

**AMOGHVARTA**

**ISSN : 2583-3189**



## **Incarcerated Womens Right in India: Issues and Challenges**

**ORIGINAL ARTICLE**



**Author**

**Dr. Mukta Verma**

Assistant Professor

Faculty of Law

University of Allahabad

Prayagraj, Uttar Pradesh, INDIA

### **Abstract**

*Women are source of nurture, sign of love, care and sacrifice but some time due to circumstances or greed or aggression, love, war, cheat, money etc. she may do wrong which is against law and they have to go through a long journey of judicial system in the under trial process and in prison. The prison system in criminal justice system was established to give some time to prisoner so they can correct their behavior, habits and suffer punishment and get rehabilitation for survival in main stream in their life after release from prison. The status of women prisoner are not good in India because they have to suffer gross violation of human rights in terms of food, health, security, safety, sanitation and hygiene, recreation, self respect, sexual and mental harassment etc. Thousands of women prisoners are living in without basic facilities which are needed to women*

*for her biological behavior. Women prisoner are in pity condition they are forced to live in overcrowded prison cell or jail. They are living separately from their family members. Lots of space and money of authorities in India is spending on under trial prisoners, it should be reduce to remove the burden on exchequer. Under trial women prisoner should be rehabilitated with protection of human rights. All the authorities of Criminal Procedure Code should work for the protection of justice because justice delayed is injustice and injustice with human being should not be done by any authorities.<sup>1</sup>*

### **Key Words**

*Women in prison, criminal procedure code, justice, human right, rights*

### **Introduction**

There is a well established principle that justice delayed is justice denied. Therefore if the incarcerated women are kept in prison for longer time which is not provided by law; they are suffering from human rights violation and injustice. There is a need to do justice on time and provide meaningful life in prison to incarcerated women to get reformation benefits in proper manner.

### **Meaning and Position of Incarcerated Women**

An incarcerated woman refers to women who are in a prison for the purpose of under trial of for the conviction of any offence according to the procedure established by law. Incarcerated women are not living in a good condition they have to suffer various social, physical, mental and ill treatments in the prison. They are

harassed by the inmates, in the prison or from the outside world due to the stigma they possess. There is a need to reform the concept of prison and treatment with the incarcerated women so they can be rehabilitated in her life after release from prison.

### **Position and Issues and Challenges faced by Incarcerated women**

1. **Food:** food is not good according to balanced diet due to lack of infrastructure of prison system
2. **Shelter or living area:** Prisons are overcrowded and due to it women are not getting proper amount of food and accommodation to live in a dignified way.
3. **Cloths:** lack of proper cloth according to her need.
4. Facilities for pregnant women, breastfeeding mothers or during menstrual periods are not up to the mark, they are forced to live in poor conditions.
5. Recreation area and time is not provided to remove mental trauma and improve their mental health.
6. **Issues of family and children:** they are living separately from their family members and children and it breaks their emotional attachments with them and family norms are degraded.
7. Cutoff from outside world: they are not aware of the outside world so sometime it becomes difficult to get back in their lives.
8. **Reformation process is not up-to-date:** reformation theory is applicable for incarcerated women but it is not up to the mark. It should be updated according to the need of time.
9. Sanitation and hygiene issues are there in prison and women are forced to live in poor conditions.
10. Redressal system in prison is very weak.
11. Violence by authority and inmates in prison: it is noted that sometime violence and harassment is happening against incarcerated women.
12. **Habitual offenders can be toxic to first time offenders:** Social evil can be adopted by other inmates
13. Educational and vocational training for women incarcerated and their children is not up to date.
14. **Sexual and mental harassment:** Violation of human rights in under trial and in prison of women prisoners.

