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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 14.02.2023
Pronounced on: 17.02.2023

+ **W.P.(CRL) 59/2023**

VED YADAV

..... Petitioner

Through: Mr. Vishesh Wadhwa,
Advocate.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Yasir Rauf Ansari, ASC
for the State with Mr. Adeel-
ul-Hasan, Advocate.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

J U D G M E N T

SWARANA KANTA SHARMA, J.

1. The present writ narrates the story of petitioner, who seeks remedy as a convict inmate of Tihar Jail, and requests the Court to examine an important issue of human rights that has been overlooked by prison laws and rules.

2. This judgment, thus, examines the issue regarding payment of compensation and its quantum, to a convict inmate of Tihar Jail who has suffered injuries i.e. amputation of three fingers of the right hand while working in the factory of Tihar Jail. This Court examines this question since neither the Delhi Prisons Act, 2000 nor Delhi Prison

Rules, 2018 deal with the issue in question, except for Rule No. 1084 of Delhi Prison Rules, 2018, which reads as under:

“1084. Payment of compensation to prisoners who meet with accidents resulting in physical or mental disability, serious injury, death, or loss of health due to occupational diseases, as certified by the Medical Officer.”

3. The petitioner seeks issuance of writ in the nature of mandamus directing the respondent to provide functional prosthesis for regular working of the amputated fingers of right hand at state expense in Airmid Hospital (situated at Samaypur, Delhi) or any other private hospital in which the said facility is available and to grant compensation for the loss suffered by him.

4. The background facts of the instant petition are that the petitioner is confined in Central Jail no. 2, Tihar, Delhi as a convict who is serving life sentence in FIR bearing No.421/2012, under Sections 302/34 of Indian Penal Code, 1860, Police Station Samaypur Badli, Delhi. On 20.01.2021, the petitioner suffered partial amputation of three fingers of right hand while working on a Rag Chopper Machine in the paper unit of the jail factory of Central Jail no. 2, Tihar. The petitioner was immediately taken to the dispensary attached to Central Jail no. 2, and after receiving first aid, he was taken to Deen Dayal Upadhyay Hospital to the plastic surgery department. During the course of medical treatment, it was found that there was total amputation of the index finger, middle finger and ring finger of the right hand of petitioner. On 21.01.2021, the petitioner was sent for surgery and he was discharged from the Hospital on

03.02.2021. Thereafter, on 08.02.2022, the petitioner was issued a disability certificate which reflected that he had suffered permanent disability to the extent of 31% in relation to his right hand. After that, he was also taken to Department of Physical Medicine and Rehabilitation of All Indian Institute of Medical Sciences ('AIIMS'), New Delhi on 26.03.2022 for providing him with functional prosthesis. However, the petitioner was informed that only cosmetic glove for the right hand is available in AIIMS, Delhi and that he cannot be provided with functional prosthesis. The petitioner stated that he required functional prosthesis for regular working of the amputated fingers of his right hand and does not require cosmetic glove. On 22.04.2022, the petitioner had approached the Jail Superintendent of Central Jail no. 2, Tihar, Delhi seeking update regarding his application for grant of compensation and for providing functional prosthesis at the State's expenses. To his utter shock, petitioner found that the application had been returned to him without stating any reasons.

5. Having no other remedy, the petitioner on 19.07.2022, approached this Court by way of *W.P. (Crl.) 1574/2022* seeking directions to the respondent to provide functional prosthesis for regular working of the amputated fingers of his right hand. This Court, on 19.07.2022, had passed the following order:

“This is a writ petition seeking directions to the respondent to provide functional prostheses for regular working of the amputated fingers in the right hand of the petitioner.

It is submitted by Mr Vinayak Bhandari, learned

counsel for the petitioner that the petitioner is a life convict and while working in a paper unit of the jail factory of central jail No. 2, met with an accident when his index, middle and ring finger on the right hand were amputated.

Even though the respondent has provided necessary medical facilities, the petitioner, in the present petition is seeking functional prostheses as well as compensation.

