

LEGAL RIGHTS OF FEMALE PRISONERS -DETAILED ANALYSIS OF PRISON LAWS IN INDIA AND ALL OTHER SPECIAL PROVISIONS

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ABSTRACT

A jail is an institution for the confinement of persons who have been remanded (held) in custody by a judicial authority or who have been deprived of their liberty following conviction for a crime. The lives of individuals held in jails are regularly in peril because depravity and abuse are frequently concealed behind closed doors. In the case of female convicts, the issues related to confinement are exacerbated more severely. In all this scenario, the jails being Male Dominated give rise to even more severe issues for the female prisoners who are a part of the same environment too. The issues faced by them usually go unhighlighted and even though there are designated rules for their safety and welfare, the executive fails to keep a check on their credibility on the ground. With the help of this Article, we will attempt to explain the numerous prisoner protections that are accessible while also learning about the unique protections designed specifically for female inmates. Understanding the numerous components of the right to life concerning the jail rights that are provided to a prisoner will be made much easier by reading this article. This article has primarily been divided into sub-parts where we start with the Introduction giving us a brief insight into how the mentality of people is shaped towards the prisoners in Jail. Further moving on we would get to know about the Laws related to Prisoners in general and then specifically only Female Prisoners. This article would also throw light on some days-based issues that women face in Prisons and how the Authorities have failed to provide them with the adequate amount of care they deserve. While reaching the climax of the article, you would get to know about some of the Author's views on the topic and his suggestions for improving the conditions of Women in prisons finally the Conclusion, where this article would be summed up, provides some detailed information regarding the statistics of previous years.

Keywords: Prison, Women, Rights, India, Jail, Executive.

INTRODUCTION

In early times, you could walk in the cities and hear people talking about a famously said proverb that “Crime is Male”. It was difficult to break this stereotype, evolve from a patriarchal society and realise that crime is something not defined by gender. In India, Women are popularly worshipped as deities or ‘devis’. No other nation cherishes its women more than India does in terms of their status in Indian society. The status of women in India has drastically evolved during the past 200 years. The activities of the bourgeoisie in the 17th and 18th centuries marginalised female political actors. As a result, female political activists began to distinguish themselves from male activists in the nineteenth century. There was a difference between men and women in this situation. Women have thus waged a continuous battle to have their inherent human rights recognised. With time, the nation evolved and realised that crime couldn’t be just restricted to gender and the constitution makers were farsighted enough to frame Prison laws for women too Daughters, mothers, and wives all have significant social functions. They raise their kids, take care of their families financially, and offer a range of additional services. Women nevertheless confront several challenges that prevent them from reaching their full potential, despite making equal contributions to the nation's success.

According to the Indian Constitution, women in prison are not given any special safeguards. Contrary to popular assumption, the Indian Constitution grants women the same rights as males. The Indian Constitution's framers spent a lot of time considering the rights of women and children. The Preamble, which refers to "the ideals and expectations of the Indian people," nicely reflects this. One of the most essential ideas is equality of rank and opportunity. The Indian Constitution guarantees equal legal rights for men and women in Articles 14¹ and 15², respectively.

Indian women in prison, however, still experience a variety of problems. India has also ratified several international agreements and human rights statutes that support the equality of women. In India, women have legal protection in terms of their personal, cultural, social, and economic safety. In India, the promotion of women's social, economic, and cultural rights (ESCR)³ as essential human rights has recently increased. The movement, which aims to

¹ Constitution of India art. 14

² Constitution of India art. 15

³ ESCR-Net, <https://www.escr-net.org/> (last visited March 16, 2023)

place women's issues in a broader human rights framework, sees women's issues as going beyond abuse and reproductive rights. The ESCR's objective includes addressing issues affecting women, such as housing, poverty, education, access to water, and unemployment.

