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Rights of Women Prisoner in India

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ABSTRACT

A jail is a facility for detaining those who have violated the law. Prisons exist to reform and rehabilitate their inmates. Depravity and abuse are routinely hidden behind closed doors in jails, endangering the lives of those housed there. The problems associated with incarceration are magnified to a greater extent in the case of female prisoners. A male-dominated prison system leaves women more vulnerable, especially in ordinary jails where both men and women are housed. At the end of 2010, women accounted for 4.1% of those incarcerated, according to data from the National Crime Records Bureau.² At the end of 2013, there were 18188 people incarcerated in Indian prisons, with 3396 of them being women, or 18.67 percent of the total.³ In addition, 34 female inmates died in 2010, five of them committing suicide, according to the research.⁴ In numerous jails across the country, sources say, torture and other cruel tactics are being used against both women and men. It's also worth noting that statistics are available on cruelty to females in other state facilities, including prisons and hospitals.

The golden triangle of our Constitution protects and safeguards the rights of prisoners in India. In this article, we will try to discuss the various safeguards that are available to prisoners, and simultaneously, we will find out the special safeguards that are made only for female prisoners. This article is going to be very helpful in understanding the various facets of the right to life with respect to prison rights that are guaranteed to a prisoner. I have divided the article into two parts. The first part would talk about the rights guaranteed to the prisoners under Article 21, and the second part would talk about the present condition of the women prisoners and some suggestions from my side that might help in improving their situation. There is no reported case law that specifically talks about the treatment meted out to female prisoners and about the rights available to them in jail. The article is also going to discuss a number of case laws that would help us gain an in-depth understanding of the concept of the right to life from the aspect of prison rights.

Keywords: prisoner, safeguard, jail, female

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² SNAPSHOTS-2010 (I), Total Number of Jail Inmates as on 31.12.2010, Prison Statistics India 2010 (National Crime Records Bureau)

³ SNAPSHOTS-2013 (I), Total Number of Jail Inmates as on 31.12.2013, Prison Statistics India 2013 (National Crime Records Bureau)

⁴ SNAPSHOTS-2010 (III), Deaths in Jail, Prison Statistics India 2010 (National Crime Records Bureau)

I. INTRODUCTION

Women's positions vary widely in a country as diverse as India. There have been some attempts to demonstrate permeability and traditional women's contribution to society's shared growth and advancement due to financial necessities, which have modified current roles for women. In terms of the standing of women in Indian society, no other country values its women more than India does. Over the last two centuries, the standing of women in India has changed dramatically. Female political activists were marginalised by bourgeoisie political movements in the 17th and 18th centuries. As a result, female political activists emerged in the nineteenth century as a distinct interest group from male activists. Obviously, there was a difference between men and women here. As a result, women have waged an ongoing struggle to be recognised for their inherent human rights. Wives, mothers, and daughters all play important roles in society. They provide financial support for their families, raise their children, and provide a variety of other services. But despite equal contributions to the country's prosperity, women face a variety of obstacles that hinder them from realising their full potential.

Global governments were obligated to prioritise women's interests and participation in the development process at all levels as a result of this context. Women's history in India has played a significant role in assessing the quality of women throughout history and into the modern-day. According to the findings of this study, women in India enjoy the same status and rights as males in a variety of categories, including equality, political empowerment, and educational attainment, as well as employment, family and married life, and issues such as health and well-being. Or who can or will benefit from it: the women themselves, society's leaders, the present government, or political agendas?

First, women's wisdom of self-esteem; second, their freedom to manage their own lives both outside and inside the home; and third, their ability to influence communal change to make a simple economic and social request broadly, worldwide, and everywhere is separated into five categories. The phrase "women's empowerment" refers to a woman's right to make all of her own life's major decisions, ensuring her success in every area of her life.

There are two types of women's rights in India: lawful and sacred. Constitutionally protected rights and privileges still apply. Those with legal privileges, on the other hand, have those rights as set down in the numerous laws, such as the Acts issued by Parliament and state legislatures. As a result of the Constitution, the government is empowered to enact anti-discrimination measures that benefit women. A number of international accords and human rights instruments that help ensure women's equality have been ratified by India. In terms of

the typical individual and their daily lives, Indian women are having the toughest time. The mental and physical abuse of women has become all too common, and their well-being is now in danger.

One of the causes of this predicament is a misunderstanding of a woman's legal and sacred rights. Most shocking of all, even women are ignorant of their rights in this situation. Because of this, it allows the government to enforce progressive segregation on women, which protects them from the economic and political disadvantages that come with being a woman. Articles 15, 15 (3), 14, 39 (b), 16, 39 (a), 39 (c), and 42 of the Constitution are especially pertinent in this regard. A time when social conditions for Indian women were dire necessitated the writing of our country's Constitution. She had to endure both mental and physical torment in her native land. She was trying to make a name for herself and find a respectable place in society.

