



RIGHTS OF FEMALE PRISONERS IN INDIA ACCORDING TO PRISON MANUALS- A CRITICAL ANALYSIS

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have now been included in right to life under the Indian constitution due to the judgments of the Supreme Court, right to life also allows a person to avail the guarantee of protection in cases of criminal justice administration. “The said humanistic approach has not barred to the necessities of life like the right to live with dignity, right to education, health, labor welfare etc., but it has also underlined the other essential rights to live a dignified human life. The right to life includes the right to justice which includes a fair trial.”¹

INTRODUCTION AND IMPORTANCE OF PRISONER RIGHTS

IMPORTANCE OF RIGHTS OF FEMALE PRISONERS

INTRODUCTION

The Indian socio-legal mechanism is built on non-violence, liberty, and dignity of the individual. If a person has conflict of the laws by committing any act which is prohibited under it, it is unfair to say, by committing an act which is prohibited by the law than the person is not rejected as a human being and that he can be deprived of those aspects of life which are essential to maintain his human dignity. Being in civilized society availability with the law and a system as such, it is essential for every citizen having human rights. Even if the person is confined because of his crime, he is entitled to their rights unchanged by the punishment for wrongs, simply because if a person under trial, his rights cannot be discarded. It is a settled system that prisoners go to prison to be confined behind bars as the punishment of their crime and not to get subjected to physical and mental abuse.

Other than the basic human needs, which

Indian society gives a respectable status to the women. She plays a vital role in the society. The important role she plays is in the capacity of mother. Constitution of India gives status of equality to the women in India. It also imposes obligation on the State to protect the rights of the women and to fulfil the requirements of international conventions regarding the rights of the women. But the reality is women in prisons are facing several problems. Even her basic human rights are being ignored despite of several directions from the Supreme Court, High Courts and by recommendations of different Committees. It creates difficulties to them in the prison which requires a special attention and needs to be removed.

Women under custody are very much vulnerable in male-centric model of prison system especially in the common jails where men and women both are lodged. The present study highlights the gender-specific needs and human rights of women prisoners

¹ M Laxmikanth, Indian Polity (Mc Graw Hill Education pvt ltd, Chennai, 2017)



set out in the documents as well as in the various directives and guidelines issued by the Supreme Court of India, National Human Rights Commission and Model Prison Manuals.²

Women prisoners have many rights. They cannot be debarred from their basic human rights and freedoms guaranteed by the Constitution of India. The Supreme Court in the case of *Sunil Batra vs Delhi administration*³ held that whether inside prison or outside, a person shall not be deprived of his guaranteed freedom save by methods 'right, just and fair'. The court has a continuing responsibility to ensure that the constitutional purpose of the deprivation is not defeated by the prison administration.

Women prisoners in Indian jails are less in number than the male prisoners. It may be a cause of overlooking the rights of women prisoners. The main purpose of this research paper is to highlight the problems of the women prisoners, violation of the human rights of the women prisoners, condition of women jails, to enumerate human rights and constitutional rights of the women prisoners.⁴

INSTRUMENTS THAT PROVIDE FOR RIGHTS OF FEMALE PRISONERS

a) PRISON ACT, 1894: The Prisons Act, 1894, presents the procedure how jail management and administration work in India. This Act has rarely gone under any significant change. However, the process of the audit of the prison problems in India lasted even after this. In theyear 1919-20, the

Indian Jail Committee published a report, put major pressure on 'reformation and rehabilitation' of offenders were considered as the object of the prison administration. The need for completely overtaking and strengthening the laws relating to prison has been constantly highlighted.

b) MODEL PRISON MANUAL: The MPM 1960 is the directing principle to create a base for the present Indian prison management is governed. On the guidelines of the MPM, the Ministry of Home Affairs, Government of India, in 1972, appointed a committee that works on prisons. And made a report and mention the need for a national policy on prisons. They also made an important reference with concern to the organization and treatment of offenders and laid down principles.

c) THE MULLA COMMITTEE: In the year 1980, the Government of India constitutes a Committee on Jail Reform; appoint Justice A. N. Mulla as a chairman. The primes motive of the Committee was to evaluate the laws; rules; and regulations, keeping in mind that the overall objective was to the protection of society and rehabilitation of offenders.

d) THE KRISHNA IYER COMMITTEE: This committee was set-up to commence an analysis of the current condition of women prisoners in India. It has suggested an option of more women in the police force in view of their special role in managing women and child offenders. "Women spend their punishments in

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https://shodhganga.inflibnet.ac.in/bitstream/10603/20871/14/14_chapter-09--women.pdf

