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# Rights of Women Prisoners: A Study

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## ABSTRACT

*The number of female prisoners has increased, making it imperative to create prisons specifically for women. In the past, prisons were used to punish male offenders who broke the law and caused harm to society. The situation has changed, though, and now women are treated equally to males in all spheres of life, as seen by the presence of women in prison. Only building a prison does not fulfil all of the government's obligations. An inmate should be required to get proper hygiene and sanitation care. Despite having committed a crime, prisoners are still entitled to fundamental human rights. Prison is a facility designed to punish offenders for their misdeeds. Nowadays, the word "jail" is gender-neutral. Prisons used to be exclusively for men, but in today's socially and economically developed age, they are a building for all genders, and anybody who commits a crime is welcome. Now, it would be incorrect to suggest that crime is a male phenomenon. The fact that there are fewer female prisoners than male convicts does not exclude them from receiving gender-specific treatment. They frequently do, however, encounter numerous challenges and trying circumstances that are not very favourable for them because older prisons were created for men, not women.*

*Through the means of this paper various provision related to the rights of women in prisoner has been discussed and what are the challenges and issues faced by women prisoners are also discussed.*

**Keywords:** Women Prisoner, Constitution of India, UDHR, Prison Act of 1894, CrPC.

## I. INTRODUCTION

It is crucial to recognise and respect the rights that women prisoners have in light of the current scenario. In contrast, there are sufficient requirements for the health and care of the kid when a woman is incarcerated and has a child (under the age of 6). Given that females have distinct needs for personal cleanliness and sanitation than men, women require different treatment. As a result, it is quite important to worry about pregnant women's health. Women make up 4% of the prison population globally, on average, compared to men.

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**“Hate the crime and not the Criminal” - -Mahatma Gandhi**

According to the State List, each state must accomplish the twin objectives of protecting society from criminals and reforming offenders. As a result, the Supreme Court of India has construed a number of fundamental rights under the Indian Constitution for the benefit of prisoners, including Articles 14, 19, 21, 22, 32, 37, 39A, and 226.

**II. WOMEN JAIL**

At all levels, including sub-divisional, district, and central, there are prisons for women. By December 2017, there were only women's prisons operating in 13 States and UT. Tamil Nadu has the most total female prison inmates at 5. By December 31, 2017, there were 5400 total female inmates in the country's various women's prisons, with 3019 prisoners registered there. Delhi had the greatest percentage of detainees that were women. Additionally, a full 100% occupancy in 3 states was once observed (West Bengal, Maharashtra and Bihar).

**III. FACTORS THAT LEAD TO WOMEN COMMITTING CRIMES**

A person is forced to commit a crime by their mindset, society, and biological pressure. Financial hardship, adolescence to satisfy a child's need, learned behaviour where the family factor is accountable for the individual's mentality, and even sometimes merely to assert dominance over the companions are all possible motives for committing a crime. A person can use the same technique to solve his problem by watching a criminal movie or series, demonstrating how important media is in shaping a person's personality. Lack of affection, illiteracy, immorality, brutality, a lack of good training, broken homes, the environment, invasion of privacy, poor health, or modern liberal ideology are the main causes of crime committed by women.

**(A) Difficulties faced by Women in Prisons****1. Prison Staff**

In almost every country, there is a shortage of female prison staff, which forces the male staff to care for the female inmates as well. And as a result, male staff members give extremely unwelcome help to female captives.

**2. Sanitization And Hygiene**

In fact, even basic sanitary and clean-up functions are disregarded. Although it is clearly stated in the prison manual that there should be one toilet and one shower cubicle for every ten prisoners, this rule is not always enforced across the country. A prisoner may not have enough water, which lowers the standard of sanitation and hygiene compared to the Manual's

minimum estimate of 135 litres for each prisoner.

### **3. Accommodation**

National and international guidelines advised inmates to live in decent conditions. Even the dimensions of jail cells and barracks are explicitly mentioned in the National Prison Manual.