Women in prison have no specific protections under the Indian Constitution.⁵ Contrary to popular belief, women in India have equal rights under the country's Constitution. Women's and children's rights were on the minds of the framers of the Indian Constitution for a long time. This is nicely reflected in the Preamble, which mentions "the ideals and expectations of the Indian people." 'Equality of rank and opportunity' is considered one of the most important concepts. Equal legal rights for men and women are guaranteed in Articles 14 and 15 of the Indian Constitution, respectively. In contrast, Indian women in prison continue to suffer a wide range of issues. Several international accords and human rights instruments supporting women's equality have also been ratified by India. When it comes to cultural, social, economic, and personal safety in India, women are provided legal protection. Women's social, economic, and cultural rights (ESCR) are now being promoted as a fundamental human right in India. Women's issues are no longer restricted to abuse and reproductive rights in the eyes of the movement, which strives to situate them in a broader human rights perspective. Women's issues, including housing, poverty, education, water, and unemployment, are all part of the ESCR's mission. Due to gender equality in every industry, women's economic opportunities in India are fast changing.

The right to life mentioned under our Constitution not only includes basic human rights but also incorporates the guarantee of protection in cases of criminal justice administration. This concept is not limited to the basic necessities of life, like the right to education, health, etc., but it also includes other rights that are required to live a dignified life. The right to life also

⁵ Garg, M. and Singla, N., 2012. Rights of women prisoners in India: an evaluation. *International Journal of Advanced Research in Management and Social Sciences*, 1(2), pp.134-52.

includes the right to have a fair trial. The rights given to an individual under the Constitution are not a favour done to them, but a result of a social contract entered into by the government and the public.

Article 20 of the Constitution states that a person cannot be convicted except for a violation of the law. The deprivation of the personal liberty of an offender is done for the benefit of society. It is done to penalise the person for the crime committed by him and also protect society from the harm that these offenders might cause. We will further talk about the prison rights available to women prisoners in the arena of the right to life.

In 1919-1920, the Indian Jail Committee proposed architecturally distinct jails for female prisoners to be built so that “female prisoners or lady visitors entering the jail should be able to reach the female yard without coming under the observation of male prisoners” in India.”⁶ Sadly, very little progress has been made in this area. Whether in central prisons, district prisons, or sub-jails, female detainees are humiliated by being forced to walk through male prisons.

A key point made by the Committee was the significance of properly classifying convicts and distinguishing between female youth and older women, as well as convicted criminals and procurers and prostitutes from women who have previously lived a reasonable life. State governments, on the other hand, have paid no attention to this advice. Only 14 of India’s 922 prisons are dedicated solely to women. Female inmates are often kept in jails with male guards. They are frequently mistreated, and they have a long list of issues to deal with. There have also been a number of sexual harassment complaints filed with the National Human Rights Commission. Women’s needs have been disregarded because of “the small number of women in jails,” according to the All-India Committee on Jail Reforms 1980-1983. These women’s lives are in jeopardy because they are confined in cramped quarters in jails. Most of the women who end up in Indian prisons come from poor families. It has been said by an esteemed social scientist that women in prison are among our society’s most disadvantaged losers. Often, women have to deal with the additional burden of caring for their dependents while also lacking the necessary qualifications to find legal jobs after serving their time.⁷

Article 10 (1) of the UN Covenant on Civil and Political Rights states that “all persons deprived of their liberty will be treated with humanity and respect for the fundamental dignity of the human person,” while Article 6 of the Covenant states that “every human being has an inherent

⁶ History of Women Prison in India, available at <http://egyankosh.ac.in/bitstream/123456789/38918/1/Unit-3.pdf>.

⁷ Bawa, P.S., 2000. Towards prison reforms. *India International Centre Quarterly*, 27(2), pp.155-162

right to life” (1). This right would be safeguarded by the Constitution. He will not take anyone’s life arbitrarily. As the Supreme Court of India has often stated, even if a prisoner is compelled to remain in solitary confinement, he or she is still entitled to the fundamental liberties guaranteed by the Constitution. People in prison shouldn’t be treated cruelly or arbitrarily. Punishment should be based on the letter of the law.

II. GUARANTEED RIGHTS FOR PRISONERS IN INDIA

Article 21 of our Indian Constitution provides an individual with the right to have a dignified life and states that “no person shall be deprived of his life and liberty except according to procedure established by law”. Article 21 and Article 22 talk about six types of rights available to prisoners.

Convict’s rights

In *D. Bhuvan Mohan Patnaik v. the State of AP*,⁸ the court held that convicts are also entitled to the rights which are available to citizens of India under Article 21. The person should not be deprived of personal life and liberty except according to the procedure established by law. The government cannot resort to oppressive measures to curb the rights of convicts. Convicts, however, don’t have the right to escape from lawful custody. The police can investigate them and post their officials outside the jail. High voltage live wires can be used to prevent convicts from escaping jail. Such measures would not be violative of Article 21.

Prisoners right

The Supreme Court was asked in *Sunil Batra v. Delhi Administration*⁹ whether a prisoner had the right to invoke Article 21. This issue came before the court as a result of a letter written by a prisoner named Batra. In the letter, the prisoner talked about a brutal assault done by a Head Warded on his fellow prisoner. The Head Warded had inserted his stick into the anus of the prisoner, which had resulted in bleeding and tears in the flesh. Batra showed courage and brought the matter to the notice of the courts. The court held that the rights under Article 21 are available to convicts in jail. When a person is convicted, certain fundamental rights, like the right to move freely throughout the territory of India or the right to practise a profession, can be taken away from him. However, certain fundamental rights, like the right to hold or dispose of property, are some of the rights which are still available to him. It was said that a convict has the right to life and liberty except according to the procedure established by law.

