



The Rights of Women Prisoners in India

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ABSTRACT

A prison is a facility used to house accused individuals awaiting trial or to house criminals as a form of punishment. The fact that brutality and depravity are often hidden behind closed doors puts the lives of those incarcerated in constant danger. The problems associated with incarceration are more acute in the case of women prisoners. In spite of the gradual rise in ratio of women to males in prison and the number of women participating in criminal activities in India, the study of women criminality is a neglected area of research. Gender sensitivity in prison systems is also rare, hence it is imperative that basic rights be provided to women in detention, taking into account their unique needs. There are several rights of women prisoners and designated rules for the same but there is a failure in the actual implementation of those when women prisoners are faced with some issues. The aim of this paper is to draw attention to the issues that women inmates face, highlight the rights that these inmates possess, and make suggestions for essential reforms. The researcher has used secondary method for data analysis for the study.

Key Words –Rights, Prison, Women Prisoners.

1. INTRODUCTION

Human rights apply to everyone. Humans have equal rights and dignity from birth. These are moral assertions that, independent of caste, color, creed, place of birth, sex, cultural differences, or any other factor, are unalienable and intrinsic in every person by virtue of their humanity alone. These assertions are made and outlined in what is now referred to as human rights. Human rights are ethical precepts or standards that delineate particular expectations for human conduct. They are consistently safeguarded as legal rights within both domestic and global legal frameworks. They are commonly understood as inalienable fundamental rights "to which a person is inherently entitled simply because she or he is a human being", and which are "inherent in all human beings". According to Justice Durga Das Basu, "Human rights are those minimal rights, which every individual must have against the State, or other public authority, by virtue of his being a 'member of human family' irrespective of any consideration." [1] Whether convicted or awaiting trial, a man does not cease to be a human being while he is incarcerated, therefore even inmates are entitled to human rights. Any criminal offense does not imply that the perpetrator no longer possesses human dignity or that he can be stripped of the elements of life that make one human. Despite being limited by their incarceration; prisoners are entitled to exercise all of their fundamental rights.

Any individual who is incarcerated due to a court order or other need that they be held in official custody is referred to as a "prisoner". Whoever is deprived of their freedom against their will is referred to as an inmate or prisoner. This may occur by forced restraint, imprisonment, or both. [2] People who are physically confined and have some degree of personal freedom taken away from them are said to be in prisons. In every nation, prisons are an essential component of the criminal justice system. Prisons may be designated only for males, women, juveniles, convicted felons, inmates awaiting trial, etc.

For a woman who bears the burden of womanhood and experiences hardships and difficulties, the battle to survive in a harsh and cruel world is much more intense. Women may occasionally be pressured to commit crimes or engage in criminal behavior that is illegal in a male-dominated, primarily patriarchal social structure, in addition to problems with poverty, deprivation, and life's

frustrations, as well as their susceptibility to victimization both at home and in public. Imprisonment means the women have to live in subpar conditions but the loss of the ability to live a dignified life is far worse than the punishment of incarceration itself. Rejected by the community, frequently disregarded by family members, and treated with disdain by the establishment, the lives of women are ruined and shattered while they are incarcerated. Uncertainty and certainty about punishment, the stigma they have to bear, the incessant worries about the welfare of her children and family back home, dealing with the deviant act itself are just a few of the unsettling effects and consequences that a woman faces when she finds herself in detention. To add to these issues, the women prisoners have to face a lot of problems while in prison.

Numerous issues hamper the lives of women incarcerated, many of whom are facing trials. The purpose of reformation is not accomplished by prisons to the fullest. Thus, it is essential to recognize the issues that women in prison face, to respect their rights, and to ensure that these rights are respected.

1.1 Purpose

The purpose of the study is to highlight the problems faced by the women in prison in India and to list out the provisions of law ensuring protection of their basic Rights.

