
BEHIND BARS: A STUDY ON THE CHALLENGES AND RIGHTS OF WOMEN PRISONERS IN INDIA

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ABSTRACT

In our country if a person is convicted for a crime, he has to face various punishments, including imprisonment as prescribed by the law and must go to jail if the court finds him guilty. Comparing to male prisoners, women prisoners constitute a small yet significant portion of Indian prison population. Women prisoners in India are entitled to equal protection of law and humane treatment as guaranteed by the Indian Constitution. Unfortunately, most prisons are overcrowded, unhygienic and not providing basic required facilities, which makes the women prisoners to suffer more than the punishment given to them. The women inmates face a lot of struggles inside the prison which make them feel low and may lead to mental health issues. Moreover, women prisoners face social stigma and limited access to legal aid, making justice elusive. This paper tries to highlights the various challenges faced by the women and also analysed the cases relating to women inmates in India and made an attempt to bring some suggestions that has been found in the area of study.

INTRODUCTION: -

In our society women plays a crucial role in our life, as mother, sister, wife, daughter, friend and even great leader. They contribute not only to the family and social bonds but also to the progress of society and the nation. In our country constitution gives special status to women in the form of reservation and at the same time it imposes an obligation on the State to bring the laws and thereby protecting the rights of the women. As women contributing a lot to our nation but at the same time there are few percentages of women who are indulged in criminal activities and ended up in becoming prisoners in the jail. Despite of the various laws in our country, the women prisoners facing many problems in the jail, it may be lack of basic facilities, lack of hygiene, poor living standards etc. It makes the women prisoners to suffer more inside the prison and also led to violation of their fundamental rights. The women prisoners need to be given special attention and care but in reality, the prisoners are made to struggle more than the punishment given to them.¹

CONSTITUTIONAL ASPECT OF WOMEN PRISONERS IN INDIA

Women prisoners in India are guaranteed several constitutional rights under the Constitution, which ensures their dignity, equality and access to justice. The Constitution of India which plays an active role in the protection of women prisoners. Supreme Court in its various verdict upheld the articles of the constitution, thereby assured the protection to female prisoners.

Right to Equality (Article 14): - Guarantees equality before law to all persons, including women prisoners, ensuring that they are not discriminated based on sex or legal status.²

Non – Discrimination (Article 15(3): - Article 15(3) allows the state to make special provisions for women and children. This enables gender – responsive measures in prisons such as separation from male prisoners and provision of child care.³

Right to Life and Personal Liberty (Article 21): - This includes protection from torture,

¹ Kumar Ajay, Problems faced by female Accused in Prison, Legal Bites, 14 March 2023 (also available at <https://www.legalbites.in/topics/articles/problems-faced-by-female-accused-in-prisons-895398> visited on 06.09.2025 at 2pm)

² Anand Himani, Goyal Muskan, Rights of women prisoners in India: A legal Analysis, International Journal of Integrated studies and Research, Vol 1, issue 2, pg. 62-63

³ ibid

inhuman treatment and guarantees dignity, health care, sanitation etc.⁴

Right to Legal Aid (Article 39A): - Ensures access to free legal aid for prisoners who cannot afford legal representation, crucial for women who are often economically and socially marginalized.⁵

Right to Seek Remedies (Article 32, 226): - Enables prisoners to approach the Supreme Court or High Courts directly for enforcement of their fundamental rights and for redress against violations.⁶

Directive Principles (Articles 39): - These mandate the state to make laws and policies for the welfare of women and children with emphasis on health, nutrition and justice.⁷

LEGAL RIGHTS OF THE PRISONERS UNDER THE PRISONERS ACT, 1894: -

The Prisoners Act, 1894 is the landmark legislation governing prison administration in India, enacted during the British colonial era. The important rights according to the Act are as follows:

1. **Accommodation for Prisoners (Sec 4):** - It is the responsibility of the State Government to provide the accommodation to the accused, according to the Prisons Act, 1894. The model prison manual (2016) also highlights that the living condition of the prison shall be compatible with human dignity in all the aspects such as accommodation, hygiene, food, health care, clothing, etc.
2. **Examination of Prisoners by Qualified Medical Officer (Sec 24):** - Every prisoners shall be examined by the medical officer and it should be enter in the book to be kept by the jailer, a record of the state of the prisoner's health, any wounds, marks on his person, the class of labour he is fit for if sentenced to rigorous imprisonment and any observation which the medical officer thinks fit to add.⁸ The female prisoners have the right to be examined

⁴ Khan Sadia, Rights of Women Prisoners in India: Nexus Between the Pervasive Impact of Patriarchy and the Problem of Women Prisoners, International Journal of Research Publication and Reviews, Vol 4, pg-1193