⁸ *D. Bhuvan Mohan Patnaik v. State of AP* AIR 1974 SC 2092

⁹ *Sunil Batra v. Delhi Administration* AIR 1980 SC 1579

A prisoner has the right to life and liberty, and this cannot be taken away from him except according to the procedure established by law. A person can be deprived of their personal liberty only after serious consideration of the welfare objectives of the society. If it is seen that the presence of such a person would cause a serious threat to society, then his personal liberty can be curbed. A person will be released on bail provided the safeguards provided by the court are followed by them.

It is seen that a number of prisoners are under trial and are presumed innocent until convicted.¹⁰ Suppose we go to the hospital for our checkup and we have to wait for the doctors along with people who have contagious diseases, and when we come home, we bring those diseases with us. Prison reform is now a constitutional compulsion.¹¹ To address these concerns, the Supreme Court issued guidelines to the states and prison staff. The prisoner's rights need to be protected by the Court. Professional organisations should work to provide free legal services to prisoners' programs.¹²

Right against inhuman torture and custodial death

In *DK Basu v State of West Bengal*,¹³ the Supreme Court said that custodial torture is a clear violation of Article 21. Such a heinous act degrades human dignity and, to some extent, destroys a person's personality. The Supreme Court said that it had been observed that police often use strong arms against those who fall within their jurisdiction. This needs to be done away with for the larger interest of justice.¹⁴ Justice Krishna Iyer said that human dignity is a core value of our Constitution, and it must not be bartered away by jail officials. Ill-treatment of women prisoners has been held violative of Article 21. The court gave direction to the concerned authorities for the safety of the prisoners, particularly women prisoners. A separate lock-up should be there for female suspects, and female constables should be present to guard the lock-ups. Female suspects should not be kept along with the male suspects in the same lock-up. The court also directed that indigent accuses, regardless of gender, receive free legal representation.

The court observed that third-degree methods used by the police are serious violations of human rights.¹⁵ Custodial deaths also come under this, and such incidents violate the provisions

¹⁰ *Id.*

¹¹ *Id.*

¹² *Ibid* at p.1063

¹³ *DK Basu v State of West Bengal JT 1997 (1) SC 1*

¹⁴ *Id.*

¹⁵ *Id.*

of life and liberty. In *Smt Nilabati Behra v State of Orissa*,¹⁶ the Supreme Court held that the concerned authorities would be held liable in case of custodial deaths and compensation needed to be given to the victim for depriving him of fundamental rights guaranteed to him under the Constitution. The Court directed the State to pay compensation to the petitioner for the custodial death of his son.¹⁷

In many cases, the Supreme Courts and the High Courts have referred to Article 5 of the Universal Declaration¹⁸ and Article 7 of the International Covenant on Civil and Political Rights,¹⁹ which provide individuals with the right to protection against torture. Our country has signed the UN Convention against torture and other cruel, inhuman or degrading punishment²⁰ on the recommendation of the NHRC.²¹ Section 330 and 331 of the Indian Penal Code states that the act of voluntarily causing grievous harm to someone with the purpose of extorting confession or restoration of property would amount to an offence. The punishment given in both cases is severe. If a person is found guilty under Section 330, then he would be fined and might receive imprisonment of up to 7 years, while on the other hand, if a person is found guilty under Section 331, then he would receive imprisonment of up to 10 years and would be fined too.

The Code of Criminal Procedure, 1973 gives the Magistrate the power to enquire into a matter in which a person dies in police custody. Sections 24, 25 and 26 of the Evidence Act²² are very important. These sections deal with the confessions made by an accused in the presence of the police. It is said that such confessions would not be used as evidence since they could have been obtained by manipulation, threat, or promise. If the matter is related to the Prevention of Terrorism Act, 2002, the confession made before the Superintendent of Police may be admissible provided all the safeguards are followed.

Our Constitution also gives us the right to not be a witness against ourselves. Article 20(3) of the Indian Constitution states that no person will be forced to be a witness against himself. Section 315 of the Code of Criminal Procedure says that an accused cannot be called as a witness except if he requests so in writing. Some more safeguards are available to him. If the accused fails to bring evidence to support his claim, it will not give rise to any presumption

¹⁶ *Smt Nilabati Behra v State of Orissa* 1993 2 SCC 746

¹⁷ *Id.*

¹⁸ Universal Declaration of Human Rights

¹⁹ International Covenant on Civil and Political rights

²⁰ United Nation Convention against torture and other cruel, inhuman or Degrading Treatment or Punishment (UNCAT)

²¹ National Human Rights Commission

²² Indian Evidence Act, 1872

against him.

Section 376 (2) of the Indian Penal Code²³ provides a minimum punishment of ten years for a person for rapes committed in police custody or within the limits of his police station or premises of any station house.

