

Women Prisoner's Rights in India: A Myth or Reality

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Abstract:-

Women have faced several ups and downs in their social status. In present society also, the condition of women is not so good. There are various rights for the women to improve their social status but they are unknown to them due to patriarchal society and lack of education. So, their status is still deplorable in the society. Yet, there are various great women who are willingly enjoying their rights and socially empowered and they are making the glorious name of our country, but the ratio of these women are very few. Most of the women are dependent on their father, sons or husbands. The study of women criminality is neglected and it is not the primary area of research for the researchers. As few women are involved in the criminality and very few go to the prison, but the ratio is increasing day by day. There are several rights of women prisoners but seems to only on papers and only for specific section of the society. This present paper focuses on the rights of women prisoners in India as they are myth or reality or whether they are followed in the prison environment or they are only on the government records. The researcher has used secondary method of data analysis for her study.

Key Words:- Women Criminality, Rights, Human Rights, Constitutional Rights, Women Prisoners, Prison.

Introduction:-

In the traditional society, women had very low status in the society. They do not enjoy rights of their life and face traditional patriarchal values system. But as the time passes, the Constitution of India provides various rights to bring upward change in the status of women to treat equally in the society. This brings a drastic change in the status of women. Traditionally, they were limited only to their houses but in present society, they are enjoying their rights yet the proportion of these women is very low. Still, women are facing torture, exploitation, harassment that increases the frustration level in women and they tend to commit crimes which are offensive and punishable by the law. The increasing trends of industrialization, urbanization, internet enhances crime rate in society and force women to commit crime against their nature which is generalized as very soft and delicate by the society.

Although, very few women commit crime and a few go to prison, but the crime rate of women criminality is increasing in comparison to men. According to NCRB records, the number of women inmates has increased by 21.7% during 2014-2019 and there is 5,875 women were confined in several jails of India by the end of 2019. Women are sent to jail for the reformation and re-socialization to reintegrate in the society but prison system fails to meet its specific functions. The situation of women is found vulnerable and very pathetic in prison. There are many constitutional, legal, human rights provided to women prisoners and several committees recommendations talks about the reformation of them whether they are committed or under-trial. But all these are only on papers; the condition of women in prison is not good and reformative as they have to face a lot of problems within the system. They often being raped by the officers and they are not aware about their rights so that they can use them for their welfare.

Review of Literature:-

- **Karuppannan and Debarati (2007)** had done an analytical study of the rights of women prisoners and examined right to life under Article 21 as a broad concept and article 21 and 22 of Indian constitution as an oxygen tube for the women prisoners.
- **Lakkaraju (2008)** had focused on the rights of women prisoners and also studied about the conditions of women prisoners in the state of Andhra Pradesh which was found worse with no awareness about their rights.
- **Sharma (2008)** has clearly explained and classified the rights of women as an attempt to create and spread awareness in the society. She has explicated the rights of women related to police and custody and described the process and terms appertain to crime, police, custody and seizure.
- **Garg and Singla (2012)** highlighted constitutional, statutory and human rights of the women prisoners and focused on their problems in prison. They found the deplorable condition of women prisoners and suggested reducing overcrowding, sufficient medical facilities, lady doctor, and awareness regarding legal and judicial rights.
- **Fathima (2017)** had studied about the rights of women prisoners in India and found that having several rights, women prisoners faced physical, mental and sexual violation and harassment under prison which were the most common problem of them in present scenario.
- **Bhatt and Bahuguna (2019)** had studied about the human rights on the basis of content analysis and descriptive method and found that mostly the women prisoner are not aware about their rights and faced a lot of problems and discrimination under the prison environment.

Objectives:-

1. To find out the rights of women prisoners.
2. To explain the implementation of women prisoners rights in the prison.

Research Methodology:-

The researcher has used content analysis method to prepare this paper by using the secondary method of data collection, which includes books, journals, newspapers, and various published and unpublished government records.

Rights of Women Prisoners

The rights of the women prisoners have divided in Human Rights and Constitutional Rights which are as follows.

Human rights of women prisoners

Human rights are guaranteed by Indian Constitution to the individuals by virtue of status as a human being related to life, liberty, equality, dignity of the individuals. National Human Rights Commission and State Human Rights Commission are established in 1993 to protect the human rights from any kind of violation. Here, the researcher listed below some of the human rights of the women prisoners.

