

“Human Rights and Women Prisoners in India: With Emphasis on their Living Condition Issues”

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INTRODUCTION

Nelson Mandela had once said “It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones”. Prison is an institution for the confinement of persons, who have been held in judicial custody by supreme authority of a state or who have been deprived of their liberty following conviction for a crime. A person found guilty of crimes may be required to serve a sentence in prison. The accused people, whose trials are pending, are held captive in the contemporary prisons and in some countries such accused persons constitute the majority of the population of prison. For example, In India more than two-thirds of the prison populations in custody are pretrial detainees. The Indian Constitution (Prisons Act, 1894) offers rights to people behind bars as normal human being to some extent. In¹, it was held that a prisoner is entitled to all the fundamental rights unless his liberty has been curtailed. The Supreme Court has held that a prisoner does not stop being a human being after filing of a complaint against him and thus he enjoys all the fundamental rights given to him under the constitution. Furthermore, In case of², it was held that Article 14, 19 and 21 are also available to the prisoners. Prison walls do not keep out the fundamental rights of a person. Article 14 provides that the unlike shall also be treated alike. Thus, this article plays an important role for the prison authorities to determine the various categories of people behind bars. Article 19 enumerates 6 freedoms but the prisoners due to the very nature of those freedoms cannot have access to some of it. If we talk about Article 21, then it provides for two rights in particular i.e. the right to life and the right of personal liberty. Under this article, right of speedy and fair trial, rights of inmates of protective homes, rights to free legal aid, etc. are given to the people behind bars. Women around the world suffer from human rights violation on a day-to-day basis. Human rights of women are not given a priority to work upon. In India Society, Women is given the highest position of Goddess. Creator of a new life and the nurturer of a home is a Woman. A woman knows how to deal with her life, her children’s life and the society. It is said that we live in a modern society where women are given equal rights as of a man, but the reality seems a little different than what is said. Earlier the society believed that the masculinity of a man is proved by the way of controlling his woman. Yes, now the time has changed but even today men want to dominate and a woman is just reduced to an object where she is exploited. When a woman is

¹State of A.P. v. Challa Ramkrishna Reddy

²T.V. Vatheeswaran v State of Tamil Nadu

put behind bars, she has to struggle with not only the imperious belief of the society but also with various injustices happening to her inside the jail. They face several problems in prison such as unstable family life, school and work failure, mental health issues, risk for infectious diseases etc. Despite of providing so many rights, the prisoners, especially women, suffer from a great deal of cruelty inside the prison.

HISTORY OF PRISON

In our country, historical background of jail can be traced from the epic age. There are traces of confinement in Ramayana as well as Mahabharata. In Manusmriti, it is written that the King should have the prisons built on both sides of the roads, so that the sufferings of wrong doers can be seen for the evil acts they committed. The other horrifying punishments such as banishing, mutilation, feeding to animals, death penalties had also been a part of our penal system back then. During Muslim period, old castles and forts served the purpose of prisons. Persons who were convicted were locked up in chain in the castles or forts as prisoners. The pre-Buddhist jails were said to be the cruelest of all times. People were locked up in heavy metal chains with a lot of load.

Until late 18th century, prisons were mainly used confinement of people who were under trials or of the ones who were banished from the courts or for the ones awaiting death penalties. In 1835, Lord Macaulay emphasized the need for making imprisonment, a severe punishment, so that the crime in number could be decreased and the act of violence could be avoided and since then the battle of prison reforms have been going on. A number of laws on prison reforms were brought up which includes The Prison Act, 1894, The Prisoners Act, 1900, The Transfer of Prisoners Act, 1950 and The Prisoners (Attendance in Courts) Acts, 1955.

Apart from these law reforms, the judicial system of our country has expanded the scope of Article 21, with respect to the rights of a prisoner, which states, “No person shall be deprived of his life or personal liberty except according to a procedure established by law.” In³, the Supreme Court held that keeping of under trials in jail with the convicted people was inhumane and more of prison reforms were set out as guidelines by the judges. Also in the case of⁴, the judiciary stepped into and directed the release of under trials who were detained for a lengthy period. The Supreme Court in a landmark case of Bhagalpur Blinding held that the free legal aid is an essential ingredient of fair, just and reasonable procedure for an under trial person. In⁵, Supreme Court held that right to appeal is also an integral part of the fair procedure as given under article 21 of the Indian Constitution. Supreme Court struck down

³Sunil Batra v Delhi Administration (AIR 1978 SC 1675)

⁴Maneka Gandhi v Union of India (AIR 1978 SC 597)

⁵M.H. Hoskot v State of Maharashtra

the principle of handcuffing and said that it is permitted only in extraordinary circumstances, in the case of⁶.