The Indian Police Act of 1861²⁴ forbids police officers from using personal violence on people in their custody. If there are complaints of custodial violence against police officers and if the charges are found to be true, then there are punitive consequences. In 1996, a senior IPS officer of Haryana was imprisoned for 18 months for perjury and contempt of court in a case related to the illegal detention of two children. In another case that took place in the same year, a senior IPS officer was imprisoned for 3 months for covering the death of a prisoner under the trial. In another case, the State of Punjab was asked to pay a compensation of Rs 10 lacs to the family of an advocate who was killed along with his wife and his child. An innocent person was falsely implicated, and he remained in jail for 3 years. He was also awarded a compensation of Rs. 2 lakh for the suffering he had caused.

In spite of the above violations of human rights, not many safeguards are available against the illegal detention of innocent people in police stations and the use of third-degree methods during interrogation. According to the statistics released by the NHRC, in the years 2003-2004,²⁵ there were a total of 1463 total cases of death in police and judicial custody, as against 1340 such deaths in the years 2002-2003. The National Human Rights Commission recommended that compensation should be given to the family of a person whose death has been caused due to the violence committed by police officials.

Detention in civil prison

The question before the court in *Jolly George Varghese v. The Bank of Cochin*²⁶ was whether detention in civil prison is a violation of Article 21. In this case, the person failed to pay the debt and was put in prison for the same.²⁷ The court said that Article 21 should be read together with Article 19 and Article 14. The court referred to the cases of *Maneka Gandhi*,²⁸ *Sita Ram v. the State of UP*²⁹ and *Sunil Batra v. the Delhi Administration*. The court ruled that incarcerating someone solely for failing to pay a debt or meet contractual obligations is too

²³ Indian Penal Code, 1860

²⁴ Indian Police Act, 1861

²⁵ Annual report of the National Human Rights Commission (2003-2004)

²⁶ *Jolly George Varghese v. The Bank of Cochin* 1980 SC 470

²⁷ *Id.*

²⁸ *Maneka Gandhi v Union Of India* (1978) 1 SCC 494

²⁹ *Sita Ram v State of UP* (1979) 2 SCR 1085

heinous. This is definitely a clear violation of Article 21. If it is apparent that he has no means of paying the debt, or even if he has money, he has to pay for other more important tasks, like paying medical bills, etc., then he cannot be put in prison for the non-payment of the debt.

Rights against solitary confinement

In *Sunil Batra v. Delhi Administration*,³⁰ the question before the Supreme Court was whether solitary confinement³¹ would amount to a violation of Article 14, 19, 20 and 21. Two petitions were filed by two convicts of Tihar Jail. One of the convicts was sentenced to death by the Sessions Judge, and since his conviction, he was kept in solitary confinement till the intervention of the Supreme Court.

Charles Sobhraj³² challenged the act of the Superintendent of Jail, putting him in bar fetters. From the time he was brought to jail, he was put in the bar fetters, and even after the doctor said that the bar fetters should be removed, it was not done. The contention of the petitioners was that Section 30 of the Prison Act does not give the authority to the prison authorities to solitary confine a person under sentence of death. The Supreme Court agreed with the contention of the petitioners and said that a person could not be solitarily confined by the prison authorities. Sections 73 and 74 of the Indian Penal Code are relevant here. Under this section, solitary confinement in itself is a substantive punishment that can be given only by a court of law and cannot be left to the discretion of the prison authorities. The court explained the meaning of the expression “prisoner under sentence of death”. The expression means those prisoners whose sentences of death have become final and cannot be changed by any constitutional procedure. This definition does not apply to a prisoner until he has the right to appeal for mercy. The punishment of solitary confinement deprives a person of communicating with his co-prisoner and is certainly a violation of Article 21. When a person is solitarily confined, his liberty to talk, share and mingle with other people is curtailed, and such curtailment would be violative of Article 21 unless such curtailment is backed by law. The punishment of solitary confinement was held to be violative of Article 21, but Section 30 of the Prison Act was not declared invalid because the procedure of limiting the liberty of a prisoner in jail was held to be fair and just within the meaning of Article 21. In the case of Charles Sobhrajit, it was contended that putting the prisoner in the bar fetters was justified under Section 56 of the Prisons Act. The petitioners contended that Section 56 is violative of Article 14 and Article 21 as it confers arbitrary powers on the Superintendent of Police. The

³⁰ *Sunil Batra v Delhi Administration* AIR 1978 SC 1675

³¹ Solitary confinement is a punishment in which a person is denied contact with another person

³² Charles Sobhraj was a serial killer who committed 12 murders and was jailed in India from 1976 to 1997.

court said that putting a person in the bar fetters day and night is very cruel. Section 56 of the Prisons Act lays down the conditions under which it can be done. Since these conditions were not present in this case, putting the person in the bar fetters was not justified. However, Section 56 was held to be valid.

Right against arbitrary arrest and detention

Article 22 of our Constitution talks about the basic rights that are available to a person arrested under ordinary law. A person has the right to know the grounds on which they are being arrested. The person can consult any lawyer of his own choice. He should be produced before the Magistrate within 24 hours of such arrest. He should not be detained beyond the specified period, except in the case of an order given by the District Magistrate. According to Article 21, no person shall be deprived of his life and liberty. From this, we can infer that a person's life and liberty can be taken away in accordance with the procedure established by law. Article 22 describes the procedure that needs to be adopted. If the procedure laid down in this article is not followed, then that would amount to a deprivation of liberty, and thus it is not in accordance with the procedure established by law. Article 22 deals with two types of matters. One is where the person is arrested under ordinary law, and the second is where the person is detained under preventive detention. The first two clauses of the article are for the former, and the remaining clauses are for the latter one.

