

Problems of Women Prisoners and Role of Judiciary in Protecting the Rights of Prisoners

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ABSTRACT

The condition of women prisoners in Indian prisons is a matter of great concern. Women in India have always been deprived of their rights and freedom, though our constitution bars any discrimination on the basis of sex. The situation of women in Indian prisons remains neglected even after many Supreme Court rulings and various committees reports. There is an urgent need for making prison authorities more sensitive in this regard. Government need to come up with social security measures of such women and speed up the process of trial which will avoid overcrowding in the jails. NGOs can also play major role in spreading awareness on legal issues and supporting families of these women. This Article deals with the, Problems of women Prisoners and the role of Supreme Court towards the human rights protection of prisoners.

Keywords: *Women, Discrimination, Prison, Supreme Court, Protection, Prisoners*

Women in the contemporary prison face many problems; Some resulting from their lives prior to imprisonment others resulting from their imprisonment itself. Women in prison have experienced victimization, unstable family life, school and work failure, and substance abuse and mental health problems. Social factors that marginalize their participation in mainstream society and contribute to the rising number of women in prison include poverty, minority group member, single motherhood, and homelessness. It has been 64 years since India attained independence — the largest democracy in the world. Yet justice for all is a far cry in the country where the judiciary system continues to ignore human rights of numerous women prisoners. The condition of women in India is like hell in perpetuity, despite the fact that today we have some powerful names among the female community in India and the world; they started their career from grass root and they touched the sky in the every field. The women prisoners either convicts or under trials are languishing in the pitiable conditions of the overcrowded Indian jails sans any basic facilities of even soap or water. The demographic profile is

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conspicuous by the presence of mentally ill women who are not supposed to be jails in the first place. Discrimination on the basis of caste, class, status etc is trite in these conditions. More concerning is the apathy shown by the families towards these unfortunate women. Even after release they remain ostracized lot. Their living conditions are worse compared to their male counterparts. They have to reside in cramped and unhealthy spaces. Lack of medicines, lack of doctors and teachers, lawyers worsen their state. Ignorance is common many of them even unaware that they can have bail. Their children grow up in these filthy conditions. The treatment by the jail authorities towards the women prisoners is also not very heartening. The women constantly suffer from physical abuse and even custodial rape.

Supreme Court, under Article 21 of Indian Constitution developed Human Rights Jurisprudence to protect right of individuals. Also it often emphasized for right to equality in Article 14 of the constitution, particularly prison rights were given undue emphasis in Supreme Court. There are innumerable cases filed in Supreme Court regarding right violations, custodial deaths, torture, inhuman treatment and other derogatory actions and reactions in the prison. Supreme Court has been vigilant in various encroachments of Human Rights in prisons. According to Article 21, it is stated that right to life and personal liberty is established by law for all citizens of India. For all forms of human Rights violations, Right to life and personal liberty serves as a backbone.

Objectives

The Article aims to analyze:

1. Various forms of problems in prison
2. Role of Supreme Court and its Judgments in protecting rights in prisons in India.

METHODOLOGY

This present study is based on secondary sources. Source of data for the present study has been adopted from articles, documents, All India Reports detailing judgments of the Supreme Court, journals and websites.

Key Concern of Women in Prisons is:

- ***Over crowded captive house:*** Observation done by National Commission on Women suggested the, number of women in the incarceration has exceeded the permissible limit.
- ***Lack of Medical Facility:*** It is common observation that the women in the prison are generally from lower section of society. Hence they are already vulnerable to disease and lack of basic health care facility, absence of lady doctors aggravated their condition.
- ***Lack of legal awareness and basic human rights:*** Many women, due to abject unawareness of their fundamental human rights, remains in the prison for what they deserve.

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- ***Apathy shown by government and police department:*** Many times brutal incidents, such as physical violence, mental torture and even rape are committed by the police personals.
- ***Social exclusion:*** If women are convicted in some case, then the nature of our society is such that the family members don't heed towards their own kin.

Role of Judiciary in Protecting the Rights of Prisoners

Judiciary in every country has an obligation and a Constitutional role to protect Human Rights of citizens. As per the mandate of the Constitution of India, this function is assigned to the superior judiciary namely the Supreme Court of India and High courts. The Supreme Court of India is perhaps one of the most active courts when it comes into the matter of protection of Human Rights. It has great reputation of independence and credibility. The preamble of the Constitution of India encapsulates the objectives of the Constitution-makers to build a new Socio-Economic order where there will be Social, Economic and Political Justice for everyone and equality of status and opportunity for all. This basic objective of the Constitution mandates every organ of the state, the executive, the legislature and the judiciary working harmoniously to strive to realize the objectives concretized in the Fundamental Rights and Directive Principles of State Policy.

