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A Critical Study of International Laws Relating to Human Rights Protection of Incarcerated Women

ORIGINAL ARTICLE



Authors

Dinesh Malviya, Dr. Bhupendra Karwande
Assistant Professor
Department of Law
Govt. J. Yoganandam Chhattisgarh College
Raipur, Chhattisgarh, INDIA

Abstract

The condition of incarcerated women is very miserable around the globe. Therefore, it is the prime object of the United Nations Organisation and its subsidiary organisations viz. Office of the High Commissioner for Human Rights, and Commission on the Status of Women, and United Nations Office on Drugs and Crime, to prepare various international binding conventions for the protection of incarcerated women undergone their imprisonment in various countries. The main propose of this paper is to critically examine the impact of various documents adopted by the United Nations and its allied agencies for the better protection of human rights of incarcerated women and to find out the key hurdles faces for their implementation world-wide.

Key Words

Incarcerated Women, Human Rights, The Tokyo Rules, The United Nations, The Bangkok Rules, Inhuman or Degrading Treatment or Punishment.

Introduction

Crime and control of criminals is the most pivotal problem in each era of human society. Every Nation is trying to combat with the problem of raising in the crimes in the society and experience difficulties to punish such criminals. With the gradual development in the social thinking and development of criminology and penology, the inhuman and barbarous punishment had been abolished from the globe and replaced with the humanized punishment. The incarceration has been accepted as the most suitable punishment. With the gradual increase in the number of criminals more places for incarceration required. The more prison means more financial burden on the State. Therefore, State as well as society both shows unwillingness to expanding on the construction of new prisons and providing more humanizing environment to the incarcerated women.

Incarceration is not an intention of moder society, but it is the progressive thought of the modern civilized society. The incarceration can be justified on the various theories of punishment viz. Punitive theory, Deterrent theory, Retributive theory, Expiation theory of punishment.

The inhuman and barbarous treatment with incarcerated people including women throughout the world is a serious issue. Therefore, United Nations and its allied organs viz. human rights commission, UNDOC,

ECOSOC, and Women Commission has been working since their constitution for the protection of incarcerated women and their human rights. These organizations have adopted many international conventions, treaties, declaration, covenants, but this research paper only deals with the documents related to protection of incarcerated women and their human rights.

The United Nations has its basic principle is to provide right to equality for women. The Preamble of Charter of the UNO i.e. Atlantic Charter, enunciated that, one of the central goals of the UNO is to reaffirmation of "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women".¹

The International Bill of Human Rights reinforces and spreads this emphasis on the human rights of women. The UDHR-1948, proclaims 'the entitlement of everyone to equality before the law and to the enjoyment of human rights and fundamental freedoms without distinction of any kind and proceeds to include sex among the grounds of such impermissible distinction.'²

The International Bill of Human Rights, viz. UDHR, ICCPR, ICESCR cumulated with associated human rights treaties, thus puts down an all-inclusive set of rights to which all persons, including incarcerated women, are eligible for same enjoyments. But the fact is that women's condition had proved that they are insufficient to guarantee them the enjoyment of their universally approved rights.

There are several international documents which are directly or indirectly associated with the protection of incarcerated women adopted by United Nations Organisation and many other international organisations as well. But this article mainly focused on those international documents which are directly concerned with the protection of incarcerated women and set out the international standards and direction for all countries. Some of them are followings

The Standard Minimum Rules for the Treatment of Prisoners-1955

The United Nations Organisation (UNO) has constantly been focused on the miserable condition of prisoners and the multifaceted liabilities of prison staff globally. 'The United Nations Congress on the Prevention of Crime and the Treatment of Offenders' first adopted 'The United Nations Standard Minimum Rules for the Treatment of Prisoners' (SMRs) in 1955 in Geneva and the 'UN Economic and Social Council' later ratified them in 1957.

The document outlines the 'Standard Minimum Rules for the Treatment of Prisoners', establishing guidelines for the humane treatment and management of incarcerated individuals. This document divided into two parts and extended to 95 rules. The rules are not a detailed model but reflect good principles and practices. They acknowledge the diversity of legal, social, and economic conditions worldwide. The rules encourage experimentation and adaptation to local contexts.

