



AN ANALYSIS OF THE LEGAL FRAMEWORK FOR THE RIGHTS OF THE FEMALE PRISONERS IN INDIA

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Abstract

Women's rights in India have always been a topic of debate, probably since the inception of mankind, considering females to be the weaker sex. However, setting aside the regular rights of women, in this paper, the researcher addressed the rights of women prisoners in India that are available under the legislation of India. The condition of women in prison in India is questionable given the fact that most female prisoners are awaiting trial or have been found guilty, which leads to a number of problems such as the overpopulation of prisons and the fact that, due to the lack of funds, the women are not supplied with adequate sanitary facilities. Likewise, because the number of inmates is higher, there is not an appropriate number of staff in the prison system, which results in a number of problems such as disputes and a lack of management in the prison. There have been instances of custodial rapes, and certain examples have shown that this is partially attributable to the inadequate security that exists within the correctional system. This piece of literature will examine the circumstances of female prisoners and identify areas that need improvement in order to correct any potential mistakes. It also highlights the difficulties confronted by female prisoners and the rights of prisoners enumerated in the Indian Constitution, which are enshrined through legal review under the heading "Prisoner's Rights." It also has good ideas and suggestions for improving the way the country's prisons are run, taking into account the fact that women inmates should be treated with care and shouldn't face any physical, mental, or emotional risks in jail.

Key Words: Legal Framework, Female Prisoners, Constitution of India, Jail, Fundamental Rights

1. INTRODUCTION

There are many studies done by a variety of outstanding authors that are included within the ambit of the International Perspective. These authors provided their viewpoints in regards to comprehending the nature of female criminality. The most important contributions were made by Lombroso with regard to the comprehension of the genetic aspects, Ferrero with regard to the knowledge of the psychosocial processes, and Thomas, and Pollak, who have considerably stressed the importance of grasping the female psychology. Thomas William and Christopher have conducted a substantial amount of sociological research on the topic of female criminality and have presented their findings. In the context of Indian society, an extremely low level of attention is placed on women and crime, both in terms of having a grasp of female criminology and having a very low

level of focus placed on precisely having an awareness of the challenges faced by female inmates. However, certain authors went to great lengths to comprehend the concept of female criminality.¹ In Indian history, Pachauri was the first person to conduct a study into the status of female prisoners, which mirrored the education and care of female inmates in Indian jails. Pachauri's findings can be found in the following sentence: Mridul Manyavar made an effort to comprehend the lifestyle choices of female criminals and recommended the treatment interventions that were utilized as the instrument for a renaissance in prisons in India. These suggestions had a significant effect on the advancement of the status of women in prisons and helped Mridul Manyavar achieve some of her goals. There is a dearth of literature, both in the form of articles that addresses the problems faced by female inmates. There are instances in which children are born, and there have been instances when women are incarcerated. In these instances, there is a requirement that the children, with reverence to such age criteria, should be managed to keep with one's mother for adequate treatment along with normal nourishment and growth of the child.² These are some of the reforms that have had a significant impact on the country and are properly considered in the Prison Manual. They have also had a positive effect.

1.1 Challenges That the Female Prisoners are Confronted With

The majority of the "female prisoners fall within the age group of 30-50 years, which comprised 50.5 percent of the percentage, accompanied by the age group of 18-30 years, which comprised 31.3 percent of the total of 1401 female prisoners. As per the records, in 2016, approximately 3 lakhs of women prisoners were arrested under the Indian Penal Code and Special Laws." The administration of prisons varies from country to country, despite the fact that the subject of imprisonment is considered a highly contentious matter in every nation on the face of the planet. At the time of a prisoner's admission, they should be given a copy of the state's manual that outlines procedures to deal with the rights and responsibilities of inmates. This manual is a standard operating procedure in every state.³ This section focuses on gaining an awareness of the unique challenges that women incarcerated in the United States experience, such as

- Inadequate housing conditions and overpopulation in prisons.
- A lack of fundamental infrastructure for maintaining hygiene and sanitation.
- Lackluster expenditures in the aspects of healthcare and welfare.
- Custodial rape is a problem that affects women who are incarcerated in India.