³ AIR 1978, SC 1514

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https://www.academia.edu/5450727/RIGHTS_OF_WOMEN_PRISONERS_IN_INDIA_AN_EVALUATION



rigorous conditions than men because of their small numbers. They have faced greater family dislocation than men because there are so fewer prisons to choose as an option for the imprisonment of women. They have been over-classified or, in any situation, they have been imprisoned in a facility that does not match to their classification. For similar reasons, they have been offered lesser programs than male prisoners, particularly in the situation of women imprisoned under protective custody arrangements, of which there is only a handful. They had no substantial seasonal training opportunities.”⁵

RIGHTS OF FEMALE PRISONERS UNDER PRISON MANUALS AND CONSTITUTION

CONSTITUTIONAL STATUS OF PRISONERS AND THEIR RIGHTS:

“The prisoners are no longer considered as an object or a slave of the nation, who the law would leave at the prison door and who would be convicted to “civil death.” It has progressively been established that a person does not disqualify to be a person just because he did an offence and put behind the bars. In *Charles Shobraj v. Superintendent, Tihar Jail*, Apex Court made it clear that, “except for the fact that the compulsion to live in a prison requires by its own force the lack of certain rights, like the right to move freely or to practice a profession of one’s choice, a prisoner is otherwise eligible to the basic freedoms guaranteed by the Constitution.” And “the convicted persons go to prisons as punishment and not for punishment.”

Constitution of India does not provide

specific guarantee to the women prisoners. However, the Indian Constitution gives the status of equality to the women. The Founding Fathers of the Indian Constitution gave serious thought to protect and promote the rights of Women and Children. This is amply reflected in the Preamble which contains “the ideals and aspirations of the people of India”. One of the golden ideals is “the equality of status and of opportunity”. Constitution of India under Article 14 provides equal protection of laws to the women in India and Article 15 prohibits the discrimination on grounds of sex. But still Indian women prisoners are facing several problems.

Both under National as well as International Human Rights Laws, inhuman and degrading treatment to women prisoners is prohibited and the State is under obligation to uphold and ensure observances of basic human rights and constitutional rights of women prisoners in the prisons. Despite the various constitutional provisions providing status of equality to the women in India, the condition of the poor women prisoners is not good. They are being ignored and tortured in the prisons.

Imprisonment does not spell farewell to fundamental rights, the Supreme Court of India has made it very clear in many judgements that except for the fact that the compulsion to live in a prison entail by its own force the deprivation of certain rights, like the right to move freely, a prisoner is otherwise entitled to the basic freedoms guaranteed by the Constitution. Prisoners cannot be treated as animals and are not to be punished except in accordance with Laws.

⁵ <https://www.lawaudience.com/rights-of-prisoners-in-india-a-legal-analysis/>



Article 14 in which the principle of equality is expressed. The concept of “equals should be treated equally” and the concept of reasonable classification are mentioned in Article 14 that has been a very useful weapon for the courts to examine the category of prisoners and their basis of classification in different classes.

Article 19 of the Constitution provides 6 freedoms to the citizens of our nation. Among these certain freedoms like freedom of movement; freedom to reside and to settle; and freedom of profession, occupation, trade, or business cannot be enjoyed by the prisoners because these freedoms have some conflict with the concept of prisons and authorities has the power to put reasonable restrictions. But other fundamental rights like freedom of speech and expression, freedom to become a member of an association; etc. can be accessed by the prisoners convicted for an offence. But these will be considered as the limitations of prison laws.⁶

Article 20(1) provides protection to the persons from ex post facto laws, this clause of article 20 provides to protect a prisoner from being convicted to any punishment. One of the important safeguards which are useful for under-trials and detenues is mentioned in Article 20(3) of the Indian Constitution, the jail authorities or the police authorities can't force the prisoners to give the testimony.

Article 21 of the Indian Constitution provides the right to life to a person. It

includes the principle of liberty. After *Maneka Gandhi*⁷ case, the Supreme Court gave a wide interpretation and provides a right that has been used against any action taken arbitrarily by the executive authorities including the police and prison authority. After that judgment concept of fair and reasonable procedure for the deprivation of the life and personal liberty of the individuals has been established.⁸

RIGHTS OF FEMALE PRISONERS UNDER PRISON MANUALS AND PRISONACTS

Besides institutional provisions, efforts have been made to provide and protect human rights of prisoners including the women prisoners under various Acts. In this regard the oldest and the most important one is the Prison Act, 1894.

THE MODEL PRISON MANUAL, 1960

The Prison Manual is drafted bearing in mind that purpose and justification of a sentence of imprisonment is to protect the society against crimes. Moreover, deprivation of liberty involving compulsory confinement and consequent segregation from society is itself a punishment inherent in imprisonment. Therefore, it is even more important for the prison administration while carrying out that punishment, to ensure that it results in the return of offender to the society who is not only willing but also be able to lead a well-adjusted and self-supported life. Thus, the Prison Manual guidelines are to be understood in the context of primary objective of institutional treatment of the prisoner, which shall be reeducation of the

⁶ Narender Kumar, Constitutional law of India (Allahabad law agency, Faridabad, 2011)

⁷ A.I.R. 1978 S.C. 579

⁸ P.M. Bakshi, The Constitution of India (Universal Law publications, New Delhi, 2011)



offender for the purpose of realigning and reorganizing her life for smooth resettlement. In this way the prison manual suggests that correctional institution shall have

- i) Proper and requisite personnel.
- ii) A system of efficient and disciplined administration; and
- iii) Diversified resources and facilities for training and treatment programs.

