

RIGHTS OF WOMEN PRISONERS AND SOME ISSUES FACED BY THEM IN INDIA

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Abstract

Inmates who have broken the law are housed in jails. The purpose of prisons is to reform and rehabilitate inmates. Despite this, cruelty and depravity are frequently covered up in jails, which is dangerous for prisoners. The problems brought on by incarceration are far more obvious in the case of female prisoners. Women in detention are particularly vulnerable in a prison system dominated by men, especially in regular jails where both women and men are kept. Every member of society is given the same fundamental rights at birth and is treated equally by their creator. The rights to life and liberty, which have been recognised by numerous international constitutions, are the cornerstones of every human being. However, in every society, there are some individuals who do not uphold the morals and standards of the community, and when this occurs, those individuals are stripped of their rights and subjected to appropriate punishment. A society without crime would be a utopian idea. The most significant contribution to understanding the rights of female inmates has come from the Indian struggle. A person does not stop being a human being if they commit a crime, therefore all fundamental rights are nevertheless upheld in practise even when they are constrained by the possibility of jail time, monetary penalties, or both. The major goal of the criminal justice system is to show that just because someone commits a crime once, it does not guarantee that they will always be criminals.

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1. INTRODUCTION

Women's status in the traditional society was quite poor. They are subject to conventional patriarchal attitudes and are denied their basic human rights. But as time goes on, the Indian Constitution offers a number of rights to improve the position of women and ensure their treatment on an equal footing with males. The standing of women is drastically altered as a result. Historically, they were confined to their homes alone, but in modern society, they are entitled to some privileges, but the percentage of these women is relatively tiny. Women continue to experience torture, exploitation, and harassment, which makes them more irritable and drives them to commit actions that are insulting and illegal. The rising tendencies in industrialization, urbanisation, and the internet increase the rate of crime in society and push women to commit crimes against their nature, which is viewed by society as being very sensitive and gentle. Even while extremely few women commit crimes and even fewer of them end themselves in jail or prison, nonetheless women crimes are increasing as compared to the males.¹

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2. SOME PROBLEM FACED BY WOMEN PRISONERS

The management of prisons varies from country to country, despite the fact that the topic of prisoners is a very sensitive one in every country in the globe. Every state has a manual that

¹ Bandana Shekhar, Nitasha Devi *et al.*, "Rights of Women Detainees Under Indian Judicial System", 5 *Law Audience Journal*, pp. 21-30 (2023).

² Aditi Prabhune, "A Legal Analysis of Rights of Female Prisoners Under Constitution of India", *available at*: <https://www.legalserviceindia.com/legal/article-2111-a-legal-analysis-of-rights-of-female-prisoners-under-constitution-of-india.html>

outlines the rights and responsibilities of inmates and should be given to them when they are first admitted to the facility. Some problem faced by women prisoners are:

2.1 They suffer from essential hygienic and sanitation facilities:

The majority of female prisoners in India are between the ages of 18 and 50, making up 81.8% of the total population. As a result, there is a rising demand for access to acceptable menstrual hygiene products as well as proper sanitation facilities. They should be given access to suitable sanitary pads to preserve their cleanliness, but some institutions reportedly charge for them or only distribute a predetermined quantity each month, regardless of necessity. Consequently, this forces women to use unsanitary items like cloth, ash, fragments of old mattresses, newspapers, etc.

2.2 Poor welfare and health care spending:

In India, prison administrations paid an average of Rs. 10,800 per prisoner per year in 2005, which was split between food, clothing, medical costs, vocational & educational costs, welfare programmes, and other expenses (National Crime Records Bureau 2005).³ Medical costs were noted as being much higher in West Bengal, Punjab, Madhya Pradesh, Uttar Pradesh, Bihar, and Delhi that year, while vocational and educational costs were noted as being somewhat higher in Bihar, Karnataka, and West Bengal. According to sources, Chhattisgarh, Orissa, and Tamil Nadu spend far more on prisoner care.⁴

2.3 Poor living conditions or prison overcrowding:

One of the most serious issues that both male and female convicts in Indian jails deal with is this. In prisons, cells and barracks are given a specific size in accordance with the National Prison Manual's recommendations. 20 convicts maximum each barrack, and four to six prisoners maximum per dormitory. Because of the overcrowding, sanitation issues and health issues have gotten worse, and even mild infections spread quickly. The situation is made worse by the disproportionately small number of bathrooms and restrooms. Prisoners forced to share such close quarters with one another suffer grave psychological impacts from overcrowding.