The Minimum Standards Rules further stipulate that windows where prisoners live or work must be sufficiently large to allow them to read or work by natural light and that dormitories must be properly supplied with people who are suitable to live with one another. One of the main problems plaguing the nation's jail facilities is congestion and overcrowding. 2015 data indicated that the country's usual occupancy rate was 114.4%. As women are typically restricted to a smaller area of the prison due to the lack of adequate infrastructure for them, the effects of overcrowding are frequently much more pronounced in their case.

### **4. Health**

The right to health includes the provision of high-quality, permitted, and easily accessible healthcare. The majority of the time, gynaecologists are inaccessible. Due to a lack of official positions, a woman with mental health issues or psychological instability is frequently disregarded while incarcerated. Overall, 51 deaths of female prisoners occurred in 2015, of which 48 were due to natural causes and 3 were the result of suicide.

### **5. Legal Aid**

The National Prison Manual states that the State governments are required to select advocates for visiting jails, establishing legal aid clinics in all prisons, and providing proper approaches towards legal education programmes in order for the convicts to fully benefit. In order to provide free legal assistance and educate all inmates about their rights, states should ensure that District and State Legal Service Authorities are connected to jails.

### **6. Violence**

Violence, including sexual assault by officials and prisoners, has been documented around the country. Official reports, however, understate the occurrence of violence since prisoners fear retaliation because they are required to stay in the same location as their abuser.

### **7. Children**

If there are no alternative options for their care, children under the age of six are allowed to reside in prison with their mothers. According to a 2009 BPR&D report, there are no accessible crèches or recreational facilities in every jail, nor are there adequate arrangements for the child's biological, mental, and social development. NHRC prison visits reveal that,

other than a glass of milk, a child's nutritional needs aren't often met.

### **According to Prison Statistic India Report, 2017 by National Crime Bureau Ministry of Home Affairs on women expresses -**

Out of the total 23 States/UTs, there were a total of 22 women's prisons in India, each with a capacity for 5400 inmates. The occupancy percentage for prisons for women was 55.91%.

Out of a total of 1454 female convicts, 1681 of them had children.

Only 365 of the 1077 women who were under trial were found guilty out of the total number of women in prison. In the women's prison, there were 5248 people in total, including employees and administrators. The overall percentage of women in prison increased by 12% between 2012 and 2017, yet it also decreased by 5.6% during the same time.

50.5% of the female prisoners are between the ages of 30 and 50, while 31.3% are between the ages of 18 and 30.

## **IV. CONSTITUTIONAL STATUS OF WOMEN IN INDIA**

50.5% of the female convicts are between the ages of 30 and 50. The Indian Constitution does not specifically guarantee any rights for women convicts. The Indian Constitution, however, accords Women equal status. In India, women have equal legal protection under the law under Article 14 of the Constitution, while Article 15 forbids sex-based discrimination.<sup>4</sup> However, the issues that Indian women prisoners still face are numerous. Even the Indian government passed the 1993 Protection of Human Rights Act and established the National Human Rights Commission to advance and defend human rights. The Directive Principles of State Policy are found in Part IV of the Indian Constitution and direct the State to grant economic and social rights to its citizens in a specific way.

In order to guarantee equal rights for women, India has ratified a number of international conventions and human rights instruments. Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1993 is a significant one of them. According to Article 12(2) of this convention, States Parties are required to provide women with appropriate prenatal, postpartum, and maternity care services, including where necessary, free services, as well as adequate nutrition throughout pregnancy and lactation.<sup>5</sup> Every person has the right to life, liberty, and the security of their person, according to Article

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<sup>4</sup> See Article 14 & 15 of the Constitution of India.

<sup>5</sup> See Article 12(2) Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1993.