Model Prison Manual advocates for separate institution for the women inmates. It says that the State Government shall establish separate prisons for women offenders. Till separate prisons for women are established, both male and female inmates can be confined in the same prison on the condition that female offenders are to be kept in a strictly secluded female enclosure.

Such enclosure should be, to the extent possible, independent in terms of infrastructural set-up. According to the Manual, the women prisoners should be classified and kept separately as under:

- (i) Undertrial prisoners shall be kept completely separated from convicted offenders, even when their number is small.
- (ii) Habitual prisoners shall be separated from casual offenders.
- (iii) Habitual offenders, prostitutes and brothel keepers must also be confined separately.
- (iv) In no circumstances should adolescent girls be confined with adult women prisoners
- (v) Political and civil prisoners shall be kept separately from convicts and undertrial prisoners.

- i) Accommodation and Sanitary Conditions:**
 - The State Government shall provide for female prisoners in the territories under such

government, accommodation in prisons constructed and regulated in a manner as to comply with the requisites of this Act in respect of the separation of prisoners. Thus, the prisoners cannot be kept in open exposed to sun, rain or cold or other vagaries of the weather. In addition to this, the prisoners are entitled to accommodation under a roof in some room type habitat. Section 79 of the Prison Act casts an obligation on the State Government to provide for temporary accommodation in case of overcrowding and outbreak of epidemic disease. The Act also provides for maintenance of sanitary conditions, the duty of which is given to the medical officer.

- ii) Mental and Physical State of Prisoner -** Section 14 of the Prison Act provides that Medical Officer is required to furnish a report regarding the mental condition of prisoner whenever it appeared that she is not fit. It provides: "Whenever the Medical Officer has reasons to believe that the mind of a prisoner is or is likely to be injuriously affected by the discipline or treatment to which she is subjected, the Medical Officer shall report the case in writing to the Superintendent together with such observations as she may think proper. This report, with the orders of Superintendent thereon, shall forthwith be sent to I.G. for information." As for as the death of a prisoner in prison custody, a complete medical history following the illness, treatment, diet, labour done by the prisoner and other necessary factors are to be recorded by Medical Officer. It is the duty and responsibility of the Medical Officer to examine the new inmates and shall advise the jailer regarding the nature of work carried by the prisoner depending on the health and other factors of the prisoner.



- iii) **Separation of Prisoners:** - There is also a specific provision in the Act which provide for the separation of prisoners. Section 27 of the Prison Act provides that: "In a prison containing female as well as male prisoners, the females shall be imprisoned in separate building, or separate parts of the same buildings in such a manner as to prevent their seeing or conversing or holding any intercourse with male prisoners.' The separation of prisoners further states that in a prison where male prisoners under the age of twenty-one years are confined, means shall be provided for separating them altogether from the other prisoners and for separating those of them who have arrived at the age of puberty from those who have not. The non-convicted criminal prisoners shall be kept separate from the convicted criminal prisoners. The civil prisoners shall be kept separate from criminal prisoners.
- iv) **Safety and Security from Fellow Prisoners:** To protect the physical safety of the inmates from other fellow prisoners, it is provided that before admission of a prisoner into jail, they shall be searched and any article which is found during search shall be handed over to the jailer. The search shall be carried out by matron in case of female prisoners.
- v) **Solitary Confinement:** For ensuring the safe custody of the other prisoners or infliction of punishment, there is a need to have solitary confinement. However section 29 of the Prison Act provides: "No cell shall be used for solitary confinement unless it is furnished with the means of enabling the prisoner to communicate at any time with an officer of the prison and moreover, such prisoners must be examined by Medical Officer at least once a day, if confined for a period of more than 24 hours."
- vi) **Handcuffing and Bar Fetters Rule 26.23** of the Punjab Police Rules, 1934 provides: Prisoners shall not be handcuffed while confined in lock up except in rule 26.4 (3) It is further provided that a prisoner who is charged only under section 124-A or 153-A of the Indian Penal Code shall not be handcuffed unless she is already undergoing sentence for the offences commanding the escort has definite reason for believing that such prisoner comes within the category described in rules 26.22 (e) of (f). As far as the better class of undertrial prisoners are concerned, they should not be handcuffed except in the circumstances mentioned in clauses (a), (b), (c) of rule 26.22. Moreover, if they are handcuffed, reason should be recorded in writing by the officer concerned for the existence of different circumstances.
- vii) **Treatment of Prisoners:**
- a) **Undertrials:** Undertrials are placed on a fairly higher footing than the convicts, and hence they are permitted to have their own clothing, food and other accessories from their own sources and are entitled to be permitted to contact these sources at reasonable hours and if such prisoners are unable to arrange, the same will be supplied by the jailer.
- b) **Civil Prisoners:** The status of civil prisoners is like that of undertrials and are to be treated at par with the under trials. They have the liberty to choose to work in the jail according to their will and can use their own implements for the same and shall be fully paid for their work.
- c) **Criminal Prisoners:** There is a maximum limit of nine hours a day for a criminal prisoner who is sentenced to labour. The Medical Officer has the responsibility to



