
“Rights of Women Prisoners in India: A Legal Analysis”

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Abstract:

When we think of a prison, we generally create a picture in our mind with inmates in striped clothes but in the reality the scenario is quite different. This paper talks about the position of women prisoners in India focusing on their rights, their problems and the constitutional and legislative provisions available to them. Article 21 and 22 of the Indian Constitution focusses on the rights of convict, under-trial and offenders.¹ It further protects and safeguards their rights. This paper throws a light on the different safeguards and provisions available to the women offenders in India. The main purpose of this research paper is to highlight the condition of women prisoners and give suggestions as to improve the current situation. The four walls of the prison have heard the pain and suffering of the women prisoners. They have seen that the women are not safe inside the four walls and even her basics human rights are curtailed or ignored. They are made to stay in conditions that are inhumane. Not just this, they are not allowed to meet their families, parents, partner or children even if they are under-trial. If any women prisoner is expecting even, then they are not treated with care. The Paper also highlights that in spite of having laws specifying the human rights, a lot has to be done for improving the condition of women in prison. As it is said, every coin has two sides similarly a woman is considered as goddess on one side and on the other she is termed as a bad woman just because she is an offender who is unable to defend herself legally and financially. There's a need for vast improvement on different levels specifically in improving hygienic conditions and in the behavior of staff towards the women prisoners.

Purpose

The purpose of the study is to enlighten the problems faced by the women in prison in India in order to improve.

Objective

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

- 1) What are the various provisions made for women prisoners?

¹ The Constitution of India, Universal's Bare Act with short notes.

2) What are the various problems faced by women prisoners?

3) What steps should be taken in order to improve the existing situation

I. Introduction

History has witnessed the inhumane treatment of a man by another man. To live a fruitful and meaningful life it is important to have some basic rights the very fact that a being has been created by nature and rights are important for his survival. These basic rights provided to every human being is referred to as Human Rights be it any innocent person or a prisoner.

The term human rights refer to all those inherent rights which are endowed by the creator in every human being and without which one cannot survive. The United Nations adopted the Universal Declaration of Human Rights in 1948 which is perhaps the first goal expression of recognizing that every human being is inherited with some basic rights by birth. India took active role in drafting the universal declaration on human rights. The founding fathers of the Indian constitution included these rights under part III & IV of the Indian constitution. The Indian constitution promotes the Idea of equality and development of every individual however it does not provide any specific guarantee to the female prisoners. India has also enacted the Protection of human rights act 1933 and have also established a body known as the National Human rights Commission. Apart from this India is also a signatory to various international conventions which commits to provide equal rights to women most importantly CEDAW ie. Convention on Elimination of All Forms of Discrimination Against Women.

Article 3 of the Universal Declaration of Human rights provides right to life, liberty and security of every individual and Article 5 state that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or Punishment.² The united nations Covenant on civil and Political rights in article 10(1) and 6(1) talks about inherent dignity of the human person and every human being has the inherent right to life.

Under the Indian constitution, Article 14,15,19,,21,22,32,37,39A and 226 are various rights which provide benefit to the prisoners. But still problems like custodial rape, poor living conditions, lack of hygiene and sanitation etc are being faced by women prisoners which will be further discussed in this paper.

II. Constitutional Status of Women in India

There are no specific provisions which guarantees rights to the women prisoners. However, the Indian constitution do provide equality to all the citizens under article 14 of the constitution of India. While framing the constitution our founding fathers have stressed upon giving equal protection to women and children as to come out of the patriarchal society and

² <http://www.un.org/en/documents/udhr/index.shtml#a>

value both men, women and children equally. Article 14 provides for equal protection of laws and article 15 further prohibits discrimination on the ground of sex. The National Human Rights Commission has also been established under the Protection of Human Rights Act 1993, to look into the matters relating to human rights and also for the promotion and protection of Human Rights. The Constitution of India also provides for various other provisions like Article 20(1) &(2) which talks about Ex Post Facto Laws and Double Jeopardy respectively. Article 21 guarantees Right to life and personal liberty and also article 22 (4) to (7) are important.

The Directive Principles of State policy gives direction to the State to provide economic and social rights. Further Article 39(A) providing free legal aid to poor and weaker section of the society ensuring Justice to all the citizens of the country.

An important convention is CEDAW I.e Convention on Elimination of All Forms of Discrimination against Women, 1993.³ Article 12 (2) of this Convention provides that States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.⁴

Article 10 of International Covenant on Civil and Political right states that “*All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person*” and Article 6(1) states that every human being has the inherent right to life.

In spite of , all these laws the condition of women’s in prison is still poor. They are still being victims of custodian rape , inhuman torture, custodian death and what not. The Hon’ble Supreme Court has also stated that a Prisoner cannot to be punished except in accordance with the law and they should not be treated as animals.