CONDITION OF WOMEN IN JAIL

Women in our society are not even safe in their own homes and when a woman is arrested for some crime, the case becomes special. The trauma of separation from their kids and other family members they face is worse than the sentence they are given. Kiran Bedi writes about the Tihar Jail in her book “It's Always Possible”, “Women prisoners were subjected to the most humiliating experiences, which robbed them of what little dignity and self-respect they reached the prison with. It must be considered some sort of miracle that these women managed to cling on to their sanity, despite the overwhelming odds they faced.” According to the report of government of India on “Women Prisoners and their dependent children” in UP, almost around 200 women were imprisoned in the area of 60 out of which only 20 were convicted. Women face worse problems than men do in prison as well. Problems such as overcrowding, unhygienic conditions, loss of sanitary napkins etc are faced by women. A study of women in prison also states that they are brutally beaten and sexually harassed in jail. “An allowance of the universal indifference that Indian Society shows to the woman” the report said. Prison does not make a human being better by keeping them imprisoned but scar them for life. Re-socializing is another problem faced by women when they are set free. The families of those women desert them and there is nowhere they can go. Women have their lives sacrificed to the society they live in and yet no body steps up to help them. The condition of women degrades day-by-day. Many of them are illiterates and they does not even fight for their rights. In a report of Tihar Jail, one of the inmates expressed that, “Life in prison is better than outside due to stigmas”.

HUMAN RIGHTS AND INDIAN CONSTITUTION

Part III of the Indian constitution delivers the Fundamental rights which the basic human rights are given to all the citizens in India irrespective of their caste, gender, religion or creed. In order to live life with dignity some basic rights and freedoms are required by every individual, these basic rights are known as the Human Rights. The preamble of Indian Constitution pledges justice, liberty of thought, faith, belief, fraternity guaranteeing the dignity of all the individuals of its nation. India is a signatory of Universal Declaration of Human rights. Part III of the constitution makes it very clear as the fundamental rights are very much similar as that of the Human rights which shall be given to the citizens such as:

1. Right to equality
2. Equality of opportunity on matters of public employment

⁶Prem Shanker Shukla v Delhi Administration(AIR 1980 SC 1535).

3. Freedom of speech and expression
4. Protection of life and liberty
5. Freedom to practice profession
6. Propagation of religion
7. Protection of interests of minorities
8. Right to property
9. Prohibition of trafficking in human beings and forced labour
10. Freedom to move freely throughout the territory of India
11. Protection against arrest and detention in certain cases
12. Prohibition of discrimination on the ground of sex, color, caste, etc
13. Equal pay for equal work
14. Opportunity for children
15. Compulsory education for children
16. To form associations
17. To assemble peaceably and without arms
18. Provision for women with respect to maternity relief

There are many more human rights in the Indian Constitution which are similar to that of the human rights provided under the Universal Declaration of Human rights. In the case of⁷, the Supreme Court observed that the UDHR may not be binding but it shows how India understood the nature of Human Rights when the Constitution was being made.

RIGHTS OF WOMEN PRISONERS

India is a democratic country giving supreme power to the citizens of India to choose their own political leaders and giving fundamental rights to every citizen irrespective of any cast, creed, religion, sex or gender. So every citizen including women is treated equally. Our Indian community gives a respectable status to the women as she is equally important as all the other citizens and plays an essential role in the capacity to bear a child and play vital role of a mother, daughter and a wife. So every women irrespective of she is in a prison deserves all the fundamental rights and to live a secure as well as dignified life. Many kinds of rights are provided officially for women prisoners but in reality they are facing innumerable problems in prisons. There are different kinds of rights provided to women prisoners like Indian laws including constitution, enactments and rules including The Prisons act, 1894, The Prisoners act, 1990, The Transfer of Prisoners act, 1950, International Human Rights, Rights provided by the Supreme Court of India, Universal Rules for women prisoners and special Rights for women prisoners etc.