### **Constitutional Aspects for Incarcerated Women Rights**

“As per the State List provided in the Seventh Schedule of Indian Constitution, all issues related to prisons, reformatories and other institutions of a like nature, and persons detained therein; arrangements with other States for the use of prisons and other institutions come under the domain of State Governments.”<sup>2</sup>

“The Constitution of India not only grants equality to women but also empowers the State to adopt measures of positive discrimination in favour of women for neutralizing the cumulative socio-economic, educational and political disadvantages faced by them. Fundamental Rights, among others, ensure equality before the law and equal protection of law; prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth, and guarantee equality of opportunity to all citizens in matters relating to employment. Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(c) and 42 of the Constitution are of specific importance in this regard.”<sup>3</sup>

Constitutional Privileges for Women are as follows:

- (i) “Equality before law for women (Article 14).”<sup>4</sup>
- (ii) “The State not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them (Article 15 (i)).”<sup>5</sup>
- (iii) “The State to make any special provision in favour of women and children (Article 15 (3))”

- (iv) Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State (Article 16).<sup>6</sup>
- (v) “The State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood (Article 39(a)); and equal pay for equal work for both men and women (Article 39(d))”<sup>7</sup>
- (vi) “To promote justice, on a basis of equal opportunity and to provide free legal aid by suitable legislation or scheme 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 (Article 39 A).”<sup>8</sup>
- (vii) “The State to make provision for securing just and humane conditions of work and for maternity relief (Article 42).”<sup>9</sup>
- (viii) “The State to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation (Article 46).”<sup>10</sup>
- (ix) “The State to raise the level of nutrition and the standard of living of its people (Article 47) (x) To promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women (Article 51(A) (e)).”<sup>11</sup>
- (xi) “Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat to be reserved for women and such seats to be allotted by rotation to different constituencies in a Panchayat (Article 243 D(3)).”<sup>12</sup>
- (xii) “Not less than one- third of the total number of offices of Chairpersons in the Panchayats at each level to be reserved for women (Article 243 D (4)).”<sup>13</sup>
- (xiii) “Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality to be reserved for women and such seats to be allotted by rotation to different constituencies in a Municipality (Article 243 T (3)).”<sup>14</sup>
- (xiv) Reservation of offices of Chairpersons in Municipalities for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may by law provide (Article 243 T (4)).”<sup>15</sup>

### **Legislative Aspect for Incarcerated Women**

Different Laws and the rules of incarceration are as follows:<sup>16</sup>

- Indian Penal Code, 1860
- Prison Act, 1894
- Prisoner’s Act, 1900
- Identification of Prisoner’s Act, 1920
- Exchange of Prisoner’s Act, 1948
- Transfer of Prisoner’s 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<sup>17</sup>
- “The Protection of Human Rights, 1993”<sup>18</sup>

“A National Policy on Prison Reforms and Correctional Administration had also been framed in 2007, which gave a number of directives relevant to women prisoners – maintenance of human rights of prisoners, avoiding overstay of under trials etc. It further states, “Women prisoners shall be protected against all exploitation. Work and treatment programmes shall be devised for them in consonance with their special needs.”<sup>19</sup>

**i. Special Procedure for Arrest on Women**

The CrPC contains certain special provisions for the arrest of women – the arrest of women after sunset and before sunrise (except with the prior permission of Judicial Magistrate First Class) is prohibited and a female arrestee is mandated to only be searched by a female officer with due regard to decency.”<sup>20</sup>

“The police official arresting the woman should ideally be dressed in plain clothes and not their uniform so as to reduce the stigma associated with incarceration. Provisions should also be made for the custody of minor children of the woman at the time of arrest. She must provide in writing the name and details of the person with whom she wishes her minor children to stay during her period of incarceration, and this must be complied with strictly. In case where no family/friends are available to care for the child and he/she cannot accompany the mother to prison, the child should be appropriately placed in a Child Care Institution.”<sup>21</sup>

**ii. “National Model Prison Manual, 2016.”<sup>22</sup>**

“The key features of the updated Model Prison Manual 2016 include emphasis on prison computerization, special provisions for women prisoners, focus on after-care services, prison inspections, rights of prisoners sentenced to death, repatriation of prisoners from abroad, enhanced focus on prison correctional staff.”<sup>23</sup>

**iii. Different Committee**

“From time to time, the Government of India had established various Committees, Commissions and Working Groups to study and suggest improvements in prison conditions and administration. Some of these include”<sup>24</sup>:

- All India Jail Manual Committee, 1957
- Working Group on Prisons, 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)<sup>25</sup>

