

Women Prisoners and their Rights in India: A Critical Legal Analysis

Sinipriya A

School of Excellence in Law, Taramani, Chennai
The Tamilnadu Dr. Ambedkar Law University, Chennai

Abstract: *Since ancient times, women is most neglected and vulnerable group of society. In ancient and medieval era, the concept of prison not applicable to women offenders. During British colonial era in India, Britishers created the system of prison and also made some provisions for women prisoner. If woman is prisoner then her total life with the life of next generation effects on the social structure. So, their rights in prisons needs to be protected. The concept of prison is the product of Positive School of Criminology. Positivist consider that purpose of punishment is to bring change among the life of offender. Hence imprisonment is widely accepted as form of punishment. Hence, number of initiatives regarding prisons taken by national and international authorities. Institution must take cognizance of women prisoner not to become victim of authority¹. Because life in jail is life in hail. The aim of this article is to elaborate the rights of women prisoner at national and international level. Their rights specially needs to be considered and implemented by the concern authorities.*

Keywords: Women Prisoner, Rights, Conventions, Laws and Cases.

I. INTRODUCTION

Woman is most vulnerable person and deprived on all fronts of the society. Women differs from men physically, socially and also psychologically. The life of woman inside prison and outside prison are one and the same. Life in prison is so hard because living with other criminals may adversely effects on the behavior of first offender. As stated by Nelson Mandela about prison that no one truly knows a nation until one has been inside its jails². Though with the passage of time, modern corrective approaches applied by prison authorities, but still we have to wait a lot for necessary changes. Some of the committees, commissions etc. really gives strong guidelines published in U.K. under the chairmanship of Baroness Jean Corston, recommended many things for the holistic, women-centered development of women in the criminal justice system. In India also same kind of a report⁴ on improving the condition of Women inmates in prisons published by National Commission for Women. Woman prisoner, an inmate, confined or forcefully restrained by authority. In literal sense, a prisoner is a person in prison and a prison is a jail or a place where prisoners are detained for permanent or temporary period. In short prisoner is a person deprived of liberty against his will³. Prison system is a part of Criminal Justice System and administrative network of Government to manage accused and convicted criminals. Prison system was not much exercised in ancient and medieval era. Because in ancient time, Retributive theory and deterrent theory of punishment was applicable and authorities (Rulers/Kings) only believe on speedy justice. If there is prison then such prison is cage for treatment of animals not humans. Hence, Court must ensure about the protection of rights of prisoners inside the jails. Their freedom inside the jail is sign of reformatory theory of punishment. The mention of women prison rarely found in ancient or medieval period of time. During British Colonial Rule in India, Indian prisons shaped their role and hence imprisonment is widely accepted as punishment. In

¹Rajaram Garud (Research Scholar, NMU, Jalgaon & Faculty, SOL, ADYPU, Pune, Maharashtra)

²Paranjape NV. Criminology & Penology with Victimology, Central Law Publications; Sixteenth Edition; 2014, p 479

³Pg. 8, World Female Imprisonment ListFIFTH Edition)
https://www.prisonstudies.org/sites/default/files/resources/downloads/world_female_imprisonment_list_5th_edition.pdf



1919, the Committee firstly gives remarks about the prison that the aim of prison administration is restoration of criminals. In the same report women inmates also considered as separate entities and some suggestive measures given for prison reforms. Modern democratic countries started viewing prisons as correctional institutions and bears responsibility to make reform among offenders. In India, Prison is a subject of Entry-4 List II (State List) mentioned under Seventh Schedule of Indian Constitution. Also Section-59 (1) of Prison Act, 1894 which empowers State government to make rules regarding prison. As per data collected in 2022 and published as World Female Imprisonment List (Fifth Edition), number of Indian female prisoners increasing year to year⁴. Such increasing number of women prisoners is alarm to all modern welfare democratic country. It is also hurdle in the development of country. Each member State must take cognizance of not to violate rights of person.

Indian Legislative framework on rights of woman prisoner In India,

THE CONSTITUTION OF INDIA, 1950 Specific guarantees to women as prisoner not provided under The Constitution of India. The Constitution of India is fundamental law of the country which specifically protects the human rights as Indian citizens. Preamble of Indian Constitution itself guarantees justice, equality, liberty to each and every Indian. Protection of life and maintaining the dignity of the individual also part of the Constitution of India. Through Article 14 and Article-15, The Constitution of India guaranteed equality of status and opportunity and prohibits discrimination on the grounds of sex. Article-14 provides equal protection of laws to women in India and Article 15 prohibits discrimination on grounds of sex. It is Article-15 (3) of the Constitution which allows the State to make special provisions for women.⁵ Hence, it is obligation on the State to provide adequate facilities and to women prisoners by making special provisions. Article-21 guarantees the right to life and protects the human dignity of all citizens. This article also ensures due process must be followed by law during deprivation of life a person. Therefore, it protects the rights of women prisoners and ensures that they are not subjected to arbitrary detention or mistreatment. Constitution of India also provides and guarantees free legal aid under its directive principles of state policy

THE PRISON ACT, 1894

The rights of prisoners mentioned under the Prison Act, 1894. This Act of 1894 is the first legislation in India which regulates all subject matters of prison. The main focus behind enactment of this Act is of reformation of prisoners and of regulation of their rights. The rights like as separation of women prisoners from men prisoners, medical examination of women prisoner carried out of lady medical officer only, suitable employment of women prisoner during day time etc. mentioned under different provisions of the Act of 1894.