examine such prisoners every fortnight and record the nature of work and its impact upon the weight and health of the prisoners in their history ticket. Medical Officer is supposed to submit a report and if it is found that there is an adverse impact on the health of the prisoner and it is because of the labour, then there is a change in work which will be recommended by the Medical Officer.

the period before a prisoner is brought before a competent court, discretion is to be exercised by the officer-in-charge of the P.S. concerned to classify her as either 'better class or "Ordinary" Only those prisoners are to be classified provisionally as 'better class" who by social status, education or habit of life have been accustomed to a superior mode of living. The fact that the prisoner is to be tried for the commission of any class of offence is not to be considered.

viii) **Punishment for Prison Offences** Several prison offences like willful disobedience, use of force and foul language etc. have been defined in the Prison Act. The determination of these offences and sentencing thereon lies with the Superintendent and he has discretionary power vested with him. Punishment for these offences include hard labour, separate confinements, reduction in diet etc. The combination of two or more punishment which will have an adverse effect on the health of the prisoner is prohibited like the punishment of reduction in diet cannot be joined with hard labour. The Act provides that there is complete prohibition on awarding of punishment other than those provided in section 46 of the Act. It is also to be mentioned that the Superintendent shall act, only in accordance with the reports of the Medical Officer that the concerned prisoner shall be able to tolerate the punishment. But, when it comes to more heinous crimes, to more heinous crimes committed by the prisoner, the case will be referred to the court along with the record of facts.

x) **Parole:** - Contemporary penological thinking has perceived parole as a useful tool for the social rehabilitation of the prisoner as it provides for an opportunity for the prisoners to meet the family members and hence can result in his realization of responsibility towards her family. The law provides that the appropriate government should make provisions for parole depending upon the nature and conduct of the criminal and gravity of the offence for which she has been convicted. Temporary Release of the Prisoners Temporary release of prisoners is provided in the Prison Act subject to certain conditions for a period not exceeding 10 days in a year excluding the time required for journey and the days of departure from, and the arrival at the prison. However, no prisoner is to be released under above provision, unless - a) She has, at the time of the release, served one half of her release including remission or a period of not less than two years of her sentence including remission, whichever is less. b) Her conduct in prison has been good. c) Twelve months have elapsed from the date of expiry of the period of her previous release, if any under this provision.

ix) **Social and cultural rights:** Rule 26.21 of Punjab Police Rules, 1934 provides: Undertrial prisoners are divided into classes based on previous standard of living. The classifying authority is the trying court subject to the District Magistrate; but during

xi) **Political rights of prisoners:** Political rights are enjoyed by the prisoners even during



imprisonment because prisoners remain as ‘persons and citizens’ even behind foe bars. The law has given protection so much so that they can not only participate in the elections by voting but also, if otherwise eligible, have right to fight elections. Their imprisonment has nothing to do with their exercising of political rights. However, there are some disqualifications which are mentioned in the Representation of People Act, the right of the prisoners to fight election or to be a voter are subject to those provisions. One of the major factors which has been duly considered in foe Act is the moral turpitude. The prisoners, who have been disqualified from being a voter or being a candidate, are those who have been convicted for the offences involving moral turpitude.

gap between theory and practice, Amritsar Central Jail has no gynecologist or any female doctor to take care of female inmates. One female doctor from the District Hospital visits once a week inthe women enclosure of jail. Women are not satisfied with the medical facilities available there. They want one permanent gynecologist or a female doctor and a small clinic in the women enclosure. The Manual further states that each adult woman prisoner should be supplied suitable number of sanitary napkins for use during menstruation. However this is only a theory, and it is difficult for the womenmates to get such facilities and they have to depend upon the relatives and friends from outside to fulfil this need.¹⁰

xii) Medical Facilities: Most women in prisons are amongst the poorest members of society and many arrive in prison with a range of prior-existing physical and mental health problems. International best practices state that the medical services provided for women prisoners should be of the same quality and standard as those available to the outside (free) community. These services shouldinclude HIV/AIDS testing, breast and cervical screening, family planning and sexual health services.

xiii) Modern facilities like X-ray, ECG, ultrasound and sonography should be available to women in the prisons. Female offenders suffering from mental disorders, anxiety, drug addiction and sex perversion should get proper medical treatment and psychotherapy.⁹

It has been seen that there is always a wide

xiv) Children of Women

Prisoners: A child up to six years of age can be kept with hismother if there is no other arrangement for keeping him outside with relatives or otherwise. As specified in Punjab Jail Manual, children born in prison may remainwith their mothers up to six years of age, if they cannot otherwise be suitably placed.