⁷Keshavananda Bharati v State of Kerala

Rights of Women Prisoners are as follows-**i. Indian Laws****- Constitution**

- a) **Article 14** talks about Equality before Law stating “The State shall not deny to any person equality before the law of the equal protection of the laws within the territory of India”.⁸
- b) **Article 19** talks about Protection of certain rights regarding freedom of speech, etc. it means that all citizens of India should have freedom of speech and expression. It mainly talks about six freedoms to all the citizens of India.
- c) **Article 20** talks about protection in respect of conviction for offences. It says that unless a person has committed any offence which violates the law in force at that time, he cannot be convicted. He shall not be punished with greater penalty than the offence committed. Also the rule of Double Jeopardy applies here which means that a person shall not be punished twice for the same offence committed by him and a person accused of any offence cannot be forced to a witness against himself.
- d) **Article 21** talks about protection of life and personal liberty.
- e) Right to meet new friends and consult a lawyer.⁹
- f) Right against solitary confinement, hand cuffing, bar fetters and protection from torture.¹⁰
- g) Right to reasonable wagers in prison.¹¹

- Enactments and Rules

- i) The prisons act, 1894
- ii) The Prisoners Act, 1990
- iii) The transfer of prisoners act, 1950
- iv) The Prisoners (Attendance in Courts) Act, 1955

- Cases decided by the Supreme Court of India

- i) The (Anonymous, Center for order and justice) Hon’ble Supreme Court has affirmed the basic rights of Prisoners- “there could be several factors that lead a prisoner to commit a crime but nevertheless a prisoner is required to be treated as a human being entitled to all the basic human rights, human dignity and human sympathy”.¹²
- ii) ***Prem Shankar Shukla v. Delhi Administration (1980)***

⁸ The Constitution of India, Universal’s Bare Act with short notes.

⁹<https://legaldesire.com/rights-prisoners-indian-law/>

¹⁰<https://legaldesire.com/rights-prisoners-indian-law/>

¹¹<https://legaldesire.com/rights-prisoners-indian-law/>

¹²https://www.academia.edu/38163933/Female_Prisoners_in_India_and_Their_Condition_1_.pdf?auto=download

In this case the apex court restricted discretionary powers of the Police by ordering that no person shall be handcuffed unless required in extreme cases.

The Supreme Court felt that to be consistent with Articles 14 and 19 of the constitution, “no prisoner shall be...fettered routinely or for the convenience of the custodian or escort”.¹³

iii) ***D.B.M. Patnaik v. State of Andhra Pradesh***

The Supreme Court asserted that the mere detention does not deprive the convicts of all the fundamental rights enshrined in our Constitution.¹⁴

- **International Human Rights**

International Human Rights law is a body formed to protect people from racism, discrimination and torture and other forms of abuse. Its made to promote human rights at all levels i.e., international level, national level, regional level and domestic level.

It mainly includes general principles and treaties between the states. It also lays down an obligation which every state in a treaty has to respect. This law is made to reduce and stop human rights abuse.

International Human rights Standard also apply to women prisoners. Back from when the UN Standard minimum rules were agreed upon in 1955, it has evolved and progressed to a extent that in today’s era common issues like gender discrimination, child rights, violation against women and pregnant prisoners etc.

1. **According to UN Charter** there are basic principles provided for the treatment of Prisoners which was adopted and announced officially by General Assembly resolution 45/111 of 14th December 1990. Those principles are as follows:-

All the Prisoners shall be fully treated and valued as human beings and with full dignity.

All the prisoners shall keep their fundamental rights and human rights which are stated in UDHR and others.

There shall be full access to health services without discrimination.

2. **According to 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.

¹³<https://www.telegraphindia.com/opinion/in-a-bind/cid/206693>

¹⁴<http://www.legalserviceindia.com/legal/article-75-rights-of-prisoners.html>

Every person who is charged with any penal offence has the right to be presumed innocent until he is proven guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.¹⁵

- **Universal Rules for Women Prisoners**

No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer.

Women prisoners shall be attended and supervised only by a woman officer.

GENERAL PROBLEMS, HEALTH AND LIVING CONDITION ISSUES OF WOMEN PRISONERS IN INDIA

The ratio of women prisoners to men prisoners always differ. Women prisoners are comparatively less than men prisoners. Prison or a Jail is a secure facility for such persons who break the law. Although there is a basic fundamental difference between the two but both have similar primary purpose of holding and reforming such persons who break the law. But despite this all the prisons and jails tries their best to hide violence happening behind those doors. Soits equally important to recognize and fulfill the rights of prisoners irrespective of their gender.

