

HUMAN RIGHTS OF WOMEN PRISONERS IN INDIA- A CRITICAL ANALYSIS

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“While women weep, as they do now, I’ll fight; while children go hungry, as they do now I’ll fight; while there is a poor lost girl upon the streets, while there remains one dark soul without the light of God, I’ll fight, I’ll fight to the very end!”

William Booth, British Methodist Preacher

I. Introduction

Human Rights are universal. Human beings are born equal in dignity and rights. These are moral claims which are inalienable and inherent in all individuals by virtue of their humanity alone, irrespective of caste, colour, creed, and place of birth, sex, cultural difference or any other consideration. These claims are articulated and formulated in what is today known as human rights. Human rights are moral principles or norms that describe certain standards of human behaviour, and are regularly protected as legal rights in municipal and international law. They are commonly understood as inalienable fundamental rights “to which a person is inherently entitled simply because she or he is a human being”, and which are “inherent in all human beings”. According to Justice Durga Das Basu, “Human rights are those minimal rights, which every individual must have against the State, or other public authority, by virtue of his being a ‘member of human family’ irrespective of any consideration.”² Even the prisoners

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² Dr. Durga Das Basu, Human Rights in Constitutional Law (Alongwith International Human Rights Documents) 8 (Wadhwa, Nagpur, 2003)

have human rights because a man on becoming a prisoner, whether convict or under trial, does not cease to be human being. If a person commits any crime, it does not mean that by committing a crime, he ceases to be a human being and that he can be deprived of those aspects of life which constitutes human dignity. For a prisoner all fundamental rights are an enforceable reality, though restricted by the fact of imprisonment.

The word “**prisoner**” means any person for the time being in a prison as a result of any requirement imposed by a court or otherwise that he be detained in legal custody. A prisoner also known as an inmate is anyone who is deprived of liberty against their will. This can be by confinement, captivity, or by forcible restraint.³

A prison is considered as a place in which individuals are physically confined and are deprived of personal freedom to a certain extent. Prison is an integral part of the criminal justice system of any country. Prisons may be meant exclusively for adults, children, females, convicted prisoners, under-trials, etc.

Article 21 of the Constitution of India guarantees the right to life and personal liberty and thereby prohibits any inhuman, cruel or degrading treatments to any person including a prisoner. Any violation of this right attracts the provisions of Article 14 of the Constitution which enshrines right to equality and equal protection of law. In addition to this, the question of cruelty to prisoners is also dealt with specifically by the Prison Act, 1894 and the Criminal Procedure Code. If any excesses are committed on a prisoner, the prison administration is

³Human Rights of Prisoners, *available at*: <http://www.legalindia.com/human-rights-of-prisoners/> (Last Visited on December 25, 2016)

responsible for that. It is beyond doubt that in the recent past the Indian judiciary, particularly the Hon'ble Supreme Court has been very vigilant against encroachments upon the human rights of the prisoners. The Courts have recently viewed third degree methods and custodial deaths in police custody as a serious violation of human rights and constitutional provision of right to life and liberty. In the comprehension of the Hon'ble Supreme Court the right to life and liberty includes right to human dignity, right to privacy, right to speedy trial, right to free legal aid, right to be prisoner to be treated with dignity and humanity, right to bail, right to compensate for custodial death, right of workers to fair wage and human conditions of work, right to security, right to education and right to health environment.

The main human rights issue of under trials is delay in trial of cases. Right to speedy trial is a right to life and personal liberty of a prisoner guaranteed under Article 21 of the Constitution of India, which ensures just, fair and reasonable procedure. However, eighty present prisoners are under trials, and some of them are not released even after granting bail as they are unable to furnish surety bonds due to lack of money or verification of addresses, as some prisoners don't have houses. The speedy trial of offences is one of the basic objectives of the criminal justice delivery system. Once the cognizance of the accusation is taken by the court then the trial has to be conducted expeditiously so as to punish the guilty and to absolve the innocent.⁴

The majority of women offenders convicted for homicidal activities were poorly adjusted to the family settings. In many cases, their offence directly stemmed from their husband and in-law's cruelty, rejection and humiliation. Husband's illicit affairs with other women, alcohol and

⁴Ibid.

substance use, domestic violence contributed significantly in motivating married women to resort to crimes depicts.

II. Concept of Prisons

A prison also known as gaol or jail is a place in which people are physically confined and usually deprived of a range of personal freedoms.

