



Rights of Women Prisoners Within Walls of Stones and Cages of Iron – A Socio – Legal Study

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Abstract

The research paper has been emphasized on the gravity of rights of women prisoners and their problems and suggestions. The paper contains Constitutional Rights – Fundamental Rights different Jail manuals regarding improvement in conditions of women prisoners. The burden of Proof lies on the Prison Staff and government to help in taking successful steps in improving conditions of women prisoners.

Introduction

Article 21 in Indian Constitution has got a wide connotation it is the 'Gem' of all articles relating to Fundamental Rights rather to be discussed as 'Human Rights' as the topic of discussion is relating to women prisoners the appropriate word would be human. Though they are prisoners they are human too.

Because of judicial activism of Judges of Supreme Court Article 21 has also included as guarantee of protection in cases of criminal justice administration. Right to live with dignity is very important right to be accessed by the women prisoners. every human being on this earth is entitled to have a dignified life Under Article 21.

Key Words – Women, Prisoners, Rights, Government, Constitution, human

Hypothesis

1. Whether laws and rules will be sufficient in protecting the rights of Women in Prisons.
2. Whether Prisons are being rehabilitation or reformatory homes.

Review Of Literature –

So many existing rules and regulations are persisting to protect rights of women inmates but yet problems are never ending. The growth in population of inmates (Women) is increasing where it should be decreasing, one should review the reasons for this statistic growth.

Research Methodology –

Doctrinal research is the common source for the paper. Internet is a vehicle which allows to collect data and moving ahead smoothly with the aim of research.

Rights Guaranteed For Prisoners In India –

Under this concept we would specifically discuss rights of Prisoners. Prisoners include Men and Women. Article 21 and 22 reflect six type of rights guaranteed to the prisoners as a whole. they are discussed in brief.

Rights of Convicts –

Even convicts are entitled to the Precious right guaranteed by Article 21. they shall not be deprived of life and personal liberty except according to the procedure established by law.



However posting of police guards outside the jails and installation of high voltage live wire on jail walls are not violative of Article 21. The above right was discussed and held in case law D. Bhuvan Mohna Patnaik V. State of A.P.¹⁴

Rights of Prisoners –

Whether Prisoner is also entitled to invoke Article 21? This particular question and other related questions were discussed in the famous case of Sunil Batra V. Delhi Administration¹⁵. This particular case is also known for giving birth to epistolary jurisdiction – a letter was written by Sunil Batra from Tihar Jail to the Judge of Supreme Court complaining of a brutal assault by a Head Warden on another prisoner Prem Chand who was undergoing life sentence, on a Habeas Corpus petition the Supreme Court held that protection of Article 21 is available to convicts also who are in jail, though they are convicts but cannot be deprived of their basic fundamental rights. It has been also observed that a substantial number of prisoners are under trials who have to face their cases in court and are innocent until proved guilty. It would be inhuman when one goes to hospital for a checkup and by being kept along with contagious cases comes home with a few diseases. Prison reform is now a constitutional compulsion and if neglected may result into drastic court action. Supreme Court has issued six directions to the prison staff as follows. The prisoners rights shall be protected by the Court by its writ jurisdiction plus contempt power. To make this jurisdiction viable, free legal services to the prisoner programmes shall be held by professional organizations recognized by court for e.g. 'Free Legal Aid'. The District Bar shall keep a cell for prisoner relief.