**iv. Women Prisoner’s Rights under Prisons Act, 1984**

“There are numerous rights provided to women in prisons by different committees appointed for prison reforms. These rights must be incorporated in the Prisons Act, 1984. As it is a matter of concern for States so it will be listed under the Seventh Schedule of the State list of the Indian Constitution. Various guidelines should be kept in mind while making Prison Manuals. Women rights with respect to human, constitutional and statutory rights, which should be available to them in prisons are”<sup>26</sup>-

- “The search and examination of the female prisoners shall be carried out by the Matron under the general or specific order of the Medical Officer.”<sup>27</sup>
- “The female prisoners have the right to live separately from the male prisoners as explained in Section 27(1) of the Prison Act 1894 and also in Rule 8(a) of Standard Minimum Rules for the Treatment of Prisoners.”<sup>28</sup>
- “Section 31 of the Prisons Act, 1894 talks about maintenance of certain prisoners from private sources.”<sup>29</sup>
- “Section 33(1) of the Prisons Act, 1894 guides about the supply of clothing and bedding to civil and acquitted criminal prisoners.”<sup>30</sup>
- “All the prisoners should be provided with the basic human rights such as healthy food, shelter, medical care and facilities for reading and writing. All should be treated respectfully and cannot be detained in

a private cell, except on medical conditions or if he/she was proven threatening for other prisoners. Women should be provided with full medical and personal care at the time of delivery and they have to be released on bail for the delivery.”<sup>31</sup>

- “Rule 53, Rule 23, Rule 24, Rule 25, and Rule 26 of The Standard Minimum Rules for the Treatment of Prisoners should be taken care of and hence followed.”<sup>32</sup>
- “The National Commission for Protection of Child Rights (NCPCR) has advised that pregnant, ill or having children dependent women in jail should be considered for early release on personal bounds.”<sup>33</sup>
- “Article 39A of the Indian Constitution strengthens the female inmates to secure free legal aid by providing a legal system to promote justice, on the basis of equal opportunity and to ensure that no one is discriminated in prevailing the legal benefits irrespective of their economic conditions.”<sup>34</sup>
- “Section 303 of the Criminal Procedure Code, 1973 privileges the inmates to be defended by the petitioner of their own choice. Section 304 deals with the legal aid cases which, should be in some cases provided at State expenses. Section 309(1) of CrPC, provides that the proceedings shall be held as soon as possible in every inquiry or trial.”<sup>35</sup>
- “Women prisoners have the right to a speedy trial. As held in Hussainara Khatoun v. Home Secretary, State of Bihar that speedy trial is a fundamental right implicit under Article 21 of the Indian Constitution.”<sup>36</sup>
- “Section 54 of the Code of Criminal Procedure, 1973 contains a proper examination of the body of an arrested person by a registered medical practitioner on the request of the accused person in case of torture and maltreatment in the jails. But commonly, women prisoners are unaware of this right.”<sup>37</sup>
- “Articles 72 and 161 of the Constitution of India, provides conferring powers to the President and the Governors of States to grant a pardon or show clemency towards the prisoners.”<sup>38</sup>

#### **v. Rights for pregnant women in prison**

“During the time of pregnancy, the provisions of the National Model Prison Manual should be strictly followed to make temporary arrangements to release the pregnant lady at the time of delivery in a hospital near the prison. Court’s should be prior informed about the women’s pregnancy so that the court can grant bail at the time of urgency. Proper health checkups should be provided to the pregnant woman inmates.”<sup>39</sup>

“The place of birth of the child born to a woman inmate should not be mentioned as the place of prison on the birth certificate of the child.”<sup>40</sup>

“According to the National Prison Manual, the pregnant woman should be provided with proper diet as needed by a normal pregnant woman. After the birth of the child, for at least one month, the woman and the child should be provided with separate accommodation and other hygienic care for protecting the child from different types of infections. Women prisoners, should not be discouraged from breastfeeding their children. Aadhar cards must be made for all the women prisoners and the newborn babies so that they get able to enjoy the benefits available to them under various government welfare schemes.”<sup>41</sup>

#### **vi. Children of Women Prisoners**

“The prisoner, if she is a mother, should be given a privilege to decide the prison, according to her child’s benefit. A proper environment should be created for children, so they don’t feel like criminals by living there. It should be the duty of the NGO’s, schools and paediatricians to look after the education, mental health and development of the children in prisons. Mothers should be provided with sufficient time to spend with their children.”<sup>42</sup>