1.2 Objective

The objective of the study is to answer the following questions:

- What are the problems/ challenges that women prisoners have to face?
- What are the rights of the women prisoners and what are the various provisions made to safeguard those rights?
- To suggest steps that can be taken to improve the existing situation of the women prisoners.

1.3 Research Methodology

The researcher has used doctrinal research method by using the secondary method of data collection, which includes books, journals, newspapers, and various published and unpublished government records.

2. THE CHALLENGES FACED BY WOMEN IN PRISON

Although the concept of the right to life has been extended to embrace a wide range of prison rights, there are still numerous obstacles that face female convicts. In spite of The Prison Act and Prison Regulations that clearly state prisoners' rights and also segregates them into gender-specific prisoner groups, the way women inmates are treated needs to be given special attention. It is apparent that women need to be treated differently from most other convicts since their physical makeup, anatomy and needs too are different. Various progressive norms safeguard the welfare and fair treatment of prisoners, particularly women, but in reality, these guidelines are not always implemented.

Women suffer from issues such a lack of female employees, cramped, unsuitable housing, poor sanitation and hygiene, a lack of services to meet their needs for mental and physical health, inadequate nutrition, limited educational opportunities, and often useless skills. Many mothers who raise their children while living together do not have access to the proper recreational, health, and educational opportunities. [3] The situation for women is made worse by these issues, as well as a lack of legal aid within the institution, limited access to the outside world, and a high rate of abuse by staff members and other inmates. As a result, after they are released, reintegrating into society will be extremely difficult for them.

2.1 Inadequate Women Prison Staff

The fact that male staff takes care of female detainees when there is a shortage of female staff highlights the unfavorable and undesired situation wherein male staff is left in charge of female prisoners. Gender-specific services that should be offered to female

detainees are lacking due to the dearth of female staff. A report by BPR&D highlighted the pressing issue that there is a growing need for exclusive women prisons, skilled female prison officers, fulltime lady doctors, and pediatricians etc. [4]

2.2 Sanitization and Hygiene

The essential area of hygiene and sanitization are, also in fact, disregarded to a great extent. Although the Prison Manual clearly states that there should be one bathroom and one shower cubicle for every ten inmates; nevertheless, this rule is occasionally observed across the country. When a prisoner does not have enough water, their level of sanitation and hygiene deteriorates, even though the Manual recommends a minimum of 135 liters per prisoner. [5]

2.3 Improper Accommodation and overcrowding

Improper Accommodation and overcrowding are some of the worst issues that the female inmates must deal with. Overcrowding frequently causes a lack of sanitation, poor hygiene, and the spread of illnesses. The health of women inmates, as well as children living with their incarcerated mothers, might be adversely impacted by unsanitary restrooms and toilets. Because inmates must live with other inmates, overcrowding also causes a lack of ventilation and may have an impact on their psychological well-being.

2.4 Substandard Healthcare and Nutrition

The right to health includes providing healthcare that is available, accessible, acceptable and of good quality. [6] Women's health requirements are unique and demand special consideration. It is necessary to evaluate their physical, mental, sexual, and reproductive health. Every jail is required by the National Prison Manual to provide a hospital. There ought to be separate wards for men and women at these hospitals. These hospitals ought to be equipped to handle the unique requirements of both senior inmates and inmates who could be struggling with addiction. The ability to fully test female inmates for health issues should be available to the hospitals. Tests that help identify mental health issues, drug dependency, sexually transmitted or blood-borne illnesses, etc., ought to be performed in prison facilities. Despite of these provisions the health care provided to the women inmates is substandard.

There is a direct correlation between healthy eating and wellbeing. Making sure that every prisoner receives a nutritious food that is balanced and contains all the ingredients necessary for their overall health and well-being is crucial. Even though the fact that the Prison Manual sets forth these guidelines for food consumption and nutrition, it has been discovered via in-depth visits to prisons that there is a difference in the definition of calories between men and women. This is sometimes used as an excuse to provide female prisoners significantly less food than male prisoners. Although the amount of food provided in most jails is said to be quite sufficient, reports of the unclean conditions in the kitchens and dining areas have caused considerable questions and worries.