RESEARCH METHODOLOGY

The doctrinal research approach has been used to conduct the anticipated study. In the legal sphere, "doctrinal research" is the arrangement, categorization, and analysis of the legal framework, case law, and legal structure to find fresh ideas through a thorough reading of the legal literature but without any field work. This paper is descriptive and elaborative.

LAWS RELATED TO THE GENERAL PRISONERS IN INDIA

When it comes to the treatment of prisoners in India or the basic conduct of the prisoners in jails all around India, India puts forward detailed and structural laws for the conduct of a healthy environment among all the people. Among all the countries which provide basic humanitarian amenities to their prisoners, India is believed to be one of the best among them. The Indian Penal Code and the Code of Criminal Procedure lay down the laws and procedures regarding the treatment of prisoners in India.

The Prisons Act, 1894⁴: It governs the management and administration of prisons in India. It provides for the classification of prisoners, their treatment, and their rights.

The Indian Penal Code, 1860⁵: It defines various offences and punishments for them. The Sections related to prisoners include commutation of the sentence of life imprisonment, period of detention undergone by the accused to be set off against the sentence of imprisonment, fractions of terms of punishment, etc.

The Probation of Offenders Act, 1958⁶: It provides for the release of offenders on probation of good conduct or after admonition. Section 4⁷ provides for the power of the court to release offenders on probation and the conditions for the same.

The Juvenile Justice (Care and Protection of Children) Act, 2015⁸: It provides for the care and protection of children in conflict with the law and their rehabilitation. Section 49⁹

⁴ Indian Prisons Act, 1894

⁵ Indian Penal Code, 1860

⁶ The Probation of Offenders Act, 1958

⁷ Probation of Offenders Act, 1958, §4

provides for the establishment of observation homes, special homes, and places of safety for the care and protection of children in conflict with the law.

The Rights of Prisoners: Article 21¹⁰ of The Constitution of India guarantees the right to life and personal liberty to all persons, including prisoners. The Other rights include the right to be treated humanely, the right to health and medical care, the right to food and clothing, the right to work and education, and the right to legal aid and representation.

THE CONDITION OF WOMEN IN PRISONS AND CHALLENGES FACED BY THEM

The idea of the right to life has been expanded to include extensive jail rights for inmates, but female inmates still confront many challenges. Prisoners have been divided into gender-specific prisoner groups and granted certain rights under the Prison Act and Prison Regulations, but the treatment of female convicts still needs special consideration. Beyond the age of six, women in prison are not permitted to frequently see their kids. If no one can care for them, their kids are placed in government homes. It has been observed that these kids frequently become prey to the local petty gangs. No male or girl under the age of fifteen will be obliged to attend any location other than their residence, according to Section 160 of the CrPC¹¹. This wouldn't apply to women or kids who are selected for questioning based on mere suspicion.

As the world recognizes the efforts and the physical anatomy of women, we realise that we must treat women differently than most of the other prisoners are treated. Following the IPC and other legislation, almost 3 lakh women were detained in 2016. The majority of them, or about 50.5 percent of the total percentage, were between the ages of 30 and 50, while the remainder, or about 31.3 percent of the total proportion, were between the ages of 18 and 30¹². We will talk about the issues that female criminals in jail confront in this section of the article. Bad living conditions are an issue over much of the nation. Some Major issues faced by Women Prisoners are as follows:

⁸ The Juvenile Justice (Care and Protection of Children) Act, 2015

⁹ Juvenile Justice (Care and Protection of Children) Act, 2015, § 49

¹⁰ Constitution of India art. 21

¹¹ Indian Code of Criminal Procedure, § 160 (1973)

¹² National Crime Records Bureau, Prison Statistics India–2016 (2017), <https://ncrb.gov.in/sites/default/files/PSI-2016-Chapter%201%26%202.pdf>

SANITATION ISSUES – The majority of female prisoners in India are from an age group that falls into the menstrual age group. Menstrual unhygienic is a catastrophe that can lead to severe private part infections as well as Hormonal Imbalances in females. Some negligible symptoms like delayed periods, rashes in private parts, Increased blood flow, etc. may seem to be pretty ordinary but they could be carrying serious issues with them which have to be kept a check regularly. Nonetheless, it has been observed that female convicts are either provided with a set quantity of sanitary pads each month or charged for such necessities. Hence, women are made to utilise materials that are exceedingly unsanitary and also have an impact on their health, such as newspapers and garments.