“Children should be provided with a healthy diet and there should be a regular checkup for the growth of children, physically and mentally once in a month by a Lady Medical Officer. Body cavity searches should never be applied to children. No child, above the age of six years, should be retarded in prison except in some cases.”<sup>43</sup>

“In case of absence of any friend or family member to take care of the child, the child should be allowed to accompany the mother to prison in a Child Care Institution. The prison administration must ensure that the child should be provided with special care and advantage to meet his mother at least once a week.”<sup>44</sup>

“Visit of children, should not be regulated and bounded by time, even the children should be allowed to visit overnight at least once in three months. A healthy, positive environment should be made for a meeting of the child and the women prisoner.”<sup>45</sup>

## **International Aspect for the Protection Incarcerated Women**

### **Role of Judiciary for the Incarcerated Women**

Judiciary on time to time has observed the importance of fundamental rights for incarcerated women and following case laws have witness this concept:

1. “In the case of the *State of Andhra Pradesh v. Challa Ramkrishna Reddy*, the court held that a prisoner is entitled to all the fundamental rights unless curtailed by the constitution.”<sup>46</sup>
2. “In *State of Maharashtra v. Prabhakar Pandurang Sanzgir*, the Supreme Court stated that the mere fact that someone is detained cannot deprive one of his fundamental rights and that such conditions are not to be extended to the extent of the deprivation of fundamental rights of the detained individual. The Court further ruled that every prisoner retains all such rights that are enjoyed by free citizens except the one that is lost necessarily as an incident of confinement.”<sup>47</sup>
3. “In *Charles Sobaraj v. Supdt Central Jail Tihar*, it was ruled that all the rights available to prisoners under Articles such as 14, 19 and 21 are though limited but cannot be said to be static. They are bound to or rather will rise to new human heights when challenging circumstances arise.”<sup>48</sup>
4. “In *Francis Corahe Mullin v. The Administrator, UT Delhi* Justice Bhagwati observed the rules laid down by Justice Douglas and Justice Marshall :*Mr Justice Dougals reiterated his thesis when he asserted: “Every prisoner’s liberty is, of course, circumscribed by the very fact of his confinement, but his interest in the limited liberty left to him only the more substantial. Conviction of a crime does not render one a non-person whose rights are subject to the whim of the prison administration, and therefore, the imposition of any serious punishment within the prison system requires procedural safeguards.” Mr Justice Marshall also expressed himself clearly and explicitly in the same terms: “I have previously stated my views that a prisoner does not shed his basic constitutional rights at the prison gate and I fully support the court’s holding that the interest of inmate.”*<sup>49</sup>

## **Suggestios to Remove Challenges Faced by Incarcerated Women**

1. Due to increasing number of crimes the number of women prisoners are increasing and prison are overcrowded with prisoners which results in lack of basic needs.
2. Basic need of living area, food, cloth, recreation should be provided in proper manner.
3. The number of under trial women prisoner should be provided some relaxation to reduce the burden on prison.
4. The purpose of reformation is not fulfilling in true manner due to lack of infrastructure and facilities for the overall development of women prisoners in prison. Infrastructure should be developed in such a manner to reform the women prisoner
5. The rules for the welfare of women prisoner are not working in to practice due to lack of will for their implementation.
6. “Women face issues related to lack of female staff, inadequate and cramped accommodation, low levels of sanitation and hygiene, insufficient services to address physical and mental health needs, deficient nutrition, negligible educational opportunities and often unusable skill and vocational training. Focus should be on mental health, sanitation and hygiene, vocational training of women prisoners.”<sup>50</sup>

