



WOMEN PRISONERS AND THEIR RIGHTS: SPECIAL NEED TO CONCERN

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ABSTRACT

Since ancient times, women is most neglected and vulnerable group of society. In ancient and medieval era, the concept of prison not applicable to women offenders. During British colonial era in India, Britishers created the system of prison and also made some provisions for women prisoner. If woman is prisoner then her total life with the life of next generation effects on the social structure. So, their rights in prisons needs to be protected. The concept of prison is the product of Positive School of Criminology. Positivist consider that purpose of punishment is to bring change among the life of offender. Hence imprisonment is widely accepted as form of punishment. Hence, number of initiatives regarding prisons taken by national and international authorities. Institution must take cognizance of women prisoner not to become victim of authority. Because life in jail is life in hail.

The aim of this article is to elaborate the rights of women prisoner at national and international level. Their rights specially needs to be considered and implemented by the concern authorities.

KEYWORDS: Women Prisoner, Rights, Conventions, Laws and Cases.

INTRODUCTION

Woman is most vulnerable person and deprived on all fronts of the society. Women differs from men physically, socially and also psychologically. The life of woman inside prison and outside prison are one and the same. Life in prison is so hard because living with other criminals may adversely effects on the behavior of first offender. As stated by Nelson Mandela about prison that no one truly knows a nation until one has been inside its jails. Though with the passage of time, modern corrective approaches applied by prison authorities, but still we have to wait a lot for necessary changes. Some of the committees, commissions etc. really gives strong guidelines

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for prison reforms. THE CORSTON REPORT³, published in U.K. under the chairmanship of Baroness Jean Corston, recommended many things for the holistic, women-centered development of women in the criminal justice system. In India also same kind of a report⁴ on improving the condition of Women inmates in prisons published by National Commission for Women.

Woman prisoner, an inmate, confined or forcefully restrained by authority. In literal sense, a prisoner is a person in prison and a prison⁵ is a jail or a place where prisoners are detained for permanent or temporary period. In short prisoner is a person deprived of liberty against his will. Prison system is a part of Criminal Justice System and administrative network of Government to manage accused and convicted criminals. Prison system was not much exercised in ancient and medieval era. Because in ancient time, Retributive theory and deterrent theory of punishment was applicable and authorities (Rulers/Kings) only believe on speedy justice. If there is prison then such prison is cage for treatment of animals not humans. Hence, Court must ensure about the protection of rights of prisoners inside the jails. Their freedom inside the jail is sign of reformatory theory of punishment.

The mention of women prison rarely found in ancient or medieval period of time. During British Colonial Rule in India, Indian prisons shaped their role and hence imprisonment is widely accepted as punishment. In 1919⁶, the Committee firstly gives remarks about the prison that the aim of prison administration is restoration of criminals. In the same report women inmates also considered as separate entities and some suggestive measures given for prison reforms.

Modern democratic countries started viewing prisons as correctional institutions and bears responsibility to make reform among offenders.

In India, Prison is a subject of Entry-4 List II (State List) mentioned under Seventh Schedule of Indian Constitution. Also Section-59 (1) of Prison Act, 1894 which empowers State government to make rules regarding prison.

As per data collected in 2022 and published as World Female Imprisonment List (Fifth Edition)⁷, number of Indian female prisoners increasing year to year. Such increasing number of women prisoners is alarm to all modern welfare democratic country. It is also hurdle in the development of country. Each member State must take cognizance of not to violate rights of person. It is the

³ <https://www.asdan.org.uk/media/ek3p22qw/corston-report-march-2007.pdf>

⁴ <http://ncw.nic.in/ncw-report/report-improving-condition-women-inmates-prisons>

⁵ Sec. 3(1) of The Prison Act, 1894

⁶ Paranjape NV. Criminology & Penology with Victimology, Central Law Publications; Sixteenth Edition; 2014, p-479

⁷ Pg. 8, World Female Imprisonment List (Fifth Edition) https://www.prisonstudies.org/sites/default/files/resources/downloads/world_female_imprisonment_list_5th_edition.pdf

duty of prison authority not to harm to the rights of prisoner. As rightly stated by Martin Luther King that injustice anywhere is threat to justice everywhere. Injustice in prison is also threat for all progressive democracies. In the category of prisoners, women prisoners are the most neglected and vulnerable group of the society which needs to be focused.