Model Prison Manual says that there shall be a creche and a nursery school attachedto a prison for women where the children of women prisoners shall be looked after. Children below three years of age shall be allowed in the creche and those betweenthree and six years shall be looked after in the nursery school. The creche and nursery school shall be run by the prison administration preferably outside the prison. Scales of diet for children shall be decided keeping in view the calorific requirements of

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https://shodhganga.inflibnet.ac.in/bitstream/10603/111935/4/04_chapter%202.pdf

¹⁰ Writ Petition (Civil) 559 of 1994 SCC



growing children as per medical norms and climatic conditions. The children of women prisoners living in the prisons shall be given proper education and recreational opportunities.

- xv) However, the practical aspect was far from satisfactory and Supreme Court of India expressed its displeasure over the facilities available in the prisons for the care of children. In *RD Upadhyay vs. State of Andhra Pradesh and others*¹⁰, Supreme Court of India has given speaking orders to provide facilities for women prisoners accompanied by children. The court has directed in clear terms that a child shall not be treated as an undertrial/convict while in jail with his/her mother. Such a child is entitled to food, shelter, medical care, clothing, education and recreational facilities as a matter of right. Strict guidelines have been issued to provide basic facilities to pregnant inmates and to arrange for delivery outside the prison. The court has prohibited writing 'Prison' as the place of birth in the birth certificate. Whilst the judicial activism of the Supreme Court in the Upadhyay case is laudable, gaps between a rights-based theory and the practical realization of these rights persist. **Legal Aid and Counselling:** Model Prison Manual says that Socio-legal counselling cell should be set up in each institution to be managed by volunteers from a designated law school, school of social work, or a non-governmental voluntary agency. This right has also been guaranteed by Article 39 A of the Indian Constitution. Work done by students while working in such a cell should be given academic credit and should form a part of the student's graded curriculum.

Vocational training plays an important role in the reformation of prisoners, and it is equally important for the women prisoners. Model Prison Manual states that as far as possible women prisoners shall be imparted training suited to their aptitude and background, making them economically self-reliant. Vocational training in useful trades shall be provided to women prisoners. The selection of vocational programmes shall be made in accordance with the marketability and profitability of the product, enhancing the prisoner's ability to earn their livelihood after release. Sufficient work or vocational trades shall be provided to keep prisoners actively employed for a normal working day. These may include tailoring, embroidery, needlecraft, candle making and toy making.

ROLE OF JUDICIARY

Sunil Batra v. Delhi Administration in a letter by a prisoner, Batra, to a judge of the Supreme Court complaining of a brutal assault (insertion of a stick into the anus resulting in tears of anus and bleeding) by a Head Warden on another prisoner Prem Chand who was undergoing a life sentence. The prisoner's explanation for the anal rupture was stated to be an unfulfilled demand for money, allegedly a general practice. Batra was not afraid of the consequences of jail indignation and brought the incident to the knowledge of the Court, resulting in these proceedings which, though not strictly traditional, were clearly in the nature of habeas corpus writ and, therefore, within the wider sweep of Article 21. The protection of Article 21 is available even to convicts in jails. The convicts are not mere reason of their conviction deprived of all the fundamental rights, which they otherwise

- xvi) Vocational training:



possess.

Following the conviction of a convict is to put into the jail he may be deprived of fundamental freedoms like the right to move freely throughout the territory of India or the right to practice a profession. However, the Constitution guarantees to them other freedom like the right to acquire, hold, and dispose of property for the existence of which detention can be no impediment. Likewise, even a convict is entitled to the precious right guaranteed by Article 21, and he shall not be deprived of his life or personal liberty except according to procedure established by law. Personal liberty of an accused or convict is fundamental and can be taken away only in accordance with the procedure established by law. So, deprivation of personal liberty must be founded on the most serious consideration relevant to the welfare objectives of the society specified in the Constitution. In the circumstances of the case, the Court held that subject to certain safeguards, the appellants were entitled to be released on bail. It was observed that a substantial number of the prisoners are under-trials who have to face their cases in court and are presumably innocent until convicted. How cruel it would be, when one goes to a hospital for a checkup and by being kept along with contagious cases comes home with a few diseases. Administration of prisons come under the domain of the State Governments. Thus, the respective governments while making Prison Manuals should consider all the provided guidelines.

