

AN ANALYSIS OF THE CONSTITUTIONAL RIGHTS OF WOMEN PRISONERS

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ABSTRACT:

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 the mother. The Constitution of India gives the status of equality to the women in India in every aspect of life. It also imposes an obligation on the State to protect the rights of the women and to fulfill the requirements of international conventions regarding the rights of the women. But the reality is women in prisons are facing many problems. Even her basic human rights are being ignored despite many directions from the Supreme Court, High Court, and by recommendations of different Committees. It creates difficulties to them in the prison which requires special attention and a need to be removed. Women prisoners in India 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, and to suggest the necessary changes in the Indian Prisons Act, 1894.

Key words: - Prisons, Constitutional Rights, Human Rights, Sexual Harassment, Custodial Torture, and women prisoners.

Introduction:

Indian society gives honorable status to the women. The position of a woman in the Vedas and the Upanishads is that of a mother or goddess. In the Manusmriti, women are considered as precious being or be projected first by her father, then by her brother and husband and finally by, her son. Presently women represent 48.2 percent of the country's population. Several development programmers have been implemented by the Five-Year Plans. In 1985, a separate Department of Women and Child Development was set up. The major programmers include Support to Training-cum-Employment Programme (STEP) for women, Mahila Kosh, Women's Development Corporation, etc. In India, there is also a need for programs for solving the acute problems of women prisoners inside or outside the prisons.

In a male dominating society, women often face discrimination. Many crimes are also being committed against the women in the society. Women are exploited in the society at different levels because of their unawareness about their legal rights. The condition of the women prisoners is also not good. They are being oppressed and tortured in the prisons. Custodial horror is a daily occurrence for women prisoners in India. What can a woman do when her 'custodians' become her violators? The question is very intimidating and frightening but this is happening to women in

India. There have been innumerable cases where ‘men-in-khaki’ as we usually refer to the police as, have been caught outraging the women prisoners modesty, inside and outside the jail. Worse, women prisoners in India are not just raped but even murdered by policemen. Most of the women in Indian jails are of poor background. A woman of rich background whatever may be the ground generally avails all the privileges in the jail as Rajya Sabha member K. Kanimozhi was sent to Tihar jail based on involvement in high profile 2G spectrum case. She pleaded in the court that she should get bail because she is a woman and a mother and was granted bail on November 28, 2011. In judicial custody for over six months, she was given a separate cell in the women’s section, equipped with a bed, television, and a toilet. But what about the women having no privilege, who suffer a lot of problems in the prison. Most of the women do not even know about the court procedure. Moreover, the Prison Act, 1894 is too old. It contains no provisions regarding the welfare of the women prisoners. Deputy Director, Institute of Correctional Administration, Chandigarh, Dr. Upneet Lalli mentioned that the Prisons Act, 1894 focuses only on prison security, offense, and punishment and not on correction, reformation and rehabilitation of prisoners. She felt that problems still existed, and charges were required in the areas of overcrowding, delay in trial and legal aid, health and hygiene, prison visits-procedure, food-hygiene, quality, service, poor living conditions, women and children-drugs, mobiles, security issues, lack of educational, vocational training, lack of reformation and slow pace of modernization. She stated that as about 4.1% of prison populated consisted of women, the problems of women prisoners should also be given due care (Bastick & Townhead, 2008).

Objective:

This paper has been prepared to consider the rights of the women prisoners and in India and also highlights the problems of the women prisoners in the prison.

Methodology:

This research paper is purely a doctrinal research that has taken its reference from books, journals, reports, and online research articles. For this study, mostly secondary data has been analysed and jotted down so as to provide the shape to the objective. Qualitative method has been used in the analysis of data.