Issue notice. Mr Sanjiv Sabharwal, learned APP accepts on behalf of Mr Sanjay Lao, learned Standing Counsel for the State. He seeks and is granted two weeks to file a response.

List on 09.09.2022.”

6. Thereafter, Status Report was filed by the State on 09.09.2022, whereby it was stated that “*Patient came for functional prosthesis, as informed previously functional prosthesis is not available in AIIMS hospital*”, however, this Court was not apprised of the fact that the said treatment was also available in some private hospitals in Delhi. The family of the petitioner had approached one of the private hospitals namely, Airmid Hospital, Samaypur, Delhi, and the said hospital had agreed to provide treatment to the petitioner, but due to poor financial condition of the petitioner, he was unable to get the said treatment. The respondent was directed, *vide* order dated 09.09.2022, to decide the application dated 22.04.2022 of the petitioner within four weeks. The relevant portion of said order is reproduced hereunder:

“...The other prayer is with regard to payment of compensation for the accident.

Mr. Bhandari, learned counsel states that the right flows from Rule 1084 of Delhi Prison Rules.

Mr.Lao states that the DGP, Prison shall hear and decide the application dated 22.04.2022 within 4 weeks from today and will communicate the decision to the petitioner.

If the petitioner has any other alternative remedy or is aggrieved by the order of DGP, Prison, he shall be entitled to avail appropriate legal remedies.

With these observations, the petition is disposed of.

Let the copy of this order be communicated to DGP, Prison for compliance.”

7. However, the petitioner was compelled to file the instant writ petition since the order of this Court dated 09.09.2022 was not complied with by the respondent and as stated, it is difficult for petitioner to do regular work without being provided with functional prosthesis as he is convicted for life imprisonment and is regularly working in Jail factory for earning wages. By way of present petition, following reliefs have been sought:

“(a) Issue a Writ in the nature of mandamus directing the Respondent to provide functional prosthesis for regular working of the amputated fingers of the right hand at state expense in Airmind Hospital Situated (Samaypur, Delhi) or any other private Hospital in which the above said facility is available.

(b) Issue a writ in the nature of mandamus directing the Respondent to pay compensation to the Petitioner as the Respondent is failed to decide the same.

(c) Pass any other order or further orders, which this Hon'ble Court deem fit and proper in the interest of justice.”

8. Learned counsel for petitioner stated that petitioner is currently working in the bakery unit of Jail no. 2, Tihar, and despite previous order of this Court, the representation of the petitioner had not been decided by the jail authorities. By virtue of order dated 10.01.2023, this court had sought a report from Director General (Prisons) qua the same.

9. On 10.02.2023, learned Additional Standing Counsel ('ASC') for the State informed the Court that Director General (Prisons), after due consultations and examining the case in detail, has awarded Rs.50,000/- as compensation to the convict/petitioner, and the said amount of Rs.50,000/- has already been credited to his Prisoner Property Account No.1035 *vide* cheque no. 254284 dated 30.01.2023 drawn on Indian Bank, Tihar Jail, New Delhi.

10. However, learned counsel for petitioner vehemently argued that the compensation of Rs. 50,000/- was not justified considering the injuries suffered by the petitioner. It was stated that petitioner comes from a poor strata of society and financial condition of his family consisting of his mother, wife and minor son is very weak, and that petitioner and his wife are also illiterate and there is no other male member in his family to bear the medial expenses of the petitioner.

11. The respondent was then directed by this Court to place on record an explanation as to how the compensation amount was computed.

12. On 14.02.2023, learned ASC for the State placed on record a Status report dated 13.02.2023, whereby it changed its stand giving Rs. 50,000/- in compensation and stated it may be treated now as

interim compensation and now this issue will be examined by Delhi State Legal Service Authority ('DSLISA') under victim compensation scheme. The status report reads as under:

“1. That this Hon'ble court vide its order dated 10.02.2023, in this *ibid* matter, has directed the Director General (Prisons), Delhi to grant adequate compensation in view of 31% permanent disability suffered by the petitioner in the jail, while he was working on Rag cutting machine in the paper unit of the jail factory.