Article 22 is a crucial element while discussing the cases of criminal justice. Previously, it was thought that this article was a complete code in and of itself and that the validity of preventive detention cases should be determined by strictly adhering to the four clauses of this article. In Gopalan's case,³³ the court said that a detainee could not say that the detention is not valid since it snatches away the right conferred upon him under Article 19 (1) (d). The validity of the preventive detention is not to be tested on the reasonableness of the restriction imposed upon him, nor on the ground that his personal liberty was infringed and, thus, Article 21 was violated.

This view was held wrong in the case of RC Kooper.³⁴ This case was brought in the matter of Maneka Gandhi³⁵ with respect to Article 21. According to this view, a case of preventive detention needs to satisfy the requirements under Article 22 as well as Article 21. The procedure prescribed for the cases of preventive detention needs to be fair and just and not

³³ Gopalan v. Union of India 1950 SC 27

³⁴ R.C. Kooper v. Union of India 1970 SC 564

³⁵ Supra note 27

violative of Articles 14, 19 and 21 of the Constitution.

Clauses 1 and 2 confer certain rights on a person who has been arrested under ordinary law.

1. A person cannot be detained in custody without being informed of the grounds for his arrest.
2. He has the right to consult a lawyer of his own choice.
3. He should be brought before the District Magistrate within 24 hours of his arrest.
4. He cannot be detained for more than 24 hours unless there is an order from the court.

In-State of Uttar Pradesh v. Abdul Samad,³⁶ the court ruled that a person must be released after 24 hours in custody in the absence of a court order confirming his arrest. In the case of MP v. Shobharam,³⁷ the Supreme Court ruled that there was no need to present the arrested person before the District Magistrate within 24 hours if the person was on bail.

The rights discussed above are equally available to all women prisoners. In the next part, we are going to discuss the problems faced by female prisoners and some suggestions for solving them.

III. THE STATUS OF WOMEN PRISONERS

The concept of the right to life has been broadened to include wide prison rights for prisoners, but yet a lot of problems are faced by female prisoners. The Prison Act and Prison Rules have segregated prisoners based on gender and guaranteed certain rights to women prisoners, but special attention is still required to improve the conditions of women prisoners. Women prisoners are not allowed to see their children often after they attain the age of 6 years. Their children are sent to government homes if there is no one to take care of them. It has been seen that these children often fall prey to the petty gangs in their areas. These women prisoners are not getting the attention they deserve. Section 160 of the Criminal Procedure Code says that no male or female person under the age of fifteen years will be required to attend any place other than the place where they reside. This would not be applicable to women or children who are picked for interrogation on mere suspicion.³⁸ Justice V.R. Krishna Iyer has given some recommendations that might be helpful in filling the lacuna that exists in the present system.

- Women prisoners should be told about the rights they have under the law.
- Only women constables should be allowed to conduct searches on women offenders.

³⁶ State of UP v. Abdul Samad 1962 SC 1506

³⁷ State of MP v. Shobharam 1966 SC 1910

³⁸ Nandini Sathpathy v. P.L.Dani 1978 2 SCC 424

- Women doctors should be allowed to conduct health checks on prisoners to ensure they are not infected with contagious diseases and are fit to be held in prison.
- Women prisoners should be allowed to meet their families and lawyers.
- Women prisoners should be allowed to keep their children with them till they attain a certain age.
- Proper sanitation facilities should be provided to them, and they should not be charged for sanitary products like pads.
- Special prosecution officers should be made available to deal with the cases of women prisoners.
- Policy guidelines are needed in the case of the arrest, interrogation, or detention of women offenders. Socio-legal counselling and psychiatric services should be made available to them during the pre-trial and convection processes. Every State should have a legal aid cell for women. Agencies working in the field of women's development should be asked to volunteer. An eye should be kept on the custodial conditions.
- The need of the hour is a National Policy on custodial Justice for Women. Formulation of an autonomous body that incorporates every component of the criminal justice system is required. Legal aid, police, social welfare, prisons, etc., should be represented by such a body. Representatives of human rights, social work, the media, etc., should also be included in this body.
- Special courts should be set up to deal with female offenders. Adalats can be held to provide speedy justice to women in custody. These adalats would be very helpful in dealing with pending cases as well as in rendering speedy justice. These Adalats should be held routinely in mental health custodial institutions as well as social welfare custodial institutions. The mobile adalats can be held on a district basis. The main objective of such Adalats should be to cover prisons as well as non-prison custodial institutions. Prisons
- should be brought under the seventh schedule because that would be helpful in strengthening the uniform national approach to custodial conditions.
- There is a need to bring a comprehensive Prison and Prisoners Act that could incorporate all the acts which at present are dispersed in the form of several acts.
- The Law Commission should be allotted the duty to critically analyse the efficacy of various legislation related to women in custody.