1.1.1 Inadequate Housing Conditions and Overpopulation In Prisons

This is among the most serious issues that both male and female inmates in Indian jails have to contend with at the same time. In correctional facilities, the National Prison Manual provides criteria that dictate the minimum and maximum dimensions of cells, as well as barracks. In a perfect world, a barracks could only hold twenty inmates, and each dormitory could only accommodate four to six inmates. The state of cleanliness and the health concerns have both worsened as a result of the increased population density, with even relatively mild diseases spreading rapidly. The situation is made significantly worse by the abnormally low quantity of toilets and restrooms. Additionally, prisoners who are compelled to live in such tight proximity with one another are subject to serious psychological repercussions brought on by overcrowding. Despite the fact that they have been found guilty and are awaiting sentencing, inmates are supposed to be housed in separate areas; yet, due to the severe lack of space, this is almost never achievable.

Young offenders, those between the ages of 18 and 21, must also be kept apart. Typically, these young offenders are found with more senior female criminals, which is what leads to them becoming habitual offenders. In addition, children of convicts are forced to live in unfavorable conditions due to the overcrowding in the nation's correctional facilities.

¹Jaishankar Karrunam, "Rights of Women Prisoners in India" 28 *International Journal of Criminology and Criminalistics* 2 (2021)

²Aishwarya Bhatia, Right of Women in Prison, INDIAN LAW PORTAL, available at: <https://indianlawportal.co.in/right-of-women-in-prison/> (Last visited on May 29, 2022)

³Jahanvi Sen, Plight of the Women Prisoner, the wire, available at: <https://thewire.in/women/india-women-prisoners-rights> (Last visited on May 30, 2022)

1.1.2 A Lack of Fundamental Infrastructure for Maintaining Hygiene and Sanitation

In the Indian prisons, there is a growing need to provide access to improved sanitation facilities and also access to necessary feminine hygiene products in India because the majority of female prisoners are between the ages of 18 and 50, which is the age range during which women begin to experience menstruation. This accounts for 81.8 percent of India's female prison population. It is alleged that in some jails, female inmates are required to pay for sanitary pads or are only given a predetermined quantity of them on a monthly basis, despite the fact that they should be supplied with suitable sanitary pads so that they can preserve their hygiene. Therefore, as a result of this, women are forced to turn to use unsanitary materials such as fabric, ash, bits of old mattresses, newspapers, and so on.⁴

1.1.3 Lackluster Expenditures in the Aspects of Healthcare and Welfare

Food, clothing, health costs, educational and vocational opportunities, welfare activities, and other types of programming each received an average of Rs.10,800 (about \$13) of the Rs.10,800 (approximately \$13) that was spent on each inmate by the Indian prison system in the year 2005. In contrast, the average yearly running cost per prison offender in the United States was \$22,650 in 2001. This was the case in the year 2001. In Indian prisons, the cost of food represents the single largest expense. During that year, states such as “West Bengal, Punjab, Madhya Pradesh, Uttar Pradesh, Bihar, and Delhi reported relatively higher spending on medical expenses. On the other hand, West Bengal, Bihar, and Karnataka reported relatively higher spending on activities related to vocational training and educational pursuits. It was revealed that the states of Tamil Nadu, Orissa, and Chhattisgarh have relatively larger spending on” social programs related to the prison system.

1.1.4 Custodial Rape Is a Problem That Affects Women Who Are Incarcerated In India

In the landmark judgement of "*State of Maharashtra vs. C.K.Jain*"⁵, the issue of custodial rape was brought into the picture. A rape occurred while the suspect was present in police custody. Considering the facts, the Supreme Court highlighted that in such cases, cooperation must not typically be pushed upon, unless the statement of the prosecutors was found to be faulty. In other words, unless the witness of the prosecutors was found to be false. Second, there should be the assumption that no woman in her right mind would fabricate a claim of rape simply to get attention. Thirdly, the plaintiff woman's delay in filing complaints against the police is not an insurmountable obstacle, and there are plausible explanations for why she waited so long to do so. The victim woman's complaint was lodged against the police. Regarding the terms of the sentencing, there was no scope for compassion; the punishment had to be an example for others to follow.