III. Legal Provisions related to Administration of Prison

There are various legislations which work towards administrations of Prisons and for the reformation of prisoners .Some of those legislations are discussed below.

1. Indian Penal Code, 1860
2. The Prisons Act, 1894
3. Prisoner’s Act, 1900
4. Identification of Prisoners’ Act, 1920
5. Exchange of Prisoner’s Act 1948

³ <http://wcd.nic.in/>

⁴ <http://www.unhcr.org/refworld/pdfid/3ae6b3970.pdf>

6. The Transfer of Prisoners Act, 1950
7. Prisoner (Attendance in Court) Act, 1955
8. Probation of Offenders Act, 1958
9. Code of Criminal Procedure, 1973
10. Repatriation of Prisoner's Act, 2003
11. Model Prison Manual, 2003
12. National Model Prison Manual, 2016

Various Committees and Commissions were also set up to reform the administration of prison and to suggest ways for improving the condition of prisons. Some of these committees were:-

1. All India Jail Manual Committee, 1957 : This committee was appointed to prepare a prison manual by the government of India in the year 1957 ie. In the post independence era. The Committee suggested reforms in the uniform policy of prison. They also suggested to adopt latest methods for probation, remand homes ,jail administration etc.
2. Working Group on Prisons, 1972
3. All India Prison Reforms Committee, 1980-83 (Mulla Committee): This committee was formed under the chairmanship of Justice A.N. Mulla. The committee suggested various recommendations for female prisoners. It also reviewed various laws ,rules and regulations related to prisoners. Addition to this they suggest to make some amendments in the Prison Act 1894. Some of the reforms suggested by the committee are stated below:-
 - Adequate sanitation, ventilation, food and clothing should be provided to all prisons
 - Staffing women prisons with women personnel
 - Under trails should be kept in separate from convicted prisoners.
 - Women should be extensively provided with probation.
4. All India Group on Prison Administration, Security and Discipline, 1986 (R. K. Kapoor Committee): this committee was constituted in July 1986 to examine prison administration, Security and Discipline and also suggested measures for reforms and improvement. The Committee recommended better communication systems, watch towers, wire fencing, raising of height of perimeter walls, metal detectors, dog squads, Close Circuit Televisions (CCTVs) for monitoring activities along the perimeter wall, rooftops and main gate area etc.⁵
5. National Expert Committee on Women Prisoners, 1987 (Justice Krishna Iyer Committee): Under the chairmanship of Justice Krishan Iyer, some important recommendations were made regarding the situation of women in jails for example:-
 - Women constables should conduct searches on women prisoners.
 - There should be separate jails for women.
 - Women prisoners should be allowed to keep their children with them.

⁵ Advisory no. 17014/3/2009/-PR dated 17th July 2000 issued by Ministry of Home Affairs

- Only women doctors should do medical check-up of women prisoners.

3.1 Prison act 1894

There are various other acts which includes the provisions made for the prisoners but the most important is the prison act, 1894. It provides various rights to the prisoners such as:

1. **Accommodation and sanitary conditions:** state government is responsible for accommodation and it varies from government to government but there are certain regulations which has to be followed by the state governments. Prisoners should not be exposed to sun, rain or other weathers and should be given room like habitat to live in. Section 7 of the prisons act, 1894 talks the state obligation to provide temporary accommodation when necessary such as overcrowding or epidemic disease.
2. **Mental and physical state of prisoner:** section 14 of the prison act states that the medical officer is required to make a report of the prisoners whenever it seems unfit. The medical officer whenever thinks that the prisoner is or is likely to get injured due to the discipline or treatment she is subjected to, then the medical officer must submit a report to the superintendent in writing and then the superintendent shall send the report to the IG information.

As far as death of a prisoner in prison custody is concerned, then it is the duty of the medical officer to record the illness, diet and medical condition and other factors of the prisoner.

3. **Separation of prisoners:** it talks about the separation of female prisoners from the male prisoners. If a prison has both male and female prisoners, then the female prisoners shall be imprisoned in the separate building or at least in a separate wing if the building is same. The main purpose of doing this is that the prisoners do not meet each other, or talk or have any intercourse with the male prisoners. It also talks about separating the male prisoners who are under 21 years of age shall be separated from the other prisoners and even the prisoners who have arrived on their puberty. Even the civil prisoners should be kept away from the criminal prisoners
4. **Safety and security from fellow prisoners:** to provide the safety environment in the prisons, it is provided that the inmates should be searched and all the details shall be handed over to the jailer before their admission in the jail. Matron should carry the search in case of the female prisoners.
5. **Solitary confinement:** safety of the all the prisoners are important and to maintain the safety to the prisoners, solitary confinement plays the important part. In solitary confinement, the prisoner is enabled to communicate with the prison officer at any time.
6. **Treatment of prisoners:**
 - **Undertrials:** under trailers are given certain liberty in terms of clothing, food and other accessories and are allowed to contact their sources at reasonable hours. And if they don't have any source to provide such things then the jailer shall provide them.
 - **Civil prisoners:** civil prisoners are treated same as the under trails and can even choose to work in the jail according to their choice and shall be fully paid for the work.