Since every society has a judicial system for the protection of its law abiding members, it has to make provisions of prisons for the law breakers. But it doesn't mean that the prisoners have no rights. The prisoners also have their rights. The Supreme Court of India, by interpreting Article 21 of the Constitution, has developed human rights jurisprudence for the preservation and protection of prisoner's rights to maintain human dignity. Any violation of this right attracts the provisions of Article 14 of the Constitution, which enshrines right to equality and equal protection of law. In addition to this, the question of cruelty to prisoners is also dealt with, specifically by the Prison Act, 1894 and the Criminal Procedure Code (CRPC). Any excess committed on a prisoner by the police authorities not only attracts the attention of the legislature but also of the judiciary. The Indian judiciary, particularly the Supreme Court, in the recent past, has been very vigilant against violations of the human rights of the prisoners. The Supreme Court and the High Courts have commented upon the deplorable conditions prevailing inside the prisons, resulting in violation of prisoner's rights. Prisoners' rights have become an important item in the agenda for prison reforms. The need for prison reforms has come into focus during the last three to four decades.

Prisoners and the Human Rights

The Supreme Court of India in the recent past has been very vigilant against encroachments upon the Human Rights of the prisoners. Article 21 of the Constitution of India provides that "No person shall be deprived of his life and Personal Liberty except according to procedure established by law". The rights to life and Personal Liberty are the back bone of the Human Rights in India. Through its positive approach and Activism, the Indian judiciary has served as an institution for providing effective remedy against the violations of Human Rights. By giving a

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liberal and comprehensive meaning to “life and personal liberty,” the courts have formulated and have established plethora of rights. The court gave a very narrow and concrete meaning to the Fundamental Rights enshrined in Article 21.

In *A.K.Gopalan’s case*, the court had taken the view that each Article dealt with separate rights and there was no relation with each other i.e. they were mutually exclusive. But this view has been held to be wrong in *Maneka Gandhi* case and held that they are not mutually exclusive but form a single scheme in the Constitution, that they are all parts of an integrated scheme in the Constitution. In the instant case, the court stated that “the ambit of Personal Liberty by Article 21 of the Constitution is wide and comprehensive. It embraces both substantive rights to Personal Liberty and the procedure prescribed for their deprivation” and also opined that the procedures prescribed by law must be fair, just and reasonable.

In the following cases namely *Maneka Gandhi, Sunil Batra, M.H.Hoskot and Hussainara Khatoon*, the Supreme Court has taken the view that the provisions of part III should be given widest possible interpretation. It has been held that right to legal aid, speedy trial, right to have interview with friend, relative and lawyer, protection to prisoners in jail from degrading, inhuman, and barbarous treatment, right to travel abroad, right live with human dignity, right to livelihood, etc. though specifically not mentioned are Fundamental Rights under Article 21 of the Constitution. Thus, the Supreme Court of India has considerably widened the scope of Article 21 and has held that its protection will be available for safeguarding the fundamental rights of the prisoners and for effecting prison reforms. The Supreme Court of India has developed Human Rights jurisprudence for the preservation and protection of prisoner’s Right to Human Dignity. The concern of the Apex judiciary is evident from the various cardinal judicial decisions. The decisions of the Supreme Court in *Sunil Batra* were a watershed in the development of prison jurisprudence in India.

Rights against Solitary Confinement and Bar Fetters

The courts have strong view against solitary confinement and held that imposition of solitary confinement is highly degrading and dehumanizing effect on the prisoners. The courts have taken the view that it could be imposed only in exceptional cases where the convict was of such a dangerous character that he must be segregated from the other prisoners. The Supreme Court in *Sunil Batra (1)* considered the validity of solitary confinement. The Supreme Court has also reacted strongly against putting bar fetters to the prisoners. The court observed that continuously keeping a prisoner in fetters day and night reduced the prisoner from human being to an animal and such treatment was so cruel and unusual that the use of bar fetters was against the spirit of the Constitution of India.