The Online Oxford English dictionary defines prison as, “A building to which people are legally committed as a punishment for a crime or while awaiting trial.”⁵

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Prison is a State subject under Entry 4, List-II of the Seventh Schedule to the Constitution of India. The management and administration of Prisons falls exclusively in the domain of the State Governments and is governed by the Prisons Act, 1894 and the Prison Manuals of the respective State Governments. Thus, the States have the primary role, responsibility and authority to change the prison laws, rules and regulations. And the Central government provides assistance to the States to improve security in prisons, repair and renovation of old prisons, medical facilities, development of borstal schools, facilities to women offenders, vocational training, modernization of prison

⁵Online Oxford English Dictionary, *available at:* <http://Oxforddictionaries.com/definitions/english/prison?q=prison>, (Last Visited on December 25, 2016)

industries, training to prison personnel, and for the creation of high security enclosure.⁶

III. Importance of Prisons

In every democratic society, prison has a unique role as a formal agency of the criminal justice system. The purpose of imprisonment as a punishment is plain enough, the person who has committed a wrong must suffer in return. The state through the prison is entitled if not morally obligated to hurt the individual who has broken the criminal law. Since a crime is by definition a wrong committed against the state. Imprisonment should be punishment, not only by depriving the individual of his liberty, but by imposing a kind of painful condition under which the prisoner must live within the walls. Today prisons serve three main purposes, which may be described as custodial, coercive and correctional. A prison as a place of correction historically is developing and new in conception.⁷

IV. Problems Faced by Women Prisoners

Although imprisonment adversely affects both men and women, it tends to impact women more adversely. This is on account of the fact that women differ from men socially, psychologically and physically. As such, women in prison also differ from their male counterparts.

Life in prison is a hard one, living with several other criminals is not what someone can be comfortable with. Crowding prisons, lack of basic amenities and of course attitude of Indian police towards

⁶ Prisons in India, *available at:* http://en.wikipedia.org/wiki/Prisons_in_India (Last Visited on December 25, 2016)

⁷ Prisons, *available at:* <http://prisons.pdf> (Last Visited on December 25, 2016)

prisoners can be well guessed and without access to proper and free legal services prisoners keep on rotting in jails.⁸

The followings are the major issues or problems that faced by women prisoners:

1. Prison capacity,
2. Lack of necessity,
3. Custodial torture, and
4. Inaccessibility of legal services.

V. Human Rights of Women Prisoners

Women prisoners have many rights. They cannot be debarred from their basic human rights and freedoms guaranteed by the Constitution of India, The Hon'ble Court has a continuing responsibility to ensure that the constitutional purpose of the deprivation is not defeated by the prison administration. There are a number of rights of women prisoners which are provided by different Committees appointed for Prison Reforms and also by United Nations. These rights must be incorporated in the Prison Act, 1894.

Our Constitution, i.e., Constitution of India doesn't hold specific rights for women prisoners but it guarantees a number of legal rights and remedies which may be used by women. Constitution makers knew the hardship faced by women and children and accordingly made various articles to protect and promote their welfare like;

(i) Article 14 of the Constitution of India provides equal protection of laws to the women in India.

⁸Supra Note 5

(ii) **Article 15** of the Constitution prohibits the discrimination on grounds of sex.

(iii) **Part IV** of the Constitution of India sets out the Directive Principles of State Policy which give direction. **Article 39-A** of the Constitution⁹ guarantees equal justice and free legal aid. The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.¹⁰

The different types of Human Rights, Constitutional Rights and Statutory Rights of Women Prisoners are discussed in the following:

V.I. Right to Free Legal Aid

Women prisoners have the right to free legal aid. 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.

The Constitution (42nd Amendment) Act, 1976 has included Free Legal Aid as one of the Directive Principles of State Policy under Article 39-A in the Constitution of India. This is the most important and direct Article of the Constitution which speaks of Free Legal Aid. Though, this Article place in Part-IV of the Constitution as one of the Directive Principle of State Policy and though this Article is not

⁹Dr. J. N. Pandey, Constitutional Law of India 375 (Central Law Agency, Allahabad, 2005)

¹⁰Ibid.

enforceable by courts, the principle laid down therein is fundamental in the governance of the country.

In the case of **M.H. Hoskot vs. State of Maharashtra**¹¹, the Hon'ble 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 reason of poverty, indigence or incommunicado situation was part of fair, just and reasonable procedures implicit in Articles 21 and 39-A, along with Article 142 of the Constitution of India and Section 304 of the Code of Criminal Procedure (Cr. P.C.).