In the landmark judgment *D.K. Basu v. State of West Bengal*, the Supreme Court held that

custodial torture is a naked violation of human rights, dignity, and degradation, which destroys, to a very large extent the individual personality. It is a calculated assault on human dignity and whenever human dignity is wounded, civilization takes a step backward—flag of humility must on such occasions fly half-mast.¹¹

The Court directed the Inspector General of Prisons and State Board of Legal Aid Advice Committee to provide legal assistance to the poor and indigent accused (male and female) whether they are under trial or convicted prisoners.¹²

In *Charles Shobraj v. Superintendent, Tihar Jail*, Apex Court made it clear that, “except for the fact that the compulsion to live in a prison requires by its own force the lack of certain rights, like the right to move freely or to practice a profession of one’s choice, a prisoner is otherwise eligible to the basic freedoms guaranteed by the Constitution.” And “the convicted persons go to prisons as punishment and not for punishment.”

In *RD Upadhyay vs. State of Andhra Pradesh and others* Writ Petition (Civil) 559 of 1994, Supreme Court Cases, Supreme Court of India has given speaking orders to provide facilities for women prisoners accompanied by children. The court has directed in clear terms that a child shall not be treated as an undertrial/convict while in jail with his/her mother. Such a child is entitled to food, shelter, medical care, clothing, education and recreational facilities as a matter of right. Strict guidelines have been issued to provide basic facilities to pregnant inmates and to arrange for delivery

¹¹ K.D. Gaur, Textbook on Indian Penal Code (Central Law publications, Allahabad, 2011)

¹² <https://www.researchgate.net/publication/306399891>



outside the prison. The court has prohibited writing 'Prison' as the place of birth in the birth certificate. Whilst the judicial activism of the Supreme Court in the Upadhyay case is laudable, gaps between a rights-based theory and the practical realisation of these rights persist.

CRITICAL ANALYSIS

CRITICISM

The human rights and basic needs of women prisoners have not been given due importance in the Indian Prison System. There are some isolated examples of reforms for the female inmates; however, it needs due attention and proper care. Women constituted 3.9 percent of the total prison population of India at the end of 2006.

There are only 15 women jails in India. There is only one women jail in Punjab located at Ludhiana. Because of shortage of women jails, women inmates are forced to be lodged in the male-dominated Central Jails and District Jails. There are several statutes, enactments and guidelines which advocate for separate institutions for the women inmates. However, women jails have not been constructed to accommodate all the women prisoners of India. Punjab and Haryana High Court has also directed to take appropriate measure to lodge all women prisoners in separate institutions other than common jails (*H.C. Arora vs. State of Punjab and others*, C.W.P. No. 8108 of 2006 decided on May 24, 2006)

National Human Rights Commission of India has expressed dissatisfaction over the conditions of women in the jails and has directed that prison conditions should be

made more humane for the women. Even IPS officer, Kiran Bedi has also expressed that women prisoners were subjected to the most humiliating experiences, which robbed them of what little dignity and self-respect they reached the prison with.

Even though right to equality is guaranteed to every Indian citizen irrespective of their sex; legislation needs to work on the safeguards to be guaranteed to the women offenders. Indian constitution is a growing constitution and hence the concept of right to life should be amended along with the global change of ideologies. New amendments should be brought in the concept of prison rights under the broad arena of Right to life. Newly improved rules of prison management and criminal psychology should be considered to give way to a broader idea of right to life for the convicts and under trials for the betterment of prison life in India successfully.

MAJOR LOOPHOLES IN THE CURRENT SCENARIO

- i) **Shortage of Women Prisons:**
In India, there is shortage of women prisons. Women prisoners are facing the problem of overcrowding in the prisons. Overcrowding itself is a generator of many problems. In such circumstances, it becomes impossible to perform day to day activities of the life. In the Tihar jail the capacity of the women jail is of 400 but the total number of women prisoners who are staying there is 516 (2012 data) It means 116 more women prisoners are staying without any capacity of their accommodation.
- ii) **Lack of Necessities:** Women prisoners in India do not even have proper



accommodation or recreation. Basic facilities are lacking for the women and their children. Women prisoners are also visibly scared of the prison staff. There is scope for vast improvement, on all levels, particularly in the attitude of the prison staff that need to learn to respect the human rights of women prisoners. Most of the women prisoners are also mothers and their children are staying with them in the prison, but the prison is not a place for healthy growth of a child. Prison environment affects the growth, survival, and development of the children. Children who stay with their mothers in prisons are denied their basic rights to pre-school education. While in jail, communication with outside world gets snapped with a result that the inmate does not know what is happening even to his near and dear ones. This causes additional trauma. The Manual further states that each adult woman prisoner should be supplied suitable number of sanitary napkins for use during menstruation.