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Rights against Inhuman Treatment of Prisoners

Human Rights are part and parcel of Human Dignity. The Supreme Court of India in various cases has taken a serious note of the inhuman treatment on prisoners and has issued appropriate directions to prison and police authorities for safeguarding the rights of the prisoners and persons in police lock-up. The Supreme Court read the right against torture into Articles 14 and 19 of the Constitution. The court observed that “the treatment of a human being which offends human dignity, imposes avoidable torture and reduces the man to the level of a beast would certainly be arbitrary and can be questioned under Article 14”. In the *Raghubir Singh v. State of Bihar*, the Supreme Court expressed its anguish over police torture by upholding the life sentence awarded to a police officer responsible for the death of a suspect due to torture in a police lock – up. In *Kishore Singh VS. State of Rajasthan* the Supreme Court held that the use of third degree method by police is violative of Article 21.

The decision of the Supreme Court in the case of *D.K. Basu* is noteworthy. While dealing the case, the court specifically concentrated on the problem of custodial torture and issued a number of directions to eradicate this evil, for better protection and promotion of Human Rights. In the instant case the Supreme Court defined torture and analyzed its implications.

Right to have Interview with Friends, Relatives and Lawyers

The horizon of Human Rights is expanding. Prisoner’s rights have been recognized not only to protect them from physical discomfort or torture in person, but also to save them from mental torture. The Right to Life and Personal Liberty enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival. The right to have interview with the members of one’s family and friends is clearly part of the Personal Liberty embodied in Article 21. Article 22 (I) of the Constitution directs that no person who is arrested shall be denied the right to consult and to be defended by a legal practitioner of his choice. This legal right is also available in the code of criminal procedure under section 304A. The court has held that from the time of arrest, this right accrues to the arrested person and he has the right of choice of a lawyer. In a series of cases the Supreme Court of India considered the scope of the right of the prisoners or detainees to have interviews with family members, friends and counsel. In *Dharmbir vs. State of U.P* the court directed the state Government to allow family members to visit the prisoners and for the prisoners, at least once a year, to visit their families, under guarded conditions.

In *Hussainara Khatoon vs. Home Secretary, Bihar*, the Supreme Court has held that it is the Constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation, to have free legal services provided to him by the state and the state is under Constitutional duty to provide a lawyer to such person if the needs of justice so require. If free legal services are not provided the trial itself may be vitiated as contravening the Article 21.

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In *Sheela Barse vs. State of Maharashtra*, the court held that interviews of the prisoners become necessary as otherwise the correct information may not be collected but such access has got to be controlled and regulated. In *Jogindar Kumar vs. State of U.P.*, the court opined that the horizon of Human Rights is expanding and at the same time, the crime rate is also increasing and the court has been receiving complaints about violation of Human Rights because of indiscriminate arrests. The court observed that there is the right to have someone informed.

Right to Legal Aid

Though, the Constitution of India does not expressly provide the Right to Legal Aid, but the judiciary has shown its favour towards poor prisoners because of their poverty and are not in a position to engage the lawyer of their own choice. The 42nd Amendment Act, 1976 has included Free Legal Aid as one of the Directive Principles of State Policy under Article 39A in the Constitution. This is the most important and direct Article of the Constitution which speaks of Free Legal Aid. Though, this Article finds place in part-IV of the Constitution as one of the Directive Principle of State Policy and though this Article is not enforceable by courts, the principle laid down there in are fundamental in the governance of the country. Article 37 of the Constitution casts a duty on the state to apply these principles in making laws. While Article 38 imposes a duty on the state to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. The parliament has enacted Legal Services Authorities Act, 1987 under which legal Aid is guaranteed and various state governments had established legal Aid and Advice Board and framed schemes for Free Legal Aid and incidental matter to give effect to the Constitutional mandate of Article 39-A. Under the Indian Human Rights jurisprudence, Legal Aid is of wider amplitude and it is not only available in criminal cases but also in civil, revenue and administrative cases.

In *Madhav Hayawadan Rao Hosket vs. State of Maharashtra*, a three judges bench (V.R.Krishna Iyer, D.A.Desai and O.Chinnappa Reddy, JJ) of the Supreme Court reading Articles 21 and 39-A, along with Article 142 and section 304 of Cr.PC together declared that the Government was under duty to provide legal services to the accused persons.