The 1955 Rules laid the foundation for humane prison standards, but they reflected the context of their time, focusing on minimum physical conditions. The part one relating to rules generally applicable for all prisoners apart from their differences. The rules aim to establish minimum standards for the treatment of prisoners globally. The rules emphasize the humane treatment of all prisoners without discrimination. All rules must be applied impartially, respecting prisoners' rights and beliefs. Different categories of prisoners must be separated based on sex, age, and legal status.²

Rule-9 provided that, 'accommodation must meet health standards, ensuring cleanliness and adequate facilities.'³

Rule-15 has provided that "Prisoners must have access to adequate health care and hygiene facilities. It includes that, each prisoner should have access to clean water, toilet articles, and bathing facilities. Medical services must include qualified personnel and regular health checks. Daily inspections of hygiene and health standards are mandated."⁴

Special provisions are required for pregnant incarcerated women and nursing incarcerated mothers so that better conditions could be available to them during their incarceration.

Recreational and cultural activities are essential for prisoners' mental and physical health.

Rule-20 provided that, 'Prisoners are entitled to nutritious food adequate for health and strength of good quality and adequate quantity.'⁵

Rule-22 provided that, 'every prison must have at least one qualified medical officer within the prison with easy availability to every prisoner and availability of physical and mental health treatment.'⁶

Rule-29 deals with the concept of punishment i.e. 'abolition of inhuman and degrading forms of punishment from law, corporal punishment should be abolished for the disciplinary action against the prisoners, close confinement, placing in dark cell, cruelty with prisoners, reduction in diet, bar fettering shall be abolished.'⁷

Rule-35 provided that, 'Prisoners have the right to be informed the treatment of prisoners, their rights within prison and to voice complaints.'⁸

Rule-37 provides that 'the incarcerated women shall have the rights to contact with outside world at regular interval by direct meeting with their family members, or by electronic communication, or by letters.'⁹

Rule-53 deals with special protection of incarcerated women, provided that 'the part of the institution set aside for women shall be under the authority of the responsible woman officer, and no male member of the staff shall enter the part of the institution set aside for women, women prisoners shall be attended and supervised only by women officers.'¹⁰

Part II of the SMRs deals with the rules applicable to special categories i.e. prisoners under sentence.

Rule-67 deals with classification of the prisoners according to their criminal record, to facilitate treatment.¹¹

Rule 71 Prison labour should be constructive and beneficial for prisoners' rehabilitation and future employment. 'All sentenced prisoners are required to work, based on their physical and mental fitness. Prisoners should have the option to choose their type of work within the limits of prison.'¹²

Rule-77 'Prisoners should have access to education and recreational activities to support their mental and physical well-being. Further education is provided for all capable prisoners, with compulsory education for illiterates and young prisoners.'¹³

Rule-88 'Insane individuals should not be held in prisons and require specialized treatment in mental institutions. Insane persons must be removed to mental institutions promptly. Prisoners with mental diseases should be treated in specialized facilities under medical supervision.'¹⁴

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment-1984

A global treaty specifically banning torture and ill treatment in all circumstances. It obliges States to prevent torture in places of detention and to ensure accountability. It builds on UDHR/ICCPR rights by requiring, for example, that imprisoned persons have the right to complaint procedures and safeguards against abuse.¹⁵

With the intention to make more robust and effective fight against torture and other cruel, inhuman or degrading treatment or punishment throughout the globe, this instrument adopted by the United Nations. Article 2 of the Convention stated that "Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. An order from a superior officer or a public authority may not be invoked as a justification of torture."¹⁶

Article 4 of the Convention stated that “Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.”¹⁷

Basic Principles for the Treatment of Prisoners-1990

A ‘United Nations General Assembly resolution (45/111)’ providing normative guidelines for prison management. Its first principle states that “*All prisoners shall be treated with the respect due to their inherent dignity...*”¹⁸

Article 6 of the Principles deals with ‘the treatment of prisoners deals with fair conditions: access to education and cultural activities.’¹⁹

Article 8 of this Principles provides ‘restriction of solitary confinement, and maintaining prisoners’ human rights except where restrictions are unavoidable.’²⁰

This “soft law” instrument emphasizes that incarceration’s only justification is deprivation of liberty, not degradation, and therefore the incarcerated women shall be equally treated at the same footing as the incarcerated men throughout the world.