1.2 Rights Available Under the Prisoners Act and Other Legislation

The Prisoner Act of 1894 was India's first piece of law to regulate the country's incarceration system. In relation to the rights of prisoners, the subsequent subsections of the Prisoners Act, 1894 define the rights that are afforded to women who are serving sentences in Indian prisons:

The female inmates have the freedom to live in a location that is separate from that of the male inmates. According to the Prisoners Act of 1894,⁶ the female inmates of a prison that houses both male and female inmates are required to be housed in different buildings or separate sections. This is to ensure that the female inmates do not interact with the male inmates in any way, including not seeing them, not talking to them, or engaging in any kind of sexual activity with them. The living quarters and hygienic conditions for those who are incarcerated. Provisions must be made for the sheltering and safekeeping of an excessive number of inmates who are unable to be held in any one prison in a secure manner. A provision regarding the examination of detainees by authorized Medical Office personnel.⁷The NCCPR has urged that jailed women who are pregnant, unwell, or have dependent children be evaluated for imminent release on private bonds. The NCCPR's recommendations suggest that while the character of the crime can indeed be ignored, the condition of imprisoned women with little resources and small children may be taken into account.

In accordance with Section 303 of the Criminal Procedure Code of 1973⁸, inmates may be represented by the counsel of their choosing, and Section 304 of the same code stipulates that in

⁴Asha Meyatti, "Life of Prisoners in India" 8 *International Journal of Law and Justice* 11 (2013).

⁵AIR 1990 SC 658

⁶Prisoners Act of 1894, No. 3 (India)

⁷Jagmohan Mishra, *Human Rights Perspective on Detention and Prisoners* 46 (Akansha Publishing, 1st edn., 2014)

⁸The Code of Criminal Procedure, 1973 (Act 2 of 1974), S. 303

some instances, the state will pay for legal representation. In accordance with section 309(1) of the criminal procedure law, every investigation or trial must be conducted as quickly as practicable. Likewise, a simple sentence does not impair the right to religious freedom. "Section 54 of the Code of Criminal Procedure of 1973"⁹ stipulates that the body of an incarcerated person may be examined by a registered medical practitioner at the arrested person's request in cases of abuse and maltreatment in detention. However, most female convicts are unaware of this right. "Before sending a pregnant woman to prison, the relevant authorities should ensure that the prison in issue has the bare minimum facilities for childbirth and prenatal and postoperative care" for both mother and child. Female detainees will undergo gynecological examinations at the District Government Hospital.

1.3 judicial Rights Available to The Women's Rights Under the Constitution

The rights of Female Prisoners are acknowledged under the "Constitution of India. A convicted prisoner is not prohibited by his fundamental rights." This is because the Constitution of India recognizes the rights of prisoners. As a foundation for human rights, some of the convicts have been granted recognition of their fundamental rights. However, through judicial interpretation, these rights have been "recognized through precedents. For example, in the leading case of *T.V. Vatheesaran v. State of Tamil Nadu*,¹⁰ it was held that Articles 14, 19, and 21 are available to the prisoners." The Constitution of India does not explicitly mention the rights of prisoners, but these rights have been recognized through precedents.

"Article 14 of the Constitution of India" serves as a guide for the responsible authorities of India's prisons and the government that oversees them in determining the various classifications of inmates and the goals of their rehabilitation.

As a result of the judiciary's expertise in the art of interpreting, several rights of suspected, charged persons and convicts who are held in police custody have been uncovered in today's society. It gave a broad interpretation of the "fundamental right of life and personal liberty and as a result, a variety of rights have been brought under the purview of Article 21 of the Constitution."¹¹

The right to one's own life and the notion of individual liberty are the subjects of discussion in "Article 21 of the Constitution of India". In decisions, the "Supreme Court of India" came to the conclusion that the provisions of Section III of the Constitution of India require the broadest interpretation feasible. It was further decided that had the right to get legal aid.

- The right to a prompt and efficient trial.
- The privilege of speaking with a close friend, a member of the family, and a lawyer.
- The right to live a life befitting one's human dignity.
- The right to make a living.
- The right of those who are confined in protective homes.