2. That, the prison department has already awarded Rs.50,000/- (Rupees Fifty Thousand only) to the convict as interim compensation and has credited the amount to his Prisoner Property Account maintained in the Central Jail No.2.

3. That, the Prison Department has taken up the matter with the Member Secretary, Delhi Legal Service Authority, as the authority computes and awards compensation to the victims, to advise the Prison Department, on the quantum of compensation, to be paid to the convict.

4. It is therefore prayed that four weeks time to be granted, so that compensation amount is calculated, disbursed and its compliance is filed in this court.

Prayed accordingly...”

13. The arguments addressed on behalf of petitioner as well as State were heard *in extenso*. The material placed on record has also been perused.

14. Therefore, in this Court's opinion, the grave issue needs to be adjudicated upon by this Court:

“Is a prisoner entitled to same compensation and facility from the State in case he is a convict in a criminal case which he would have been entitled to in case he was not a convict?”

15. In the present case, admittedly, medical aid was provided to the convict/petitioner, but it is sad to note that petitioner had to approach this Court on 19.07.2022 after waiting for around 06 months since his application for being provided with compensation as well as functional prosthesis was not even looked into by the DG, Prison. Even thereafter, though this Court had directed DG, Prisons to decide the application of petitioner within 4 weeks, no action was taken regarding the same. Having no other option, the petitioner again approached this Court by way of present petition, and it is only pursuant to the order dated 10.01.2023 passed by this Court, that the DG, Prison acted on the application of petitioner.

16. This Court has been informed by the State that since there is no facility providing artificial prosthesis in AIIMS, Delhi either a cosmetic glove can be provided to the convict, or surgery is available at AIIMS, Delhi for constructing the lost fingers.

17. The petitioner, on the other hand, does not wish to undergo surgery of reconstruction of his fingers, but pleads that he be provided with an automated artificial limb at State expenses, the facility for which is available at a private hospital namely Airmid Hospital, Samaypur, Delhi.

18. It is stated by parties that such a case has not been, in the past,

decided by any Court of law and there is no rule as such which deals with the issue in question.

19. As far as Delhi Prison Rules, 2018 are concerned, the relevant portion of **Rule 1082** reads as under:

“1082. The following facilities should be provided in work-sheds and other places where prisoners work:

ix. safety equipment and accident prevention measures...”

Further, **Rule 1084**, which deals with the aspect of compensation in case of accidents, is extracted as under:

“Payment of compensation to prisoners who meet with accidents resulting in physical or mental disability, serious injury, death, or loss of health due to occupational diseases, as certified by the Medical Officer.”

20. Though the Delhi Prison Rules, 2018 have more than 1900 rules, unfortunately, the same do not deal with the issue at hand. There is no monitoring or remedial mechanism available to address the legitimate grievances and prayers for being compensated for work related injuries sustained by a convict-inmate while serving sentence. Such instances may have occurred in the past and may have gone unresolved in the recent decades. Fortunately, for the present petitioner, the provision of free legal aid gave him the opportunity to file the present case seeking compensation for work related injuries.

21. There are no rules dealing with the State compensating prisoners against industrial injury or occupational diseases in Delhi. In

this regard, guidance can be sought from the *United Nations Standard Minimum Rules for the Treatment of Prisoners*, also known as the *Nelson Mandela Rules*, whereby Rule 101(2) reads as under:

“Rule 101(2). Provision shall be made to indemnify prisoners against industrial injury, including occupational disease, on terms not less favourable than those extended by law to free workers.”