THE PROTECTION OF HUMAN RIGHTS ACT, OF 1993

The Human Rights Act also important statutes enacted in 1993 with specific object of protection of Human rights.⁶ National Human Rights Commission works for the protection of women as most disadvantaged group of society⁷. Under the chairmanship of NHRC, Justice Verma called meeting to make prison reforms effective. NHRC issued guidelines to prison authorities, high courts as well as to state governments to pay attention for promotion and protection of human rights of prisoners, from its inception.

⁴In 1983 Inter-State conference admitted the Model Prison Manual, 1959 but it was not implemented by number of States.

⁵See Article 14 & 15 of the Constitution of India.

⁶See Article 3 of the Universal Declaration of Human Rights.

⁷See Article 12(2) Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1993.



THE NATIONAL COMMISSION FOR WOMEN ACT, 1990

The National Commission for Women is a statutory body set up in 1992 with the object to review the constitutional and legal safeguards for women. Its object is also to recommend remedial legislative measures. In short the Commission initiated various steps for improvement the status of women. Recently i.e. in 2018, a report was submitted by National Commission for Women (NCW) suggesting certain recommendations for improvement in the status of women prisoners.⁸

NEW CRIMINAL LAWS, 2023 AND WOMEN PRISONERS

Recently, Central Government enacted new criminal laws and they were effected from date of first of July 2024. Now, Bharatiya Nyaya Sanhita, 2023 (Previously Indian Penal Code, 1860) provides separate i.e. chapter-iv for offences against women and children. When we say it's Bharatiya Nyay Sanhita then the statute also must be in the form to give justice to Indian Citizen. Few provisions under specific headings as offences against women and children were added in BNS, 2023. Also new provisions which were added and amended in old criminal laws (Provisions added in post Nirbhaya period and added due to recommendations made by Justice Verma Committee appointed for revival of criminal laws) kept as it is in BNSS, BNS AND BSA statutes.

MODEL PRISONS AND CORRECTIONAL SERVICES ACT, 2023

Model Prisons and Correctional Services Act, 2023 in short Model Prisons Act, 2023 enacted by Ministry of Home Affairs of Government of India with basic purpose of safe custody, correction, reformation and rehabilitation of prisoners as law abiding citizens, and management of prisons and correctional services of the prisons in the State/Union Territories.⁹ Chapter- X with the title of Prison regimen for women prisoners added in Section 30 to Section 33 of the said Act of 2023. In the preliminary part of the Act Government clears that Prison and it's management is related with State Government but to remove the irregularities from outdated colonial laws, new uniform law is prepared in 2023. In the categorization of prisoner, women prisoners segregated on the basis of natural categorization. Women prisoners with children is subcategory added and segregated under this Model Prisons Act, 2023. Women prisoners are allowed to kept their children upto the age of six.¹⁰ But after six, who is guardian of that children was not specifically mentioned. Though, Central Government prepared this statute of 2023 which is related with correctional ideology but still its actual execution depends upon the will power of State Government. A provision has been made for the change in the designation of 'Inspector general' in 'Director General' in Model Prison Act, 2023. There is news from Maharashtra that State cabinet of Maharashtra has approved the introduction of this Bill in the Maharashtra Legislature. State governments tries to take initiatives of adaptation of rules framed in Model Prison Act, 2023. Generally, following are the prisoners' rights provided in Indian Statutes: a. Separation of prisoners b. Accommodation and sanitary conditions. c. Safety and Security from fellow prisoners d. Health check up e. Punishment f. Social and cultural rights

Challenges faced by women prisoner in Prison in India

Female inmates may have a variety of difficulties while detained. These problems frequently result from a confluence of systemic, structural, and societal issues. In Indian jails, some of the issues that female inmates may experience include:

- a. Insufficient living conditions: a lack of personal space, and increasing stress among inmates are all results of overcrowding in many Indian prisons. Other issues within the jail system may be made worse by overcrowding.
- b. Limited Access to Quality Healthcare: Female convicts may have restricted access to reproductive health services and mental health support. For convicts who are pregnant or have special medical needs, access to quality healthcare

⁸The Prison Act, Section 2 of 1894, and Section 24 of 1894.

⁹See section 27(1) of the Prison Act of 1894 and Rule 8(a) of the Standard Minimum Rules for the Treatment of Prisoners.

