



TREATMENT OF WOMEN OFFENDERS IN INDIA: A LEGAL STUDY

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Abstract-- The purpose of this research paper is to identify the treatment and challenges faced by Indian women offenders. Imprisonment could be a method of punishment which has evolved over the centuries. Prison and its administration may be a state subject detailed in list 2 schedule 7 of Indian constitution. During this research paper we try to discuss the matter faced by women in Indian jails and solutions for the identical. The courts in India have purported the requirement to acknowledge the correct to offenders. Many factors lead a prisoner to commit a criminal offense but always a prisoner is required to be treated as a human being who could be a person with basic right, human dignity, and human sympathy.

UN general assembly has espoused rules for the welfare of female offenders & non-custodial measure for women offender (the Bangkok rule) in 2010. Now a days the number of women offenders is increasing. Majority of women offenders are in the age group of 30-50 years. The problems faced by the women in Indian jails are both physical and mental, which include, overcrowding, sanitation and hygiene, poor health conditions and nutrition, vulnerabilities of pregnancy and childcare, lack of education and violence.

The model prison manual drafted by the BPR & D also calls for women doctors, superintendent, and separate kitchens for female inmates, and also temporary release for an impending delivery which are to be provided to district and state jail. Most of them are uneducated, so officers ought to tell them about charges framed against them. There are number of provisions in the form of law, rule & guidelines that protect female from exploitation, and guarantee them basic services. A comprehensive after care program can prevent recidivism and help in the smooth transition of female in society after release. This should include support for various aspects of post imprisonment life.

INTRODUCTION

Every person in the society is born with equality and they are endowed by their creator with similar basic rights. These rights form the basis of every woman offender that is the rights of life and liberty which have been recognised by various Constitutions of the world, but in every society, there are some people who don't follow the ethics and standards of society then that woman offender is deprived of these rights with proper punishment. If there is a Society without crime, it is a European theory. The Indian struggle has played the most crucial role in identifying the rights of women offenders.

If a woman commits any crime he does not cease to be a human being, thus all fundamental rights are enforceable in reality, though they are restricted by the fact of imprisonment or fine or with both. The main aim of the criminal justice system is that if women are ones a criminal, it does not mean that he is always a criminal for his lifetime. There is a famous quote – *Hate the crime and not the Criminal - Mahatma Gandhi*

According to the State list every state has to achieve the goal of protecting the society from the convict and also to reform the women offenders. Thus, under Constitution of India, the Supreme Court has interpreted various fundamental rights for the benefits of women offenders such as- Article 14, 19, 21, 22, 32, 37, 39A, 226.

LITERATURE REVIEW

In India the status of women offenders is a problematic situation as the women in the offenders are



either under trial or convicted which leads to lots of issues like-the Overcrowding of Prisons and due to lack of funds the women are not provided with proper sanitation facilities, as the number of offenders are more there is no adequate staff members in the offenders which causes lots of trouble in the prisons, rising to conflicts, poor management in the prisons, etc. There are certain cases which reflected that due to poor security in the prison system there has been the occurrence of custodial rapes.

Thus, the following are some of the problems which are faced by female offenders:

1. Poor living Accommodations or Overcrowding of Prisons.
2. Lacks with basic facilities of sanitation and hygiene.
3. Poor spending on health care and welfare.
4. Problem of Women Offenders in India- custodial rape

This research paper seeks to study the conditions of women offenders and provides the area for improvement to resolve the same possible errors and it also deals with the problems which are faced by the female offenders and talk about the rights of offenders mentioned under the constitution of India were through judicial interpretation these rights are recognised under the head of Offenders Rights.

This article also provides proper recommendations and suggestions in improving the prison administration of the country with keeping in mind those women offenders should be handled with proper care and seeking that there are no physical, psychological and emotional threats to them in the prisons.

RESEARCH QUESTION

In International Scenario, there are several studies done by various great authors out of India which contributed their views in terms of understanding the woman criminality. The major and important contribution includes Lombroso in terms of understanding the biological factors, Ferrero in understanding psychological factors, Thomas, Pollak¹ who has greatly emphasized in understanding the woman criminology. Thomas William and Christopher have extensively analyses on the criminality of female in sociological aspects.

In the Indian scenario, there is very less and low importance given to female and crime in terms of understanding the woman criminology as well as there is very less and low focus given to specifically understand the problems of women offenders. But there are certain authors and thinker who took great efforts in understanding the woman criminality, the first attempt was done by Sharma who conducted the sociological research on female offenders from Uttar Pradesh three decades ago, later on, the various research was conducted by Sohoni Bhanot, Mishra, Singh who furnished the statistical analysis to understand the nature, extents and patterns of female criminality.