CUSTODIAL RAPE – While we talk about women's safety and empowerment, we tend to forget that Indian Government has still not been able to ensure the safety of women in such a place which is most probable to be surrounded by Police Officers. It hasn't been a new talk in the town, as every year there have been numerous cases of Sexual Harassment and Custodial rapes in different Jails across the nation. Women inmates have occasionally been subjected to in-custody torture. Custodial rape is one of the deadliest forms of torture inflicted on women by prison staff, according to the Asian Centre for Human Rights. Police in Mumbai attacked a female prisoner while she was being held there. Such cases shake the nation to its roots and it again becomes a tedious task for the Judiciary bodies to ensure women's safety at every nook and corner of the Indian prisons.

NO HEALTHCARE SERVICES OR MEDICAL AID – The basic issue faced in this domain is that reluctant spending on prisoners results in reduced spending in the healthcare sector. The prison authorities primarily focus just on the food, clothing and shelter requirements but fail to address the medical ailments faced by women and get them regularly checked by the Doctors. Women are prone to iron deficiency, anaemia and thyroid-related diseases which need regulated medication and check-ups. States like Karnataka, West Bengal, and Bihar reported higher spending on educational activities in 2005, whereas states like Delhi, UP, and MP reported higher spending on medical care compared to other things. Orissa and Tamil Nadu reported higher welfare expenditures.

ACCESSIBILITY TO FREE LEGAL AID: Legal aid is not available to inmates who are women. An improved legal aid system that is accessible to individuals who cannot afford it is

required. According to the NHRC's annual report for 2008–2009,¹³ Females one of the main issues facing prisoners is that they are not aware of the law. Illiterate women are unable to take use of the benefits provided to them because, according to a report by the Assistant Secretary-General of the United Nations Women, they are unaware of their rights and the legal system. One example of the advantages provided to the accused women is Section 437¹⁴ of the Criminal Procedure Code.

LAWS DEFINING THE PROVISIONS FOR WOMEN PRISONERS IN INDIA

The Indian legal system has provisions that protect the rights of female prisoners. The Indian Constitution and various criminal laws ensure that female prisoners are treated with dignity and respect. Different segments of some laws define the rules which designate specific provisions for female prisoners and ensure that uniformity is ensured all across the Nation.

The Indian Constitution - The Indian Constitution guarantees the right to life and personal liberty to every individual. Article 21¹⁵ of the Constitution states that "No person shall be deprived of his life or personal liberty except according to the procedure established by law." This provision applies to female prisoners as well.

The Prisons Act 1894¹⁶ – This Law is the primary law that governs the management of prisons in India. Section 4¹⁷ of the Act states that every prisoner should be treated humanely, and no prisoner should be subjected to cruel, inhuman, or degrading treatment.

Section 24¹⁸ of the Act provides that female prisoners should be kept in separate quarters from male prisoners. The Act also provides for the appointment of female staff in female quarters.

The Code of Criminal Procedure 1973¹⁹ – This Law provides for the rights of female prisoners during arrest, detention, and trial. Section 46(4)²⁰ of the CrPC states that a woman cannot be arrested after sunset and before sunrise, except in exceptional circumstances.