1.3.1 Right To Free Legal Aid

In spite of the fact that article 21 of the constitution does not directly name any of these rights as fundamental rights, the courts have found a way to recognize them as the rights of prisoners. The right to free legal aid also includes the provision of financial assistance to a person who is involved in a matter involving a legal dispute. Free legal aid was included in the Constitution as one of the "Directive Principles of State Policy under Article 39A", thanks to the Constitution 42nd Amendment Act, which was passed in 1976. The Right to Legal Assistance is not guaranteed in any explicit fashion under the Indian Constitution. However, the judicial system has exhibited favoritism against low-income inmates, which are those who are incarcerated and cannot afford to hire attorneys of their own choosing due to financial constraints.

In the case of "*M.H. Hoskot v. the State of Maharashtra*",¹² the Supreme Court of India ruled that an accused person who cannot pay the fees of legal assistance caused by poverty or poorness had the right to be free legal aid at the cost of the state. This ruling was made as part of the Supreme Court's determination that fair, just, and satisfactory procedures are inherent in Article 21. After reading together "Articles 21 and 39-A, along with Article 142 and Section 304 of the Criminal

⁹The Code of Criminal Procedure, 1973 (Act 2 of 1974), S. 54

¹⁰*T.V. Vatheeswaran v. State Of Tamil Nadu*, AIR 1983 SC 361

¹¹ The Constitution of India, Art. 21

¹²*M.H. Hoskot v. the State of Maharashtra*, 1978 AIR 1548

Procedure Code, a bench of three judges from the Supreme Court (V.R. Krishna Iyer, D.A. Desai, and O. Chinnappa Reddy, JJ)” came to the conclusion that the government has a responsibility to offer legal assistance to those who have been accused of a crime.

1.3.2 Right to Conduct Interviews with Relatives and Lawyers

In “*Sheela Barse v. the State of Maharashtra*”,¹³ it was held by the apex court determined that interview questions of inmates become essential because, or else, the accurate data may not be gathered; however, such connectivity has got to be governed and controlled. In addition, prisoners have the entitlement to have interview sessions with friends and relatives

In “*Dharambir v. State of Uttar Pradesh*”,¹⁴ the apex court had ordered the State Government to permit relatives to visit the convicts, and the court also ordered the convicts to be allowed to contact their relatives at least once each year, albeit under guarded conditions.

1.3.3 Right to Be Protected Against Inhumane Treatment

The protection and promotion of human rights are essential to upholding human dignity. In various occasions, the apex court has treated seriously the inhumane prison conditions and has given appropriate directives to the necessary authorities in order to defend the rights of the inmates. This is to ensure that the prisoners are treated with dignity and respect. The Court made the observation that the conduct of a “human being that violates human dignity, imposes needless torture, and degrades the man to the status of a beast would undoubtedly be arbitrarily and could easily be challenged under Article 14 of the Convention on the Rights of the Child.”

In “*Christian Community Welfare Council of India vs. Government of Maharashtra*”¹⁵, “it was held by the Bombay High Court that women can only be detained in the company of lady constables. They should not be detained between the hours of twilight and morning. The court ordered the state government to establish a committee to develop a comprehensive plan for police oversight to human rights abuse” and to create specific clauses for female detainees. The committee is also tasked with making particular accommodations “for female detainees. This right plays a significant part in safeguarding female prisoners from any form of sexual harassment and” unpredicted forms of torture.

Conclusion

A democratic nation like India essentially needs three autonomous institutions – the legislative, the executive, and the judicial which are also known as the three organs of the government. To preserve the equilibrium between the allocations of powers, it not only aids the country to split the labor in order to increase effectiveness but also guarantees that a system of democratic accountability is maintained in a consistent manner. It is a well-established idea in both the law and management that responsibility and accountability must work in tandem in order to achieve better performance. This notion needs to likewise be applicable to those who are in charge of the prison system. It is intended that the jail serves as a facility that can be used for rehabilitative purposes. However, if the prisoners are not granted the rights that are essential to their status as human beings, then the entire purpose of the institution will be rendered meaningless. A few generations earlier, people who were incarcerated were frowned upon since it was believed that they had given up all of their rights. On the other hand, our contemporary society acknowledges the rights of those who are incarcerated. Therefore, a person's status as a non-person whose rights are dependent on the whims of the penal system and authorities does not change simply because they have been convicted of committing a crime. If the steps are not followed, it would not be feasible to meet the whole of the hour. It does not imply that life in jail should be made easier; rather, it means that conditions inside prisons should be improved by being made more humane and rational. The operation of the judiciary demonstrates that it has employed its authority in the most innovative manner possible and conceived of new techniques to ensure that inmates' human rights are protected in a way that is compliant with international standards. Therefore, merely putting words on paper has never been sufficient. It is time for laws to be put into effect and given the opportunity to work toward their intended goal of creating a harmonious and equitable society.

