

Human Rights of Women Prisoners in Indian Criminal Justice System: An analysis in the light of Judicial Response.

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Abstract:

In spite of underlying the detrimental effects of prison on women, their special needs are rarely taken into consideration. The change in the composition of the prison population has highlighted the shortcomings in almost all prison systems in meeting the gender-specific needs of women prisoners. Any modern approach to provide a more acceptable criminal justice policy for women must pay greater attention to their problems. In particular there is need to give attention to the situation of women and children in the prison and apply gender perspective to policies and programme for them. In India, only a few studies worth their name have been conducted on prison life of women criminals. This study focused on the under trial or convicted women prisoner and their dependent children residing in different Prison or Jail.. The purpose of the present study is to identify the key issues of the problem faced by women prisoners and their dependent children in the jail and possible measures by which these issues could be addressed better by implementing the National and International Laws in this regard. Moreover, this paper highlights the judicial approach in addressing these issues by understanding the ground reality.

Keywords: Prison, Women, Children, Reforms, Judicial Approach, Human Rights.

Introduction:

Apart from the basic human needs, included in the arena of right to life under the Indian Constitution due to the Brilliant humanistic Judgement of the Supreme Court, right to life also enables a person to avail the guarantee of protection in cases of Criminal Justice administration. The right to life includes the right to justice which includes fair trial. The human rights afforded to an individual are not a favour done to him but a matter of norm accepted in a civil Society.

Indian Society confers honourable status to the women. A women is mother, a sister and women is often associated with the characteristics of love, humanity and devotion. In India many laws have been established to protect the rights of women but it is often seen that the women are tortured and harassed by family members and co-workers. This assault is a root cause of the women committed crimes. Women are blessed with the ability of being mother and many responsibilities come with this status. Thus the women prisoner shall be provided all the facilities and special treatment to fulfil the responsibility of motherhood. Secondly, women are prone to the sexual abuse in the Common jails. Thirdly, maintenance of hygienic living standards is necessary for women because of the menstrual cycle of the female. These facts elucidate the reasoning behind special treatment of women Prisons.

Position under International sphere:

Since the expanding horizon of human rights guarantees to women, has been fraught with difficulties, there was need for special formulations that world assert, protect and remote women's human rights this was the basic for Convention on the Eliminations of all forms of discrimination Against women 1967. And the Beijing Platform for action-all of which mutually enforce the different dimensions of human rights violations of women. One of the purpose of the United Nations, stated in Article 1 and 55 is to promote Universal respect for human rights and fundamental freedom without distinction so as to any kind, including sex. The Universal Declaration on Human Rights also proclaims that everyone is entitled to all the rights and freedoms set forth in the Declaration without distinction of any kind including sex. It also proclaims that all human beings are born free and equal in dignity and rights. Thus discrimination against women is incompatible with human dignity and the welfare of the society and constitutes an obstacle to the full realization of the Potentialities of women. Standard Minimum Rules for the Treatment of Prisoners was adopted in the year 1955 in Geneva and this rules provides special provision for pregnant women prisoners by

providing special accommodation to them for pre-natal and post-natal treatment. This rules also deals with free legal aid to untried prisoners if such prisoner desires such free legal aid. International Covenant on Civil and Political Right (ICCPR) is a significant documents in regard of the rights of prisoners. Art. 9 of ICCPR guarantee the right to life for every human being vis-avis provides for the elimination of cruel or inhuman treatment to any human being. Convention against Torture and other Cruel and Inhumane or Degrading Treatment or Punishment was adopted in the Year 1984 by the U.N. General Assembly. Art. 1 of this convention defines the torture as any activity by which severe pain or suffering which may be mental or physical in nature is inflicted on a person for the purpose of obtaining some information or confession, punishing him for an act he or a third person has committed or is suspected of having committed. It also provides that every state party is bound to take effective measures in form of either legislative or administrative or judicial action as a precaution against the acts of torture.¹

Position in India:

The above Convention expressly states that discrimination against women is socially and culturally constructed, and encompasses both the public and private spheres. In the administration of Criminal Justice system, the women prisoners have right within the wide range aspect of Human Rights in India. The Cruel and inhuman treatment to women Prisoners confined in the Police lock-ups is not new concept as well as not uncommon. It is the violation of fundamental rights within the ambit of Article 21 of the Indian Constitution. Indian Constitution under Article 21 and 22 protects and safeguards the rights of convicts, under trials and offenders. The fundamental right to live a dignified secured life in India is guaranteed by Art. 21, which is the corner stone of this study and which says that “no person shall be deprived of his life and liberty except according to procedures established by law”. Art. 21 and 22 of the Indian Constitution indicate different types of rights guaranteed to the prisoners as a whole.

Recommendations of different Committees for Prison Reforms:

Prison is a state subject under 2nd list of seventh Schedule of Indian Constitution. The Administration of jails exclusively falls in the domain of state governments. In the Republic of India first major reform in the context of prisons was the establishment of All India Jail Manual Committee in 1957. The Committee suggested Model Prison Manual and provided for the formulation of a uniform policy for the administration of all Jail in India. The Committee further suggested amendment in the Prison Act, 1894. A.N.Mulla Committee was established in 1980. This Committee suggested 657 recommendations on various aspect of Prison development for the consideration of Government. The major recommendation was that the prison and other allied homes should be included in the concurrent list of the Constitution and to amend the IPC as per the revision of jail manual. Another Committee which was established under the Chairmanship of Justice V.K.Krishna Iyer, which made vital improvement in the Existing Policy. Justice Iyer suggested for the increased recruitment of women police force, construction of separate jails, care for the children born in the jails along with many other recommendations. In 2003, Model Prison Manual manifested the recommendations of Mulla Committee and Iyer Committee. This Manual also provided for various gender specific treatments of women which were advocated by the ICCPR. Furthermore, this manual suggested specific medical needs of women in relation of which India has ratified the convention of United Nation. The bureau of Police Research and Development prepared a draft National Policy on Prison Reform and Correctional Administration in 2007. But this draft was nothing more than the old wine in new bottle. The latest Model Prison Manual, 2016 makes the government feel at home to some extent. This manual contains many provisions for the women Prisoners including the record of women prisoner who are pregnant or having babies and that should be informed to District Legal Service Authority by the concerned Jail Superintendent.

Judicial Contributions:

The Custodial violence to women prisoners in police lock-ups was complained of before the Court in **Sheela Barse v. State of Maharashtra**,² where women were assaulted in Bombay central Jail. The Court held that it is violation of Art. 21 of Indian Constitution. The Supreme Court laid down detailed guidelines in this regard which include:

1. Female suspect should not be kept in police lockup in which male suspects are detained. Female suspects must be kept in separate police lockup guarded by female constables:

¹. Article 2, Convention against torture and other cruel and inhumane or degrading treatment or punishment 1984.

². (1983) 2 SCC 96.

2. Interrogation of female suspects should be carried out only in presence of female police officers/constables.
3. Whenever a person is arrested and taken to the police lockup, the police will immediately give intimation of the fact of such arrest to the nearest Legal aid Committee which will provide legal assistance to the arrested person at the cost of State, provided he is willing to accept such help.
4. The District and Session Judge will make surprise visit to police lockups in the city periodically with a view to providing the arrested person give an opportunity to hear their grievances and ascertaining what the conditions in police lockups are and take up the matter with the Commissioner of police or Home Department or Chief Justice of High Court.
5. Whenever a person is arrested the police must obtain from him the name of friend or relatives of the person whom he would like to be informed about his arrest.
6. The Magistrate before whom arrested person is produced shall enquire from arrested person whether he has any complained of torture or maltreatment in police custody and inform him of his right to be examined medically under section 54 of Criminal Procedure Code.