Right Against Inhuman Torture and Custodial Deaths –

In the famous case of D.K. Basu V. State of W.B.¹⁶ AIR 1997 Supreme Court held that custodial torture is a naked violation of human rights, dignity and degradation which destroys individual personality to its extreme extent Supreme Court further observed that the police with their wide powers are apt to use strong arm against those who happen to fail under their scheduled jurisdiction. "Human dignity is a clear value of our constitution not be bartered away for mere apprehension entertained by jail officials" was said by Justice Krishna Iyer. Similarly torture and ill treatment of women suspects in police lock ups has been held to be violative of Article 21 of the Constitution. Court gave strict orders to the concerned authorities for providing security and safety in police lock up and particularly to women suspects. Female suspects should be kept in separate police lock ups and not to be kept with male accused detained, the female accused should be guarded by female constables. The court gave directions to the Inspector General of Prisons and State Board of Legal Aid Advice Committee to provide legal aid to the poor and indigent accused whether they are under trails or convicts. Courts have recently notices third degree methods and custodial deaths in police custody as a serious violation of human rights. In the popular case of Smt. Nilabati Behara V. State of Orissa¹⁷, Supreme Court held the liability of Custodial deaths and held that compensations for violation of fundamental rights guaranteed by Constitution is as acknowledged remedy for protection of such rights and directed the State to pay Rs. 1.5 lakh Custodial death of her son aged 22 years. The Constitution of India

¹⁴ AIR 1974 SC 2092

¹⁵ AIR 1978 SC 1679

¹⁶ AIR 1997 SC 610

¹⁷ AIR 1993 SC 1960



gives the fundamental right to the citizen not to be compelled to be a witness against himself . Article 20(3) of Constitution says that no person accused of any offence shall be compelled to be a witness against himself, inspite of above violations of human rights and constitution the Supreme Court has been very active in this area there is no let up in illegal detention of innocent people in police custody, use of third degree methods during interrogation of suspects leading to custodial deaths in police custody. According to statistics released by National Human Rights Commission for the year 2003 – 2004 there were 162 deaths and 1300 deaths in judicial custody. Uttar Pradesh topped the list of custodial deaths with 217 deaths. The NHRC recommended compensation to the victims family recovering from errant police officials besides other legal action.

Detention In Civil Prison –

Whether arrest and detention in vigil prison under Section 151 of the judgment debtor who had no means to pay the debt was violative of Art. 11 of International Covenant of Civil and Political Rights and Article 21 of Constitution. A person should not be punished for failure to repay his contractual liability. To be poor is no crime and to recover debts by putting a person in prison is violative of Article 21.

Right Against Solitary Confinement –

In Sunil Batra V. Delhi Administration, the important question which came before Supreme Court was whether solitary confinement imposed upon prisoners who were undergoing death sentence was violative of Article 14, 19, 20 and 21 of Constitution. Solitary confinement punishment was against human right and stood to be deleted from IPC.

Rights Against Arbitrary Arrest And Detention (Art.22) –

Art. 22 guaranteed four basic rights to the persons who are arrested under an ordinary law. (1) The right to be informed as soon as may be of the grounds of arrest. (2) The right to consult and to be represented by the lawyer of his own choice. (3) The right to be produced before a magistrate within 24 hrs. (4) The freedom from detention beyond the said period except by the order of magistrate.

Status of Female (Women) Prisoners –

The above discussion reveals the position of all prisoners (male and female). But the issue remains regarding the female prisoners, may be they are in minority are neglected. An unfortunate situation prevails in the area of women prisoners although the Prison Act and the Prison Rules talk about the segregation of the convicts on gender basis but yet it has been observed that women prisoners need more attention. Specially women with children do not get access to their children after they are 6 years old when they are sent to government homes for the remaining period of their mother's conviction. Studies have shown that these children often fall prey for petty criminal gangs. Prisons and its inmates are no longer seen as isolated from other aspects of society, therefore increase in the number of female prisoners can be interpreted both as a product of shifting social forces as well as a provocation of social change. The types of offences for which women are imprisoned and the time period of sentence they receive suggest that they are at little risk to the society. Most arrested females are usually first time offenders, they do not recidivate as often as do males. Feminist thinkers always propogate the idea that any crime committed by women is not independently done as one male partner definitely



accompanies her, in case she is alone she is the victim of male atrocity. Women are victims of circumstances. Gender is thus fundamental but largely ignored issue in criminal justice system because women offenders are different from men with different pathways to crime, different life circumstances and different habilitative or rehabilitative needs. This study focuses on the need for the management of Criminal Justice System including prisons especially for women offenders. The statistics shows that till year 2015 male prisoners are 401789 and female prisoners are 17834 that means of the total percentage only 4.3% are female prisoners.