7. "Many women who live with their children do not receive appropriate educational, health and recreational services to raise them well. If women prisoner are living with her children then proper facilities should be provided to women and her children to raise them in dignified environment."<sup>51</sup>
8. Legal aid service should be provided to women prisoner so they can present herself in court and know about proceedings of court.
9. Women prisoner should be updated about outside world because after release from jail they have to face outer world.
10. Violence by women prisoner inmates and from authorities should be stop it affect the mental, psychological status of women prisoner.
11. The number and accommodation facilities in prison should be upgraded according to the time and number of incarcerated women.
12. Regular inspection of prison, prisoner authority and incarcerated women on regular basis and surprisingly.
13. "Prison administrators and all staff dealing with women prisoners should mandatorily undergo gender sensitive training, which will help them make better decisions with regard to women in prison. They must also be sensitive towards the needs of women belonging to minority communities, disabled women and foreign nationals so as not to discriminate against them in any manner."<sup>52</sup>
14. "A genuine and responsive grievance redressal mechanism should be put in place to help address the violation of rights in prison and give inmates a method to have a dialogue with the administration."<sup>53</sup>
15. "By improving conditions within prison, providing better support on release and most importantly keeping women out of formal prison systems as far as possible, the issue of female criminality in India can be better dealt with."<sup>54</sup>
16. "Comprehensive and result-oriented research must be encouraged for reformation of incarcerated women which shall have a positive impact on policy formulation and programme development, which will help in responding to the social reintegration needs of women offenders more effectively."<sup>55</sup>

## Conclusions

It is important to do justice with incarcerated women because if they are kept in prison they should be corrected or reformed. If any type of harassment is committed against her it should be stop and they should be provided a meaningful life so they can get benefit of reformation and rehabilitee and get involved in her life after the release from prison. There is a need to enact a law which is specifically dealt with the issues and challenges faced by incarcerated women.

## References

1. <https://doi.org/10.1080/13642987.2019.1663341>
2. <https://www.tandfonline.com/doi/epdf/10.1080/13642987.2019.1663341?needAccess=true&role=button>
3. [ijcchalderrjaiarticle.pdf](#)
4. Right of Women in Prison - Indian Law Portal
5. (PDF) RIGHTS OF WOMEN PRISONERS IN INDIA: AN EVALUATION | GARPH Publication - Academia.edu
6. Rights of Women Prisoners in India by Pamini Kasera :: SSRN SSRN-id3621467.pdf
7. MergedFile (wcd.nic.in)
8. Women in Prisons — Vikaspedia, Women in Prisons — Vikaspedia - Search (bing.com)

9. Rights of prisoners and major judgments on it - iPleaders

**Footnotes**

1. Retrieved from <https://www.tandfonline.com/doi/epdf/10.1080/13642987.2019.1663341?needAccess=true&role=button> visited on 10 August 2023.
2. Retrieved form Right of Women in Prison - Indian Law Portal visited on 10 August 2023.
3. Retrieved from Constitutional&Legal\_Rights.pdf (mospi.gov.in) visited on 10 August 2023.
4. Id.
5. Retrieved from Constitutional&Legal\_Rights.pdf (mospi.gov.in) visited on 10 August 2023.
6. Id.
7. Id.
8. Id.
9. Id.
10. Id.
11. Id.
12. Id.
13. Id.
14. Retrieved from Constitutional&Legal\_Rights.pdf (mospi.gov.in) visited on 10 August 2023.
15. Id.
16. Retrieved from Women in Prisons — Vikaspedia visited on 10 August 2023.
17. Id.
18. Id.
19. Retrieved from Women in Prisons — Vikaspedia visited on 10 August 2023.
20. Id.
21. Id.
22. Id.
23. Id.
24. Id.
25. Retrieved form MergedFile (wcd.nic.in) visited on 10 August 2023.
26. Retrieved form Right of Women in Prison - Indian Law Portal visited on 10 August 2023.
27. Id.
28. Id.
29. Id.
30. Id.
31. Id.



32. Id.
33. Id.
34. Id.
35. Id.
36. Id.
37. Id.
38. Id.
39. Retrieved form Right of Women in Prison - Indian Law Portal visited on 10 August 2023.
40. Id.
41. Id.
42. Id.
43. Id.
44. Id.
45. Retrieved form Right of Women in Prison - Indian Law Portal visited on 10 August 2023.
46. Retrieved from Rights of prisoners and major judgments on it - iPleaders visited on 10 August 2023.
47. Id.
48. Id.
49. Retrieved from Rights of prisoners and major judgments on it - iPleaders visited on 10 August 2023.
50. Retrieved from MergedFile (wcd.nic.in) visited on 10 August 2023.
51. Id.
52. Id.
53. Id.
54. Id.
55. Retrieved from MergedFile (wcd.nic.in) visited on 10 August 2023.

---==00==---