To implement the above directions effective, it is suggested that the draconian prison rules must be replaced by human condition regulations. For this purpose the Prison and police officials should be trained in this respect. Moreover, Art. 21 of Indian Constitution prescribe the conditions to ensure human dignity to the Inmates of Care Homes and Protective homes for women and children's. Women prisoners are entitled to all basic human rights and freedom granted by the Constitution. In the case of **Sunil Batra v. Delhi Administration**³, Supreme Court said that a person whether or not he/she is in the prison, he/she cannot be deprived from his/her rights save by just, right and fair method. Further the Court held that the detained person has the right to meet his friends and family members, inter alia, he has the right to consult with the Lawyer of his Choice in Private. Specially, in **Charles Shobraj v. Superintendent, Tihar Jail**,⁴ Supreme Court said that imprisonment does not mean farewell to the fundamental rights. In the case of **State of Maharashtra v. C.K.Jain**⁵ is a landmark judgement pronounced by the Supreme Court regarding rape in custody. Supreme Court said that no women will make false allegation of rape, thus the presumption of rape should be in the favour of victim. Secondly, delay in filing FIR is understandable in case of rape and if the police office is found guilty, the punishment shall be exemplary. In **Hussainara Khatoon and others**,⁶ the Apex Court held that the women in "protective Custody" should be sent to the welfare homes established by the Social Welfare Departments.

In the landmark judgement **D.K. Basu v. State of West Bengal**,⁷ 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 much must on such occasions fly half-mast.

The Constitution of India shows a particular regard for women and children and it contemplates special provision being made for them. It can be expected only at the time when enlightened Constitutional system takes charge of political and socio economic governance of a society, which has for centuries witnessed the relegation of women to a place below their due. On 13th April, 2006, in **Upadhya v. State of A.P.**, the Supreme Court provided guidelines regarding under trial detainees and directed state governments to facilitate the children of women prisoners, so that the children can live normal vis-a-vis directed the governments to make changes in the model jail manual.⁸ In the present case Supreme Court interpreted the article 14, 15, 21, 23 and 39(f), 42, 45, 47 with other inter related provision to establish the rights of women prisoners with children.

In **Vikaram Deo Singh Tomar**, Chief Justice Pathak aptly observed:⁹

“ The Right to live with human dignity is the fundamental right of every Indian citizen. And so, in the discharge of its responsibilities to the people, the state recognises the need for maintaining establishment for the care of those unfortunates, both women and children, who are the castaways of an imperfect social order and for whom, therefore of necessity provision must be made for their protection and welfare.”

³. AIR 1980 SC 1579.

⁴. AIR 1978 SC 1514.

⁵. AIR 1990 SC 658.

⁶. AIR 1979 SC 1360.

⁷. AIR 1997 SC 610.

⁸. Rakesh Shukla, Looking After Children of Women Prisoners, Info change Women, 2013.

⁹. Vikaram Deo Singh Tomar v. State of Bihar, AIR 1988 SC 1782.

Public interest litigation was filed by the Delhi Domestic working Women's Forum to espouse the pathetic plight of our domestic servants who were subjected to indecent sexual assault by seven army personnel. In this case the Supreme Court gave the following directions to the government for assistance to the victims of rape:

1. The Complainant of sexual assault cases should be provided legal representation. It is important to have someone one who is well acquainted with the Criminal Justice System. The role of the victim's advocate would be not only to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in court but also to provide her guidance as to how might obtain help of a different nature from other agencies, for example, mind counselling for medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interest in the police station represents her till the end of the case.
2. Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station. The guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her.
3. The police should be under a duty to inform the victim of her right to get free legal assistance before any question were asked of her and the police report should state that the victim was so informed.
4. A list advocates willing to act in these cases should be kept at this police station for the victims, who didn't have a particular lawyer in mind or whose own lawyer was unavailable.
5. The Advocate should be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay, advocates would be authorised to act at the police station before leave of the court was sought or obtained.

The above schemes also require immediate implementation by the Government.