In the case of **Khatri (I) vs. State of Bihar**¹², the Hon'ble Supreme Court held that the state is under Constitutional mandate to provide Free Legal Aid to an accused person who is unable to secure legal services on account of indigence and whatever is necessary for this purpose has to be done by the state.

V. II. Right to Speedy Trial

Women prisoners have the right to speedy trial. There is an undoubted right of speedy trial of under trial prisoners. The Hon'ble Supreme Court of India in the case of **Hussainara Khaton vs. Home Secretary, State of Bihar**¹³, held that speedy trial is a fundamental right implicit in the guarantee of life and personal liberty enshrined in Article 21 of the Constitution of India.

In the case of **A. R. Antulay vs. R. S. Nayak**¹⁴, the Hon'ble Supreme Court has laid down following propositions which will go a long way to protect the Human Rights of the prisoners. In the instant case the Apex Court held that the right to speedy trial flowing from Article 21

¹¹AIR 1978 SC 1548

¹² AIR 1981 SC 928

¹³ AIR 1979 SC 1369

¹⁴(1992) 1 SCC 225

of the Constitution is available to accused at all stages like investigation, inquiry, trial, appeal, revision and retrial.

Further in the case of **Anil Rai vs. State of Bihar**¹⁵, the Hon'ble Supreme Court observed that any inordinate, unexplained and negligent delay in pronouncing the judgement by the Hon'ble High Court infringed the right under Article 21 of the Constitution of India.

V. III. Rights against Hand Cuffing

An arrested person or under-trial prisoner, both male and female should not be subjected to handcuffing in the absence of justifying circumstances. When the accused are found to be educated persons, selflessly devoting their service to public cause, not having tendency to escape and tried and convicted for bailable offence, there is no reason for handcuffing them while taking them from prison to court.

In the case of **Prem Shankar Shukla vs. Delhi Administration**¹⁶, the question raised was whether hand-cuffing is constitutionally valid or not? The Hon'ble Supreme Court discussed in depth the hand cuffing jurisprudence. It is the case placed before the Hon'ble Court by way of Public Interest Litigation (PIL) urging the court to pronounce upon the Constitution validity of the "hand cuffing culture" in the light of Article 21 of the Constitution. The Hon'ble Supreme Court held that hand cuffing is prima facie inhuman and therefore, unreasonable, is over harsh and at the first flush, arbitrary. The Supreme Court found the practice of using handcuffs and fetters on prisoners violating the guarantee of basic human dignity, which is part of the constitutional culture in India and thus not standing the test of Equality before Law

¹⁵AIR 2001 SC 3173

¹⁶(1980) 3 SCC 526

(Article 14), Fundamental Freedoms (Article 19) and the Right to Life and Personal Liberty (Article 21).

V. IV. Rights against Inhuman Treatment

Human Rights are part and parcel of Human Dignity. The Hon'ble Supreme Court of India in various cases has taken a serious note of the inhuman treatment on prisoners and has issued appropriate directions to prison and police authorities for safeguarding the rights of the prisoners, both male and female and persons in police lock-up.

Torture is regarded by the police or investigating agency as normal practice to check information regarding crime, the accomplice, extract confession. Police officers who are supposed to be the protector of civil liberties of citizens themselves violate precious rights of citizens. But torture of a human being by another human is essentially an instrument to impose the will of the strong over the weak. Torture is a wound in the soul so painful that sometimes you can almost touch it, but it is also so intangible that there is no way to heal it

In the case of **Raghubir Singh vs. State of Bihar**¹⁷, the Hon'ble Supreme Court expressed its anguish over police torture by upholding the life sentence awarded to a police officer responsible for the death of a suspect due to torture in a police lock-up.

In the case of **Kishore Singh vs. State of Rajasthan**¹⁸, the Hon'ble Supreme Court held that the use of third degree method by police is violation of Article 21 of the Constitution of India.

In the case of **D. K. Basu vs. State of West Bengal**¹⁹, when dealing the case, the Hon'ble Supreme Court specifically concentrated on the

¹⁷ (1986) 4 SCC 481

¹⁸ AIR 1981 SC 625

problem of custodial torture and issued a number of directions to eradicate this evil, for better protection and promotion of Human Rights. In the instant case the Hon'ble Supreme Court found custodial torture “**a naked violation of human dignity**” and ruled that law does not permit the use of third degree methods or torture on an accused person since “actions of the State must be right, just and fair, torture for extracting any kind of confession would neither be right nor just nor fair”.