⁵ Pathak Ananya, Human Rights of Female Prisoners in India, dec 23 2023 (also available at <https://www.jusscriptumlaw.com/post/human-rights-of-female-prisoners-in-india> visited on 08.09.2023 at 3pm)

⁶ Supra note - 2

⁷ ibid

⁸ Section 24(2)

by a lady matron under the special or general orders of the medical officer.⁹

3. **Separation of Prisoners (Sec 27):** - The female prisoners shall be imprisoned in the separate building, or in the separate part of the same building, in order to avoid their conversation, seeing, chance of any sexual intercourse. In a prison where male prisoners under the age of twenty-one are confined, means shall be provided for separating them altogether from the other prisoners and for separating those of them who have arrived at the age of puberty from those who have not. The undertrial criminal prisoners shall be kept apart from convicted criminal prisoners and civil prisoners shall be kept apart from criminal prisoners.
4. **Maintenance of Certain Prisoners from Private Sources (Section 31):** - A civil prisoner or an undertrial criminal prisoner shall be permitted to maintain himself, and to purchase, or receive from private sources at proper hours, food, clothing, bedding or other necessities, but subject to examination and to such rules as may be approved by the Inspector General.
5. **Supply of clothing and bedding to civil and undertrial criminal prisoners (Section 33):** Every civil prisoner and undertrial prisoner unable to provide himself with sufficient clothing and bedding shall be supplied by the Superintendent with such clothing and bedding as may be necessary.
6. **Employment of criminal prisoners (Section 35):** - Prisoners who are sentenced to rigorous imprisonment shall not be engaged in manual labour for more than 9 hours in any one day, except on an emergency with the sanction in writing of the Supreme Court.
7. **Visits to civil and undertrial criminal prisoners (Section 40):** - The Prisoners (Civil and unconvicted) shall be allowed to meet the person whom they desire to meet within the prison at proper timings and under proper restrictions. The under-trial Prisoners may be allowed to see their duly qualified legal advisers without the presence of any other person in the interest of justice.¹⁰

⁹ Section 24(3)

¹⁰ National Human Rights Commission India, Rights of Prisoners, Published by National Human Rights Commission India (also available at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://nhrc.nic.in/sites/default/files/11%20Rights%20of%20Prisoners-compressed.pdf visited on 10.09.2025 at 3:30pm)

OTHER SPECIAL RIGHTS OF THE WOMEN PRISONERS:

1. **Female Prison Staff:** - According to the Prisons Act, 1894 and other prison rules, women prisoners must under the supervision and custody of female warders or female police constables during their stay, transfer and court attendance.
2. **Sanitation and Hygiene:** - Sanitation and hygiene is one of the essential rights of the women in the prison. Court have affirmed that prisoners do not lose their basic human rights when incarcerated and these rights include access to clean drinking water, adequate sanitation and hygienic living condition.
3. **Nutrition:** - The right to adequate nutrition for prisoners in India is recognized as part of the broader constitutional right to life and dignity under article 21 of the Indian Constitution. Prisoners despite their incarceration, retain the fundamental right to receive wholesome nutritious food sufficient to maintain health and well-being.
4. **Education:** - The Model Prison Manual, 2016 which guides prison administration across India, explicitly states that education including both formal and informal learning and vocational training should be provided as a compulsory activity for at least one hour every day for women inmates.

In 1987, Justice Krishna lyer committee was appointed as a National Expert Committee on Women Prisoners and this committee recommended special provisions for women including compulsory education and training inside the prison.

5. **Rights of women with children:** - The children below the age of six years are allowed to live with their mothers inside the prison. The Hon'ble Supreme Court has issued guidelines in **R.D Upadhyay v. State of A.P, AIR 2006 SC 1946**, the children residing with women prisoners, mandating states to provide food, shelter, medical care and education to these children as a matter of right.¹¹

IMPORTANT CASE LAWS RELATING TO WOMEN PRISONERS IN INDIA

T.V. Vatheeswaran v. State of Tamil Nadu, 1983 AIR 361, it was held that Articles 14, 19

¹¹ ibid

and 21 of the Indian Constitution are available to the prisoners as well as common man.¹² In the case of **Upendra Baxi v. State of U.P, AIR1987 SC191** it is a landmark Supreme Court case addressing the *rights and living condition of inmates*, particularly women and girls, in state protective homes in Uttar Pradesh. The public interest litigation originated by Prof. Upendra Baxi, exposing in humane and degrading conditions suffered by women in Agra protective home, established under the Suppression of Immoral Traffic in Women and Girls Act, 1956. The court admitted the matter as a writ petition, spotlighting state responsibility to ensure humane treatment and rehabilitation for vulnerable women.¹³