United Nations Rules for the Treatment of Women Prisoners-2010 (Bangkok Rules)

‘The particular necessities for addressing the condition of incarcerated women have been emphasized in the year 1980 at the United Nations Organization. In the sixth meeting of United Nations Congress on the subject of ‘Prevention of Crime and the Treatment of Offenders’ adopted a resolution on the particular needs of incarcerated women. In this conference UN Congress recommended that, in the execution of the resolutions directly or indirectly relevant to the treatment of incarcerated women, acknowledgment should be given to the comprehensive problems of incarcerated women and there is necessity to provide the means for their resolution. In states where it was not so far completed, programs and services used as substitutes to incarceration should be made available to incarcerated women, and guarantee that the woman offender had been treated fairly and equally during arrest, trial, sentence and incarceration, particular attention being paid to the special snags which women offenders come across.’²¹

But due to vast diversity of social, legal, geographical, and economic conditions at globally, it is not feasible that all rules might be equally applied at all times and in every places. But they must serve to arouse a constant attempt to overcome practical complications as how they are applied, the universal objectives considered by the United Nations Organization as leading to the common objective of improving outcomes for incarcerated women.

The rules espoused by United Nations General Assembly vid. Resolution number 65/229 in 2010, this set of 70 rules addresses the specific needs of incarcerated women and woman offenders. It recognizes that most prison systems were designed for men and thus often fail women. The Bangkok Rules fill this gap by providing guidance on gender sensitive measures.²²

Rule-2 deals that ‘Newly arrived women prisoners shall be provided with facilities to contact their relatives; access to legal advice; information about prison rules and regulations. Prior to or on admission, women with caretaking responsibilities for children shall be permitted to make arrangements for those children, including the possibility of a reasonable suspension of detention, taking into account the best interests of the children.’²³

Rule-4 provides that ‘Women prisoners shall be allocated, to the extent possible, to prisons close to their home or place of social rehabilitation, taking account of their caretaking responsibilities, as well as the individual woman’s preference and the availability of appropriate programs and services.’²⁴

Rule-7 provides that ‘the right of women prisoners to medical confidentiality, including specifically the right not to share information and not to undergo screening in relation to their reproductive health history, shall be respected at all times.’²⁵

Rule-9 provides that ‘If the woman prisoner is accompanied by a child, that child shall also undergo health screening, preferably by a child health specialist, to determine any treatment and medical needs. Suitable health care, at least equivalent to that in the community, shall be provided.’²⁶

Rule 12 ‘Individualized, gender-sensitive, trauma-informed and comprehensive mental health care and rehabilitation programs shall be made available for women prisoners with mental health-care needs in prison or in non-custodial settings.’²⁷

Rule 19 ‘Effective measures shall be taken to ensure that women prisoner’s dignity and respect are protected during personal searches, which shall only be carried out by women staff who have been properly trained in appropriate searching methods and in accordance with established procedures.’²⁸

Rule 22 ‘Punishment by close confinement or disciplinary segregation shall not be applied to pregnant women, women with infants and breastfeeding mothers in prison.’²⁹

Rule 23 ‘Disciplinary sanctions for women prisoners shall not include a prohibition of family contact, especially with children.’³⁰

Rule 25 ‘Women prisoners who report abuse shall be provided immediate protection, support and counselling, and their claims shall be investigated by competent and independent authorities, with full respect for the principle of confidentiality. Protection measures shall take into account specifically the risks of retaliation. Women prisoners who have been subjected to sexual abuse, and especially those who have become pregnant as a result, shall receive appropriate medical advice and counselling and shall be provided with the requisite physical and mental health care, support and legal aid.’³¹

Rule 26 ‘Women prisoner’s contact with their families, including their children, and their children’s guardians and legal representatives shall be encouraged and facilitated by all reasonable means. Where possible, measures shall be taken to counterbalance disadvantages faced by women detained in institutions located far from their homes.’³²

Rule-54 ‘Prison authorities shall recognize that women prisoners from different religious and cultural backgrounds have distinctive needs and may face multiple forms of discrimination in their access to gender- and culture-relevant programs and services. Accordingly, prison authorities shall provide comprehensive programs and services that address these needs, in consultation with women prisoners themselves and the relevant groups.’³³

Rule 58 of the Rules, ‘women offenders shall not be separated from their families and communities without due consideration being given to their backgrounds and family ties. Alternative ways of managing women who commit offences, such as diversionary measures and pretrial and sentencing alternatives, shall be implemented wherever appropriate and possible.’³⁴