- An amendment should be made to the Indian Penal Code, Prisons Act, Code of Criminal Procedure and Police Act to incorporate the special needs of women offenders.
- Special attention also needs to be given to the dependent children of female offenders so that they do not become criminals in the future.
- A Mental Health Bill should be passed, which would include the treatment meted out to non-criminal as well as criminal lunatic women in custody.
- A female DIG should be assigned to the State Headquarters to oversee both the female staff and the female prisoners.
- Permanent induction of wardens and matrons into the institution
- Released Prisoner's Aid Societies should be formed to help in the rehabilitation of released prisoners.
- There should be a uniform prison manual. The manual should separately talk about the rights and duties of women prisoners.
- Every police station should have an enclosed space where all the arrestees should be kept. There should be a separate space for female arrestees. Women's police stations should be opened, and all the officials employed should be women.
- A Women's Assistance Unit should be formed, which should consist of men as well as women officials. Their main objective should be to provide assistance to the women in custody at the time of the arrest.
- A model policy manual should also be formulated in line with the prison manual, and it should be strictly adhered to by the police officials. The police can be consulted for the formation of such a manual. The manual should prescribe the standard that needs to be maintained while a woman is taken into custody.
- Custodial authorities, as well as voluntary groups, should work together to protect the rights of women in custody as well as outside.
- Counselling cells should also be set up, and such cells should have custodial staff.

Justice Krishna Iyer says that people's participation is necessary for making the system better. In 2006, the Supreme Court gave certain guidelines to the Central and State governments with respect to the rights of women offenders and their children. The apex court said that pregnant women should be taken to a hospital outside the jail premises for delivery, and the birth certificate of the child should not mention jail as the place of birth. This is done so that the

child is not condemned in the future for being a child of a criminal. It should be made sure that the rights of children to healthy living and education are not violated while they are living with their mother in jail. Our legal system has failed to address the needs of rape victims and those who are victims of violent crimes.

IV. PROBLEMS FACED BY WOMEN PRISONERS

In the year 2016, around 3 lakh women were arrested under the IPC and special laws. Most of them were between the ages of 30-50 and constituted around 50.5 percent of the total proportion, and the others were between the ages of 18-30, constituting around 31.3 percent of the total proportion.³⁹

The administration of prisons is different in different jurisdictions. In this part of the article, we will deal with the problems faced by female offenders in prison. Poor living conditions are a problem in many parts of the country.

Overcrowding

This is one of the main problems faced by female as well as male offenders in prisons. The National Prison Manual provides the size of the cells and barracks and the number of prisoners that should be allowed in them. Overcrowding of prisoners has worsened the hygiene conditions and has resulted in a lot of prisoners suffering from health conditions. Minor infections spread quickly and affect all those who are present in the cells. The reduced number of toilets and bathrooms has exacerbated the situation. The overcrowding affects the prisoners not only physically but also mentally.

- Convicted prisoners are required to be housed separately, but this is not the case due to the limited number of cells and barracks.
- Young offenders also need to be kept separately so that they do not get influenced by their co-prisoners and end up committing crimes like them. These young offenders are often kept with female offenders. The overcrowding in prison results in a lot of inconvenience for the children of female offenders, who are forced to live in that cramped space. Lack of basic facilities and unhygienic conditions

Sanitation facilities

In India, the majority of female prisoners are between the ages of 18 and 50, accounting for approximately 81 percent of the total population. These prisoners are under the menstruating

³⁹ National Crime Records Bureau (NCRB) reports.

age group, and there is a need to provide proper sanitation facilities and menstrual products. Free sanitary pads should be given to them. However, it has been seen that women prisoners are charged for such basic things, or they are given a limited number of sanitary pads in a month. Thus, women are forced to use things like newspapers and clothes, which are very unhygienic and also affect the health conditions of the women offenders.

Poor spending on health care

In 2005, the prison authorities spent around 10,800 a year on each prisoner. The expenses included food, medical expenses, clothing, and welfare activities. This is very little in comparison to other countries, like the US. They spend a hefty amount on the maintenance of the prisoners. In India, maximum expenditure is on food and not other important aspects like health.

In 2005, states like Delhi, UP, and MP reported higher spending on medical care in comparison to other things, while states like Karnataka, West Bengal, and Bihar reported higher spending on educational activities. Tamil Nadu and Orissa reported higher spending on welfare activities.⁴⁰

Custodial rape

In the case of the State of Maharashtra v. C.K. Jain,⁴¹ a woman was raped in police custody. The Supreme Court said that in these types of cases, there is no need for collaboration unless it appears that the testimony given by the prosecution is unreliable. Secondly, the presumption would be that the woman was raped because ordinarily, no woman would make such a claim if she was not raped. Thirdly, the delay in making the complaint is not that crucial if there is a reasonable explanation for the same.⁴²

There have been instances where female prisoners have been tortured in custody. The Asian Centre for Human Rights stated that custodial rape is one of the worst forms of torture inflicted on women by prison personnel. Around 39 cases of custodial rape were reported from the years 2006 to 2010. Maloti Kalandi was rescued from being trafficked and was handed over to the police station. Instead of working for the safety of the woman, the Sub-inspector called her to his official quarters and raped her. A woman prisoner in Bombay was assaulted by the police in the lock-up.

Legal services inaccessibility

⁴⁰ National Crime Records Bureau (NCRB)

⁴¹ State of Maharashtra vs. C.K.Jain, AIR 1990 SC 658

⁴² Id.