In India, inmates who are female are not even given sufficient housing or recreational opportunities. Basic services are denied to women and their kids. It is still obvious that the female inmates are scared of the correctional staff. The children's development, survival, and

³ Ibid.

⁴ National Crime Records Bureau (NCRB)

advancement are impacted by the jail environment. Preschool access is limited for children who are kept in custody with their mothers. When incarcerated, communication with the outside world is cut off, which prevents the prisoner from being aware of his surroundings and his family.

This makes the distress worse. Many nations forbid the use of the extreme authority of detaining someone without cause or legal recourse unless there is a conflict or violent activity.

Except for those that are restricted by imprisonment, an inmate or detainee retains most of the civil rights and other freedoms that apply to a free citizen. The therapy programme in the women's prison is also subpar. It's a catastrophe. Numerous inmates have died as a result of the inadequate medical care provided in prisons, which has been well-documented.

In comparison to police custody, judicial imprisonment has a significantly higher fatality rate, according to the National Human Rights Commission's Annual Report. It would be useful to look into how many deaths in judicial detention are caused by medical neglect given the regularity and seriousness of concerns regarding prison care services.⁵

2.4 The issue of custodial rape against women in India:

There was rape while the subject of police custody in the case of *State of Maharashtra vs. C.K. Jain*.⁶ In terms of the evidence, the Supreme Court emphasised that cooperation should often not be demanded in such circumstances unless the prosecution's testimony was suspect. Second, it is assumed that no woman would typically make a false accusation of rape. Thirdly, there are perfectly logical reasons why the victim women delayed filing a complaint against the police, and the delay alone is not deadly. There was no room for compassion when it came to the judgement; the punishment had to be severe.

The ongoing problem of female prisoners being sexually harassed is significant. Torture of women in prison has been documented in horrifying incidents. According to the Asian Centre for Human Rights (ACHR), custody rape is one of the worst forms of torture meted out to women by law enforcement, and numerous custodial rapes of female inmates occur often. The NHRC has 39 cases of police-judicial rape documented between 2006 and 28 February 2010. Citing the *Maloti Kalandi* case, Badal Kalandi's wife and their twins were rescued from

⁵ Honawar, "Social Work Intervention with Women Offenders: A Pathway to Prevent Recidivism", 4 *Asian Social Work Journal*, pp.35-46 (2019).

⁶ *State of Maharashtra v. C.K.Jain*, AIR 1990 SC 658

trafficking and brought to the Tamulpur police station in the Baksa district of Assam under security custody. The victim was summoned to Sub-Inspector Sahidur Rahman's office, where instead of offering her safety, he sexually assaulted her.⁷

2.5 No prisons for women:

There are not enough prisons for women in India. According to the 2018 Prison Statistics India report, there are 1412 total prisons in India, with the categories provided in table.⁸

Jail's Name	Number of Prisons	Jail's Name	Number of Prison
Sub jails	732	Special jails	42
Women Jails	20	Borstals Schools	20
Central jails	137	Open jails	64
District Jails	394	Other jails	3

Only 12 States/UTs have female-only jails, and there are only 18 women's prisons nationwide, according to this table. Women's Jails are prisons with only female inmates. Women's jails can be found at the district, subdivisional, and central(range/zone) levels. India had 20 women's prisons as of December 31, 2018, with a total capacity of 5,197 inmates and an occupancy rate of 60.1%. Due to the lack of room in women's jails, the majority of female prisoners are housed in other types of prisons. As of December 31, 2018, approximately 83.12% of all female detainees in India were housed in facilities other than women's jails. Maharashtra has five prisons for women. There are three female jails in each of Kerala and Tamil Nadu.

2.6 Access to legal services and aid is restricted:

Legal representation for female inmates is insufficient. There is a critical need to address the difficulty in obtaining legal counsel. According to the NHRC's 2008-2009 Final Annual Report 17, the legal aid programme has to be improved in the majority of the jails visited in India to make sure that all indigent clients are given access to qualified solicitors. The fact that many female prisoners are ignorant of the law and its application is a major problem.