Discussion:**Constitutional Status of Women Prisoners in India:**

Constitution of India does not provide specific guarantees 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 opportunity”. Constitution of India under Article 14 provides equal protection of laws to the women in

India and Article 15 prohibits discrimination on grounds of sex. But still Indian women prisoners are facing many problems. Article 21 of the Constitution of India states various rights for women prisoners, for example; Right to inmates of protective homes; Right to free legal aid; Right to speedy trial Women prisoners have the right to a speedy trial. There is an undoubted right of speedy trial of undertrial prisoners, as held in a case of Supreme Court, Right against cruel and unusual punishment, Right to a fair trial, Right against custodial violence and death in police lock-ups, Right to live life with human dignity. Constitution of India also gives rights against solitary confinement, handcuffing and protection from torture. The government of India passed the Protection of Human Rights Act, 1993, and constituted a body known as the National Human Rights Commission for the promotion and protection of human rights. Part 4 of the Constitution of India sets out the Directive Principles of State Policy which gave direction to the State to provide economic and social rights to its people in a specific manner. India has also ratified various International Conventions and Human Rights Instruments committing to secure equal rights of women.

Legal Acts of the Women Prisoners:

Article 21- No person shall be deprived of his life or personal liberty except according to the procedure established by law.

Article 5 of the universal declaration of human rights (UDHR) – No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 142- The Supreme court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it.

Article 39A- Equal Justice and free Legal aid.

Section 428 of the Indian Penal Code (IPC)- Set off the periods of detention of an accused as an under-trial prisoner against the term of imprisonment imposed on him on his conviction.

Special Rights to women prisoners: Honorable Supreme court of India held some rights specially to women prisoners which are as follows: -

- Rights to female guards for female security.
- Rights to pregnant women prisoners.
- Rights to mother prisoners.
- Rights to child of women prisoners.

These are the various rights and acts which are guaranteed by Indian constitution, Indian penal code and other committees and institutions for the safeguards and reformation of women prisoners.

Women Prisoner's Right Under the Prisoner's Act, 1894:

Prisoners Act, of 1894 is the first legislation regarding prison regulation India. This Act mainly focus on reformation of prisoners in connection with the rights of prisoners, following sections of the Prisoners Act, 1894 describes rights of women prisoners in India:

a) The female prisoners have the right to live separately from the male prisoners. Section 27(1) of the Prisoners Act 1894 provides that in a prison containing female as well as male prisoners, the females shall be imprisoned in separate buildings or separate parts of the same building, in such a manner as to prevent their seeing or conversing or holding any intercourse with the male prisoners.

b) Section 31 of the Prison Act 1894 provides that a civil prisoner or an unconvicted criminal prisoner shall be permitted to maintain himself, and to purchase, or receive from private sources at proper hours, food, clothing, bedding or other necessities, but subject to examination and to such rules as may be approved by the Inspector General.

c) About supply of clothing and bedding to civil and unconvicted criminal prisoners section 33(1) of the Prison Act, 1894 provides that every civil and unconvicted criminal prisoner unable to provide himself with sufficient clothing and bedding shall be supplied by the Superintendent with such clothing and bedding as may be necessary.

d) Accommodation and sanitary conditions for prisoners.

e) Provision for the shelter and safe custody of the excess number of prisoners who cannot be safely kept in any prison.

f) Provision related to the examination of prisoners by qualified Medical Officer.

Women Prisoner's Rights (International and National provisions):

There are many rights of women prisoners which are provided by different committees appointed for prison reforms and also by the United Nations. Since Prisons is a State subject under Entry 4 of the State Subjects list of the Seventh Schedule to the Constitution of India. Hence, the management and 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. The different types of human rights and statutory rights of women prisoners are discussed as under:

1. The search and examination of the female prisoners shall be carried out by the Matron under the general or special order of the Medical Officer;

2. Section 376(A), 376(B), 376(C), 376(D) of IPC punishes custodial rape.

3. Rule 8(a) of Standard Minimum Rules for the Treatment of Prisoners also provides for the right to live separately from male prisoners.

4. All the prisoners have basic human rights such as hygienic food, shelter, medical facilities, and facilities of reading and writing. They must be treated with dignity in the custody and cannot be isolated in a separate cell, except on medical grounds, or if he/she has proven to be dangerous to other prisoners. It is the human right of a pregnant lady to have a full facility (medical and personal) at the time of delivery. Women prisoners who are pregnant cannot be provided the full facilities during the pregnancy. Hence at the time of delivery, they can be released on bail for the delivery.