22. While deciding the present case, it is imperative to take note of the forms of punishment which can be awarded to a convict within the existing legal framework. In this regard, it will appropriate to refer to Section 53 of IPC, which is extracted as under:

“53. Punishments.—The punishments to which offenders are liable under the provisions of this Code are

First — Death;

Secondly — Imprisonment for life;

Fourthly — Imprisonment, which is of two descriptions, namely:—

(1) **Rigorous, that is, with hard labour;**

(2) Simple;

Fifthly — Forfeiture of property;

Sixthly — Fine.”

(Emphasis supplied)

23. As observed by Hon’ble Apex Court in *Phool Kumari v. Office of the Superintendent, Central Jail Tihar New Delhi AIR 2012 SC 3198*, rigorous imprisonment is one which is required by law to be completed with hard labour. While a person sentenced to simple imprisonment has the option of choosing to work, a person sentenced

to rigorous imprisonment is required by law to undergo hard labour.

24. This cannot be overlooked in the present case that the convicts/petitioner in this case was serving rigorous imprisonment. Therefore, the work related injury suffered by him was in relation to the sentence he was serving and the work that he was doing was a part of his sentence. The arguments that the convict in this case can be considered as an employee will be incorrect view to hold since the convicts are not employees, but have been forced to work by statutory mandate or by a judicial direction. A convict does not voluntarily enter into an agreement or contract to work and therefore, there is no question of there being an employer-employee relationship between the inmate and prison authorities. Therefore, the Workmen's Compensation Act, 1923 cannot be held applicable to prisoners or inmates. Even otherwise, the inmates are not hired for work by the jail authorities and their wages are to be paid by the concerned department of the government.

25. In India, the punishment upon conviction of a criminal offence is based on theory of reformation and is essentially a correctional policy. Convicts are made to work as per mandate of Section 53 of Indian Penal Code, 1860 which has been discussed in the preceding paragraphs. As per Delhi Prison Rules 2018, Central Jail Factory, Tihar functions on non-profit basis which are established under Delhi Prison Department wherein the factory works as per jail rules and the workers are also given wages as per policy determined by the concerned Prison Department. The Court is informed by learned ASC for the State, on instructions, that the factories are working on non-

profit basis with only 10 per cent margin of profit and the said 10 per cent profit earned is used for the maintenance and welfare activities of the inmate. Therefore, it can be stated that the same is essentially based on institutional maintenance and inmate welfare basis. Parts of wages are also sent by the prisoners to their families as part of the policy of their reformation and being meaningful to the society and their families. The Tihar Jail Factories are working and engaged in activities producing envelope making/paper unit, tailoring, carpentry, etc. In such circumstances, when there exists no employee or employer relationship between prisoners and the jail authorities; for work related injuries they should be provided protection and remedies as the Constitution vision does not permit that any citizen should be rendered remediless in case of commission of an offence or infringement of a fundamental right or availing compensation for injuries even as a prisoner.

26. The justice for an inmates who has suffered disability due to an injury suffered which is work related in the prison, has fundamental right to get justice and compensation as per law.

27. Our Constitutional Jurisprudence is mature and portrays sign of a progressive mature society. The Hon'ble Apex Court has time and again laid down the rights of prisoners by upholding the right to live with dignity while being in prison and have stood up for their individual human rights as provided by the Constitution.

28. In the decision rendered by Hon'ble Apex Court in ***Dr. Mehmood Nayyar v. State of Chattisgarh*** 2012 (8) SCC 1, compensatory jurisprudence was invoked while exercising writ

jurisdiction regarding grant of compensation to a person who suffers custodial torture, custodial death or fake encounter. It was held that even prisoners are to be treated with human dignity and they cannot be deprived of their rights merely because they are in prison, as under-trials or as convicts.

29. There is established duty of court towards the prisoners and the convicts as laid down by several judgments of the Hon'ble Supreme Court. The State duty to provide safe environment and basic facilities as per Prison Rules is well established by case law. The living and working conditions of the prisoners have to be hassle free and healthful and liability has to be established in case of an inmate suffering from injury while working in prison. The duty cast on the police authorities to protect prisoners from harm, their duty to take care of the inmates and to take reasonable steps to protect them from self harm and harm from other inmates or work related injuries, etc. are statutory. It is the duty of the Jail authorities to provide medical care to the inmate. However, this Court faces question as to whether this duty extends to providing treatment from a private hospital or being provided with artificial prosthesis to the inmate and compensation for the disability suffered by him due to injuries suffered while working in prison.