- ❖ Women prisoners have the right to live separately from the male and should be in inspection of female staff.
- ❖ Women prisoners should be allowed to keep their children with them until the children reach the age of 6 years. There should also have the facility of creche and nursery attached to prison
- ❖ Prison should have the facility of proper medical care and child delivery for the pregnant women and separate female wing with lady gynaecologist should also be there for the regular medical check-up.
- ❖ Prison should have minimum and basic medical facilities under the system with all the necessities of pre natal and post natal treatment for both mother prisoners and children.
- ❖ Women prisoners have right to speedy trial and free legal aid at the cost of state government.
- ❖ Women prisoners have right to have vocational training with skills in the useful trades to improve the life after prison.
- ❖ It is also there in the provision to have interview with their legal counsel, relatives and friends.
- ❖ Article 53(1) of The Standard Minimum Rules for the treatment of women prisoners provides that they should be under the supervision of responsible women officer. Article 53(2) and 53(3) respectively states

about no entry of men in the cell of women prisoners except accompanied by women officer for the supervision and attention.

- ❖ Mentally ill female prisoners should be kept separately to the other prisoners.

List of Constitutional rights of women and women prisoners

The constitution of India does not provide specific rights of women prisoners but it deals with the equality of the women in the society to raise their status. Therefore, some of the constitutional rights provided for women safeguards are as follows:-

- Article 6 of Indian constitution provides right to life for the people of India.
- Article 14 provides equal protection of laws to the women.
- Article 15 deals with the prohibition of discrimination on the grounds of sex, caste, race and colour.
- Article 21 guarantees a fundamental right to dignified secured life.
- Article 23 of Indian Constitution talks about protection against exploitation and restricts forced and unpaid labour.
- Article 15(3) guarantees to make any special kind of provision for the empowerment of women.
- Article 39(A) of the Constitution of India refers to empower women to secure free legal aid for their case.
- Article 3 of Universal Declaration of Human Rights provides right to life, liberty and security of every person and article 5 states that no-one shall be subjected to cruel, inhuman treatment.
- Article 10(1) of United Nations Covenant on Civil and Political Rights states that all persons deprived of liberty shall be treated equally and humanity.

Recommendations of National Expert Committee:-

The committee, headed by Justice Krishna Iyer in the year 1987, had given certain suggestions to the women prisoners in its report which are as following-

- According to the policy of state, police should avoid to arrest the women until and unless any serious crime has not reported.
- In case of any reluctance, women should not be arrest between the times of sunset to sunrise without any female police officer.
- Bail should be granted as soon as possible in all cases of bail-able offences.
- Women should be kept in women ward only and minimum facilities should be arranged according to the necessities of women prisoners and their children.
- A woman should be examined only at her place of resistance. Police should not force her to investigate at police station unless her preference.
- All senior police officers should be worked to check the conditions of women prisoners under the custody.
- If, a woman is arrested by the police it should provide all necessary legal services. Police should also immediately inform the family and friends of the women arrestee.
- Data related to crime, arrest and disposal should be compiled sex-wise in all police stations.
- Officer should be punished by the magistrate on the violation of the above policies.

Recommendations of All India Committee on Jail Reforms:-

The committee also known as Justice Mullah Committee and the recommendations of this committee are as follows.

- Women prisoners should be kept in separate place with gender-specific requirements and proper toilet facility.
- For under-trials women prisoners bail should be granted liberally.
- All general duties related to women prisoners should be performed by women officers and staff only.
- Pregnant women should be provided proper nutrition diet and health care for mother and children both.
- Women prisoners should allowed following their cultural norms and values.
- Newly admitted women prisoners should be medically examined and pregnant women should be sent to local maternity hospitals for delivery.
- Prison should not be mentioned as birth place if a woman delivers a child in prison.
- Women prisoners should be permitted to maintain the contact with their families and friends.

- Children of the women prisoners should be kept in creche outside the prison.
- Children should preferably be kept with the family, relatives and friends of the women prisoners.
- The superintendent of the prison should take a monthly review and necessary actions regarding the condition of mother and children.