5. The Standard Minimum Rules for the treatment of prisoners provide under Rule 53(1) that in an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible women officer who shall have the custody of the keys of all that part of the institution. Rule 53(2) No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a women officer. Rule 53(3) Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women.

6. Rule 23 (1) provides that in women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate. Rule 23(2) Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers (Raval, 2022). This fact shall not be mentioned in the birth certificate. Rule 23(2) Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.

7. Rule 24 that the medical officer shall see examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions, the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work.

8. Rule 25(1) that the medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed. Rule 25(2) The medical officer shall report to

the director whenever he considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.

9. Rule 26(1) that the medical officer shall regularly inspect and advice the director upon:
(a) The quantity, quality, preparation and service of food; (b) The hygiene and cleanliness of the institution and the prisoners; (c) The sanitation, heating, lighting and ventilation of the institution; (d) The suitability and cleanliness of the prisoners clothing and bedding; (e) The observance of the rules concerning physical education and sports, in cases where there is no technical personal in charge of these activities.

10. The National Commission for Protection of Child Rights (NCPCR) has recommended that women in jail who are pregnant, ill or have children dependent on them should be considered for early release on personal bonds. The guidelines prepared by NCPCR states that while the nature of the crime cannot be overlooked, the condition of women prisoners could be considered when they have few means and are responsible for young children.

11. Section 303 of the Criminal Procedure Code, 1973 empowers the prisoners to be defended by the leader of their choice and Section 304 of this code provides that in certain cases legal aid is to be provided at state expense. 309 (1) of the criminal procedure code provides that in every inquiry or trial, the proceedings shall be held as expeditiously as possible. Similarly, a mere sentence does not restrict the right to freedom of religion.

12. Section 54 of the Code of Criminal Procedure 1973 provides for examination of the body of an arrested person by a registered medical practitioner at the request of the arrested person in case of torture and maltreatment in lock-ups. But generally, women prisoners are not aware of this right.

13. Before sending a woman who is pregnant to a jail, the concerned authorities must ensure that jail in question has the basic minimum facilities for child delivery as well as for providing prenatal and postnatal care for both, the mother and the child. Gynecological examination of female prisoners shall be performed in the District Government Hospital.

14. Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1993. Article 12(2) of this Convention provides that State Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation (Kumar 1986).

Problems faced by Female Prisoners:

In 2016, over 3 Lakhs of women prisoners were arrested under the Indian Penal Code and Special Laws, most of the female prisoners were between the age group of 30-50 years which constituted the 50.5% of the proportion, followed by the age of 18-30 years which constituted the 31.3% of the total of 1401 female prisoners. Though the topic of prison forms a very sensitive issue in all nations across the world, the administration of prisons differs from nations to nations. In every state, there is a manual in terms of dealing with the rights and duties of prisoners which should be introduced to the prisoners at the time of their admission in the prison.

This section deals with understanding the particular problems faced by women in prison:

- Poor living Accommodations or Overcrowding of Prisons.
- Lacks with basic facilities of sanitation and hygiene.
- Poor spending on health care and welfare.
- Problem of Women Prisoners in India- custodial rape.

A. Poor living accommodations or Overcrowding of Prisons:

This is one of the most severe problems faced in Indian prisons both to the male and female prisoners. In prisons, a specified size for cells and barracks is provided according to the guidelines of the National Prison Manual. Barracks are ideally only for 20 prisoners and dormitories to house only four to six prisoners each. Overcrowding has worsened hygiene conditions and health problems with even minor infections spreading quickly. The disproportionately low number of toilets and bathrooms exacerbate the situation. Overcrowding also has severe psychological effects on prisoners forced to live in such close quarters with one another. Although convicted and under trial, prisoners are to be housed separately on conviction, this is usually not possible due to severe space constraints.

Young offenders (18-21 years of age) must also be kept separately, mostly they are found with the older women offenders leading to make them the habitual offenders. Overcrowding in prisons also leads to children of prisoners having to live in cramped and undesirable conditions.

