

The challenges faced by women prisoners in India

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Abstract

The purpose of this research is to identify the challenges faced by women prisoners in India. Imprisonment is a method of punishment which has evolved over the centuries. Prison and its administration is a state subject detailed in list 2 schedule 7 of Indian constitution. In this research paper we are attempting to discuss the problem faced by women in Indian jails and solutions for the same. The court in India have purported the need to recognize the right to prisoners. Many factors lead a prisoner to commit a crime but always a prisoner is required to be treated as a human being who is a person with basic human right, human dignity, and human sympathy. UN general assembly has espoused rules for the welfare of women prisoners & non-custodial measure for women offender (the Bangkok rule) in 2010. Nowadays the number of women prisoners are increasing. Majority of women prisoners are in the age group of 30-50 years. The problems faced by the women in Indian jails are both physical and mental, which include, overcrowding, sanitation and hygiene, poor health conditions and nutrition, vulnerabilities of pregnancy and childcare, lack of education and violence. The model prison manual drafted by the BPR&D also calls for women doctors, superintendent, and separate kitchens for women inmates, and also temporary release for an impending delivery which are to be provided to district and state jail. Most of them are uneducated, so officers ought to tell them about charges framed against them. There are number of provisions in the form of law, rule & guidelines that protect women from exploitation, and guarantee them basic services. A comprehensive after care program can prevent recidivism and help in the smooth transition of women in society after release. This should include support for various aspects of post imprisonment life.

Introduction

Punishing the wrongdoers is the main function of all civil societies. Penitentiaries are known to have existed throughout the history. Existence of prisons can be traced back to the prehistoric period. It was believed that rigorous segregation and custodial measures would reform the offenders. Experience, however, belied this expectation and often imprisonment

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had the reverse effect. The prisoners are deprived of freedom and personal contacts with family and friends. The utility of prison as an institution for rehabilitation of lawbreakers and preparing them for normal life is very difficult process. With the growth of behavioural sciences, it began to federalize that reformation of offenders was not possible by detention alone². The main focus of prison system is to reform them into honest and law enduring citizens by training in them a revulsion for crime and criminality. But in real practice, the prison authorities try to bring out reformation about prisoners by use of force and compulsive methods³.

Custodial justice has become important because of the changing economic and social scenario enhance women's involvement in crimes and increase rapidly⁴. The fact is that women in prisons are facing a number of problems. Even her basic human rights are being ignored despite of a number of instructions from the Supreme Court, High Courts and by recommendations of different Committees. It generate difficulties to them in the prison which requires a special care and needs to be removed. The main purpose of this paper is to discuss the problems of the women prisoners, their rights, also the conditions in women jails, and to suggest the necessary changes. Custodial horror is a daily occurrence for women prisoners in India. What can a woman do when her 'custodians' become her violators? The question is very intimidating and frightening but this is actually happening to women in India⁵.

Research methodology

The paper includes both theoretical and empirical investigation. The theoretical study includes a critical analysis of the provisions in the CRPC & IPC meant for the safety and security of the women in custody. The review of statutory provisions relating to women prisoners are also discussed. The empirical part of the study deals with assessment from text books, faculty meeting and interviews.

OBJECTIVES

The specific objectives of the paper are

1. To make a review of the legal status of women in custody in the Indian context

²Dr. Mukesh Garg & Nareshlal Single, *Right of women prisoners in India: An evaluation*, International journal of Advance Research in Management & Social Science, ISSN:2278-6236, Vol 1:NO 2, Aug 2012; Page no. 134.

³Prison reforms in India, by team, Aug 18, 2017, https://www.2thepoint.in/prison-reforms-in-india/http://shodhganga.inflibnet.ac.in/jspui/bitstream/10603/149011/9/09_chapter%201.pdf.

⁴DR. JAYASREE LAKKARAJU, WOMEN PRISONERS IN CUSTODY, Kaveri Books, 2008.

⁵*Supra* note 2.

2. To study the various procedures and practises in handling women in various custodies.
3. To examine the efficiency of institution and other services for the reformation and rehabilitation of women in custody.
4. To discuss the challenges faced by women prisoners in India
5. To suggest better measures for alienating the plight of women prisoner

The research issues

In this paper we discuss both social and legal analysis.