The problems and violation of rights become more and more stronger when it narrows down to women inmates. Prisons were basically designed which were suitable for the category of men and women prisoners. Women face a lot of problems in prison and it impacts their health and living conditions too. General Problems, health and living condition issues faced by women in prisons are-

- i- Delay in trial – It is a serious problem faced by the prisoners in the prison system.
- ii- Prison Staff
- iii- Accommodation issues due to overcrowding
- iv- No proper Legal Aid services
- v- Education
- vi- Violence
- vii- Children
- viii- Health
- ix- Sanitation
- x- Personal Hygiene
- xi- Connection with the outside world

¹⁵<http://www.legalserviceindia.com/legal/article-75-rights-of-prisoners.html>

- xii- Acceptance and adjusting in the community after serving in prison
- xiii- Vocational training
- xiv- Nutrition
- xv- Bath and Latrine
- xvi- Clothing and bedding
- xvii- Family management issues
- xviii- Impact on their child/children due to staying away in prison.

METHODS FOR RESOLVING THE ISSUES FACED IN JAILS AND PRISONS BY WOMEN PRISONERS

Different methods can be adopted to resolve ongoing issues faced by women prisoners. The can be-

- i- Legal Aid camps and awareness
- ii- Facilities shall be provided for pregnancy and childbirth in prison.
- iii- Improved and better living arrangements shall be organized.
- iv- Sufficient staff for full management shall be recruited and checked in time to time.
- v- Special Provisions for the Foreign Nationals shall be made to avoid hustle and misunderstandings between the inmates.
- vi- Better education system shall be installed and importance of education shall be taught so that the women prisoners learn the importance of education, learn and follow moral values and learn to be independent.
- vii- Rehabilitation and reformation programme
A proper programmeshall be organized to make them feel valued and learn the importance of moral and ethical values a person should possess.
- viii- Addressing and stopping violence
Any kind of violence happening in the premises of the prison shall be addressed and acted upon to avoid any further act of violence.
- ix- A proper and time to time thorough inspection of the prison shall be done as decided.
- x- The women prisoners shall be, time to time, allowed to meet their children. It will help them stay connected to their family and it would have less impact on their children that they are living separately from their mother.
- xi- Women prisoners shall be allowed to meet with their children. A child shall never be treated as a prisoner even if he is living in a prison. If a child is brought to meet his/her mother in a prison, and then a proper homely environment in a separate area shall be provided to the mother and the child.

Children of age above 6 years serving in a prison shall be provided with educational scholarships. For example Tihar Jail in Delhi, India provides scholarship to the children of the inmates who are from Delhi. Rs. 3500 to one child and Rs. 6000 for two children.¹⁶

- xii- Upgrading and developing of health, diets and nutrition.
- xiii- National Commissions for Prisoners shall be established. For example NHRC (National Human Rights Commission) has been focusing its attention on promotion and protection of Human Rights of Prisoners, from its inception.

CONDITION OF FEMALE PRISONERS IN INDIAN JAILS

Prisons Staff

The National Model Prison Manual 2016 (henceforth referred to as the ‘National Prison Manual’) recognizes in principle that there should be one guarding staff for every six prisoners. Further, each prison is meant to have executive staff, medical, welfare, educational and other personnel to ensure proper functioning of the “institution. (Prison Statistics India 2015, NCRB, 2015) As of 2015, the total number of women jail officers/staff was 4,391, which is only 8.28% of the total. There is a scarcity of supervisory level female officers. The National Prison Manual prescribes the appointment of one lady DIG attached to the Prison Headquarters to look after women prisons, staff and prisoners in the state.¹⁷

In May 2017, the Hon’ble Supreme Court noted that there is a huge shortage of staff in almost every jail of the country. It directed all State Governments/UTs to take necessary steps on an urgent basis to fill up these vacancies by 31st December 2017. (15 SC Order in Re - Inhuman Conditions in 1382 Prisons dated 2th May 2017. W.P.(C) No.406 of 2013) Visits by NHRC to over 100 jails have revealed a woeful lack of staff, particularly in smaller district prisons.