However, this is only a theory, and it is difficult for the women inmates to get such facilities and they must depend upon the relatives and friends from outside to fulfil this need.¹³

iii) **Inaccessibility of Legal Services:** Women prisoners are not getting satisfactory legal aid in the prisons. Inaccessibility of legal services is a major problem which needs to be resolved. Final Annual Report 2008-2009 of National Human Rights Commission provides that in most of the jails visited in India, there is need to strengthen the legal aid system so that the qualified lawyers are provided to all those who cannot afford their services. Unawareness about the law and procedure amongst the women prisoners is also a major problem. According to

“Progress of the World’s Women” a report by the Assistant Secretary General of United Nations Women, uneducated women have lack of awareness about the judicial system and their rights.

Women, due to their ignorance, are not even getting the benefit of proviso to Section 437 Cr.P.C, according to which they may be released on bail even in non-bailable cases. Bail, in non-bailable offences, is not a matter of right of the accused person. Section 437 of the Code of Criminal Procedure envisages the provision as regards bail in case of non-bailable offences, which may or may not be granted depending on the discretion of the court. But proviso to this provision exempts women, and empowers court to grant bail to a woman irrespective of the gravity of the crime.

iv) **Condition of children of female prisoners:** The condition of women inmates having children is a subject of major concern. Despite specific instructions of the Supreme Court of India in *RD Upadhyay vs. State of Andhra Pradesh and others* (1999 4 SCC 437), the conditions of childbearing mothers have not improved in general.

According to *India Spend’s report* “As many as 1,320 children (73%) were living with under-trial mothers. Uttar Pradesh had the highest number of children growing up in prisons, 428, followed by West Bengal (298) and Bihar (166). Growing up in restricted spaces, children sometimes miss any sort of education and may not be able to recognize what is obvious to other children, such as the difference between an elephant, a needle and a tractor; BBC reported in November 2005”

iv) **Torture in Custody:** Sexual assault to the



women prisoners is also a major problem which they are facing. There are horror stories about the torture in custody to the women prisoners. Asian Centre for Human Rights (ACHR) stated that custodial rape remains one of the worst forms of torture perpetrated on women by law enforcement personnel and several custodial rapes of women take place at regular intervals. The NHRC recorded 39 cases of rape from judicial and police custody from 2006 to 28 February 2010.

RECOMMENDATIONS

Even though right to life under Indian constitution has been broadened enough to include wide prison rights to the prisoners, unfortunate situation still prevails around women prisoners. The Prison Act and the Prison Rules do talk about the segregation of the convicts on gender basis and certain rights to women convicts, yet the area needs special attention. Mostly women with children do not get access to their children after they are 6 years old when they are sent to government homes for the remaining period of their mother's conviction, in case the father or the other family members are incapable of taking care. Studies have shown that these children often fall pray for petty criminal gangs. The position of victims who happen to be women or children has not merited the attention it deserves in the procedural statute (Muralidhar, 2005). The protection under Sec.160 Cr.Pc that no male person under the age of 15 years or women shall be required to attend any place other than the place in which such male person or woman resides doesn't apply to woman or child who is picked up as a suspect. Justice Krishna Iyer in his report has pointed out this lacuna. His suggestions are notable for

improving the present situation:

- 1) Policy guidelines should be developed, among others, on the arrest, interrogations, search and detention of women, bail and sentencing, pre-sentence investigations, use of socio-legal counselling, psychiatric services and scientific classification in the pre-trial and conviction process, presence of legal aid cells for women in every police district, diversion of women offenders to separate and specialized trial processes and to non- institutional correctional options, association of volunteers and voluntary agencies working in the field of women development in the investigation and trial of offences and watching over custodial conditions, etc.
- 2) Formulation and adoption of National Policy on Custodial Justice to Women.
- 3) Creation of a statutory autonomous body to be designated as the National Authority on Custodial Justice to Women (NACJW) which should have the representation of every component of the criminal justice system namely the judiciary, law, legal aid, police, prisons, probation and aftercare, and social welfare and mental health custodial institutions. It should also include representatives of medicine, psychiatry law schools, schools of social work, women s groups, human rights and civil rights groups, the media, professional research, and training bodies in criminology and social defense, etc.
- 4) Specialized courts must be set up to dispense justice separately and speedily to women. In addition to the separate Women Courts or Family Courts it is recommended that Nari Bandigriha Adalats be held in mobile judicial camps as an immediate modality for rendering speedy redress to women in custody. Such camps and courts should be



held urgently and routinely in social welfare and mental health custodial institutions also to clear the backlog of pending cases, and to render speedy justice. The mobile adalats should be conducted on a district-wise or cluster basis to cover all prisons and non-prisons custodial institutions. Its objectives should be to provide speedy justice.