2.5 Violence against the Prisoners

Numerous incidents of guards violently abusing female inmates, inmates being fatally beaten as well as instances of custodial rape have been reported. All of these sufferings go unnoticed, and when a prisoner's death is reported, authorities try to fabricate evidence to brush off their responsibility or accept the abuse that may have caused the death. [7] In State of Maharashtra v. C.K. Jain, [8] there was a rape that happened while the accused was in police custody. Numerous other documented examples exist when women were subjected to violent attacks.

2.6 Children

In prison, children under the age of six are allowed to reside with their mothers if other arrangements for their care cannot be found. According to a BPR&D report, not every jail has the necessary infrastructure in place for a child's social, mental, and biological

development, as well as a crèche and recreational amenities. NHRC trips to prisons reveal that, other than a glass of milk, children are frequently not provided with a healthy food.

Lack of awareness about Legal Aid and assistance, Education, vocational skills etc. are few other challenges that women prisoners have to face.

3. RIGHTS OF WOMEN PRISONERS

3.1 Prisons Act of 1894 [9]

The first legislative framework governing prisons in India was established by the Prisons Act of 1894. The provisions in this legislation intended to guarantee the protection and well-being of all prisoners—convicts as well as those awaiting trial. Few of the key rights of the women prisoners guaranteed by the Act are as follows:

3.1.1 Right to Adequate Accommodation: Section 4

Accommodations for prisoners must meet the requirements outlined in the Prisons Act of 1894. Aspects including housing, food, clothes, sanitation, cleanliness, and medical facilities should all be provided in a way that preserves inmate human dignity, according to the Model Prison Manual of 2016.

3.1.2 Right to Shelter and Safe Custody for Excess Prisoners: Section 7

This section of the Act states that temporary prisons should be set up to offer refuge and safe custody if a jail is too full and it isn't feasible to move the excess inmates to other locations. This is particularly important when epidemic diseases break out inside of prisons.

3.1.3 Examination of Prisoners by Qualified Medical Officers: Sections 24 and 26

- It is the right of every prisoner to be examined by a medical officer. The prisoner's health status, any scars or marks on their body, their suitability for specific labor (should they be condemned to a lengthy period of incarceration), and any pertinent observations should all be documented by the medical officer. According to Section 24(2), the jailer maintains a book with these records.
- Under special or general orders from the Medical Officer, female prisoners are entitled to have a lady matron examine them (Section 24(3)).
- Transferring inmates between prisons is prohibited unless the Medical Officer certifies that the inmate is free of any ailment that would render the transfer hazardous (Section 26(2)).
- According to Section 26(3), a prisoner cannot be released from custody against their will unless the Medical Officer certifies that doing so is safe.

3.1.4 Separation of Prisoners: Section 27

Female inmates must be housed in separate buildings or different parts of the same structure in a jail that houses both male and female inmates. The purpose of this arrangement is to keep them from coming into contact with, talking to, or seeing male inmates.

3.1.5 Section 30

This section deals with the employment of female prisoners. It provides that female prisoners must not be employed in work that is unsuitable or dangerous, and that they must not be required to work at night.

3.2 Rights of Women Prisoners under the Indian Constitution

Every person has rights under the Indian Constitution that are based on their status as human beings, including those relating to life, liberty, equality, and dignity. The Indian Constitution protects each and every prisoner's fundamental rights. In the State of A.P. vs. Challa Ramkrishna Reddy & Ors. case, [10] the Hon'ble Supreme Court upheld the fundamental rights, including the right to life, that every prisoner, whether convicted or awaiting trial, is entitled to under the Indian Constitution. Even though, India's Constitution does not give women in prison any particular protections, women have been given equal status under the Constitution of India. The Constitution of India under Article 14 provides equal protection of laws to women in India and Article 15 prohibits discrimination on grounds of sex. [11]

Every citizen of India is granted fundamental rights under Articles 14, 19, and 21 of the Indian Constitution; these rights also apply to prisoners. The Hon'ble Supreme Court emphasized that both inmates and non-prisoners are entitled to fundamental rights under Articles 14, 19, and 21 of the Constitution in the case of T.V. Vatheeswaran v. State of Tamil Nadu. [12]

Article 14 of the Constitution guarantees equality before the law and the equal protection of the law, ensuring that all individuals should be treated equally. The Constitution of India provides equal protection of laws to the women in India.