30. The equality before law in certain cases as the present one which is bodily injury suffered by an individual whether a free citizen or an under trial or a convict and his right to compensation cannot be on different criteria except as provided under law. In this regard, it will be appropriate to refer to the decision of Hon'ble Apex Court in

in *Sunil Batra (II) v. Delhi Administration* (1980) 3 SCC 488

wherein it was observed as under:

“It is imperative, as implicit in article 21, that life or liberty shall not be kept in suspended animation or congealed into animal existence without the freshening flow of fair procedure. Fair procedure in dealing with the prisoners calls for another dimension of access of law-provision, within the easy reach of the law which limits liberty to persons who are prevented from moving out of prison gates”.

“No prisoner can be personally subjected to deprivation not necessitated by the fact of incarceration and the sentence of court. All other freedoms belong to him – to read and write, exercise and recreation, meditation and chant, creative comforts like protection from extreme cold and heat, freedom from indignities like compulsory nudity, forced sodomy and other unbearable vulgarity, movement within the prison campus subject to requirements of discipline and security, the minimum joys of self-expression, to acquire skills and techniques and all other fundamental rights tailored to the limitations of imprisonment”.

“Inflctions may take protean forms, apart from physical assaults, pushing the prisoner into a solitary cell, denial of a necessary amenity, and, more dreadful sometime transfer to a distant prison where visits or society of friends or relations may be snapped, allotment of degrading labour, assigning him to desperate or tough gang and the like, may be punitive in effect. Every such affliction or abridgement is an infraction of liberty or life in its wider sense and cannot

be sustained unless Article 21. There must be a corrective legal procedure fair and reasonable and effective. Such infraction will be arbitrary, under Article 14, if it is dependent on unguided discretion; unreasonable, under Article 19 if it is irremediable and unappealable; and unfair under Article 21 if it violates natural justice....”

“The prison authority has duty to give effect to the court sentence. To give effect to the sentence means that it is illegal to exceed it and so it follows that prison official who goes beyond mere imprisonment or deprivation of locomotion and assaults or otherwise compels the doing of things not covered by the sentence acts in violation of Article 19. Punishments of rigorous imprisonment oblige the inmates to do hard labour, not harsh labour. ‘Hard labour in section 53, Prisons Act to receive a humane meaning. So a vindictive officer victimising a prisoner by forcing on him particularly harsh and degrading jobs, violates the law’s mandate. The prisoner cannot demand soft jobs but may reasonably be assigned congenial jobs”.

31. The human rights of the prisoners are often ignored, if not disregarded. The convicts have been sentenced to serve a valid criminal law purpose. The criminal law purpose for awarding sentence is according to the acts, gravity of offence and circumstances of the individual apart from the Indian Penal Code and the judicial precedents. Primarily, the sentence in India is awarded to act as a deterrent, rehabilitate apart from retribution.

32. The circumstances, as in the present case, may seldom arise,

however, that cannot be a ground to close one's eyes to such occurrences and there is urgent need to find a solution as to how they should be dealt with keeping in mind the criminal law purpose of sentence as well as fundamental right of the prisoners to be treated with dignity and equality subject to their particular circumstance and the sentence they are undergoing. There are human rights obligations on the State and jail authorities towards the prisoners and the convicts. One of them is while the prisoner undergoes the sentence imposed by the Court, it has to be through safe and humane custody as well as assisting the convicts who are offenders for rehabilitation and help them reintegrate into the society as useful and law abiding citizens once they come out of the prison.