Pachauri was the first who take charge and conducted the research in understanding the status of female offenders which reflected the training and treatment of women offenders in Indian prisons. Mridul Manyavar made an attempt in focussing to understand the lifestyles of female criminals and suggested the therapeutic approaches which were used as the tool for reformation in offenders in India which greatly impacted in developing the status of women offenders.

There are very fewer and small article works and researches which focussed on the issues of women offenders. There are circumstances were under the classification of woman offenders are made in terms



of under trial, convicted and where there are situations when children are born or sometimes the female are imprisoned when they have a very young child at home where there is a need that the children with respect to certain age criteria should be kept with their mother for proper care and for the normal growth and development of the child. These are certain reforms which are taken into account in the Manual and which have impacted a lot in the country.

RESEARCH OBJECTIVES

This Research Paper aims at understanding the following points:

- To make a review of the legal status of women in custody in the Indian context.
- What are the problems faced by women offenders.
- To study the various procedures and practices in handling women in various custodies.
- What are the various constitutional rights of the offenders in India?
- What are the improvements needed to be done in the existing situation of women offenders.

RESEARCH METHODOLOGY

The research paper has been made in keeping in mind the following research objectives:

- To identify the problems faced by the Woman Offenders in India.
- To understand various Rights of the Woman Offenders.
- To understand judicial creativity in protecting the rights of Woman offenders.

The researcher has used the following tools and techniques for collecting the data for research:

1. Content Analysis- Researcher has referred various manuals and reports regarding understanding prison functioning in terms of its environment, Conditions of the offenders, facilities provided to offenders both male and female.
2. Referred to some of the journals where there was the research conducted on the Offenders in terms of understanding the prison administration
3. National Crime Records Bureau (NCRB) reports.
4. Case Studies in understanding the judicial interpretation of offenders' rights, etc. The study has further taken into account the usage of secondary data which is shared by Ministry of Home Affairs, data published by the National Crime Records Bureau, Bureau of Police Research and Development, National Human Rights Commission, various central level committees set up to review prison conditions as well as orders/judgments of the Hon'ble Supreme Court.

SOCIAL ANALYSIS

The basic premise of most efforts to reform the jail system is that this can be done without any basic transformation of the structure of the society as a whole. The liberal perspective on reform is that basic changes in the jail system are possible without basic changes in the rest of the society, while the radical perspective is that basic changes in jail can come about only through drastic changes in the society



itself. The attitude of the society needs to be changed in respect of woman offenders. Jail constitutes important institution which safeguards the society from lawbreakers. Prison confines people against their will. A human being is able to apply new customs and methods to replace the old traditional customs are being formed. When changes do not occur at the appropriate time, revolutions take place. The causes of social change are diverse, and the processes of change can be recognised as either short-term trends or long-term developments. The mechanisms of social change can be varied and interrelated. Several contrivances may be united in one explanatory model of social change².

Law relating to offenders is the main area where the instrumentality of law has proved social change in the punishment of woman offenders³. Justice Krishna Iyer has stated that 'woman offenders are built with the stones law'. The woman offenders have many social rights while serving their sentence, some of them are;

- a) Reading and writing books in jail
- b) Liberal use of parole
- c) Segregation of offenders
- d) Right to interview
- e) Releasing the prisoner on temporary bail to perform sacred ceremonies
- f) Release on bail of under trial prisoner under NDPS, etc.⁴

LEGAL ANALYSIS

Constitutional Status of Women in India

Constitution of India does not provide specific securities to the women offenders. But, the Indian Constitution gives the status of equality to the women. The Founding Fathers of the Indian Constitution gave serious thought to protect and promote the rights of Women and Children⁵. This is thoroughly reflected in the Preamble which contains "the ideals and aspirations of the people of India". One of the golden ideals is "the equality of status and of opportunity". Constitution of India under Article 14 provides equal protection of laws to the women in India and Article 15 prohibits the discrimination on grounds of sex. But still Indian women offenders are facing a number of problems. Government of India passed the Protection of Human Rights Act, 1993 and constituted a body known as the National Human Rights Commission for promotion and protection of human rights. Part IV of the Constitution of India sets out the Directive Principles of State Policy which give direction to the State to provide economic and social rights to its people in specified manner⁶. India has also ratified various International Conventions and Human Rights Instruments omitting to secure equal rights of women. Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1993⁷.