¹⁰See section 31 of the Prison Act of 1894.



might be very important. Violence and Abuse: Female detainees may be at danger if they are subjected to acts of violence, abuse, or harassment, including by staff members and other inmates. Abuse of any kind, including physical, sexual, and psychological, can have a detrimental long-term impact on a person's wellbeing.

d. Family Separation: Incarceration frequently results in the division of families, especially those of children. Since many female convicts are the major carers for their families, their absence can alter family dynamics and influence the wellbeing of their kids.

e. Absence of Rehabilitation Programmes: Rehabilitation and skill-building programmes are crucial for assisting inmates with their post-release reintegration into society. However, these programmes are frequently insufficient in Indian jails, restricting the potential for female inmates to pick up new skills and raise the likelihood of a successful reintegration.¹¹

f. Stigma and prejudice: Female inmates may experience stigma and prejudice both while they are detained and after they are released. Their chances of reintegrating into society as well as their mental health may be affected by this.¹²

g. Limited Legal Aid: Female convicts, especially those from disadvantaged backgrounds, may find it difficult to obtain legal counsel. Being unable to access adequate legal representation can make it difficult for them to defend their rights in court.

h. Inadequate Sanitation and Hygiene: The health and dignity of female prisoners might be negatively impacted by inadequate sanitation facilities and a lack of appropriate hygiene products. For preserving menstrual hygiene, this issue is especially important

i. Isolation and loneliness: Since female convicts are separated from their families and communities, they may feel alone and isolated. This may result in mental health problems like depression and anxiety.

j. Lack of Vocational Training: Educational and vocational options are sometimes scarce in jails. The development of new skills that would help female convicts obtain employment after release may be hampered as a result

k. Limited Visitation: In some circumstances, family members' visitation rights, including those of children, may be curtailed because to formalities, safety concerns, or other factors. The psychological elements pertaining to female inmates in India exhibit a complex and comprehensive nature, influenced by a diverse array of elements encompassing their individual backgrounds, the prison milieu, and the various obstacles they encounter. The psychological well-being of female inmates is a matter of utmost importance that has significant implications for their process of rehabilitation, successful reintegration into society, and overall life satisfaction.

SUGGESTIONS

Panel of female advocates needs to be appointed. Though our Constitution guaranteed free legal aid to each of the needy but absence of quality legal aid is serious issue in front of our legal system. In case of women prisoner, there is need to appoint panel of female advocates and such advocates must be skillful and capable to give support to women prisoner.¹³

Well trained and sufficient women staff. Increasing number of women prisoners gives an alarm as well as gives hint to appoint sufficient women staff to handle prison affairs. Hence, training with sufficient equipment needs to be provided to women staff. **3. Regular judicial visits.** Make it compulsory to all female judicial members to keep close watch over women prison management. Regular judicial presence may reduce the tense in women prison.

4. Allow regular conjugal visits. Allow conjugal visits to needy women prisoner. Regular conjugal visits may reduce the psychological, emotional and social problems of women prisoner.

¹¹See Article 39(1) of the Constitution of India. 14 (1980) 1 SCC 81.

¹²See Section 54 of the Code of Criminal Procedure, 1973.

¹³Rattiram v. State of M.P., (2012) 4 SCC 516.



5. **Create separate cells for women accused in each district jail.** There is no separate jail available at each of district of the State. Women Prisoners kept in the separate place of the district jail. It creates lot of tension between male prisoner and prison officials. So, creation of separate cells for women accused or prisoner is essential thing¹⁴

6. **Prison Survey should be conducted.**

To ensure smooth working of prison administration, a survey should be conducted within fixed time slot.¹⁵

Proper adoption and implementation of national laws and international conventions. There is need for proper implementation of the national and international conventions. It may protect the rights of women prisoner.

Custodial sentence for violent and Community Sentence for non-violents. There should be presence of custodial sentence for those women prisoners who are violent and threat to public at large. But presence of community sentence for non-violent prisoners may reduce psychological problems and leads reformation among prisoners.¹⁶

II. CONCLUSION

The above mentioned rights are in the statutes, but in actual practice needs to be applied by authorities. Instead of the above discussed rights, woman prisoners have also religious, educational and social rights. There has been a lack of strict implementation of specific rules within criminal justice system. In India, the percentage of women prisoners are far less than men prisoners. Though Constitution guarantees equality without discrimination on the basis of gender but still there is huge gap found in social status of women and men. Though rights under specific statutes mentioned but still women prisoners faces number of problems like as lack of legal aid, poor infrastructure, lack of well trained staff etc. Also lack of education and awareness regarding rights of prisoners are the main fields where government's special attention needs to be increased. Indian prison history achieved a lot and since independence India follows the corrective approach. Substitution of transportation into imprisonment for life shows the clean object of prison reforms¹⁷. Also adding prison in state list of seventh schedule of Constitution of India, 1950 and inviting to Dr. W.C. Reckless (United Nations expert on correctional work) in 1951 in India also gives blueprints of adaptation of prison policies of India. Recently at central level government prepared Model Prison Manual in 2023 but its adaptation and implementation is great task in front of State Government. Prison history shows that number of times Central government prepared Model Prison Manual for maintaining uniformity of prison rules but such Manual has not been implemented by most of States

¹⁴Jagmohan Singh v. State of U.P., AIR 1973 SC 947.

¹⁵Upendra Baxi v. State of U.P., (1983) 2 SCC.

¹⁶M.H. Hoskot v. State of Maharashtra, (1978) 3 SCC.

¹⁷(1983) 2 SCC 96