⁷ Lodha, P., Venkatesh, S., Kumar, Y. and De Sousa, A., "Incentives of female offenders in criminal behavior: an Indian perspective", 5 *Violence and Gender*, pp.202-208, (2018).

⁸ Freitas, A.M., Inácio, A.R. and Saavedra, "Motherhood in prison: reconciling the irreconcilable", 96 *The Prison Journal*, pp.415-436 (2016)

A report by the Assistant Secretary General of the United Nations for Women titled “Progress of the World’s Women” claims that uneducated women are unaware of the legal system and their legal rights. Women cannot even be released on bail in unfair circumstances with the use of section 437 of the Cr.P.C. because of their irresponsibility. For circumstances where bail is not an option, it is not an issue of the convicted party’s rights. Section 437 of the Cr.P.C. contains bail provisions for non-bailable cases that the court may or may not order a trial in. The section, however, exempts women and allows a court to grant bail to a woman regardless of how serious the offence is.

3. RIGHTS OF PRISONER UNDER JUDICIAL INTERPRETATION

Rights of Prisoners Recognised by the Indian Constitution: Despite not genuinely having all the essential rights that other men do, a condemned prisoner is not prohibited by those rights. As a foundation for human rights, some essential rights are recognised for prisoners. The rights of prisoners are not explicitly stated in the Indian Constitution, but they are recognised through precedents and judicial interpretation. For example, in the landmark case of *T.V. Vatheeswaran v. State of Tamil Nadu*⁹, it was determined that both prisoners and the general public are entitled to the protections of Articles 14, 19, and 21.

The Indian Constitution’s Article 14 serves as a beacon for the prison administration and authorities in deciding how to segregate inmates and how to use them as reformation targets.¹⁰ All Indian people are entitled to six freedoms under Article 19 of the Indian Constitution. There are several rights that do not apply to inmates, however among those freedoms, prisoners do have the right to freedom of speech and expression¹¹ and the right to join an association. Rights given in this case was (i) Right to legal aid, (ii) Right to have an interview with a friend relative and lawyer, (iii) Right of inmates of protective homes, (iv) Right to speedy trial, (v) Right to live with human dignity, (vi) Right to livelihood, etc.

According to Judicial Interpretation, the Indian Constitution guarantees the following rights to prisoners:

3.1 Right to free legal aid:

⁹ T.V. Vatheeswaran v. State of Tamil Nadu, AIR 1983 SC 361 : (1983) 2 SCC 68.

¹⁰ Chowdhury Roy Nitai, “*Indian Prison Laws and Correction of Prisoners*”, p.75, Deep and Deep Publications, New Delhi. (2002)

¹¹ The Constitution of India, art 19 (1)(a).

It also refers to offering financial support to a person involved in a legal issue. Free legal aid was added as one of the Directive Principles of State Policy under Article 39A of the Constitution by the Constitution 42nd Amendment Act of 1976. The right to legal aid is not explicitly stated in the Indian Constitution. However, the judiciary has favoured impoverished inmates who, because to their poverty, are unable to hire the attorneys of their choosing.

The Supreme Court ruled in *M.H. Hoskot v. State of Maharashtra*¹² that Article 21's implied fair, just, and reasonable procedures included the right to free legal assistance provided by the state at the expense of an accused who could not afford legal representation due to poverty. A three-judge Supreme Court panel that considered Articles 21 and 39-A, as well as Article 142 and Section 304 of the Criminal Procedure Code together decided that the Government has a responsibility to provide legal representation for those who have been accused of a crime.

3.2 Right to meet friend relative and lawyers:

The court decided in *Sheela Barse v. State of Maharashtra*¹³ that prisoner interviews are required since else the right information might not be gathered, but that such access must be limited and monitored. In the case of *Dharambir v. State of U.P.*¹⁴, the court ordered the state government to permit family members to visit the convicts and for the prisoners to visit their families at least once a year while being closely watched.