3 of the Universal Declaration of Human Rights<sup>6</sup> and Article 5 specifies that no one shall be subjected to torture, cruelty, or inhuman treatment.<sup>7</sup> All people robbed of their liberty must be treated with humanity and regard for the inherent dignity of the human person, according to Article 10(1) of the United Nations Covenant on Civil and Political Rights.<sup>8</sup> Therefore, it is against the law to treat female inmates inhumanely or degradingly, and the State is required to uphold and ensure that the fundamental human rights and constitutional rights of female prisoners are observed in the prison. Prisoners cannot be treated like animals, and only legal punishments should be administered.

### **(A) Women Prisoner's Rights**

The many committees established for prison reform have given women prisoners many rights. The 1984 Prisons Act must be amended to include these rights. Since it affects States, it will be mentioned in the Seventh Schedule of the Indian Constitution's State List. When creating prison manuals, certain guidelines should be taken into consideration. In terms of human, constitutional, and statutory rights, women should have access to the following in prison:

- Under a general or special instruction from the Medical Officer, the Matron is responsible for searching and examining the female detainees.<sup>9</sup>
- According to Section 27(1) of the Prison Act of 1894 and Rule 8(a) of the Standard Minimum Rules for the Treatment of Prisoners, female prisoners have the right to dwell apart from male prisoners.<sup>10</sup>
- The Prisons Act of 1894 discusses upkeep of some inmates from private sources in Section 31.<sup>11</sup>
- The Prisons Act of 1894's Section 33(1) provides instructions on how to provide clothing and bedding to civil and acquitted criminal prisoners.<sup>12</sup>
- Every prisoner should have access to the fundamental human rights, including wholesome food, a place to live, medical care, and tools for reading and writing. Everyone should be treated with respect, and no one can be held in a private cell unless

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<sup>6</sup> See Article 3 of the Universal Declaration of Human Rights.

<sup>7</sup> See Article 5 of the Universal Declaration of Human Rights.

<sup>8</sup> See Article 10(1) of the United Nations Covenant on Civil and Political Rights.

<sup>9</sup> The Prison Act, Section 2 of 1894, and Section 24 of 1894.

<sup>10</sup> See section 27(1) of the Prison Act of 1894 and Rule 8(a) of the Standard Minimum Rules for the Treatment of Prisoners.

<sup>11</sup> See section 31 of the Prison Act of 1894.

<sup>12</sup> See section 33(1) of the Prison Act of 1894.

they have a serious medical condition or have shown to be a threat to other inmates. Women giving birth should get complete medical attention as well as personal care, and they must be freed on bond to do so.

- The Standard Minimum Rules for the Treatment of Prisoners' Rule 53, Rule 23, Rule 24, Rule 25, and Rule 26 should be observed.
- According to the National Commission for the Protection of Children's Rights (NCPCR), pregnant, sick, or dependent child-bearing mothers in jail should be given preference for early release on personal bond.
- The Indian Constitution's Article 39A strengthens the ability of female prisoners to obtain free legal representation by establishing a legal system to advance justice, on the basis of equal opportunity, and to ensure that no one is discriminated against in obtaining legal benefits regardless of their financial circumstances.<sup>13</sup>
- According to Criminal Procedure Code, 1973, Section 303, prisoners have the right to be represented by a petitioner of their choosing. Section 304 addresses legal aid matters, which may occasionally be granted at State expense. According to Section 309(1) of the Criminal Procedure Code, any inquiry or trial must begin as quickly as practicable.
- The right to a prompt trial exists for female convicts. According to the ruling in *Hussainara Khatoon v. Home Secretary, State of Bihar*,<sup>14</sup> an expeditious trial is an implicit fundamental right protected by Article 21 of the Indian Constitution.
- According to Section 54 of the Code of Criminal Procedure from 1973, if an accused person requests it, a licensed medical professional must properly examine the body of an imprisoned person to determine whether they have been subjected to torture or other ill treatment while being held in custody. Women in jail, however, sometimes are not aware of this entitlement.<sup>15</sup>
- The Constitution of India grants the President and State Governors the authority to pardon or show clemency to prisoners in Articles 72 and 161.