Implementation of Women Prisoners Rights in the Prison

In modern society, everyone only talks about the equality, fraternity, women empowerment, girls' education etc. but do not correctly implement in the society. It is very sad to have glimpse upon the pathetic and deplorable condition of women prisoners in the prison. It is such neglecting issue which need to have conscious attention for the overall development of the society. The constitution of India luckily provides some special rights and provisions for the women prisoners, but it is seemed that all these rights are only in the documents not implementing in the real time atmosphere and despite of having a number of direction from supreme court and high court, constitutional rights, human rights and recommendations of various committee, the condition of women is still found very neglecting, exploitative and pathetic that their basic human rights are violated under the four walls of the prison institution.

Under the *Prison Act 1894*, there is only one article for the women prisoners to have separated prison counterpart male prisoners but in India there are 31 women prisons specially designed according to their needs. Rest of the prisons are found neglecting this law and they kept male and female prisoners in the same jail/prison with male staff which leads to exploitation and sexual harassment of women.

Monika Kamnath stressed on the condition of women prisoners as an unaddressed entity that the study of women prisoners are found negligible in the society and laws which are made for the women prisoners are not followed in the contemporary period also. Having so many rights, women prisoners are neglecting and have serious condition in today's world itself. She also stated that the Indian Jail Committee (1919-20) has also focused on separation of women prisoners but it has no used even in the modern world and the reality is different than the laws and recommendations.

Problems of women prisoners

In reality, women prisoners are ignored in every aspect and they have to face lots of problems in prison. Here, the researcher listed below some of the major problems of women prisoners in India.

- **Overcrowding:-** Overcrowding is found as the root cause of every problem. According to the report of NCRB 2019, West Bengal has ranked the first state with the highest number of overcrowding (142.04%), followed by Maharashtra (138.55%) and Bihar (112.50%).
- **Lack of nutritional food availability:-** The problem of unavailability of nutritional food negatively affects the health of female prisoners.
- **Lack of medical services:-** Proper medical health care services with pre and post natal treatment are not provided to women in prison.
- **Lack of free legal aids:-** The Constitution of India has provided the right to free legal aid which is not implementing in the prison and women prisoners are unconscious about the right.
- **Lack of gender-specific needs:-** India's prison system is not able to meet the gendered specific requirements inside the prison and women find lack of necessities and privacy under the prison environment.
- **Lack of rehabilitation facilities:-** Prison system of India does not provide technical skills programs, education, vocational training and awareness of the rights for the rehabilitation of women prisoners.
- **Unsatisfactory living Conditions:-** Unsatisfactory living condition results in lack of basic necessities.
- **Physical Harassment:-** Prison is regulated by the patriarchy and women are often violated and harassed by the male prisoners, staffs as well as by police in the custody.
- **Lack of accommodation:-** The number of women prisoners are increasing but the structure of the prison remains the same as earlier which results in the problem of accommodation.
- **Lack of education:-** Being as a reformative institution, prison system of India fails to launch the educational programmes for the reformation and re-socialization of women prisoners.
- **Discriminated behaviour:-** Women are discriminated in prison system also because men prisoners are given more priority counterparts women.

- **Sexual abuse:-** Sexual assault of women prisoners shows exploitation and harassment in the prison instead of reformation. Asian Centre for Human Rights observed custodial rape as the worst form of sexual abuse in prison.
- **Shortage of female prison:-** There are only 15 states who have prisons exclusively for women prisoners and according to the latest report of NCRB(2019), there are only 31 women Jails in all over India which needs to be increased in number.
- **Shortage of female staff:-** As per record of NCRB-2019, till 31st December 2019, the actual strength of jail-staffs is 60,787 in which only 7,794 were women jail-staffs/officers including 254 medical women staff.

Conclusion:-

In India, crime rate of women is increasing. According to the report of NCRB 2019, Uttar Pradesh has the highest number of convicts and under-trial prisoners including women. They are from socially backward section of society, illiterate and have involved in the serious crime as murder and drugs. They face a lot of problems in the prison which is responsible for their miserable and pathetic condition in contemporary society. It will be correct to say that the rights of women prisoners, various recommendations of the committees, policies are only a kind of myth in front of all of us which do not have any relation with the reality, because if the rights, policies and recommendations have correct implementation in the society, the condition of women prisoners could be better. From the record of NCRB, the researcher found that it has been becoming a non-neglecting issue in the present time which needs to be resolved attentively.

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