The women prisoners are not able to take the benefit of legal aid. The annual report (2008-2009) of NHRC stated that there is a need to make the legal aid system better and accessible to those who are not in the position to afford it.

Females Prisoners are unaware of the law and, thus, this is one of the biggest problems facing them. According to a report by the Assistant Secretary-General of the United Nations Women, illiterate women are not aware of their rights and the judicial system, due to which they are not able to take advantage of the benefits made available to them. Section 437 of the CrPC is one example of the benefits that have been given to the accused women. Uneducated women are not aware of such a provision and thus fail to take its benefit. The provision says that a woman is allowed to get bail even for non-bailable offences, despite the gravity of the crime.

V. ANALYSIS OF JUDICIAL INTERPRETATIONS

As a basis for human rights, some of the rights are available to a prisoner. The court ruled in *T.V. Vatheeswaran v. State of Tamil Nadu*⁴³ that prisoners have access to Articles 14, 19, and 21.

Article 14 is the torchbearer for the authorities in determining the object of reformation.⁴⁴ Article 19 guarantees six freedoms to the citizens of India. Out of these rights, there are certain rights that are not available to the prisoners. A prisoner's only freedoms are the freedoms of speech and expression⁴⁵ and the freedom to join an association.

There are a number of rights that have been included in the ambit of Article 21 of the Constitution. In cases like *Maneka Gandhi*⁴⁶ and *M.H. Hoskot*,⁴⁷ the Supreme Court has stated that the widest possible interpretation should be given to Part III of the Constitution.

Some of the rights are mentioned below-

1. Right to live with human dignity
2. Right to free legal aid⁴⁸
3. Right to livelihood
4. Right to consult with a lawyer or conduct an interview with a friend⁴⁹

⁴³ *T.V. Vatheeswaran v. State of Tamil Nadu*, AIR 1983 SC 361 : (1983) 2 SCC 68.

⁴⁴ Chowdhury Roy Nitai, *Indian Prison Laws and Correction of Prisoners*, Deep and Deep Publications, New Delhi, 2002, p.75.

⁴⁵ Article 19(1)(a) of the Constitution of India.

⁴⁶ *Supra* note 27

⁴⁷ *M.H. Hoskot v. State of Maharashtra*, (1978) 3 SCC 544

⁴⁸ *M.H. Hoskot v. State of Maharashtra*, (1978) 3 SCC 544

⁴⁹ *Jagmohan Singh v. State of U.P.*, AIR 1973 SC 947.

5. Right to a speedy trial etc.⁵⁰

These rights are not specifically mentioned under Article 21. With the help of the decisions given by the court in various cases, these rights have been recognised as the rights of prisoners.

Given below are the cases and the rights available to a prisoner.

Right to free legal aid: If a person is not in the position to hire an advocate, then they should be provided financial assistance. The 42nd Amendment Act has inserted free legal aid as one of the DPSP under the Constitution. The Constitution does not expressly mention that free legal aid should be provided to prisoners. But the judiciary decided to introduce such a provision, so that poor people do not have to suffer just because of their poverty.

In *M.H. Hoskot v. the State of Maharashtra*,⁵¹ the court held that it is the government's responsibility to provide free legal aid to the accused if he is indigent.

In *Sheela Barse v. the State of Maharashtra*,⁵² the court ruled that prisoners should be allowed to be interviewed by their lawyers in order for them to gather accurate information for the case. However, such interviews should be regulated.⁵³

In *Dharambir v. the State of UP*,⁵⁴ the court directed the State Government to allow the family members of prisoners to visit him once a year.

Right against inhuman treatment- Human rights are an essential part of human life. The Supreme Court of India has taken note of the inhuman treatment meted out to the prisoners and directed the concerned authorities to take appropriate measures to safeguard the rights of the prisoners. The court said the treatment of a person in such a manner that offends human dignity and does not treat him like a human would be arbitrary and can be challenged under Article 14.

In *the Christian Community Welfare Council of India v. Government of Maharashtra*,⁵⁵ it was held that women offenders would not be arrested after sunset and before sunrise. The arrest would take place only in the presence of woman constables. The court directed the State to form a committee that would work for the formulation of a Scheme that would include special provisions for female detainees.⁵⁶

The Mulla committee provided the list of rights available to a prisoner.

⁵⁰ *Rattiram v. State of M.P.*, (2012) 4 SCC 516.

⁵¹ *M.H. Hoskot v. State of Maharashtra*, (1978) 3 SCC 544

⁵² *Sheela Barse v. State of Maharashtra*, 1983 2 SCC 96

⁵³ *Id.*

⁵⁴ *Dharambir v. State of U.P.*, 2010 5 SCC 344

⁵⁵ *Christian Community Welfare Council of India vs. Government of Maharashtra*, 1996(1) BOM CR 70

⁵⁶ *Id.*

- Right to human dignity, right
- to access to the law, right
- to basic human needs
- Right to communication with the outside world

VI. RECOMMENDATIONS

There are certain recommendations that I would like to put forward for the welfare of female prisoners as well as male prisoners.

- Prisoners should be allowed to communicate with their families. This helps them face the world when they are released from jail. The legal system should ensure that these prisoners are rehabilitated and are able to set aside the stigma attached to them.