### **(B) Children of women prisoners**

If the prisoner is a mother, she should have the right to choose the prison for the benefit of

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<sup>13</sup> See Article 39(1) of the Constitution of India.

<sup>14</sup> (1980) 1 SCC 81.

<sup>15</sup> See Section 54 of the Code of Criminal Procedure, 1973.

her kid. Children should be raised in a suitable setting that doesn't make them feel guilty for being there. NGOs, schools, and paediatricians should be responsible for the development, education, and mental health of children inside of prison. It is important to provide mothers enough time to bond with their kids. Children should be fed a healthy diet, and a lady medical officer should check on them once a month to see how they are developing physically and cognitively. Children should never be subjected to body cavity searches. Except in certain circumstances, no child under the age of six should be imprisoned if they are retarded. The child should be permitted to go to prison with the mother at a child care facility if no friend or family member is available to watch them. The prison administration must make sure the child receives particular attention and the opportunity to see his mother at least once each week.

Children should be permitted to visit without restriction or time limits, and they should be allowed to stay overnight at least once every three months. For the meeting of the child and the female prisoner, a healthy, encouraging environment should be created. In consideration of the budgetary situation, additional educational scholarships for female detainees' children should be given to those under the age of six.

## V. ANALYSIS OF JUDICIAL INTERPRETATION

The following rights have been interpreted by the judiciary as belonging to prisoners:-

A convicted prisoner is not prohibited by his fundamental rights even though he does not genuinely enjoy all of them like other common persons, according to the Indian Constitution. As a foundation for human rights, several essential rights are recognised for inmates. The rights of prisoners are not explicitly stated in the Indian Constitution, but they are recognised through precedents and judicial interpretation. For example, in the landmark case of *T.V. Vatheeswaran v. State of Tamil Nadu*,<sup>16</sup> it was determined that both prisoners and the general public are entitled to the protections of Articles 14, 19, and 21.

“The Indian Constitution's Article 14 serves as a beacon for the prison administration and authorities in deciding how to segregate inmates and how to use them as reformation targets. Six liberties are guaranteed to all Indian citizens under Article 19 of the constitution. There are several rights that do not apply to convicts, but among those freedoms, the right to free speech and associational membership are available to them.”<sup>17</sup>

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<sup>16</sup> AIR 1983 SC 361 : (1983) 2 SCC 68.

<sup>17</sup> Chowdhury Roy Nitai, *Indian Prison Laws and Correction of Prisoners*, Deep and Deep Publications, New Delhi, 2002, p.75.

Article 21: The judiciary has today uncovered a variety of rights for suspects, accused people, and prisoners who are in police custody through the art of interpretation. The Supreme Court of India has given a broad interpretation to the phrase "life and personal liberty," and a number of rights have been brought under the purview of Article 21 of the Constitution.

The right to life and the notion of liberty are the two key ideas that are the subject of Article 21 of the Indian Constitution. In cases like *Maneka Gandhi*, *Sunil Batra (I)*, and *M.H. Hoskot*, the Supreme Court has held that the provisions of Part III of the Indian Constitution should be given the broadest meaning feasible.

**The following rights were upheld:-**

- **The Right to Legal Aid,<sup>18</sup>**
- **The Right to a Speedy Trial,<sup>19</sup>**
- **Right to have an Interview with a friend, relative and lawyer,<sup>20</sup>**
- **The Right to live with dignity,**
- **The Right to a livelihood,**
- **The Right of residents of protective homes etc.,<sup>21</sup>**

Although article 21 of the constitution does not directly list these rights as fundamental rights, they are nonetheless recognised as prisoners' rights thanks to creative judicial interpretation. According to Judicial Interpretation, the Indian Constitution guarantees the following rights to prisoners:-

**1. Right to Free Legal Aid:** This term also refers to giving someone financial support in a legal battle. Free legal aid was added as one of the Directive Principles of State Policy under Article 39A of the Constitution by the Constitution 42nd Amendment Act of 1976. The right to legal aid is not explicitly stated in the Indian Constitution. However, the judiciary has favoured impoverished inmates who, because to their poverty, are unable to hire the attorneys of their choosing.