¹³ National Human Rights Commission, Annual Report 2008-09 (2009)

¹⁴ Indian Code of Criminal Procedure, § 437 (1973)

¹⁵ Constitution of India art. 14

¹⁶ Indian Prisons Act, 1894

¹⁷ Indian Prisons Act, 1894, § 4

¹⁸ Indian Prisons Act, 1894, § 24

¹⁹ Criminal Procedure Code, 1973

²⁰ Code of Criminal Procedure, § 46(4)

- Section 50(1)²¹ of the CrPC provides that a woman should be searched only by another woman.
- Section 52²² of the CrPC provides that a female accused should be examined by a female medical practitioner. The section also states that the examination should be conducted with strict regard for decency.
- Section 54²³ of the CrPC provides that a woman arrested should be searched by a woman police officer and if a woman police officer is not available, by any woman.

Prisons (Attendance in Courts) Act 1955²⁴ – Enacted in 1955, it is a special law that governs the management of women's prisons in India. The Act provides for the establishment of separate prisons for women. It also outlines the duties and responsibilities of the authorities in charge of these prisons, including the appointment of female staff in women's prisons. The Act emphasizes the need for female prisoners to be treated with dignity and respect and provides for their welfare during their period of detention. Section 4²⁵ of the Act provides that female prisoners should be treated with dignity and respect. The Act also provides for the appointment of female staff in women's prisons.

The Indian Penal Code 1860²⁶ - The Indian Penal Code, 1860 (IPC) is the primary criminal law in India. The IPC provides for the punishment of various offences, including those committed by female prisoners.

Section 354²⁷ of the IPC provides for the punishment of sexual harassment. Section 376²⁸ of the IPC provides for the punishment of rape.

The Juvenile Justice Act 2015²⁹ - The Juvenile Justice Act, 2015 provides for the protection of the rights of children in conflict with the law. The Act provides for the establishment of separate facilities for children in conflict with the law.

Section 31³⁰ of the Act provides that female children should be kept in separate quarters from male children.

²¹ Code of Criminal Procedure, § 50(1)

²² Code of Criminal Procedure, § 52

²³ Code of Criminal Procedure, § 54

²⁴ Prisons (Attendance in Courts) Act, 1955, ch. XXXI, § 1, 1955 (India)

²⁵ Prisons (Attendance in Courts) Act, 1955, § 4

²⁶ Indian Penal Code, 1860

²⁷ Indian Penal Code § 354

²⁸ Indian Penal Code § 376

²⁹ Juvenile Justice (Care and Protection of Children) Act, 2015

But merely stating these laws does no good to us. On the ground level, hundreds of cases of misconduct towards women have gone unnoticed or unreported due to the negligence of the Prison staff or the minimal flaws in these rules. The executive bodies have done no good either, as they have failed to sentence the criminals who were accused of heinous crimes against women in prisons. This move of theirs has caused mass agitation among the public.

SUGGESTIONS FROM THE AUTHOR'S SIDE

Improve access to legal representation: Female prisoners should have access to legal representation, particularly in cases related to their rights and welfare. The government could provide funding for legal aid programs that specifically cater to female prisoners, and ensure that female lawyers are available to represent them.

Enhance healthcare facilities: Prisons should provide adequate healthcare facilities, including gynaecological care, for female prisoners. The government could also establish specialized hospitals or clinics for female prisoners to address their specific health needs.

Address gender-specific needs: The government could introduce policies and programs that recognize and address the gender-specific needs of female prisoners. For example, female prisoners should be housed separately from male prisoners to ensure their safety and privacy.

Improve living conditions: Female prisoners should be provided with clean, safe, and hygienic living conditions. The government could also introduce policies to address overcrowding and improve sanitation in prisons.

Rehabilitation and reintegration: The government could provide education and vocational training programs to help female prisoners acquire skills that could enable them to earn a livelihood after their release. Additionally, the government could establish support networks and programs to facilitate the reintegration of female prisoners into society after their release.