The Supreme Court in the case of Sunil Batra vs. Delhi Administration² held that whether inside prison or outside, a person shall not be deprived of his guaranteed freedom save by methods 'right, just and fair'. The court process casts the convict into the prison system and the deprivation of his freedom is not a blind penitentiary affliction but a blighted institutionalization geared to a social good. The Court



also held that bar-fetters make a serious inroad on the limited personal liberty which a prisoner is left with and therefore before such erosion can be justified it must have the authority of law. The court in the case R.D. Upadhyay vs. State of A.P. & Ors, held that before sending a woman who is pregnant to a jail, the concerned authorities must ensure that jail in question has the basic minimum facilities for child delivery as well as for providing pre- natal and post-natal care for both, the mother and the child. Gynaecological examination of female offenders shall be performed in the District Government Hospital⁹.

Right of Women Offenders under Substantive Law

Many forms of violence against women, custodial violence involving rape and molestation has clearly been on in the increase. Rape in the police station or by the police is the most notorious forms of violence against women. The inadequacy of law of rape under sec 376 IPC is manifested in number of judgments. One such important cases Mathura case¹⁰. The second important amendment made in the penalcode in 1983 was the insertion of sections 376B, 376C and 376D to deal with custodial sexual abuse not amounting to rape. These sections provided punishment to those persons who have taken advantage of their official position for sexual intercourse with a woman on official position on official premises.

In 2016, over 3 Lakhs of women offenders were arrested under the Indian PenalCode and Special Laws, most of the female offenders were between the age group of 30-50 years which constituted the 50.5% of the proportion, followed by the age of 18-30 years which constituted the 31.3% of the total of 1401 female offenders.¹¹ Though the topic of prison forms a very sensitive issue in all nations across the world, the administration of prisons differs from nations to nations. In every state, there is a manual in terms of dealing with the rights and duties of offenders which should be introduced to the offenders at the time of their admission in the prison.

This section deals with understanding the particular problems faced by women in prison:

- Poor living Accommodations or Overcrowding of Prisons.
- Lacks with basic facilities of sanitation and hygiene.
- Poor spending on health care and welfare.
- Problem of Women Offenders in India- custodial rape.

PROBLEMS FACED BY FEMALE OFFENDERS

A. Poor Living Accommodations or Overcrowding of Prisons:

This is one of the most severe problems faced in Indian prisons both to the male and female offenders. In prisons, a specified size for cells and barracks is provided according to the guidelines of the National Prison Manual. Barracks are ideally only for 20 offenders and dormitories to house only four to six offenders each. Overcrowding has worsened hygiene conditions and health problems with even minor infections spreading quickly. The disproportionately low number of toilets and bathrooms exacerbate the situation. Overcrowding also has severe psychological effects on offenders forced to live in such close quarters with one another.



- Although convicted and under trial, offenders are to be housed separately on conviction, this is usually not possible due to severe space constraints.
- Young offenders (18-21 years of age) must also be kept separately, mostly they are found with the older women offenders leading to make them the habitual offenders. Overcrowding in prisons also leads to children of offenders having to live in cramped and undesirable conditions.

B. Lacks basic facilities of sanitation and hygiene:

In India, most of the female prisoner's age from the age group of 18-50 was a large majority that is 81.8% female's falls under the menstruating age group where there is an increasing need to provide proper sanitation facilities as well as access to adequate menstrual hygiene products. As they should be provided with proper sanitary pads to maintain their hygiene but it is reported that they charged for sanitary napkins in some prisons or are only provided a set monthly number irrespective of need. Thus, this leads women to resort to using unhygienic materials such as cloth, ash, pieces of old mattresses, newspapers etc.

C. Poor spending on Health care and welfare:

In India, an average of Rs.10,800 per inmate per year was spent by prison authorities during the year of 2005, distributed under the heads of food, clothing, medical expenses, vocational & educational, welfare activities and others (National Crime Records Bureau 2005)

This is in contrast to the US, where the average annual operating cost per state inmate in 2001 was \$ 22,650 (the latter presumably also includes salaries of prison staff). The maximum expenditure is on food in Indian prisons.

The States like- West Bengal, Punjab, Madhya Pradesh, Uttar Pradesh, Bihar and Delhi reported relatively higher spending on medical expenses during that year, while in Bihar, Karnataka and West Bengal reported relatively higher spending on vocational and educational activities. Tamil Nadu, Orissa and Chhattisgarh reported as it is relatively higher spending on welfare activities regarding with the prison¹².