Social analysis

The basic premise of most efforts to reform prison system is that this can be done without any fundamental transformation of the structure of the society as a whole. The liberal perspective on reform is that fundamental changes in the prison system are possible without fundamental changes in the rest of the society, while the radical perspective is that fundamental changes in prison can come about only through drastic changes in the society itself. The attitude of the society need to be changed in respect of prisoners. Prison constitutes important institution which safeguard the society from lawbreakers. Prison confines people against their will. A human being is able to apply new customs and methods to replace the old traditional customs are being formed. When change do not occur at the appropriate time, revolutions take place. The causes of social change are diverse, and the processes of change can be recognised as either short-term trends or long-term developments. The mechanisms of social change can be varied and interrelated. Several contrivances may be united in one explanatory model of social change⁶.

Law relating to prisoners is the main area where the instrumentality of law has proved social change in the punishment of offenders⁷. Justice Krishna Iyer has stated that ‘prisoners are built with the stones law’. The prisoners have many social rights while serving their sentence, some of them are;

- a) Reading and writing books in jail
- b) Liberal use of parole

⁶Kaustabh Rote, LL.M, *Prison Reform & Social Change in India*, <http://www.grkarelawlibrary.yolasite.com/resources/FM-Jul14-LSC-Koustubh.pdf>.

⁷Ismail Alimasi Bin Masudi, Anadolu University School of Social Science, Department of Communication, The Social Change, Oct 2016, http://www.academia.edu/29980138/Social_change_dissertation.

- c) Segregation of prisoners
- d) Right to interview
- e) Releasing the prisoner on temporary bail to perform sacred ceremonies
- f) Release on bail of under trial prisoner under NDPS, etc.⁸

Legal analysis

Constitutional status of women in India:

Constitution of India does not provide specific securities to the women prisoners. But, the Indian Constitution gives the status of equality to the women. The Founding Fathers of the Indian Constitution gave serious thought to protect and promote the rights of Women and Children⁹. This is thoroughly reflected in the Preamble which contains “the ideals and aspirations of the people of India”. One of the golden ideals is “the equality of status and of opportunity”. Constitution of India under Article 14 provides equal protection of laws to the women in India and Article 15 prohibits the discrimination on grounds of sex. But still Indian women prisoners are facing a number of problems. Government of India passed the Protection of Human Rights Act, 1993 and constituted a body known as the National Human Rights Commission for promotion and protection of human rights. Part IV of the Constitution of India sets out the Directive Principles of State Policy which give direction to the State to provide economic and social rights to its people in specified manner¹⁰. India has also ratified various International Conventions and Human Rights Instruments omitting to secure equal rights of women. Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1993¹¹.

The Supreme Court in the case of *Sunil Batrav. Delhi Administration*¹² held that whether inside prison or outside, a person shall not be deprived of his guaranteed freedom save by methods ‘right, just and fair’. The court process casts the convict into the prison system and

⁸UTKARSH 130896, *Conclusion of Social Change in India*,
<https://www.scribd.com/document/348295627/Social-Change-Conclusion-Sociology-Britannica>

⁹*Supra* note 2.

¹⁰Varsha Purohit LLM, National Law Institution, Bhopal, *Custodial right of women in India*, International Journal of Law & Legal Jurisprudence Studies, ISSN:2348-8212 Volume 2, Issue3, Published, Universal Multidisciplinary Research Institution Pvt. Ltd. <http://ijlljs.in/wp-content/uploads/2015/04/custodial-rights.pdf>.

¹¹*Supra* note 2.

¹²Sunil Batrav. Delhi Administration, A.I.R. 1980 S.C. 1579.

the deprivation of his freedom is not a blind penitentiary affliction but a blighted institutionalization geared to a social good. The Court also held that bar-fetters make a serious inroad on the limited personal liberty which a prisoner is left with and therefore before such erosion can be justified it must have the authority of law. The court in the case *R.D. Upadhyay vs. State of A.P. & Ors*, held that 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-natal care for both, the mother and the child. Gynaecological examination of female prisoners shall be performed in the District Government Hospital¹³.