33. Needless to say, the offenders are not deprived of human rights guaranteed by the Constitution except being deprived of such rights as a necessary consequence of being convicts undergoing sentence imposed by the Court. The criminal law system which extends to convicting a person and sending him to jail for serving the sentence has to remain responsive and sensitive while such prisoners as convicts are serving their sentences and ensure that their right to dignity and life is not taken away. A prisoner cannot be made to suffer due to inadequacy of policies that have failed to consider a particular eventuality as is in the present case. The judicial consciousness must contribute to reach every individual and provide them remedies in law even in cases where it may seem none are available. It is rightly said that the right without remedies are no rights at all.

34. There is no mention in either Delhi Prisons Act, 2000 or Delhi

Prison Rules, 2018 as to what happens to the loss time wages of the convict who was not able to work after his accident having suffered amputation as in present case where the petitioner lost three fingers of his right hand for a considerable period of time. There is no mention regarding the pain and suffering due to the accident in question and about future loss of prospects a convict suffers once he is released from prison.

35. The present case illustrates a need to clarify and lay down framework for determining the standard of reviewing policy for quantifying and assessing the compensation paid to a prisoner for work related injuries sustained in the jail. The remedies for a convict and a free civilian cannot differ though they may be assessed on different criteria owing to absence of employee-employer relationship in the case of a convict or under trial.

36. However, this Court while deciding so, must try to balance the injury suffered by a convict even if it was suffered while he was serving sentence or rigorous imprisonment without equating him to a workman working being hired or under a contract.

37. The doctrine of fairness has to be kept in mind towards the convicts which includes procedural fairness in cases as the present one, since the employer-employee relationship does not exist in such cases in absence of any rule or procedure which may reasonably require.

38. More so, since a convict may not spend rest of his life in jail. There will be a life beyond jail after he is released after serving his entire sentence and the petitioner who has lost three fingers of his

right hand, his future loss is also to be assessed in terms of his future prospects once he is out of the jail. His earning capacity has been adversely affected undoubtedly due to him suffering 31% disability in relation to his right hand which will surely affect his future and that of his family.

39. It is very troubling to note that the present petitioner had to take the long rugged route before reaching to the present destination as the incident took place on 20.01.2021. Subsequently, the petitioner approached jail Superintendent and a representation was made on 22.04.2022 which was returned back to petitioner without stating reasons and thereafter a writ petition was filed before this Court i.e. W.P.(Crl) No. 1547/2022 titled as “*Ved Yadav v. State of NCT of Delhi*”

40. This Court also notes that the cost of litigation would have become a road block for the present petitioner to have brought the grievance before the present court but for the legal aid provided by the State in the jail itself. This Court also holds the view that a firm attitude by the Court was needed to awaken the relaxed authorities from their slack approach towards entitlement of the prisoners and their fundamental rights. This court is of the firm view that the claims of the prisoners regarding their injuries, wellness, etc. must not take a back seat considering that they are serving sentence for heinous offences or are under trials.

41. The aforesaid discussion in the preceding paragraphs thus reveals that there is no mechanism, committee or procedure apart from non-existence of any rule or law with regard to quantifying the

compensation in case of work related injuries sustained by a convict-inmate. Even during the oral arguments, when the concerned officer from Tihar Jail was present, he reiterated the above position as on date. Merely stating that this case can be referred to DSLSA so that they can assist to provide compensation to petitioner in terms of victim compensation scheme of other offences as per law assisted by their Victim Compensation Assessment Committee, is not a permanent solution to the problem. The victim compensation scheme of DSLSA is in a different context and works within its framework under which the present facts do not fall. Since the question of fundamental right of the prisoners is in issue and the legal position of them being on different footing than a workman and not under the fault of employee/employer relationship, a specific mechanism in relation to the issue in question is the requirement of the day.

42. The following guidelines are laid down which will be guided by jurisprudence regarding right to equality and remedy available against injury based on expert advice and within the framework of a scheme which will be made, with rules by the concerned authorities.