There was also yet another case *Premshankar Shukla vs Delhi Administration* in which Supreme Court gave a supportive verdict of protecting right violations in the prison. The under trial prisoners sent a telegram regarding enforced handcuffing and fetter entanglements. In Batra case judgment, only in essential condition, handcuffs and iron fetters may be used is the judicial pronouncement. But in the present case the undertrial prisoners complained that they were forcefully handcuffed and escorted from goal to court.

The Supreme Court reemphasized in its judgment that usage of handcuffs and as well as iron fetters among prisoners is a blatant violation of human dignity and right encroachment which is

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also against the constitutional culture. The court added that, part III of fundamental rights in Indian constitution, it is enumerated that equality before law be maintained on accordance with article 14 and on accordance with the Article 19 and 21, right to life and personal liberty be not breached.

CONCLUSION

The women and children, being the vulnerable section of society face certain stigma and stereotypes and need special attention and care. This coupled with their state of being illiterate, poor and perception of being criminals should not lead to their deprivation of Fundamental Rights as citizens of the country. The Role of Indian Judiciary regarding the protection of Human Rights of prisoners indicates that the judiciary has been playing a role of saviour in situations where the executive and legislature have failed to address the problems of the people. The Supreme Court has come forward to take corrective measures and provide necessary directions to the executive and legislature. From the perusal of the above contribution it is evident that the Indian Judiciary has been very sensitive and alive to the protection of the Human Rights of the people. It has, through judicial activism forged new tools and devised new remedies for the purpose of vindicating the most precious of the precious Human Right to Life and Personal Liberty.

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Conflict of Interests

The author declared no conflict of interests.

REFERENCES

- Nidhibeniwal, Role of Judiciary in Protecting the Rights of Prisoners, Retrieved from: <http://www.legalservicesindia.com/.../role-of-judiciary-in-protecting-the-rights-of-prisoners->
- Human Rights and Humanitarian law – Developments in India and International Law South Asia Human Rights Documentation Centre (SAHRDC)
- Hand Book of Human Rights and Criminal Justice in India – Second Edition – SAHRDC
- Law Relating to Protection of Human Rights under the Indian Constitution and Allied Laws by Justice Palok Basu.
- Human Rights and Justice System – Ashwan Kant Gautam
- Maneka Gandhi vs. Union of India – AIR 1978 SC 579
- Francis Coralie Mullin vs. The Administrator Union Territory of Delhi, (1981) 1 SCC 608
- Sunil Batra vs. Delhi Administration – AIR 1978 SC 1675
- Charles Sobraj vs Suptd. Central Jail – AIR 1978 SC 1514
- Rustom Cowvasjee Cooper vs. Union of India – AIR 1970 SC 1318

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Sada Shiv Manohar Parkar vs. State of Maharastra – 1998 CrL LJ.3755.
A.R.Antulay vs. R.S.Nayak – (1992) 1 SCC 225
State of A.P. vs. Challe Ramakrishna Reddy – (2000) 5 SCC 712
D.K.Basu vs. State of W.B – AIR 1997 SC 619
State of U.P vs. Deoman Upadhyaya – AIR 1960 SC 1125
Raja Narayanlal Bansilal vs. Maneck Phiroz Mistry – AIR 1961 SC 29
Danial H.Walcott vs. Supdt. Nagpur Central - (1972) 74 BOMLR 436
State of Gujarat vs. High Court of Gujarat – (1998) 7 SCC 392
Common Cause vs. Union of India – (1996) 4 SCC 33
Prem Shankar Shukla vs. Delhi Administration (1980) 3 SCC 526
Hussainara Khatoon vs. Home Secretary, State of Bihar – AIR 1979 SC 1369
Sheela Barse vs. State of Maharashtra, (1983) 2 SCC 96
R.D.Upadhyah vs. State of A.P. – AIR 2006 SC 1946
Hiralal Mallick vs. State of Bihar – AIR 1977 SC 2236
Sheela Barse vs. Union of India – AIR 1986 SC 1773
International Covenant on Civil and Political Rights
International Covenant on Economic, Social and Cultural Rights
State of U.P. vs. V.Chandrik, 2000 CrL LJ 384 (386)
State of Gujarat vs. Natwar Harchenji Thakor – (2005) CrL LJ 2957
Selvi vs. State of Karnataka – (2010) 7 SCC 263
Law and Practice of Rights of Prisoners by Mr.A.Sirajudeen, Advocate
<http://www.insightsonindia.com/2015/08/20/2criticallycommentontheconditionofwomenprisoner sinindianprisons/>