Hussainara Khatoon v. State of Bihar (1979, AIR 1369)

The Court in this case declared that the right to free legal aid and speedy trial for the undertrials. This verdict is also applicable to women prisoners who are often victims of excessive delays and lack of advocacy.¹⁴

Sheela Barse v. State of Maharashtra (1983 (SC) 378)

The Supreme Court of India addressed the inhuman and degrading treatment of women prisoners and emphasized their right to legal aid and humane treatment.¹⁵

D. K. Basu v. State of West Bengal (AIR 1997 SC 610)

The Supreme court held that custodial torture is a violation of human dignity, reinforcing that prisoners including women must not suffer third-degree treatment or physical abuse in custody.¹⁶

Francis Mullin v. The Administrator, Union Territory of Delhi, 1981 AIR 746,

The Supreme Court held that the right to life under Article 21 of the Constitution includes the right to live with human dignity, encompassing the right of a detainee or prisoner to

¹² <https://vlex.in/vid/special-leave-petition-civil-852323527> (last visited on 11.09.2025 at 2pm)

¹³ <https://indiankanoon.org/doc/1455719/> (last visited on 11.09.2025 at 4pm)

¹⁴ Jain Sakshi, Hussainara Khatoon v. State of Bihar (1979): case analysis, Ipleaders, March 7, 2024 (also available at <https://blog.iplayers.in/hussainara-khatoon-v-state-of-bihar-1979-case-analysis/> visited on 11.09.2025 4pm)

¹⁵ Agarwal Aishwarya, Sheela Barse vs State of Maharashtra [Sheela Barse Case], Law Bhoomi, Jan 3 2024, (also available at <https://lawbhoomi.com/sheela-barse-vs-state-of-maharashtra-sheela-barse-case/> visited on 13.09.2025)

¹⁶ <https://www.alec.co.in/judgement-page/dk-basu-v-state-of-west-bengal> last visited on 14.09.2025 at 1pm

communicate with their lawyer and family members without unreasonable restrictions.¹⁷

R.D Upadhyay v. State of Andhra Pradesh, AIR 2006 SC 1946,

The Supreme Court set out guidelines for treatment of children staying with women prisoners, including rights to food, medical care and privacy about the child's birth.¹⁸

CHALLENGES

- 1. Prison Overcrowding in India:** The National Prison Manual has given various guidelines in order to establish a decent living standard, essential facilities, ventilation standards etc in the prison. However, due to the overcrowd of the prison made the condition worst and led to the various problems. Such as worsened hygiene, health problems. As a result of overcrowding the toilets and bathrooms became less in numbers and created more problem to the prisoners. Young women prisoners between the age of 19 - 25 years are in most of the cases found with the habitual offenders, which leads to harassment and ragging of the young women prisoners.
- 2. Sanitation And Hygiene:** women in the prison needs proper hygiene and sanitation facilities. Especially women under any medication or at their menstruation they need high care and access to hygiene products. In order to maintain hygiene, the female accused must be given with sanitary pads. But unfortunately, in many prison the women are neglected and not provided any sanitary pads. This made the women to use other means like cloths, newspaper etc.¹⁹
- 3. Poor Health care:** Each year, Government spends a specified amount on the prisoners, and this amount has to be utilised for food, clothing, medical expenses, education and to other basic facilities. But the population of the prison are increasing and made it difficult to manage all these expenses with a small amount. Poor health condition inside

¹⁷ <https://mukeshsuman.com/francis-coralie-mullin-vs-the-administrator-union-territory-of-delhi-case-summary/#:~:text=THE%20ADMINISTRATOR%2C%20UNION%20TERRITORY%20OF%20DELHI%20%3A%20CASE%20SUMMARY,-12%20November%202024&text=The%20Supreme%20Court%20in%20Francis,that%20goes%20along%20with%20it.> Visited on 14.09.2025 at 8pm

¹⁸ <https://www.casemine.com/judgement/in/5609ad6be4b01497114115a3> visited at 15.09.2025 at 1pm

¹⁹ Ankita, Women Prisoners in India, Legal Service India (available at <https://www.legalserviceindia.com/legal/article-12934-women-prisoners-in-india.html> visited on 15.09.2023)

the prison makes the inmates to face a lot of health issues, like inaccessibility to gynaecologist, lack of medical services, lack of nutritional food etc.

4. **Custodial Rape:** Custodial rape refers to the rape or sexual assault of an individual who is in the custody of the state or its agencies, such as police stations, prisons or other law enforcement institutions.