- 5) Prison should be brought into the concurrent Lists of the Seventh Schedule of the Indian Constitution to strengthen the process of standardized and uniform national approaches to reform of custodial conditions.
- 6) There is need to have a Comprehensive Prison and Prisoners Act which can bring together in a single Act the provisions presently dispersed in several Acts.
- 7) A critical assessment of the efficacy and relevance of various legislations bearing on women status in custody and their criminality should be undertaken by the Law Commission.
- 8) On an immediate basis, appropriate amendments and additional provisions should be introduced in the IPC and Cr. PC as well as in the Prisons Act, 1894 and Police Act, 1861 to reflect the special needs of women in custody.
- 9) The States must agree to enforce a uniform prison manual. Prison amenities for women and for their children, and the rights and duties of women prisoners should be clearly identified preferably in a separate volume of the prison manual.
- 10) Separate police lockups should be established in consultation with State IGs of Police. It should be mandatory for each police station to provide enclosed space for holding all arrestees and separated space for female arrestees. Separate Women police stations where they exist should be suitably reinforced with adequate training and tools of

the trade.

- 11) Appropriate linkages should be established between custodial authorities and voluntary groups/individuals in protecting the rights and dignity of women not only in custody but also outside.
- 12) Counseling cells should be attached to every custodial center and such cells should encompass the custodial staff.

Suggestions

There should be separate institutions for the women prisoners, and they should not be lodged in the male-dominated Central and District jails. There should be separate kitchen, canteen, and hospital for the women prisoners as long they are lodged in the common jails.

The guidelines given by the Supreme Court of India in *RD Upadhyay vs. State of Andhra Pradesh and Others* should be enforced to safeguard the rights of women inmates. Arrangements should be made to ensure childbirth outside the prison and to provide sufficient facilities to the women prisoners accompanied by children. There should be one female doctor for every 100 women inmates. Sanitary napkins should be provided in sufficient numbers to the young women inmates. Every women prison should have basic facilities of crèche and nursery for the children living with their mothers.

The present study reveals that separate women prisons are essential to keep the women prisoners. The number of women prisons is not sufficient in India, and it should be increased. Women prisoners being women have special requirements which should be necessarily fulfilled. The number



of undertrial prisoners should be reduced to the maximum extent to reduce the burden over jails. Prisons should be converted into correctional homes. It is essential for the women prisoners for their reformation and rehabilitation. To fulfil this purpose, it is compulsory that they should be provided basic facilities in the prison. There is need of special training program for the prison officials so that their behave towards the women prisoners can be changed and they can give importance to the basic human rights of the women prisoners. In the case of pregnant women prisoners, they can be granted bail and in case the children are dependent on the women prisoners, their mercy application should be considered sympathetically and released accordingly.

Most of the women prisoners are not aware about the complexity of judicial process. Legal awareness programs should be launched on war footing in the jails so that women prisoners should be made aware of their legal rights and about the complexity of judicial process. Sufficient lady doctors should be appointed in the prison. Mulla Committee had recommended the appointment of full-time lady medical officer in case women prison contains 25 or more women prisoners and in case of fewer women prisoner's lady medical officer should be appointed on part time basis.

The efforts should be made on war footing to reduce the strength of women undertrial prisoners and for this purpose the procedure of plea bargaining can be adopted. Lok Adalats should be organized frequently. Fast track courts should be established to reduce the burden of undertrial prisoners over jails. The Prison Act 1894 which regulates the prison administration is too old and it

requires to be substantially amended in the present scenario. Panels of visitors should be appointed on a permanent basis to all prisons as recommended and emphasized by National Expert Committee on women prisoners and apex court in various observations.

Succinctly, it can be said that the goal or aim behind awarding the punishment to the women offenders should be the reformation and the rehabilitation of women prisoners and for achieving this goal the jail manuals should be prepared in consideration with minimum standard of human rights.

CONCLUSION

Indian society gives a respectable status to the women. She plays a vital role in the society. The important role she plays is in the capacity of mother. Constitution of India gives status of equality to the women in India. It also imposes obligation on the State to protect the rights of the women and to fulfil the requirements of international conventions regarding the rights of the women. But the reality is women in prisons are facing a number of problems. Even her basic human rights are being ignored despite of a number of directions from the Supreme Court, High Courts and by recommendations of different Committees. It creates difficulties to them in the prison which requires a special attention and needs to be removed.

Women under custody are very much vulnerable in male-centric model of prison system especially in the common jails where men and women both are lodged. Women prisoners have many rights. They cannot be debarred from their basic human rights and



freedoms guaranteed by the Constitution of India.

The recommendations of various committees on prison reforms and women prisoner rights should be implemented on war footing to address the present situation. Monthly or weekly inspections are necessary to ensure the compliance of all the directions. Reports of inspection of conditions of jails where women live should be submitted to the higher officials designated for such purpose. Complaints of violation of such rights should be addressed expeditiously.

The goal or aim behind awarding the punishment to the women offenders should be the reformation and the rehabilitation of women prisoners and for achieving this goal the jail manuals should be prepared in consideration with minimum standard of human rights.

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