The Supreme Court ruled in *M.H. Hoskot v. State of Maharashtra*,<sup>22</sup> that Article 21's implied fair, just, and reasonable procedures included the right to free legal assistance provided by the state at the expense of an accused who could not afford legal representation due to poverty. A three-judge Supreme Court panel that considered Articles 21 and 39-A, as well as Article 142

<sup>18</sup> *M.H. Hoskot v. State of Maharashtra*, (1978) 3 SCC.

<sup>19</sup> *Rattiram v. State of M.P.*, (2012) 4 SCC 516.

<sup>20</sup> *Jagmohan Singh v. State of U.P.*, AIR 1973 SC 947.

<sup>21</sup> *Upendra Baxi v. State of U.P.*, (1983) 2 SCC.

<sup>22</sup> (1978) 3 SCC 544.

and Section 304 of the Criminal Procedure Code together decided that the Government has a responsibility to provide legal representation for those who have been accused of a crime. nable to hire the attorneys of their choosing.

**2. Right to an Interview with Friends, Relatives, and Lawyers:**In *Sheela Barse v. State of Maharashtra*,<sup>23</sup> the court found that prisoner interviews are required since otherwise accurate information may not be gathered, although such access must be limited and regulated.

The court in *Dharambir v. State of U.P.*,<sup>24</sup> ordered the State Government to permit family members to visit the convicts and for the detainees to see their relatives at least once a year, under guarded circumstances.

**3. Human rights are a crucial component of human dignity.** They are meant to protect people against inhuman treatment. In a number of cases, the Supreme Court of India expressed grave concern about the inhumane treatment of prisoners and gave the relevant authorities the necessary instructions to protect the inmates' rights. The Court stated that any treatment of a person that violates their human dignity, subject them to unnecessary suffering, or lowers them to the status of a beast would undoubtedly be arbitrary and subject to scrutiny under Article 14.

The Bombay High Court ruled in *Christian Community Welfare Council of India v. Government of Maharashtra*,<sup>25</sup> that women should only be detained in the presence of lady constables and never after dusk or before dawn. The State Government was ordered by the Court to appoint a committee to develop a thorough plan for police accountability for violations of human rights and to make special arrangements for female inmates. The protection provided by this right is crucial in preventing sexual harassment and unforeseen torture of female detainees.

Therefore, in addition to these, the Mulla Committee lists the following as rights of prisoners:

The Right to Human Dignity;

The Right to the most Basic Necessities, such as clean water to drink, hygienic clothing and bedding;

The Right to access the legal system; and

The Right to meaningful and profitable employment.

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<sup>23</sup> (1983) 2 SCC 96.

<sup>24</sup> (2010) 5 SCC 344.

<sup>25</sup> 1996(1)BOM CR 70.

## **VI. CONCLUSION**

This study has shown that keeping women prisoners in separate jails is absolutely necessary. India consequently lacks adequate jails to accommodate the rising number of female prisoners. Women should have their personal needs met with special emphasis and on a first-come, first-served basis. The number of prisoners awaiting trial declines to lessen the pressure on jails. The way the staff members act with the female detainees needs to be improved, and if necessary, appropriate training sessions should be made available.

Women should be aware of their rights, and legal awareness programmes should be held frequently. Pregnant women should be given bail at the time of delivery, and women who have dependent children should be treated kindly. Ladies in medicine, a woman staff member needs to be hired for service in women's prisons. To lessen the load of under-trial convicts in jails, fast-track courts should be established. The primary goal of punishing female prisoners should be to reform and rehabilitate female inmates, and to accomplish this goal; jail manuals should be developed with a minimal standard of prison rights in mind.

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