- Only female officers should be permitted to interact with female inmates. I don't think it would be possible to build a separate women's police station. Already, the status of the police stations is appalling. In light of the enormous expense, I don't believe it would be a smart idea. In *RD Upadhyay v. State of Andhra Pradesh and others*³¹, the

³⁰ Juvenile Justice (Care and Protection of Children) Act, 2015, § 31

³¹ *R.D. Upadhyay v. State of Andhra Pradesh*, 11 SCC 221 (2006) (Sup. Ct. India)

court ruled that children born to a woman offender should not have the word "prison" listed as their place of birth on their birth certificates.

Increase oversight and accountability: The government could increase oversight and accountability mechanisms to ensure that prison staff and officials are held accountable for any abuses or violations of the rights of female prisoners. This could include establishing independent oversight bodies and providing training for prison staff on human rights and gender sensitivity.

These recommendations from my side are very general suggestions that any layman could give to look after the integrity of women in Indian prisons. However, to effectively implement these recommendations, it is important to engage with a wide range of stakeholders, including legal experts, policymakers, and civil society organizations, as well as female prisoners themselves.

CONCLUSION

There are increasingly more women behind bars in India. In the coming time, through social media and news channels, even the women in prisons will get to voice their struggle and their hardships and reach out to the public. With the government negligently ignoring the demands of the women in prison, the public and opposition are getting offended. Women are continuously facing different forms of issues every day and there hasn't been any help being provided to them. The dearth of female employees, subpar housing, sanitation, and hygiene facilities that fall short of expectations for physical and mental healthcare, subpar nutrition, and occasionally unsuitable educational opportunities are issues that aren't being taken care of lately. As a result, a lot of mothers who live with their kids are less likely to have access to high-quality educational, medical, and recreational possibilities. In addition to these problems, women in prison experience a disproportionate amount of abuse from both inmates and prison employees and have limited access to legal counsel and the outside world.

A prison is a world different from the outer one and needs suitable provisions. Though the makers of the Indian Constitution have tried their best to frame laws in such a way that promotes the condition of Indian women, the executive bodies have failed to get the work done on the ground level. It is essential to conduct independent inspections regularly to make sure the legislation is being followed. Prison officials and other employees who work with female inmates should be required to complete gender-responsive training. They would then

know the necessity to decide where to house the female prisoners in an informed manner. If they are to be treated equally, women from ethnic groups, women with impairments, and foreign nationals must all have their needs taken into account.

One more point to keep in mind is that the government needs to ensure the safety of women and avoid prisoners from getting bullied by public servants. Criminals are bound to be punished by the law, and the Law has to ensure that the public doesn't take the law into their hands and punish the criminals in a way that is unethical and illegal. To address inmate rights violations and allow prisoners a way to communicate with the authorities, a real and sensitive grievance redressal process should be implemented. The best way to address India's female criminal problem is to enhance jail infrastructure, offer better post-release care, and do all in our power to keep women out of traditional prison systems.

The Authorities need to come up with an innovative method to convey the voices of prisoners to the public outside. When women would be allowed to speak to the masses and tell them about their experiences, it would help in the promotion of human rights. Both animal and Human beings need four legs and two legs, respectively to move. To maintain the balance of power, the legislative, executive, and judicial branches must all be independent for Indian democracy to work effectively. This allows for a more effective work division and the maintenance of a checks and balances system. The ideas of accountability and responsibility are closely related in management and legal settings. Jail staff should be subject to this rule as well.

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The results of this study should be applied to a better understanding of the situation of women in prison. The reader will have a clearer notion of how the court system might be improved after reading this article. The prison system must be changed to be predominantly male-centric in jail and reform female inmates effectively. Legislators and administrators may find it useful to read this essay in context while making decisions about prison reform.

At last, as natives of this country, we need to realise that we have to change our perspective towards the people living in prisons. We need to realise that judging them based on one incident in their life, isn't right on our part. We have to give them due respect as citizens of this country and ensure that they live a life that is as resourceful and dignified as ours. At any point, making them feel inferior or any less than us would be very detrimental to society. It's high time we started working on our preconceived notions and broadening our mentality

towards them. Let's make this country a better place to live in, even for those who are in jails or prisons.