D. The problem of Women Offenders in India- custodial rape:

In the case of **State of Maharashtra vs. C.K.Jain**¹³, there was rape in police custody. Regarding evidence, the Supreme Court emphasized that in such cases unless the testimony of the prosecution was unreliable, collaboration normally should not be insisted upon. Secondly, the presumption is to be made that ordinarily, no woman would make a false allegation of rape. Thirdly, delay in the making of the complaint is not fatal and quite understandable reasons exist for the delay on the part of the victim woman in making a complaint against the police. As far as the sentence was concerned there was no room for leniency, the punishment must be exemplary.

ANALYSIS OF JUDICIAL INTERPRETATION

The Judiciary has interpreted various rights as the Rights of Offenders which are mentioned below-

Rights of Offenders recognised under Constitution of India: A convicted prisoner is not barred by his fundamental rights though he truly not enjoys the entire fundamental rights like other common men



some of the fundamental rights are recognised for the offenders as a basis of human rights. Constitution of India has not clearly mentioned the rights for offenders but through judicial interpretation, they are recognized through precedents, as in the leading case of **T.V. Vatheeswaran v. State of Tamil Nadu**¹⁴, it was held that the Articles 14, 19 and 21 are available to the offenders as well as to the common man. Article 14 of the Constitution of India acts as a torchbearer for the prison authorities and its administration to determine various segregations of offenders and their object of reformation.¹⁵

Article 19 of the Constitution of India guarantees six freedoms to all citizens of India. There are certain rights which are not for the offenders but among those freedoms, the freedom of speech and expression¹⁶ and freedom to become a member of an association is there for the offenders.

Article 21: Today, the judiciary, by its art of interpretation, has discovered a variety of rights of suspects, accused persons and offenders, who are in police custody. The fundamental right of 'life and personal liberty' has been interpreted by the Supreme Court of India in a broad spirit and various rights have been included in the ambit of Article 21 of the Constitution.

Article 21 of the Constitution of India focuses on two crucial concepts i.e., right to life and principle of liberty. In the cases like- *Maneka Gandhi*, *Sunil Batra (I)*, *M.H. Hoskot*, the Supreme Court has taken the view that the provisions of part III of Constitution of India there needs to be a widest possible interpretation. **It was held that:**

- Right to legal aid¹⁷,
- Right to speedy trial¹⁸,
- Right to have an interview with a friend, relative and lawyer¹⁹,
- Right to live with human dignity,
- Right to livelihood,
- Right of inmates of protective homes²⁰, etc.

Though these rights are specifically not mentioned as fundamental rights under article 21 of the constitution with the help of judicial creativity they are recognised as the Rights of Offenders.

Following are the rights which are guaranteed to the offenders under the Indian Constitution though Judicial Interpretation:

1. **Right to Free Legal Aid:** It also means to provide Financial Aid to a person in a matter of legal disputes. The Constitution 42nd Amendment Act, 1976 has inserted Free Legal Aid as one of the Directive Principles of State Policy under Article 39A in the Constitution. The Indian Constitution does not expressly provide the Right to Legal Aid. But the judiciary has shown its favour towards poor offenders those who are not in a position to engage the lawyers of their own choice because of their poverty.

In **M.H. Hoskot v. State of Maharashtra**²¹ the Supreme Court laid down that right to free legal aid at the cost to the state to an accused who could not afford legal services for the reason of poverty, indigence situation was part of fair, just and reasonable procedures implicit in Article 21. 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.P.C. together declared that the Government is under a duty to provide legal services to the accused persons.



2. Right to have Interview with Friends, Relatives and Lawyers: In **Sheela Barse v. State of Maharashtra**²², the court held that interviews of the offenders become necessary as otherwise the correct information may not be collected but such access has got to be controlled and regulated. In **Dharambir v. State of U.P**²³ the court directed the State Government to allow family members to visit the offenders and for the offenders, at least once a year, to visit their families, under guarded conditions.
3. **Rights against Inhuman Treatment:** Human Rights are part and parcel of Human Dignity. The Supreme Court of India in several cases has taken a serious note of the inhuman treatment on offenders and has issued appropriate directions to the concerned authorities for safeguarding the rights of the offenders. 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 case of **Christian Community Welfare Council of India vs. Government of Maharashtra**²⁴, it was held by the Bombay High Court that woman should not be arrested after sunset and before sunrise and only in the presence of lady constables. The Court directed the State Government to set up a Committee to formulate a comprehensive scheme for police accountability to human rights abuse and make special provisions for female detainees. This Right plays an important role in protecting the female offenders from any sexual harassment and unforeseeable tortures.