Right of women prisoners under substantive law

Many forms of violence against women, custodial violence involving rape and molestation has clearly been on the increase. Rape in the police station or by the police is the most notorious forms of violence against women. The inadequacy of law of rape under sec 376 IPC is manifested in number of judgements. One such important cases Mathura case¹⁴. The second important amendment made in the penal code in 1983 was the insertion of sections 376B, 376C and 376D to deal with custodial sexual abuse not amounting to rape. These sections provided punishment to those persons who have taken advantage of their official position for sexual intercourse with a woman on official position on official premises.

Right of women prisoners in procedural law

The Cr.PC is designed to create the necessary machinery for the prevention of crime, arrest of the suspected criminals, collection of evidence, determination of guilt or innocence of the suspected person in a trial and imposition of proper punishment on the guilty person. Thus the object of Cr.PC is to provide a suitable mechanism and the just procedure for the enforcement of criminal law. It was for the first time a new sub section (4) is added to section 46 of Cr.PC¹⁵. This sub section prohibits the arrest of a women after sunset and before sunrise exceptional unavoidable circumstances. Section 53 of Cr.PC imposes an obligation when the person to be medically examined is a female, the examination must be made only by or under supervision of a female registered medical officer. Also when arresting a women proper

¹³R.D. Upadhyay v. State of A.P. & Ors., A.I.R. 2006 S.C.1946. (India)

¹⁴Tukuram & Ans. v. State of Maharashtra, A.I.R. 1979 S.C. 185. (India)

¹⁵ApilKhanal, *Postponement of execution of sentence of death Sec.415 of CRPC*, available at <http://www.shareyouressays.com/knowledge/postponement-of-execution-of-sentence-of-death-section-415-of-crpc/119473>.

arrangement for the protection and care of her offspring shall be the responsibility of the state. One question arises often in relation to pregnant women and mother and baby units is whether this class of women should ever be given custodial sentences. Section 416 of the Code of Criminal Procedure, 1973 provides that if a woman sentenced to death is found to be pregnant the High Court shall order the execution of the sentence to be postponed, it thinks fit, commute the sentence to imprisonment for life: court thought that the time has come to make commutation of the sentence mandatory in such cases and recommend that section 416 should be so amended. For this purpose,' for existing section 416 Cr.PC, the following section should be substituted:--

"416. Death sentence on pregnant woman, "If a woman sentenced to death is found to be pregnant, the High Court shall commute the sentence to one of imprisonment for life."¹⁶.

Problems of women prisoners

i) Unsatisfactory Living Conditions:

To improve prison conditions it does not mean that prison life should be made soft; it means that it should be made human and sensible. Overcrowding is a serious problem being faced, greatly contributing to abysmal conditions of the prisoners. According to a report by India Today, in the Tiruchirapalli women's prison in Tamil Nadu, inmates have to get mud to clean their toilets since there is no water. Lodged in the Tamil Nadu prison for five years as an under trial from 2005 to 2010, an under trial named Murugeswari has written that "water was so scarce that they had to choose between washing themselves and their clothes"¹⁷.

ii) Lack of Legal Aid:

The legal rights entitled to the needy under-trials have been mandated by the Constitution. The Supreme Court has ordered free legal aid to every person from the point of arrest. However, in reality, legal aid is only provided at the time of trial, that too in most cases only for name-sake. Further, under the Legal Aid Services Authorities Act, 1987, the Legal Aid Boards have been setup at Centre as well as State level, to provide free legal aid to the poor and needy. But these boards have been mainly inefficient in dealing with burgeoning number of cases. Due to the lack of awareness on the part of the accused/victim, and the lack of

¹⁶Manishranjan, Legal service India.com, *Meaning & Kind of Person*, <http://www.legalservicesindia.com/article/2316/Meaning-and-Kind-of-Person.html>.