B. Lacks basic facilities of sanitation and hygiene:

In India, most of the female prisoner's age from the age group of 18-50 was a large majority that is 81.8% female's falls under the menstruating age group where there is an increasing need to provide proper sanitation facilities as well as access to adequate menstrual hygiene products. As they should be provided with proper sanitary pads to maintain their hygiene, but it is reported that they charged for sanitary napkins in some prisons or are only provided a set monthly number irrespective of need. Thus, this leads women to resort to using unhygienic materials such as cloth, ash, pieces of old mattresses, newspapers etc.

C. Poor spending on Health care and welfare:

In India, an average of Rs.10,800 per inmate per year was spent by prison authorities during the year of 2005, distributed under the heads of food, clothing, medical expenses, vocational &

educational, welfare activities and others (National Crime Records Bureau 2005). This is in contrast to the US, where the average annual operating cost per state inmate in 2001 was \$ 22,650 (the latter presumably also includes salaries of prison staff). The maximum expenditure is on food in Indian prisons (Kaushik & Sharma, 2009). The States like- West Bengal, Punjab, Madhya Pradesh, Uttar Pradesh, Bihar and Delhi reported relatively higher spending on medical expenses during that year, while in Bihar, Karnataka and West Bengal reported relatively higher spending on vocational and educational activities. Tamil Nadu, Orissa and Chhattisgarh reported as it is relatively higher spending on welfare activities regarding with the prison.

D. The problem of Women Prisoners in India- custodial rape:

In the case of State of Maharashtra vs. C.K. Jain, there was rape in police custody. Regarding evidence, the Supreme Court emphasized that in such cases unless the testimony of the prosecution was unreliable, collaboration normally should not be insisted upon. Secondly, the presumption is to be made that ordinarily, no woman would make a false allegation of rape. Thirdly, delay in the making of the complaint is not fatal and quite understandable reasons exist for the delay on the part of the victim woman in making a complaint against the police. As far as the sentence was concerned there was no room for leniency, the punishment must be exemplary.

Analysis Of Judicial Interpretation:

The Judiciary has interpreted various rights as the Rights of Prisoners which are mentioned below- Rights of Prisoners recognised under Constitution of India: A convicted prisoner is not barred by his fundamental rights though he truly not enjoys all the fundamental rights like other common men some of the fundamental rights are recognised for the prisoners as a basis of human rights. Constitution of India has not clearly mentioned the rights for prisoners but through judicial interpretation, they are recognized through precedents, as in the leading case of T.V. Vatheeswaran v. State of Tamil Nadu, it was held that the Articles 14, 19 and 21 are available to the prisoners as well as to the common man (Jaishankar & Halder, 2007).

Article 14 of the Constitution of India acts as a torchbearer for the prison authorities and its administration to determine various segregations of prisoners and their object of reformation. Article 19 of the Constitution of India guarantees six freedoms to all citizens of India. There are certain rights which are not for the prisoners but among those freedoms, the freedom of speech and expression and freedom to become a member of an association is there for the prisoners.

Article 21: Today, the judiciary, by its art of interpretation, has discovered a variety of rights of suspects, accused persons and prisoners, who are in police custody. The fundamental right of 'life and personal liberty' has been interpreted by the Supreme Court of India in a broad spirit and various rights have been included in the ambit of Article 21 of the Constitution.

Article 21 of the Constitution of India focuses on two crucial concepts i.e., right to life and principle of liberty. In the cases like- Maneka Gandhi, Sunil Batra (I), M.H. Hoskot, the Supreme

Court has taken the view that the provisions of part III of Constitution of India there needs to be a widest possible interpretation. It was held that:

- Right to legal aid
- Right to speedy trial
- Right to have an interview with a friend, relative and lawyer
- Right to live with human dignity
- Right to livelihood
- Right of inmates of protective homes etc.

Though these rights are specifically not mentioned as fundamental rights under article 21 of the constitution with the help of judicial creativity they are recognised as the Rights of Prisoners.