Article 15(3) of the Constitution allows the state to make special provisions for women and children. In the context of women prisoners, these provisions mean that the state has a duty to provide for the special needs and requirements of women prisoners. [13] In addition to providing proper facilities, medical attention, and safety from abuse and assault, the state must guarantee that female inmates are not subjected to discrimination.

Article 19 of the Constitution provides various freedoms for citizens, but in case of women prisoners they are allowed to exercise the following two rights while being incarcerated :

- The right to freedom of speech and expression (Article 19(1)(a))
- The right to become a member of an association (Article 19(1)(c)).

These rights ensure that prisoners are not deprived of their basic freedoms and legal protections, even while serving their sentences. Article 21 of the Indian Constitution plays a pivotal role in protecting individual rights. It states that “no person shall be deprived of his life or personal liberty except according to the procedure established by law.” [14] The two main facets of rights covered under Article 21 are:

Right to life: The right to life is a fundamental and inalienable human right that is guaranteed under Article 21. People are shielded from capricious acts or choices that might cause fatalities. The right to live with human dignity is implied by this right, in addition to the right to exist physically. The state's ability to take a life is limited unless it follows a fair and legal procedure.

Right to Personal Liberty: Article 21 also protects a person's freedom of choice. It guarantees against the state or any other authority unfairly restricting an individual's freedom and physical autonomy. Against wrongful arrest, detention, or incarceration is one aspect of this.

Thus, it guarantees that women in prison do not face arbitrary detention or maltreatment and safeguards their rights.

Under Article 39A of the Constitution of India all citizens, including female inmates, are entitled to equal justice and free legal assistance. The purpose of this article is to guarantee that every citizen has access to justice and legal counsel, irrespective of their financial or social standing. In the case of M.H. Hoskot vs. State of Maharashtra, [15] the Hon' ble Supreme Court laid down that right to free legal aid at the cost to the state to an accused who could not afford legal services for reason of poverty, indigence or incommunicado situation was part of fair, just and reasonable procedures implicit in Articles 21 and 39-A, along with Article 142 of the Constitution of India and Section 304 of the Code of Criminal Procedure (Cr. P.C.).

3.3 Rights of Prisoners in India Recognized by the All India Committee on Jail Reforms, 1980

The Mulla Committee emphasized the importance of treating prisoners humanely and with dignity while they are incarcerated, highlighting many key rights. The essential rights are as follows:

- **Right to Human Dignity:** The right to be treated as a person and as a human being, as stipulated by the Supreme Court of India, which has made it clear that inmates cannot be treated like non-persons.
- **Right to Basic Minimum Needs:** The right to have one's fundamental needs met, such as enough food, medical attention, clean water to drink, sanitary living circumstances, personal cleanliness, suitable clothing, bedding, and other necessities.
- **Right to Communication:** the freedom to continue having contact with the outside world, the right to periodic interviews and the freedom to access information about the outside world via different communication channels.
- **Right of Access to Law:** The right to effective access to information and all legal provisions that regulate conditions of detention, the right to consult or be represented by a legal practitioner of the prisoner's choice etc.
- The right to engage in meaningful and gainful employment.
- The rights of the prisoners also involve the right to be released on or before due date in certain circumstances.