- **Criminal prisoners:** unlike the other two, criminal prisoners have to complete min of 9 hours a day of labour and are monitored by the medical officer every fortnight and then the medical officer checks their health and their work. Medical officer submits a report and if he finds that there has been certain changes in the health of the prisoners due to the labour, then he has the authority to change the work of the prisoner.
- 7. **Punishment for prison offenders:** there are numerous offences which are done by the prisoners such as disobedience, foul language, violence, etc. In such case, superintendent has the rights vested with him to punish the prisoner by the reducing the diet or by giving solitary confinement or increase working hours. Two punishments can be combined if it is result in health of the prisoner and also, the superintendent should give the punishment based on the medical officer report on the health of prisoners. And if the prisoners commit more harmful crime then he may be referred to the court with the facts of the crime done by him.
- 8. **Diet:** prisoners who are classified as “better class” shall be provided with the food for A and B convict prisoners and the under trials shall be with C level and also allowed to private purchase through authorities and the food sent by the relatives or family shall be examined.
- 9. **Social and cultural rights:** under trial prisoners are divided into classes based on the standards of their previous living. It is classified by the district magistrate but before the prisoners is brought to in front of a competent court, discretion is exercised by the officer-in charge to classify the class of the prisoner where she is better class or ordinary. Prisoners are provided superior mode of living on the basis of their social status, education or habit of life. Interaction and meetings with the family for the under trails have been made easy as they can meet twice in a week for others, it is once in a week.
- 10. **Political right of prisoners:** political rights are even enjoyed by the prisoners because even the prisoners are considered as persons and citizens during imprisonment. They can not only vote but also, if eligible can even stand in election. Prisoners who cannot vote or fight elections have committed the offence of moral turpitude.

3.2 The National Model Prison Manual, 2016

Special procedure for arrest of women prison: according to CRPC, a woman cannot be arrested after sunset and before sunrise, if necessary, permission of the Judicial Magistrate first class is required and, in that case, too, female officer should be there with the decency. The police officer should in normal clothes and not in uniform just to reduce the stigma. Women prisoners have every right to give the custody of her minor children to whomsoever she wishes to give. If the family or friends are unable to take care of the child then the child should be placed in a child care center for the time being and should not accompany her mother.⁶

⁶ *vikaspedia Domains*. (2016). *Vikaspedia.In*. <https://vikaspedia.in/social-welfare/women-and-child-development/women-development-1/women-in-prisons>

Pregnancy and child birth in prison: national model prison manual has strictly made provisions for the temporary release of the prisoner for the delivery of the child in a hospital outside the prison. During pregnancy, the suspension of sentence should be made for the casual offenders and also, the status of prisoners should be given to the court in order to grant bail or modify the detention of the prisoner. the place of birth should never mention the prison to eliminate the social stigma in that child's life. Pregnant and lactating prisoner should be provided with a special diet and mothers in postnatal stage shall be given a separate room to maintain hygiene and protect her child. Pregnant and lactating women should be given advice on their health and diet. Not only the mothers but also the prisoner who has undergone an abortion or a miscarriage should be provided the treatment they require.

Children of women prisoners: women are given the choice of choosing the prison if in case, she has a child. Children should be kept in prison in a way that they shouldn't feel like a prisoner in there. Facilities should be made while keeping in mind that the children also live there. With the help of NGOs and schools' other facilities such as education, day care, etc are well taken care of.

Women prisoners who have their children living with them in prison shall be given maximum time to spend with their children. Regular check-up of the children is mandatory and even the diet and the health should be monitored. At attaining the six, children are free to go outside the prison and should not be restrained from doing so. Overnight visits of minor children who are living outside the prison shall be allowed at least once in every quarter.

There is some other provision as well:

- In special cases such as pregnancy, child birth, family care etc.⁷ all the facilities should be provided to the women prisoners.
- Equal access to work, vocational training and other things should be provided as male prisoners.
- 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.
- Searching should be done by the women wardens and not by male wardens.
- In case of pregnant prisoner, lady medical officer should report the superintendent about the pregnancy. For the delivery of the child outside the prison, prisoners should be given temporary release.
- Children below 6 years of age are allowed to accompany their mother in prison if nothing else is arranged for them.