V. V. Rights against Solitary Confinement and Bar Fetters

Solitary Confinement in a general sense means the separate confinement of a prisoner, with only occasional access of any other person, and that too only at the discretion of the jail authorities. In strict sense it means the complete isolation of a prisoner from all human society.

In the case of **Sunil Batra (I) vs. Delhi Administration**²⁰, the Hon'ble Supreme Court observed that continuously keeping a prisoner in fetters day and night reduced the prisoner from human being to an animal and such treatment was so cruel and unusual that the use of bar fetters was against the spirit of the Constitution of India.

V. VI. Right to have Interaction with Friends, Relatives and Lawyers

The horizon of human rights is expanding. Prisoner's rights have been recognized not only to protect them from physical discomfort or torture in the prison but also to save them from mental torture.

¹⁹ AIR 1997 SC 619

²⁰ AIR 1978 SC 1675

In the case of **Sunil Batra (II) vs. Delhi Administration**²¹, the Hon'ble Supreme Court recognized the right of the prisoners to be visited by their friends and relatives. The court favoured their visits but subject to search and discipline and other security criteria. The Hon'ble Court observed that visits to prisoners by family and friends are a solace in insulation, and only a dehumanized system can derive vicarious delight in depriving prison inmates of this humane amenity.

In the case of **Prabha Dutt vs. Union of India**²², the Supreme Court held that it would be a part of fundamental freedom of the press to interview prisoners sentenced to death.

In the case of **Dharambir vs. State of Uttar Pradesh**²³, the Hon'ble Supreme 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.

In the case of **Hussainara Khatoon vs. Home Secretary, Bihar**²⁴, the Hon'ble Supreme Court held that it is the Constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation, to have free legal services provided to him by the state and the state is under Constitutional duty to provide a lawyer to such person if the needs of justice so require. If free legal services are not provided the trial itself may be vitiated as contravening the Article 21 of the Constitution of India. The Hon'ble Supreme Court expressed anguish at the “**travesty of justice**” on account of under trial prisoners spending extended time in custody due to unrealistically

²¹AIR 1980 SC 1579

²²AIR 1982 SC 6

²³AIR 1979 SC 1595

²⁴AIR 1979 SC 1369

excessive conditions of bail imposed by the magistracy or the police and issued requisite corrective guidelines, holding that “the procedure established by law” for depriving a person of life or personal liberty (Article 21) also should be “reasonable, fair and just”.

In the case of **Sheela Barse vs. State of Maharashtra**²⁵, the Hon’ble Supreme 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 the case of **Jogindar Kumar vs. State of Uttar Pradesh**²⁶, the Hon’ble Supreme Court opined that the horizon of Human Rights is expanding and at the same time, the crime rate is also increasing and the court has been receiving complaints about violation of Human Rights because of indiscriminate arrests. The court observed that there is the right to have someone informed.

In the case of **Francis Coralie Mullin vs. The Administrator, Union Territory of Delhi & others**²⁷, the Hon’ble Supreme Court ruled that the right to life and liberty included his right to live with human dignity and therefore a detainee would be entitled to have interviews with family members, friends and lawyers without severe restrictions.

V. VII. Right to Expression

In the case of **State of Maharashtra vs. Prabhakar Pandurang**²⁸, the Hon’ble Supreme Court held that the right to personal liberty includes the right to write a book and get it published and when this right was exercised by a detenu its denial without the authority of law violated Article 21 of the Constitution of India.

²⁵ (1983) 2 SCC 96

²⁶ (1994) 4 SCC 260

²⁷ (1981) 1 SCC 608

²⁸ AIR 1986 SC 424

In the case of **R. Rajagopal alias R. R. Gopal and Another vs. State of Tamil Nadu and Others**²⁹, the petition raises a question concerning the freedom of press vis-a-vis the right to privacy of the citizens of this country. It also raises the question as to the parameters of the right of the press to criticize and comment on the acts and conduct of public officials.

V.VIII. Right to Live Separately from Male Prisoners

The female prisoners have the right to live separate from the male prisoners. **Section 27(1)** of the Prison 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; this right is also provided by Rule 8(a) of Standard Minimum Rules for the Treatment of Prisoners.³⁰

V. IX. Right to Food, Shelter and Other Medical Facilities

All the prisoners have the 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.