Overcrowding and accommodation problems

Overcrowding is one of the key problems plaguing Indian prisons. The national average occupancy was reported at 114.4% in 2015. States/UTs such as Dadra and Nagar Haveli, Chhattisgarh and Delhi have reported the status of overcrowding in prisons as high as 276.7%, 233.9% and 226.9% respectively. (Prison Statistics India 2015, NCRB) Overcrowding directly relates to a lack of space for prisoners and increases pressure on already limited facilities available in jails. It is pertinent to note here that even in prisons

¹⁶ Referred from “Women in Prisons India, June 2018, Ministry of Women and Child Development, Government of India.

¹⁷ Female prisoners in India and their conditions, Nidhi Singh, Llyod College.

where overcrowding is not a serious issue, accommodation is still found inadequate in many cases.

Protectors can be Predators too

The protocol demands that prisoners raise any concern with jail authorities or inform senior police officers when they visit for inspection. There are no complaint boxes that allow women prisoners to fearlessly voice out their concerns. "Women prisoners are not safe from harassment or assault in jails, be it physical or sexual".

Living conditions of Female Prisoners

The rules are well defined, unfortunately, they are in the books. Women have a smaller place, perhaps because they are also small in number. Women prisoners run a higher risk of health problems. With practically nothing to keep their minds preoccupied with, the women, most who are victims of harassment themselves, are allowed to get further depressed.

Health and diet is a major issue.

Medicines are not available at times in the prison hospital. They are supposed to maintain a stock at any given point in time. The right to health includes providing healthcare that is available, accessible, and acceptable and of good quality. The National Prison Manual provides for a hospital in every prison with separate wards for men and women. It further prescribes comprehensive health screening for women prisoners, including tests to determine presence of sexually transmitted or blood-borne diseases, mental health concerns, existence of drug dependency, etc. All prisoners are to be vaccinated at the time of admission. Special care is to be taken for elderly prisoners and needs of prisoners addicted to drugs. The prison administration should be cognizant of the fact that owing to the lack of awareness and spending on health concerns of women in the world at large, many of them enter prison with pre-existing physical and psychological conditions, which require intervention much like any government office, loopholes exist.

Correctional attitude is missing

Yoga, reading, handloom weaving, basket weaving gardening, baking, ornament making, tailoring and beautician courses are prescribed for women inmates in jails across the country. The tailoring and beautician courses serve no purpose since there are no clients.

Exploitation, Abuse, inappropriate Procedures and Torture:-

Violence, abuse, sexual and shape are serious problems within detention facilities for prisoners of both genders and ages. Prison authorities have a responsibility to eliminate

them, both by direct action to repress them and by establishing a system that does not facilitate these abuses. But there is not any correctional still, they may be complicit or even active perpetrators.

CONCLUSION

The number of women in prison in India is gradually growing. A number of issues plague the lives of women in prison, many of whom are under trials. Prisons are not effectively serving their reformatory purpose. There is thus an urgent need to understand the issues of women in prison recognize their rights and ensure these rights are fulfilled.

While there are a number of progressive rules laid down for the welfare and fair treatment of prisoners, particularly women, this does not always translate into practice. Women face issues related to lack of female staff, inadequate and cramped accommodation, low levels of sanitation and hygiene, I inadequate services to address physical and mental health needs, deficient nutrition, negligible educational opportunities and often unusable skill and vocational training. Many women who live with their children do not receive appropriate educational, health and recreational services to raise them well. These issues coupled with a lack of legal aid in prison, limited contact with the outside world and high incidence of violence by inmates and authorities further exacerbate the situation for women. Their re-integration in society after release is thus also a huge challenge.

As more women enter the prison system, it is essential to make appropriate changes in services, processes and infrastructure to cater to their particular needs. Prisons remain closed to the outside world, thus making it further difficult to ensure good conditions. It is important to allow independent and regular inspections so adherence to rules is improved.

Prison administrators and all staff dealing with women inmates should mandatorily undergo gender sensitive training, which will help them make better decisions with regard to women in prison. They must also be sensitive and careful towards the needs of women belonging to minority communities, disabled women and foreign nationals so as not to discriminate against them in any manner. An authentic and responsive grievance redressal mechanism should be put in place to help address the violation of rights in prison and give inmates a method to have a dialogue with the administration. By making conditions better within prison, providing better support on release and most importantly keeping women out of formal prison systems as far as possible, the issue of female criminality in India can be better dealt with.