Rules Governing Women in Prison –

As per the state list provided in the 7th Schedule of Indian Constitution, all issues related to prisons reformatories, borstal institutions and other institutions, come under the domain of state governments. The rules of incarceration are determined by following laws

- Indian Penal Code, 1860
- Prison Act, 1894
- Prisoner's Act, 1900
- Identification of Prisoners Act, 1920
- Exchange of Prisoner's Act, 1948
- Transfer of Prisoners Act 1950
- Prisoner (Attendance in Court) Act, 1955
- Probation of offenders Act, 1958
- Code of Criminal Procedure, 1973
- Repatriation of Prisoner's Act, 2003
- Model Prison Manual, 2003
- Model Prison Manual, 2016

Various Committees have been established by the Government of India from time to time to study and suggest improvements in prison conditions and administration. Some of them have been listed below.

- All India Jail Manual Committee, 1957
- Working Group on Prison, 1972
- All India Prison Reforms Committee, 1980-83 (Mulla Committee)
- All India Group on Prison Administration, Security and Discipline, 1986 (R.K. Kapoor Committee)
- National Expert Committee on Women Prisoners, 1987 (Justice Krishna Iyer Committee)

Problems Faced by Women Prisoners

1. **Prison Staff** – There is a huge shortage of staff in almost every jail of the Country. This was also identified by Hon'ble Supreme Court in May 2017. The Supreme Court gave immediate directions to all State Government and UTs to fill up vacancies by 31st December 2017
2. **Accommodation** – Overcrowding is one of the key problem faced in Indian prisons. Overcrowding can worsen hygiene conditions and health problems.



1. **Sanitation And Hygiene** The next or related problem is lack of sanitation facilities over population is creating scarcity of toilets. Women toilets should have safe entrance away from male intervention. No adequate water supply makes situation more worse, female prisoners in the age group of 18-50 years should be provided adequate menstrual hygiene products.
4. **Health** Women's health needs covering mental, physical, sexual and reproductive health, requires special attention and care.
5. **Nutrition** Nutrition is closely connected to good health. Caloric intake should be proper for women inmates who are pregnant or are feeding.
6. **Education** Basic education is not universally available to women prisoners and access to higher education is almost missing.

Suggestions And Recommendations

- To ensure that the female prisoners should be strictly supervised by female staff only.
- Female juveniles should be kept separate from adult or habitual female inmates.
- Proper facilities and nutrition rich food is provided for pregnant females or lactating mothers and mothers whose children are with them in prison
- Children living with their mothers should be protected from violence.
- Female prisoners should be provided by lady Doctor on daily basis.
- Mental health should be examined daily.
- The inmates should be made to go for regular counseling sessions.
- Provide vocational training and skilled training to keep them occupied and find a source of living after their release.
- Higher educational facilities should be made available for those inmates who are interested.
- CCTV Cameras should be fixed in working conditions.
- Time and again the above suggestions are mentioned in the Model Jail Manual, but it is only found in letter not in spirit.
- Proper implementation is missing if these suggestions are implemented properly the conditions of women prisoners will be improved.

Conclusion –

Because of circumstances and growing standards of living the number of women prisoners is increasing day by day. Prisons are not serving as a reformatory homes infact is has been turned a place of violence and exploitation. Women are victims of society and circumstances, but after they go in prison they are again repeatedly victimized and there is gross violation of their basic human rights. We have already discussed constitutional rights, rules laid down in manuals, various Committees suggestions, these are many steps taken to improve conditions of women prisons, but all this has not received fruits as expected. The issues of female prisoners are yet not exhausted in totality, reasons may be various. Problems have been identified, resolutions have been suggested only thing is proper implementation of rules, laws as not been alone. The prison staff and government both are equally responsible for this failure, providing proper infrastructure is responsibility of government. As women are already neglected group of society, so are the women prisoners.



The concerned authorities should take the recommendations forward at its best. We should all come together and see that prisons don't open the gates for further women prisoners in future and be as reformatory and rehabilitation homes.

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