

## **Prisoners' right to procreation**

- Shefali Malhotra and Simran Dhillon

In '*Jasvir Singh Vs. State of Punjab*, CWP No. 5429 of 2010, the learned Single Judge of Punjab and Haryana High Court dismissed the petition praying for enforcement of their right to have conjugal life and procreate within the jail premises. The Hon'ble Court delved into the concept of right to procreation and held that the right to procreation survives incarceration and falls within the right to life guaranteed under the Article 21 of the Constitution.

### **Facts**

The principal issues in the instant case was a) Whether 'right to life' and 'personal liberty' guaranteed under Article 21 of the Constitution include the right of convicts or jail inmates to have conjugal visits or artificial insemination (in alternate)?, and b) Whether penological interest of the State permits or ought to permit creation of facilities for the exercise of right to procreation during incarceration?

### **Judgment**

The Court held that the Right to Life under Article 21 includes the right of convicts or jail inmates to have conjugal visits or artificial insemination. The penological interest of the State ought to permit the creation of facilities for exercise of the right to procreation during incarceration in a phased manner, as there is no inherent conflict between the two but it would however be subject to the reasonable restrictions and security concerns. The Court further passed directions to constitute a Jail Reforms Committee entrusted with the task of full realization of the aforesaid right.

However, the Court dismissed the aforesaid petition on the ground that the jail infrastructure, as it exists, does not permit conjugal visits in jail, but held the same to be sufficient condition for parole.

### **Analysis**

The court did a balancing act by recognizing convicts' and prisoners' fundamental right and holding right to procreation as a sufficient condition for parole/furlough. At the same time, it

passed directions to constitute a Jail reforms committee to give recommendations for realization of the right to procreation within jail premises.