Apart from the above mentioned rights the women prisoners also have the following rights

- Right to Speedy Trial
- Right Against Custodial Violence and Death in Police Lock-ups or Encounters
- Right Against Solitary Confinement, Handcuffing and Bar Fetters
- Right to interact with Relatives, Friends and Consult a Lawyer
- Right to Be Informed About Legal Rights
- Right to Expression
- Pre-natal and Post-Natal Care for Pregnant Mothers sent to prisons
- Children below 6 years of age are allowed to accompany their mother in prison if no other arrangement is made for them.
- Male prisoners are strictly prohibited from entering the female prisoner wards. Staff should be well trained about the gender specific needs and human rights of women.

4. INTERNATIONAL HUMAN RIGHTS

The purpose of international human rights law is to shield people against abuses such as torture and other types of discrimination as well as racism. It is designed to advance human rights on all fronts—international, national, regional, and home. Treaties between the states and broad guidelines make up the majority of it. It also establishes a duty that each state party to a treaty must uphold. This law aims to curtail and eradicate violations of human rights. Prisoners who are female are equally subject to international human rights standards. The United Nations Standard Minimum Rules were established in 1955, and since then, they have developed to such an extent that common issues such as child rights, gender discrimination, and violations against pregnant inmates and women have become commonplace.

- The General Assembly officially endorsed and declared the basic principles for the treatment of prisoners in UN Charter resolution 45/111 on December 14, 1990. These guiding ideas are as follows:
 - Every prisoner will receive the same level of respect and consideration as other people.
 - Every prisoner is entitled to the fundamental freedoms and human rights outlined in the UDHR, among others.
 - Health services should be fully accessible to everybody without any form of discrimination.
- According to the UDHR document:
 - No person shall be subjected to torture, cruel or inhuman or degrading treatment or punishment.
 - Every person shall have their right to life, liberty and security of person.

-No person shall be subjected to any arbitrary arrest, detention or exile.

International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Rights of the Child, Convention on the Elimination of All Forms of Discrimination against Women, International Convention on the Elimination of all Forms of Racial Discrimination, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment etc. are various international conventions that state the provisions relating to protection of the Human rights of Women Prisoners.

5. SUGGESTIONS:

The following suggestions are made to help resolve the ongoing issues faced by women prisoners.

- To organize Legal Aid camps and spread legal awareness among the women prisons.
- Provide facilities that shall aid the women prisoners during pregnancy and childbirth in prison.
- Upgrades or modifications to facilities to meet the needs of women with disabilities.
- In order to teach women prisoners, the value of education, how to uphold moral principles, and how to become self-sufficient, a better educational system must be put in place.
- To organize and focus on Rehabilitation and reformation programs.
- Addressing and preventing violence against women prisoners.
- Improve the provision for sanitary napkins.
- Meetings between female inmates and their children should be permitted. When a child is taken to see their mother in prison, both the mother and the child must have a suitable atmosphere in a separate location. Even when residing in a prison, a child is never to be treated like a prisoner.
- Children below the 6 years living in a prison with their mothers should be provided with nutritional food, sanitary living conditions and basic primary education.
- Training on women-specific laws, health, and cleanliness, particularly with regard to reproductive health, is necessary for female jail staff.
- Gender sensitivity training should be provided to all prison staff.

6. CONCLUSION

Certain situations may push some women to turn to criminal activity as a way to survive or as a reaction to their experiences with oppression. Still, it's critical to acknowledge that criminal behavior is a reflection of greater systemic problems that require attention rather than the fault of the individual. To stop women in these situations from committing crimes again, it is essential to give them opportunity, resources, and assistance. This can involve financial aid, education, training programs for the workforce, mental health support, and counseling in addition to vocational programs. Establishing safe locations where women convicts can obtain services and support is also crucial. Enacting strong legal protections for women against abuse, prejudice, exploitation, and other types of mistreatment while incarcerated is also crucial. These can take the shape of laws, regulations, and recommendations. In addition to guaranteeing women their fundamental human dignity, this will make sure they don't suffer any more abuse while incarcerated.

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