¹⁷Bavanavij-Aurora, *Right to Justice Bill Helplessness Psychological Disorders Torture Indian Prisoners*, India Today; 24 July 2011, <https://www.indiatoday.in/magazine/special-report/story/20110704-right-to-justice-bill-jails-turn-into-nightmares-for-undertrials-746616-2011-06-24>.

initiative and coordination between the police and the legal aid authorities, there are huge discrepancies between what the law mandates to the accused and what they actually get¹⁸.

iii) Physical Mistreatment

Physical mistreatment of Prisoners is the problem of officials of the prison, which the Prison Administrations have continuously proven to be incapable of handling primarily because of poor infrastructure, coupled with adverse prisoner official ratio. Rehabilitation of criminals is one of the main function of the prison authorities, as recognized by the Indian courts on several occasions. A prison is now seen as more of a correctional facility than a detention one.

iv) Food, Accommodation and Medical Treatment:

All persons deprived of their liberty shall have the right to be in a standard of living, including adequate food, drinking water, accommodation,

Clothing and bedding. It is a basic requirement that all jailbirds should be given a medical examination as soon as they have been admitted to a prison or place of detention. Also all needed medical treatment should be provided free of charge.

Outcomes and suggestions

The present study exposes that separate women prisons are crucial to keep the women prisoners. The number of women prisons is not sufficient in India and it should be increased. Women prisoners being women have special wants which should be certainly fulfilled. The number of under trial prisoners should be reduced to the maximum extent to reduce the burden over jails. Prisons should be converted into correctional homes. It is very important for the women prisoners for their reformation and rehabilitation. There is need of special training programme for the prison officials so that their behavior towards the women prisoners can be changed and they can give importance to the basic human rights of the women inmates. In the case of pregnant women prisoners they can be granted bail and in case the children are dependent on the women prisoners, their mercy application should be considered sympathetically and released accordingly. Legal awareness programmes should be launched on war footing in the jails then only women prisoners should be made aware of their legal rights and about the complexity of judicial process. Enough lady doctors should be allotted in the prisons. Mulla Committee had recommended the appointment of full time lady medical

¹⁸AkshayGoel, *Indian Prison System; Case Study of Tihar Jail*, Research club, 14 June 2014, <https://researchersclub.wordpress.com/2014/06/14/indian-prison-system-case-study-of-tihar-jail/>.

officer in case women prison contains 25 or more women prisoners and in case of fewer women prisoners' lady medical officer should be appointed on part time basis. The efforts should be made on war footing to reduce the strength of women under trial prisoners and for this purpose the procedure of plea bargaining can be adopted. LokAdalats should be organised frequently. Fast track courts should be established to reduce the burden of under trial prisoners over jails¹⁹. Panels of visitors should be appointed on a permanent basis to all prisons as recommended and emphasised by National Expert Committee on women prisoners and apex court in various observations²⁰.

Conclusion

It can be said that the goal or aim behind awarding the punishment to the women offenders should be the reformation and the rehabilitation of women prisoners and for reaching this aim the jail manuals should be prepared in consideration with minimum standard of human rights. The condition of women prisoners is pathetic. Women are suffering through sexual harassment during their custody²¹. The conditions are so inhuman that sensitive people feel a sense of shock and shame since die-hard resistance to reverence of the women sector defeats humanism, softness, compassion and affection which mankind owes to its sisterly half. This custodial violence is cancer to our Indian Society. It is therefore asserted that a gender perspective must be considered while catering to the needs of women in criminal justice system in general and prison in particular²². It is clear from the brief discussion above that the needs of women prisoners are often overlooked by penal institutions, by governmental policy makers, and by the international community and that consideration needs to be given to every aspect of women's prison regimes as well as to the reasons for the increasing female prison population to ensure that their rights, as defined in international law, are met. There is a need for a reform as there are no laws that cover many aspects of imprisonment of women and children and a proper mechanism must be there to their support.

¹⁹Supra note 10.

²⁰Supra note 2.

²¹Supra note 4.

²²Asha Bhandari, *Socio-Legal Status of Women Prisoners and their Dependent Children; A Study of Central Jail of Rajasthan*, *Sociology & Criminology*, Access, 20MAY2015, <https://www.omicsonline.org/open-access/titlesociolegal-status-of-women-prisoners-and-their-dependentchildren-a-study-of-central-jails-of-rajasthan-2375-4435-1000120.php?aid=53502>.