¹³Sheela Barse v. State of Maharashtra, AIR 1983 SC 378

¹⁴ AIR 1979 SC 1595

¹⁵1996(1) BOM CR 70

Recommendations

- The circumstance of women prisoners in jails was evaluated, and numerous suggestions were made, by a number of different committees. One of these committee members, the National Expert Committee on Women Prisoners, which is led by Justice Krishna Iyer and serves as chairperson, was one of the advisory boards that made these recommendations. The legal rights of women who are currently incarcerated should be made clear to them. Women constables should be the only ones allowed to perform searches on female detainees. As soon as female inmates are brought into the facility, a medical screening should be conducted on them by female medical professionals. Women who are incarcerated have to be let to maintain touch with their families and have visits from their attorneys, social workers, and representatives of nonprofit groups.
- Women who are incarcerated should have the option of keeping their children with them, subject to reasonable age restrictions. It is important that women have access to proper hygiene supplies like sanitary pads and additional clothing in order to preserve their health and ensure that their health is not compromised. Women should be given these items. It is imperative that women inmates have access to specialized prosecution officers who can present their cases.
- The inmates should be permitted to visit with their parents and other relatives, as this will aid in his rehabilitation and prepare them to face the outside world with courage once they are released, allowing them to cast aside the stigma that has been attached to them as a result of their precognition. The Prisons Act of India and the laws that were formed in accordance with it are designed with the intention of accomplishing this goal by providing inmates with occasional furloughs.
- The female inmates ought to be given more freedom, and they ought to be let to see their children on a more regular basis. In particular, the women who are victims of sexual assault should be shown compassion, and their children who were born outside of marriage should be given the opportunity to live a productive life in society. It was decided in "*Francis Coralie Mullin v. The Administrator of the Union Territory of Delhi*"¹⁶ that female inmates should also be permitted to meet their children more frequently and that the attitude toward this matter should be more lenient in the case of under-trial inmates.
- Only female law enforcement officers or corrections staff members should deal with female offenders. The concept of constructing distinct female prisons that would only house female inmates, on the other hand, does not appear to be feasible when the substantial costs associated with the procedure are taken into consideration.
- In the case of *R.D. Upadhyaya v. State of Andhra Pradesh and others*¹⁷, it was ruled that on a kid's birth certificate, the word jail should not be used to describe the location where the child was born if the mother was incarcerated.
- Under-trials, minors, repeat offenders, and first-time offenders should all be kept in separate areas for the course of the case. Similarly, ideological criminals who are not convicted of violence should also be kept apart and should not be placed in the same facilities in which other offenders are detained. This is to ensure that they do not incite further violence. It is both inhumane and illogical to assign mental chores to hardened and well-off inmates while also employing young boys to conduct mental errands for these inmates. The juvenile detainees and the adult inmates ought to be kept apart. A classification among the inmates is determined by the nature of the crime that was done, the offender's age, gender, character, and attributes, such as his academic background and likely reaction to therapy in jail.
- The legislation governing prisons ought to include a provision for the remedy of compensation for inmates who have been wrongfully held or who have been injured as a result of the indifferent or negligent actions of the staff working in prisons. It is heartening to learn that over the past few decades, the Supreme Court has demonstrated significant concern for the right of prisoners to receive justice and fair treatment. The court now mandates that prison officials take precautions to ensure that prisoners' fundamental rights are not violated and that they are not forced to live in conditions that are inhumane.

¹⁶ AIR 1981 SC 746

¹⁷ AIR 2006 SC 1946