Rule 61 ‘When sentencing women offenders, courts shall have the power to consider mitigating factors such as lack of criminal history and relative non-severity and nature of the criminal conduct, in the light of women’s caretaking responsibilities and typical backgrounds.’³⁵

Rule 64 ‘Pregnant women and women with dependent children non-custodial sentences for pregnant women and women with dependent children shall be preferred where possible and appropriate, with custodial sentences being considered when the offence is serious or violent or the woman represents a continuing danger, and after taking into account the best interests of the child or children, while ensuring that appropriate provision has been made for the care of such children.’³⁶

Rule 65 'Juvenile female offenders Institutionalization of children in conflict with the law shall be avoided to the maximum extent possible. The gender-based vulnerability of juvenile female offenders shall be taken into account in decision-making.'³⁷

Difficulties in Implementing 'The Bangkok Rules'

Despite the significance of the Rules, several challenges hinder their effective implementation across countries. These hurdles stem from structural, cultural, financial, and political factors.

1. Many prison authorities and policymakers remain unaware of the Rules and their provisions.
2. Financial and infrastructural limitations often prevent the provision of gender-specific health care, education, and facilities.
3. Prison staff frequently lack the training necessary to implement gender-sensitive approaches and uphold human rights standards.
4. Deep-rooted gender biases and stigma against female offenders can obstruct progressive reform.
5. High incarceration rates and overcrowding hinder the adoption of measures tailored to women's needs.
6. Some countries lack specific legislation to support the principles of the Bangkok Rules, making enforcement difficult.
7. A lack of disaggregated data on women prisoners makes it difficult to identify needs and design targeted policies.
8. In some regions, low political commitment to prison reform stalls the incorporation of the Bangkok Rules into national frameworks.

Addressing these challenges requires a combination of international advocacy, national legal reform, capacity-building, resource allocation, and societal change. Only through concerted and sustained efforts can the full potential of the Bangkok Rules be realized.

Impact of 'The Bangkok Rules'

'The Bangkok Rules' have had a noteworthy effect on the treatment of incarcerated women in the prison system. These rules have helped shift global perspectives toward more gender-sensitive approaches in penal systems.

1. Many countries have introduced or amended legislation to include gender-specific provisions in their criminal justice systems.
2. There has been a growing emphasis on improving conditions for women in detention, including better healthcare, sanitary facilities, and maternal support.
3. The rules have encouraged the use of non-custodial measures, especially for pregnant women, mothers of young children, and those convicted of minor offenses.
4. Increased awareness and training for prison staff on gender sensitivity and human rights have improved interactions between staff and female prisoners.
5. Enhanced focus on mental health, trauma, and substance abuse treatment has emerged, reflecting the distinct needs of many women prisoners.
6. Better recognition of the rights and needs of children whose mothers are incarcerated has led to more family-friendly visiting facilities and policies.
7. The rules have stimulated more research and data collection on women in prison, providing a stronger evidence base for policy changes.

Overall, the Bangkok Rules have provided an essential framework for advocating the rights of women prisoners and promoting their reintegration and rehabilitation into society. However, the level of implementation varies across regions, and continued advocacy, monitoring, and backing are necessary to guarantee their full realization.

The Nelson Mandela Rules-2015

For a long interval, about seventy years SMRs-1955 were intact as standard rules for the protection of incarcerated women worldwide. They had globally influenced on the growth of prison laws, policies and practices for the protection of human rights of incarcerated women. The revision was necessary to align the rules with evolving international human rights standards, modern correctional practices, and lessons learned from six decades of application.

‘The United Nations General Assembly In 2011, formed an inter-Governmental Expert Group to bring up-to-date the Standard Minimum Rules for the Treatment of Prisoners without letting down any of the existing standards. From 2012 to 2015, Member States SMRs participated for the revisions of the SMRs with the help of the United Nations Office on Drugs and Crime (UNODC). Civil society and other relevant international organizations from various countries were also invited to contribute their valuable suggestions on the improvement of conditions of prison and prisoners.’³⁸

In 2015, after extensive review and consultation, the United Nations GA adopted a revised version, now recognized as the “Nelson Mandela Rules” in respect of the great leader of the South Africa Nelson Mandela, ‘who had detained for 27 years in prison due to his struggle for equality, freedom, justice and human rights and became a global symbol of dignity and human rights.’³⁹ The Rules transformed them into a comprehensive human rights- based framework, addressing modern challenges such as mental health, prohibition of torture, accountability of prison staff. This evolution reflects the global recognition that prisoners, despite their crimes, retain their human dignity and rights.