Following are the rights which are guaranteed to the prisoners under the Indian Constitution though Judicial Interpretation:

Right to Free Legal Aid: It also means to provide Financial Aid to a person in a matter of legal disputes. The Constitution 42nd Amendment Act, 1976 has inserted Free Legal Aid as one of the Directive Principles of State Policy under Article 39A in the Constitution (Bhat, 2019). The Indian Constitution does not expressly provide the Right to Legal Aid. But the judiciary has shown its favour towards poor prisoners those who are not in a position to engage the lawyers of their own choice because of their poverty.

In *M.H. Hoskot v. State of Maharashtra* the Supreme Court laid down that right to free legal aid at the cost to the state to an accused who could not afford legal services for the reason of poverty, indigence situation was part of fair, just and reasonable procedures implicit in Article 21 a three Judges Bench (V.R. Krishna Iyer, D.A. Desai and O. State of Maharashtra the Supreme Court laid down that right to free legal aid at the cost to the state to an accused who could not afford legal services for the reason of poverty, indigence situation was part of fair, just and reasonable procedures implicit in Article 21. a three Judges Bench (V.R. Krishna Iyer, D.A. Desai and O. Chinnappa Reddy, JJ) of the Supreme Court reading Articles 21 and 39-A, along with Article 142 and Section 304 of Cr.PC together declared that the Government is under a duty to provide legal services to the accused persons.

Right to have Interview with Friends, Relatives and Lawyers: In *Sheela Barse v. State of Maharashtra*, the court held that interviews of the prisoners become necessary as otherwise the correct information may not be collected but such access has got to be controlled and regulated.

In *Dharambir v. State of U.P* the court directed the State Government to allow family members to visit the prisoners and for the prisoners, at least once a year, to visit their families, under guarded conditions.

Rights against Inhuman Treatment: Human Rights are part and parcel of Human Dignity. The Supreme Court of India in several cases has taken a serious note of the inhuman treatment on

prisoners and has issued appropriate directions to the concerned authorities for safeguarding the rights of the prisoners. The Court observed that the treatment of a human being which offends human dignity, imposes avoidable torture and reduces the man to the level of a beast would certainly be arbitrary and can be questioned under Article 14 (Garg & Singla 2012).

In the case of Christian Community Welfare Council of India vs. Government of Maharashtra, it was held by the Bombay High Court that woman should not be arrested after sunset and before sunrise and only in the presence of lady constables. The Court directed the State Government to set up a committee to formulate a comprehensive scheme for police accountability to human rights abuse and make special provisions for female detainees. This Right plays an important role in protecting the female prisoners from any sexual harassment and unforeseeable tortures (Ahuja, 1969).

Therefore, apart from these according to Mulla Committee following are also the list of rights of prisoners which include:

- Right to human dignity,
- Right to basic minimum needs such as drinking water, hygiene, medical care, clothing, bedding etc.,
- Right to communication with the outside world,
- Right to access to law, Right to meaningful and gainful employment and so on.

CONCLUSION:

Despite the various constitutional provisions providing a 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 judgments that except for the fact that the compulsion to live in a prison entail by its 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 under laws. Government has provided various measures to safeguard the rights of the women prisoners but this is not actually applicable in true sense; women are still facing problem in the police custody. Many times they suffer through sexual harassment during their custody, they still face hurdles in all stage of criminal justice process. At the time of arrest, the women suffer from lack of knowledge about her basic rights. It is common in case of poor and illiterate women. This custodial violence is definitely a menace or cancer to our Indian Society. It has to be cut down from the society.

The prison is supposed to be a place meant for a reformatory purpose. However, the entire Purpose fails when the prisoners are denied the very rights that are fundamental to their being a human being. A few decades ago, prisoners were looked down upon and were considered to have

forsaken all their rights. However, modern society recognizes the rights of a prisoner. Hence, a conviction for a crime does not reduce the person into a non-person, whose rights are subject to the whim of the prison administration and authorities.

It is the need of the hour that we take positive steps to ensure that the basic human rights of prisoners are not infringed and that they live with dignity because human beings denying other human their basic rights does nothing but taking us right back to the era of cannibalism and war. To improve prison status it does not mean that prison life should be made easy, it means, it should be made humane and sensible. The functioning of judiciary reveals that it has exercised its powers in the most creative manner and devised new strategies to ensure the protection of Human Rights of the prisoners.

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