V. X. Pre-natal and Post-natal Care for Pregnant Mothers sent to prisons

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 pre- natal and post-

²⁹(1994) 6 SCC 632, Popularly known as "Auto Shankar Case".

³⁰Section 27 (1) of The Prison Act, 1894

natal care for both, the mother and the child. Gynaecological examination of female prisoners shall be performed in the District Government Hospital.³¹

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.³² **Rule 23(2)** provides that 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.³³

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 state 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.³⁴

VI. Conclusion and Recommendations

Women either in police custody or in jail are in quite horrible and dreadful situation. It is hard to measure their physical and mental state as they do not easily discuss their problems with anyone. Women prisoners who live with their children or have children outside the jail

³¹ R.D. Upadhyay vs. State of A.P. & Ors., AIR 2006 SC 1946

³² Woman and Child Prisoners, *available at*:<http://Woman & Child Prisoners\Prison Law and Regulations Indian Law.html> (Last Visited on December 25, 2016)

³³ Ibid.

³⁴ Woman and Child Prisoners, *available at*:<http://Woman & Child Prisoners\Rights of Prisoners in India.html> (Last Visited on December 25, 2016)

confront more psychological issues than others. More than 60% of women prisoners are mothers of little children. 3% of women's children are living in jail with them. Most prisons are overcrowded and few provide rehabilitative services to prisoners. Majority of female prisoners are illiterate and unaware of their legal rights. These female prisoners accused of many crimes actually committed by their male partners are forced to live behind bars.

Jails are always considered as correctional facilities for the criminals. A prison was defined as a place properly arranged and equipped for the reception of prisoners who by legal process are committed to it for safe custody while awaiting trial or punishment. Though the types of jails were changed according to time they always existed for the reformation of criminals. Early punishments for the women criminals were harsh and brutal. These punishments were not proved to be helpful for reducing the crimes and correction of female prisoners.

But as ill luck would have it there are only nineteen (19) women jails in India. Because of shortage of women jails, women inmates are forced to be lodged in the male-dominated Central Jails and District Jails. There are a number of statutes, enactments and guidelines which advocate for separate institutions for the women inmates.

Judiciary in every country has an obligation and a Constitutional role to protect Human Rights of citizens. As per the mandate of the Constitution of India, this function is assigned to the superior judiciary namely the Hon'ble Supreme Court of India and the Hon'ble High Courts.

However, women jails have not been constructed to accommodate all the women prisoners of India. The Hon'ble Punjab and Haryana High

Court has also directed to take appropriate measure to lodge all women prisoners in separate institutions other than common jails³⁵.

Women prisoners of India need serious attention of not only Government but other Non-governmental Organizations too. Discriminatory laws should be modified or eradicated to improve the social status of women in India. Criminal Justice system also needs to accelerate. Women in prison wait many years for justice, fear of future and helplessness make them more vulnerable, as according to British Politician, William Gladstone (1809 - 1898) said that '**Justice delayed is Justice denied**'. This process requires legislature will to change and implement laws, few recommendations are suggested:

Recommendations:

- i. There should not be any discrimination between male and female inmates inside the jail. They should be treated equally for all types of facility available for prisoners.
- ii. Facilities to be upgraded or changed to take care of the needs of the women with disability.
- iii. Livelihood awareness programme should be organized for women jail inmates.
- iv. Provision for lady teacher to impart adult education inside the jail for female prisoners.
- v. Promote continuation of formal education and facilitate such interests.
- vi. Provision for lady doctor visit.

³⁵ H.C. Arora vs. State of Punjab and others, C.W.P. No. 8108 of 2006 decided on May 24, 2006.

- vii.** Special facility like separate room for women prisoners during meeting with family members or relatives and acquaintances.
- viii.** Jail manual be amended regarding the food timing of the inmates.
- ix.** Provision of beds for women prisoners.
- x.** Provisions of variety of food and snacks.
- xi.** Enhanced provision for sanitary napkins.
- xii.** Facilities for children of women inmates.
- xiii.** Creche for children of women inmates inside female ward is required in every jail.
- xiv.** Regarding pregnant and nursing women inmates.
- xv.** Need of monitoring and evaluation in legal aid support facility.
- xvi.** The prisoners should know their updated case status.
- xvii.** Legal Aid system should be strengthened in all jails. More para legal volunteers for each jail along with a panel of lawyers.
- xviii.** Need of training for female jail staff on women specific laws, health and hygiene specifically on reproductive health.
- xix.** All jail staff should be oriented towards gender sensitivity.