities in prisons few standards are given.

Under Section (33.1) it says that there should be adequately equipped hospital, both for male and female prisoners, with provisions for the necessary medical, surgical, dental and psychiatric services.

Under Section (33.5) it says that at least two pharmacists shall be appointed for an institute with population ranging from 250 to 500.

Under Section (33.17) the rule says that whenever Medical officer of a district/ Sub Jail is absent from the station, his duties shall be performed by the Senior Medical Subordinate of the Jail under the Supervision of Medical officer of the local hospital. In case of Central Jails, his duties shall be performed by another Assistant Surgeon under the supervision and control of physician specialist.

This right is guaranteed under international law in Article 25 of the United Nations Universal Declaration of Human Rights and Article 12 of the International Covenant on Economic, Social, and Cultural Rights. Furthermore, the international community has generally accepted that prisoners retain all rights that are not taken away as a fact of incarceration, including the right to the highest attainable
standard of physical and mental health. Loss of liberty alone is the punishment, not the deprivation of fundamental human rights. States therefore have an obligation to implement legislation, policies, and programmes consistent with international human rights norms, and to ensure that prisoners are provided a standard of health care equivalent to that available in the outside community.

Right to health in terms of prisoners do not only include the preventive and curative health only, but it also includes supportive health care by providing prisoners the access to several determinants of health like adequate sanitation, safe drinking water, safe food, accommodation, adequate nutrition, health education, exercise, access to fresh air, meditation, etc.

With respect to legal back ground to the right to health there are many legal instruments available that provides rights of prisoners for the proper access to the health care facility. Talking about the laws at national level the constitution is main statute that guarantees right to health services in the form of the fundamental rights like right to life and personal liberty to all including prisoners. Similarly there are Jail manuals of every state that provides different rules to manage the affairs of prisons and prisoners within the jail that includes the medical facility as well. Coming to the other side there are many international legal instruments that also enshrine many specific rights for the protection, safety and health care of prisoners. Few of the laws that provides right to health care facility to prisoners are:

b. Body of Principles for the Protection of All Persons under Any Form of Detention and Imprisonment
c. Basic Principles for the Treatment of Prisoners
e. Universal Declaration of Human Rights
f. International Covenant on Economic, Social and Cultural Rights
g. International Covenant on Civil and Political Rights
h. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment

Both as per the National and international laws, All the Prisoners including the political prisoners possess right to receive all the required medical treatment during imprisonment and detention. Because when a person is being arrested or detained it is the full responsibility of the state to provide him with the proper medical treatment to ensure their health and well being.

According to the international human rights law, state authorities should give the best possible treatment as per the established medical standards. The International covenant on civil and political rights do not express the right to health explicitly but it provides this right under the manifestation of different articles like United nations Human rights committee stresses upon the state that it should provide the timely appropriate and adequate medical treatment to all the detainees so that enjoyment of certain rights under the International Covenant on Civil and Political Rights can be ensured like,

- Article 6 of ICCPR on the right of life
- Article 7 of ICCPR on the prohibition on torture or cruel, inhuman or degrading treatment and punishment and
- Article 10 of ICCPR on the right to human treatment.
- Article 12 of the International Covenant on Economic, Social and Cultural Rights, recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
- Principle 9 of the U.N. Basic Principles for the Treatment of Prisoners provides that prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.
- Rule 26 of the Standard Minimum Rules requires that amongst others, the Medical Officer shall regularly inspect the quantity, quality, preparation and service of food and the hygiene and cleanliness of the institution and the prisoners.

Besides several renowned bodies, The World Medical Association (WMA) has adopted few of the actions to be taken by the respective states for the protection of health rights of prisoners. It has drafted few actions related to prisoner health conditions that were adopted by the 52nd WMA General Assembly, Edinburgh, Scotland, October 2000 and revised on 62nd WMA General Assembly, Montevideo, Uruguay, October 2011.some of these actions required are:

1. Prisoners should enjoy the same rights as other patients, as is also outlined in the WMA Declaration of Lisbon
2. Ensuring that the conditions in which detainees and prisoners are kept, whether they are held
during the investigation of a crime, whilst waiting for trial, or as punishment once sentenced, do not contribute to the development, worsening or transmission of disease.

3. Ensuring that prisoners are not isolated, or placed in solitary confinement, as a response to their infected status without adequate access to health care and the appropriate medical treatment of their infected status;

4. Ensuring that, upon admission to or transfer to a different prison, inmates’ health status is reviewed within 24 hours of arrival to assure continuity of care.

Analysis and Findings:

Health During and Post Imprisonment:

Health in Prisons is a part of public health because Prisons cannot be considered isolated from the society. With reference to the health of prisoners there can be severe repercussions of incarceration on them. Many health problems of prisoners may begin right from the beginning as a Prison itself induces the psychological fear into a prisoner as it gives an image of captivity and being surrounded by the huge prison walls. Similarly when a prisoner lands into the prison due to the different varied reasons like inadequate nutrition and hygiene, less physical exercise, no fresh air a prisoners health gets an impact. Sometimes along with other health issues, problems like malaria, tuberculosis, hepatitis B, C, skin disease, malnutrition diarrhea, etc are also prevalent among the prisoners. Similarly psychological problems are also prevalent among the prisoners therefore it is not wrong to say that many prisons may be the basin of diseases in some contexts if the standards of health and proper humane conditions do not prevail there. Coming to the findings part of this paper with reference to the political prisoners in Kashmir, here are few of the responses that researcher has received from the interviews of respondents below in order to understand the status of right to health of prisoners in Kashmir, like in an interview one of the respondent (name with held) stated,

“In a local police lockup I was kept for more than a month but the cell in which I was held was worse than the torture cell. It was a actually a washroom there. It was a dark, I was not allowed to move outside of it for more than two weeks, and everything I had to do was inside the cell. they provide me food inside this cell and most probably some medicine they had mixed with this food due to which for these days I never felt even to go far toilet at all but I was only urinating at times that too inside the cell but its colour got completely changed after I had the food given to me by authorities”. Respondent added that“it took me a lot of time to be in normal course of life after release but my eye sight has still some problem. It has got much weaker because I was confined in a total dark room that was a kind of torture for my eyes. When after so many days I came out my eyes were not able to see anything, since then my eyesight has got some problem”.