‘The Standard Minimum Rules for the Treatment of Prisoners (also Known as The Nelson Mandela Rules) explicitly recognize inherent dignity and human rights of all prisoners, aligning with international conventions such as the UDHR and ICCPR.’⁴⁰

This rule has been divided in to two parts and contains 122 rules. The part-1 deals with rules of general applications. It extends from rule 1 to rule 85.

There were several changes had been made in the old SMRs-1955, these may be summarize as following:

- NMR2015 expanded to ensure equivalence of healthcare with the community, access to mental health services, prohibition of medical or scientific experimentation, and protection of prisoners with psychosocial or intellectual disabilities.
- NMR-2015 Introduced Rule 43 solitary confinement beyond 15 days is prohibited.
- NMR-2015 provided strong safeguards against abuse of solitary confinement, collective punishment, and use of chains or shackles. Introduced independent review mechanisms for disciplinary actions.
- NMR-2015, emphasized on safeguards against abuse of solitary confinement, collective punishment, and use of chains or shackles. Introduced independent review mechanisms for disciplinary actions.
- More nuanced approach special protections for vulnerable groups such as incarcerated women, have to be provides some special treatment in many matters which are not required by male prisoners.

Difficulties in Implementing ‘The Nelson Mandela Rules’

The rules offer a comprehensive framework for the treatment of prisoners as human being like others. However, the implementation faces numerous obstacles, particularly in countries with limited resources, systemic issues, or political resistance.

Main Hurdles in Implementation:

1. Many countries lack the financial and infrastructural resources necessary to implement the standards set by the Mandela Rules.

2. High prisoner populations make it difficult to provide adequate space, healthcare, nutrition, and rehabilitation services.
3. Prison staff often receive minimal or no training on human rights, leading to poor treatment and management of inmates.
4. In some systems, corruption and abuse by prison authorities go unchecked, directly violating the principles of the Mandela Rules.
5. The absence of independent inspection bodies and transparency limits accountability and enforcement of the rules.
6. Not all countries have incorporated the Mandela Rules into their national laws or prison regulations, limiting enforceability.
7. Resistance to change, particularly in punitive systems, can stall reforms aimed at rehabilitation and humane treatment.
8. Many prisons focus solely on confinement, neglecting mental and physical health care facilities within the prison.
9. A focus on security and control often overrides the human rights and dignity of incarcerated women.

Impact of the Rules

'The Nelson Mandela Rules,' have the global impact on the treatment of incarcerated women. These rules have redefined international standards around prison management, promoting human dignity and the humane treatment of incarcerated women.

The key Impacts of Nelson Mandela Rules may be summarised followingly:

1. The rules serve as a universal benchmark for prison conditions and treatment of incarcerated women, influencing national laws and prison regulations globally.
2. They reinforce the idea that prisoners retain their human rights and dignity, which has been increasingly acknowledged in policy and judicial systems.
3. Many countries have undertaken prison reforms focusing on health care, mental well-being, and humane conditions, inspired by the Mandela Rules.
4. The rules have prompted legislative changes and the drafting of new correctional policies that reflect international standards.
5. The emphasis on independent inspection mechanisms has led to the creation of monitoring bodies to prevent abuse and neglect in prisons.
6. There is greater emphasis on rehabilitation, reintegration, and reducing recidivism, as opposed to punitive incarceration alone.
7. The rules have encouraged countries to provide human rights training for prison staff, enhancing professionalism and ethical conduct.

While the rules have made significant contributions, challenges persist in terms of implementation, especially in low-resource countries. However, they remain a powerful tool for reform and a moral compass for penal systems globally.

Conclusion

The critical examination of above-mentioned international rules reveals that the United Nations Organization with the help of its allied agencies tried to overcome from the problem of torture with incarcerated women and inhuman conditions of prisons worldwide. From the day of the establishment of the United Nations Organization. All the principles, conventions and rules associated with the protection of incarcerated women

are provided an exhaustive guideline universally to all nations. There are many hurdles on the implementation of these sets of rules due to a variety of reasons such as different economic, social, political and geographical conditions of different countries. Though there are remarkable changes in the condition of incarcerated women in the universe.

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