3.3 Rights against unhuman treatment:

Human dignity is integral to human rights. In a number of cases, the Supreme Court of India expressed grave concern about the inhumane treatment of prisoners and gave the relevant authorities the necessary instructions to protect the inmates' rights. The Court stated that any treatment of a person that violates their human dignity, subject them to unnecessary suffering, or lowers them to the status of a beast would undoubtedly be arbitrary and subject to scrutiny under Article 14.

The Bombay High Court ruled in *Christian Community Welfare Council of India v. Government of Maharashtra*¹⁵ that women should only be detained in the presence of lady constables and not after dusk or before dawn. The State Government was ordered by the Court to appoint a

¹² (1978) 3 SCC 544

¹³ (1983) 2 SCC 96

¹⁴ (2010) 5 SCC 344

¹⁵ 1996(1) BOM CR 70

committee to develop a thorough plan for police accountability for violations of human rights and to make special arrangements for female inmates. The protection provided by this right is crucial in preventing sexual harassment and unforeseen torture of female detainees.

As a result, in addition to these, the Mulla Committee lists the following as rights of prisoners:

- ☐ Dignity of the human being,
- ☐ The right to necessities like food, water, clothing, shelter, and other necessities is guaranteed.
- ☐ The right to communicate with others,
- ☐ Rights such as the right to meaningful and lucrative employment.

4. IMPORTANT LEGAL PROVISIONS FOR WOMEN IN INDIA

In order to carry out the Constitution's authority, the state has passed a number of laws aimed at ensuring equal protection, combating social injustice, preventing various forms of violence and massacres, and offering support services, notably to employed women. Although women can become victims of any crime, including homicide, rape, and fraud, the phrase "crime against women" refers to crimes that are only committed against women. The Indian Penal Court (IPC) has the following security measures in place for women:

- ☐ Sec. 302/304-B IPC: Homicide for Dowry, Dowry Deaths, or their efforts
- ☐ Sec. 354 IPC: Harassment
- ☐ Sec. 376 IPC: Assault
- ☐ Sec. 363- 373 IPC: Kidnapping and Abduction for various reasons
- ☐ Sec. 498-A IPC: Torture, both mental and physical
- ☐ Sec. 509 IPC: Sexual Harassment
- ☐ The crimes listed in the Special Laws (SLL)

5. CONCLUSION

The proportion of women incarcerated in India is progressively increasing. Numerous issues hamper the lives of women in prison, many of whom are facing trials. Prisons fall short in their efforts to reform its inmates. Understanding the issues that women in prison face, identifying their rights, and ensuring that these rights are enforced are therefore crucial. Numerous problems affect women, such as a lack of female employees, inadequate housing, poor sanitation and hygiene, a lack of facilities to satisfy their physical and mental health needs, inadequate

nutrition, a lack of educational possibilities, and frequently useless capacity and vocational training. Many mothers who share a home with their kids lack access to quality recreational, medical, and educational resources. The situation for women is made worse by these issues, as well as a lack of access to legal counsel while in custody, little contact with the outside world, and a high rate of abuse by other inmates and staff members.

A democratic country like India needs three autonomous institutions - the legislative, executive, and judiciary - to preserve the balance between power distributions, just as a car needs four wheels to move and a person needs two legs to walk. This not only makes the work more efficient by dividing it up into smaller tasks, but it also guarantees a continual system of checks and balances. The legal and managerial tenet that duty and accountability must coexist in order to produce better results is well established. The prison administration should follow this rule as well.

The prison is supposed to serve as a place for reformation. However, when prisoners are denied the basic rights that are essential to their existence as human beings, the entire purpose is defeated. A few decades ago, inmates were despised and thought to have relinquished all of their rights. However, contemporary society is aware of a prisoner's rights. As a result, a criminal conviction does not turn a person into a non-person whose rights are dictated by the authorities and administration of the prison.

It is essential that we act today to ensure that prisoners' basic human rights are upheld and that they are treated with dignity because, when we deny other people their basic rights, we are only returning to a time of cannibalism and war. It does not imply that jail life should be made simple; rather, it should be made reasonable and humane. The way the judiciary operates shows that it has creatively used its authority and developed fresh plans to safeguard the preservation of inmates' human rights. Thus, merely writing anything down has never been sufficient. It is time for rules to be put into effect and given a chance to create a peaceful society of equals.