State of Maharashtra v. Chandraprakash Kewal Chand Jain (1990 AIR 658)

Chandraprakash Kewal Chand Jain, a Sub-Inspector of Police, was accused of raping a young newly married girl who was aged between 19–20-years. The young girl and her husband were staying in a hotel; the police officer arrested the couple on the pretext that they revealed their false identity and took them to the police station. The husband was kept in the other room where he was beaten and the girl was raped. The Session Judge, convicted the accused and sentenced him to 5 years rigorous imprisonment. Later it was appealed in the High Court and the Court acquitted him. The Supreme Court of India overturned High Court's acquittal, restoring the trial court's conviction and sentence.²⁰

Smt. Rameeza Bee v. D Armugam (1978)

Rameeza Bee, a 26-year-old woman and her husband were arrested by the police for loitering late at night. While her husband was sent to fetch money for fine, Rameeza Bee was allegedly gang raped by three police officers at the police station. When her husband returned, Rameeza informed about the incident. Her husband started protesting against the assault, he was mercilessly beaten to death by the police. A commission of inquiry, known as the Justice Mukhtadkar Commission, was set up to investigate the incident. The commission found the police officers guilty of rape and murder. However, all the accused officials were acquitted because all evidence recorded by the commission is inadmissible in the session court.²¹

5. **Lack of Free Legal Aid:** - Article 39 A of the Constitution of India provides free legal aid to the person by reason of economic and other disabilities. The Supreme Courts in

²⁰ Supra note-1

²¹ Asst. Prof. Jyoti Bhimrao Shinde, Asst. Prof. Jyoti Bhimrao Shinde, Scholarly Research Journal for Humanity Science & English Language, Aug-Sept, 2022, Vol-10/53, pg-13410

its various rulings has ordered to provide free legal aid to every person from his/her arrest. But in reality, the legal aid is provided sometimes, that to only at the time of the trial. Under Legal Aid Service Authority Act, 1987, the legal aid boards have been established to provide free legal aid to the persons who are in need of it. However, in many cases, these boards failed to provide free legal services due to insufficient knowledge about the accused and due to a lack of coordination between police officials and legal aid authorities. In fact, what law provides and what the accused receive from the legal aid services, there is a huge difference between the both.²²

NATIONAL COMMISSION FOR WOMEN: -

The National Commission for women (NCW) is a statutory body established in 1992 under the National Commission for Women Act, 1990. NCW protect and promote the rights of the women, including women prisoners by reviewing laws, recommending reforms, inspecting jails and advising government on critical challenges faced by incarcerated women.

This Commission conducts studies and investigations into specific problems faced by women prisoners such as menstrual hygiene, sexual harassment, poor health facilities, lack of educational and vocational training. It can take suo moto action in cases of rights violations, custodial violence or mass complaints. It collaborates with NGOs, academic institutions and other statutory bodies to organize workshops, capacity building and awareness programs focused on women prisoners' welfare and rehabilitation. The NCW plays a central role in safeguarding women prisoners' rights, aiming for improvement in custodial conditions and serving as a bridge between prisoners, civil society and government for social justice.²³

SUGGESTIONS:-

1. **Medical Services Panel:** - Establishing panels of female doctors like gynecologist, pediatricians, psychiatrists and counsellors for regular check-ups and specialized medical attention, especially for pregnancy, mental illness etc.
2. **Sanitation and Menstrual Hygiene:** - Making mandatory provision of free sanitary

²² Niveditha v, Dr. Neelampandey, Problems of Women Prisoners and Role of Judiciary in Protecting the Rights of Prisoners, International Journal of Social Impact, Volume 3, Issue 4, October-December, 2018,

²³ <https://blog.ipleaders.in/national-commission-women-working-composition-functions/> visited on 15.09.2025 at 3 pm

products, clean water, adequate bathing facilities and proper disposal of menstrual waste.

3. **Nutrition:** - Providing nutrition food to the female prisoners, especially special diets during pregnancy and during illness.
4. **Employable Activities:** - Introducing income generating activities for undertrials and convicts. Also, innovative employment training should be provided.
5. **Family Contact:** - Providing facilities to talk to their family members and a video facility for prisoners to connect with family, as it is crucial for emotional stability.
6. **Legal aid Facility:** - providing free legal aid and also creating awareness among the needy inmates.

CONCLUSION: -

Women prisoners in India are ensured rights under Indian Constitution, under article 14, 15, 21. Which collectively guarantees the protection from arbitrariness, discrimination, violence and inhumane treatment. The Supreme Court in its various decisions directed the access to health care, legal support, child care, privacy and measures to prevent abuse and rehabilitation to the female inmates. However, gaps persist in practice due to lack of resources, gender-specific programming and social stigma. Comprehensive prison reforms, strict implementation of legal standards and active monitoring by bodies like the National Commission for Women, along with periodic review by courts, remain essential to actualize these constitutional promises for every woman who enters the Indian prison system.