Therefore, apart from these according to Mulla Committee following are also the list of rights of offenders which include:

- Right to human dignity,
- Right to basic minimum needs such as drinking water, hygiene, medical care, clothing, bedding etc.,
- Right to communication with the outside world,
- Right to access to law, Right to meaningful and gainful employment and so on.

CONCLUSION

A car needs four wheels to run, a human needs two legs to walk and a democratic nation like India needs three independent organs – legislative, executive and judiciary to maintain the balance between distributions of powers. This not only helps to divide the work for better Efficiency but also ensures a continuous process of checks and balance. It is well known legal and management principle, responsibility and accountability need to operate together for Better results. This principle should also be applicable to the prison authorities.

The prison is supposed to be a place meant for a reformatory purpose. However, the entire Purpose fails when the offenders are denied the very rights that are fundamental to their being a human being. A few decades ago, offenders were looked down upon and were considered to have forsaken all their rights. However, modern society recognizes the rights of a prisoner. Hence, a conviction for a crime does not reduce the person into a non-person, whose rights are subject to the whim of the prison administration



and authorities.

It is the need of the hour that we take positive steps to ensure that the basic human rights of offenders are not infringed and that they live with dignity because human beings denying other human their basic rights does nothing but taking us right back to the era of cannibalism and war. To improve prison status it does not mean that prison life should be made easy, it means, it should be made humane and sensible. The functioning of judiciary reveals that it has exercised its powers in the most creative manner and devised new strategies to ensure the protection of Human Rights of the offenders.

Thus, mere words on a paper have never been enough. It is time that laws are implemented and given the chance to fulfill its purpose— a peaceful society of equals.

RECOMMENDATIONS

There are various committees which have given several recommendations were one of National Expert Committee on Women Offenders which runs under the chairpersonship of Justice Krishna Iyer appraised the situation of women in jails and made various recommendations.

Some of the important recommendations include:

- Women offenders should be informed of their rights under the law.
- Only women constables should conduct searches on women offenders.
- Women doctors should do a medical check-up of women offenders as soon as they are admitted to prison.
- Women offenders should be allowed to contact their families and communicate with their lawyers, social workers and voluntary organizations.
- Women offenders should be allowed to keep their children with them with a proper age restriction.
- Women should be provided with proper hygiene products like- sanitary pads, more number of clothes such that their health is taken care of and thus it would help to protect their health.
- Special prosecution officers should be available to present the case of women offenders.

Apart from the above-mentioned recommendation, there are some recommendations which are highlighted in this research paper which is as follows:

1. The offenders should be allowed to meet their parents, relatives such that this will help in his rehabilitation and after their release were they can face the outside world courageously casting aside the stigma attached to them on account of precognition. The periodical furlough granted to offenders in India under the Prisons Act and the rules framed there under are intended to achieve this objective.
2. The women offenders should be treated more freely and allowed to meet their children frequently. Particularly, the women who fall prey to sex offence should be treated with sympathy and their illegitimate children should be assured an upright life in the society. In the case of Francis Coralie Mullin v. The Administrator, Union Territory Delhi²⁵ it was held that the women offenders should also be allowed to meet their sons and daughters more frequently, particularly the attitude in this regard should be more liberal in case of under trial offenders²⁶.
3. Women offenders should be handled only by women police or prison officials. The idea of setting



up separate women jails exclusively for women offenders, however, does not seem to be compatible keeping in view the huge expenditure involved in the process. In the case of R.D. Upadhyaya v. State of Andra Pradesh and others,²⁷ the child born out of prisoner mothers their birthplace should not be recorded as 'prison' on their Birth Certificate.

4. The under trials, minors, recidivists and first offenders should be kept separated from each other. Similarly, political offenders who are not guilty of violence should also be kept separate and not be housed in the same premises in which other criminals are lodged. It is inhuman and unreasonable to throw young boys to sex-starved offenders or to run mental jobs for hardened and affluent offenders. The young offenders should be separated from adults.
5. There is a need for the scientific classification of offenders based on nature of the crime committed, age, sex, character and properties of the offender including his educational level and likely response to prison treatment²⁸.
6. The prison legislation should make provision for the remedy of compensation to prison who are wrongfully detained or suffer injuries due to callous or negligent acts of the prison personnel. It is gratifying to note that in recent decades the Supreme Court has shown deep concerns for prisoner's right to justice and fair treatment and requires prison officials to initiate measures so that prisoner's basic rights are not violated and they are not subjected to harassment²⁹ and inhuman conditions of living.
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