⁷ *Plight of Women in Indian Prisons*. (2019, March 9). CJP. <https://cjp.org.in/plight-of-women-in-indian-prisons/>

IV. Problems Faced by Women Prisoner's

Over the years, women have been victims of inhuman treated, torture, injustice and what not. Even women in prisons are not treated equally. They are made to live in poor hygienic conditions, lack of sanitization, medical care, poor bedding etc. There are several critical problems which women undergo which are not even addressed. These problems include :-

4.1 Poor Living conditions or Overcrowding in Jails

It is one of the most severe problems faced by the women prisoners. Overcrowding often results in poor hygiene conditions, lack of sanitation and leads to spread of infections. Poor sanitation in toilets and bathroom can seriously affect the health of both women, men and children prisons. Overcrowding also leads to lack of ventilation and can affect the psychological health of the prisoners too as they are forced to live with other prisoners.

It is important to note that even in those cases where there is no overcrowding, providing proper accommodation is still a challenge. A study done by BPR&D on the conditions of women prisoners in Punjab⁸ had revealed that women have to sleep on the floor as they do not have proper accommodation in the jails. It has also been highlighted in the report that even today jails do not have proper sessional arrangements and lack of access to natural air and ventilation.

There are also a large no of under trial prisoners, although the under trial prisoners are to be kept separately from the convicts but due to lack to space this leads to overcrowding in the jails.

4.2 Poor Sanitation & Hygiene

The National Prison Manual clearly states that there should be 1 toilet and 1 bathroom for every 10 prisoners however the situation is not the same. There are lack of toilets and bathrooms as compared to the size of prisoners. The manual also provides that the toilets for women prisoners should be situated in safe areas where male prisoners do not have access to it as this could lead to sexual abuse and harassment against women prisoners. Women Prisoners aged between 18-50 do not get adequate access to menstrual hygiene products like sanitary pads and they have to depend upon other unhygienic materials like cloth etc.

4.3 Poor Healthcare and welfare

Due attention should be paid on the healthcare of the prisoners. Heath not only refers to the physical health but also the mental, sexual and reproductive health of the women prisoners. Comprehensive health screening and medical checkups should be done so as to identify blood-borne diseases, sexually transmitted diseases or any other health related issues. The prisoners should also be vaccinated at the time of admission. A lady medical officer should

⁸ Report no. 260 (Available at: <http://www.bprd.nic.in/WriteReadData/userfiles/file/201707110435168799390NationalPoliceResearchRepository.pdf>)

also be appointed for all female prisoners' provisions regarding the same are also mentioned under the National Prison Manual.

4.4 Lack of Prison Staff

Due to lack of female staff, women prisoners are not comfortable in addressing their problems to the male staff members. The presence of female staff members makes it easy to provide gender specific services to the women prisons. Otherwise male staff becomes responsible for female inmates. The National prison manual 2016, also prescribes appointment of one lady DIG. Further for every 6 prisoners there should be one guarding staff.

4.5 Violence against the Prisoners

There has been various instance reported that the guards often physically abuse the female prisoners. They are often beaten to death and there are many cases reported of custodian rape. All these suffering remain unheard and if any death of a prisoner is reported the officials falsely prove that as a case of suicide.

In State of Maharashtra vs C.K. Jain⁹, rape occurred while in the custody of the police. There are many other cases reported in which women were victim to brutal assault.

V. Conclusion & Suggestions

With the increasing number of women in prison there arises an urgent need to address the problems being faced by them. A number of problems like lack of female staff, poor sanitization, improper diet and nutrition, and facilities related to their living becomes hurdle in their living. Not only this women prisoner also faces lack of legal aid, violence by inmates and staff. Women are in need of special care and requirements which should be fulfilled. In order to reduce burden over jails the number of under trial prisoners should be reduced. However, this is only possible when we have ample number of prisons in our country.

There's also a need for reformation and rehabilitation for the prisoners so as to reintegrate in society after their release. The prison staff should undergo proper training so that their behavior towards women prisoners can change and the importance should be given to basic human rights of the prisoners.

In India, due to lack of education and awareness people are not aware of their rights so it is necessary to have awareness on regular basis so as to make the prisoners aware of their legal rights. Lok Adalat's should be organized frequently.

So as to achieve the goal of equality as stated under article 14 of the Indian constitution and the principles of natural justice are duly followed it is important that steps should be taken at various levels so that women are treated equally no matter what crime they have committed until and unless there is a special provision under the Indian laws regarding punishment that all together makes the treatment against such prisoners different.

⁹ State of Maharashtra vs. C.K.Jain, AIR 1990 SC 658