43. Considering the same, this Court lays down the following guidelines:

- a) In Case of a convict suffering work related amputation or life threatening injury, the Superintendent Jail will be duty bound to **immediately inform about the same to the concerned Jail Inspecting Judge within 24 hours from the incident.**

- b) A **Three-Member Committee** consisting of (i) Director General (Prisons), Delhi, (ii) Medical Superintendent of a government hospital (including, but not limited to, All India Institute of Medical Sciences, Safdarjung Hospital, Ram Manohar Hospital, Deen Dayal Upadhyay Hospital, Guru Teg Bahadur Hospital, and Dr. Baba Saheb Ambedkar Hospital), and (iii) Secretary, DSLSA of the concerned district wherefrom the convict has been sentenced, **who will assess and quantify the compensation** to be paid to the victim of such work related injury, after perusing the opinion of a board of doctors which will be constituted at their request by the treating hospital.
- c) The government hospital wherefrom the victim will be medically examined/treated for the injury or the disability, if any, the same will be put up before the above mentioned committee for assessment of compensation.
- d) For assessing the injury/disability, the contributory negligence, if any, of the victim in question will be kept in mind.
- e) It is clarified that the above **guidelines will be applicable only in the case of amputation, or any other life threatening injury, arising out of work related injury, sustained by the convict.**

f) The essential **interim compensation** will be provided to such victim in case of amputation or life threatening injury.

44. This **arrangement will remain in place until necessary guidelines in this regard are formulated, or rules are made or amended** in this regard or any amendment is brought in the Prison Act, 1894 by the wisdom of the Parliament of India, or in Delhi Prisons Act, 2000 to deal with such situation.

45. Since the present petitioner has already been provided interim compensation by the Jail authorities, the case of the petitioner qua enhanced compensation and for providing functional prosthesis will be decided in light of the above guidelines within three months from today.

Conclusion

46. While this judgment does not intend to create new rights of prisoners, it expresses and reiterates the recognition of right to equality, right to life and human dignity of a prisoner who has been convicted. This Court vide this judgment has tried to give meaning to the existing rights of the prisoners.

47. The plight of the imprisoned in a democracy sheds light on the State as to how should States care for them since very few care for the imprisoned. The attitude of the majority towards the imprisoned *viz.* under trials or convicts is not very positive and those who speak on behalf of prisoners are at times considered callous towards victims of

crime. The prisons are correctional institutions and they should be known as such. Those who have been part of the reformation of the prisons and the prisoners know that there are many in the prison who have been able to find meaning in their sufferings and despite going through the suffering rise again for themselves and their families.

48. The fundamental rights should not remain on paper and it is the duty of courts to ensure that they become living law and in practicality assist, help and guide the citizens. The injury and disability suffered by the applicant in this case cannot be assessed to be lesser in pain and suffering compared to a free citizen. Pain from an injury cannot be different for a convict and a free citizen. The Court has to hear the voiceless and feel and treat the pain and suffering suffered by the convict not as pain of a prison inmate but as that of a human being. Under the Constitutional system of India, the Courts have always stood guard and have acted as refuge for people who may be helpless, out-numbered, or may stand in position of power imbalance. The Constitution of India does not permit distinction in such cases and the judicial and moral conscience of the Court advances the principles of the Constitution.

49. The prisoners who are separated from the society and the family due to the Court's sentence are often unseen by the general public and their family.

50. While parting with this case, this Court observes that it is time that the authorities of the prisons which are correctional homes act as guardians of the prisoners for their health and safety and not merely consider themselves as guards of the inmates.

51. A copy of this judgment be forwarded by learned Registrar General of this Court to (i) Director General (Prisons), Delhi, (ii) Secretary, DSLSA of all districts in Delhi, (iii) Secretary, Union Ministry of Health and Family Welfare, and (iv) Secretary, Department of Health and Family Welfare, Delhi, for taking note of its contents and ensuring compliance.

52. Accordingly, the present petition stands disposed of in above terms

53. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBRUARY 17, 2023/kss

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