Few of the respondents said that when we were held in different detention and interrogation centers we were asked to clean the blocks in the dirty sewage drains inside and similarly many times we were not allowed to bath as well for months after our arrest. Sometimes even we were given food in the unclean plates.

Most of the respondents said that they have very weak physical strength, they cannot engage themselves in any form of physical exertion like many of my respondents have one to multiple discs in their back due to the torture they have met in different interrogation and detention centers and later they have not been provided with any treatment for that therefore many of them are facing are facing the post release health problems as they cannot easily walk or work.

It was also analyzed that there are many associated health impacts like psychological problems prevailing among the prisoners as one of the respondent said that I am in a continuous depression due to the health issues I am facing, I use to weep a lot. I was imprisoned for two years though later I was acquitted by court but inbetween I have lost everything I am not able to do anything. When I was arrested in the beginning I was badly tortured due which I am not able to work or my support my family because I have got many discs and my nerves have got weak as well, doctors have said to me that there is not any good treatment available for me, therefore I am not able to carry even a small weight and cannot properly walk but my family is poor so I don’t how my family will survive.

Further, in this study it was also reported that among post imprisonment issues the psychological fear prevails in many respondents because they are always in a state of fear that they can be rearrested at any time because since the time they have been released they have been continuously frisked and rearrested as well by different security agencies.
Similarly, many of the health problems that came into knowledge during imprisonment and post imprisonment include like Kidney stone problem and stomach problems, that usually respondents attributed to the unhealthy food given to them during imprisonment.

Health Delivery system for Prisoners

Over all the response of respondents was that whenever they require the ambulance for any critical case the jail authorities do not possess any ambulance therefore jail authorities have to request the ambulance from the Police Control Room (PCR) and till the ambulance reaches there the patient’s condition gets worse. Similarly another problem is that the Jail authorities also do not provide the patient with the escort party on time because they do not possess the escorts to accompany the prisoner this also delays the patient’s arrival to the hospital. The prisoners said comparatively hygiene and other facilities are better in the Srinagar central jail as compared to the jails in Jammu where the hygiene inside jails is not maintained at all, food is not of good quality and health care delivery system is not working as per the requirements of the prisoners.

It is important to mention that according to respondents there is no availability of medical care and supervision for the prisoners in different detention centers, interrogation camps, and also in the district and sub jail of the state. According to the respondents doctors and the medicines are not available for the prisoners in any place of imprisonment and detention except in the Srinagar central jail where sometimes the physician comes to visit. The prisoners have complained that even if the prisoner is tortured and dying with the pain or any other health issue. The authorities keep their eyes close and the prisoner remains in the state of suffering. Bad conditions of living are prevailing in the prisons and detention centers that lead to the increased risk of health issues of prisoners. It was revealed by the respondents that even for the small illness there is not the availability of medicines. Similarly it comes out from the responses of respondents that mostly health problems have been resulted among the prisoners due to the ill treatment and torture done to prisoners which have long lasting post imprisonment impacts.

Further, it is important to mention here that it is being said that prisoners are more vulnerable to diseases because they come from the under privileged class of the society and they do not have access to the treatment but here researchers do not found any such case that was coming from such a under privileged class. Similarly, respondents shared that sometimes the authorities neglect their health on the basis of many excuse like they do not possess an ambulance which is a basic need of a prison similarly they do not possess an escorts to carry them to hospital.

Conclusion:

Health is a fundamental human right and is necessary to provide in order to uphold the right to life of a prisoner. Right to health is one of the measures that speak how much rights of a prisoner are being denied or respected. It can be concluded that health care is a state responsibility to deliver to the prisoners because they have deprived their liberty and prisoners themselves are helpless and at the helm of the authorities.

Here in this study, Health has remained a main issue for the political prisoners in the state of Jammu and Kashmir, when the interviews were analysed the health problem came out as one of the most concerned issue that prisoners have been facing and one of the important aspect of health that came out is that prisoners do not face health issues only due to bad quality of food, bad hygiene etc but also due to the torture and ill treatment they had got exposed to during their detention and imprisonment.

Mostly, it has been concluded as per the information given by the respondents that they were healthy both physically and psychologically before the imprisonment but after their arrest their health condition started worsening, which they mostly attribute to the treatment they have met during their detention or imprisonment by the officials. Similarly, it also came out that the unhealthy conditions under which they were held has also added to the bad impact on their health.

Some more reasons that respondents shared to this study which by one way or the other affects their health consists of the following like, the accommodation pattern that do not offer inmates with enough space, light and fresh air. Prevalence of bad hygiene and dirty facilities of sanitation in different detention and prisons of the state of Jammu and Kashmir. Absence of heating arrangement for the extreme cold winters and similarly no arrangement for the summers therefore the prisoner’s situation is likely to become vulnerable to certain health issues. Similarly, it was also reported that inadequate nutrition to individual needs is provided in all places of detention and imprisonment except in Srinagar.
Central Jail where situation is better according to respondents.

Reference:


Legal Documents:


Constitution of India