- Women prisoners should be treated properly and should be allowed to meet their children more often. Women who get involved in sex offences should be given special attention, and efforts should be made to ensure that their illegitimate children live their life with dignity. The court held in *Francis Coralie Mullin v. The Administrator, Union Territory Delhi*⁵⁷ that a liberal approach should be taken in the case of women prisoners and that they should be allowed to see their children on a regular basis.⁵⁸

- Women officers should only be allowed to handle women prisoners. The idea of setting up a separate women's police station does not seem feasible to me. The existing police stations are already in a pathetic state. I don't think it would be a good idea given the huge expenditure involved in the process. In *RD Upadhyaya v. State of Andhra Pradesh and others*,⁵⁹ the court said that the children born to a woman offender, their birth certificate should not mention jail as their birthplace.

- The minors should be kept away and segregated from the others. Political offenders should also be kept separately from criminals, and they should not be housed in the same premises. It would be inhuman to keep young children with affluent prisoners.

- Scientific classification of criminals is needed. They need to be separated on the basis of their age, sex and etc.⁶⁰

- Prison legislation should provide compensation to a person who was wrongfully

⁵⁷ *Francis Coralie Mullin v. The Administrator, Union Territory Delhi*, 1981 AIR 746, 1981 SCR (2) 516

⁵⁸ *Francis Coralie Mullin v. Union Territory Delhi*, AIR 1981 SC 746

⁵⁹ *R.D. Upadhyaya v. State of Andhra Pradesh and others*, AIR 2006 SC 1946

⁶⁰ *Sunil Batra v. Delhi Administration*, AIR 1978 SC 1675

detained or suffered harm due to the negligent acts of prison officials. The Supreme Court of India has started addressing these issues and directed states to maintain proper treatment of prisoners and take measures to ensure that prisoners' basic rights are not violated.⁶¹

VII. CONCLUSION

The number of women incarcerated in India is steadily increasing. Women in prison, many of whom are on trial, face numerous challenges in their daily lives. Inmates aren't getting the help they need in rehabilitating themselves in prisons. This means understanding the issues that women in prison face, diagnosing their rights and ensuring that they are upheld are all crucial. Other challenges that women confront include the scarcity of female employees, inadequate housing and sanitation and hygiene facilities that do not meet physical and mental healthcare demands, inadequate nourishment and educational options that are sometimes unusable. As a result, many mothers who share a home with their children are disadvantaged in terms of having access to quality educational, health, and recreational opportunities. In addition to these issues, women in prison face a lack of legal help, limited contact with the outside world, and a higher than average rate of abuse by fellow inmates and prison staff.

As a result, once they've been released, reintegrating back into society will be difficult. As the number of women in the criminal justice system grows, it will be necessary to modify programmes, procedures, and infrastructure to accommodate their unique demands and circumstances. The fact that prisons are now completely cut off from the rest of society makes it much more difficult to keep a healthy population within them. Independent and periodic inspections are crucial for ensuring that laws are being followed. Gender-responsive training should be mandated for prison administrators and other staff that work with female inmates. This would give them the information they need to make well-informed decisions about the placement of female inmates. Women from ethnic groups, women with disabilities, and foreign nationals must all have their needs taken into consideration if they are to be treated fairly.

A sincere and sensitive grievance redressal process should be established to rectify jail rights breaches and give inmates a way to connect with the authorities. The best way to deal with India's female criminal problem is to improve prison facilities, provide better post-release care, and keep women out of traditional prison systems as much as possible.

To be welcomed is research that focuses on results and has a favourable impact on the execution of policy programmes and designs, allowing for better responses to women lawbreakers' social

⁶¹ Sanjay Suri v. Delhi Administration 988, Cr LJ 705 (SC)

reintegration needs. The findings in this paper should be used to better comprehend the status of women in jail. With the help of this article, the reader will have a better idea of how the judicial system might be improved. In order to adequately jail and reform female inmates, the prison system must be altered to be overwhelmingly male-centric. In making judgments about prison reform, legislators and administrators may find it helpful to read this essay in context.

When it comes to moving an automobile or a human, both require four wheels and two legs. However, for Indian democracy to function properly, it requires three independent organs – the legislative, executive, and judiciary – to keep the distribution of power in check. Thus, the task may be divided more efficiently, and a process of checks and balances can be maintained. In both legal and management circles, the concepts of responsibility and accountability go hand in hand. This rule should be extended to jail officials as well.

For the most part, the objective of a jail is to serve as a place of reformation. However, if the convicts are denied even the most basic human rights, the entire goal will be in vain. Until recently, inmates were treated with contempt and stigmatised as if they had forfeited all of their civil rights. The rights of a prisoner are now recognised in modern society, nonetheless. A person's rights do not become subject to the whims of the prison administration and authorities just because they were convicted of a crime.

Taking steps to make sure that prisoners' basic human rights are not violated and that they can live in dignity is urgently needed since depriving other human beings of their basic rights only returns the world to cannibalism and conflict. Making jail life easier does not mean it should be made humanitarian and sensible to improve prison status. There is no doubt that judges have employed their authority in a creative manner and come up with innovative ways to ensure that inmates' Human Rights are protected.

As a result, putting words on paper has never been sufficient. It is time for laws to be put into action and given a chance to achieve their goal of creating a society where everyone is treated equally.