“A right is an interest recognized and protected by a rule of right. It is any interest, respect for which is a duty, and the disregard of which is a wrong.”--- Salmond

We can say that right is one person’s capacity which is supported or protected by third party. If the third party is the State then it is legal right. If the third party is the God then it is of divine right.

INTERNATIONAL SCENARIO ON THE RIGHTS OF WOMEN PRISONERS

1) The United Nations Standard Minimum rules for the Treatment of Prisoners (The Nelson Mandel’s rule)⁸

In 2015, certain new rules at international level, under the heading of the Nelson Mandel’s rule adopted by United Nations Office on Drugs and Crime. This adaptation is one kind of tribute to the prison life of Nelson Mandela. These rules also named as The United Nations Standard Minimum rules for the Treatment of Prisoners. There are total 122 rules and few rules of them includes and highlights over women prisoner.

Rule-11 Separation of Categories.

As per rule-11 of the Nelson Mandela’s Rules women prisoner must be kept in separate institutions. The whole premises allocated to women prisoners shall be entirely separate from men prisoners.

Rule-28 Special accommodation for prenatal and postnatal care and treatment.

As per rule-28, special accommodation for prenatal and postnatal care and treatment must be provided to women prisoner. It also includes provision for the child born in prison that if the child born in prison then birth certificate shall be prohibited the prison as birth place.

Rule-45 Prohibition on the use of solitary confinement and similar measures.

This rule-45 mentioned that there is prohibition on the use of solitary confinement and similar measures in cases of women prisoners. This rule applied as it is mentioned under United Nations Standards and Norms in crime prevention and criminal justice⁹.

Rule-48 Instrument of restraints shall never be used.

⁸ https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf

⁹ https://www.unodc.org/pdf/criminal_justice/UN_standards_and_norms_in_crime_prevention_at_your_fingertips.pdf

As per rule-48 instrument of restraints shall never be used on women during labour, during childbirth and immediately after child birth.

Rule-58 Contact with outside the world.

Under this rule, women prisoners' conjugal visits are protected. Right to make contact with outside the world must be enjoyed safely with dignity.

Rule-74 Adequate salary

Women prisoners salaries, employment benefit and conditions of service shall be adequate with the nature of work.

Rule-81 Attendance and supervision

Attendance and supervision over women prisoner must be accompanied with women staff members.

2) United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules)¹⁰

In December 1990, the Tokyo Rules¹¹ with 23 headings adopted by General Assembly of United Nations with the headings of Non-custodial measures.

The main object¹² of adaptation of Tokyo rules is to promote the use of noncustodial measures, as well as minimum safeguards for persons subject to alternatives to imprisonment and to promote greater community involvement in the management of criminal justice, specifically in the treatment of offenders, as well as to promote among offenders a sense of responsibility towards society.

But it is also mentioned in the Tokyo Rules that these rules shall be implemented as per the political, economic, social and cultural conditions of each country and should be matched with the aims and objectives of its criminal justice system. Also Member States should ensure about a proper balance between the rights of individual offenders, the rights of victims, and the concern of society for public safety and crime prevention¹³.

Member States shall develop non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalize criminal justice

¹⁰ <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/tokyorules.pdf>

¹¹ Adopted by General Assembly resolution 45/110 of 14 December 1990

¹² Rule 1, Chapter1 General Principles, The Tokyo Rules, 1990
<https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/tokyorules.pdf>

¹³ Rule 1.3, Chapter1 General Principles, The Tokyo Rules, 1990
<https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/tokyorules.pdf>

policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the offender¹⁴.

3) United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (The Bangkok Rules)¹⁵

In December 2010, these Bangkok rules adopted by General Assembly of United Nations. The Bangkok Rules developed to complement and supplement¹⁶ the Tokyo Rules, 1990. The Tokyo rules are applicable to all prisoners without gender discrimination. While, women prisoners is the basic category of persons for the application of the Bangkok Rules. It is United Nations Human Rights office which framed 70 rules with four chapters¹⁷ under specific headings. The reason behind adoption of the Bangkok rules is due to worldwide increasing number of women prisoners and second reason is in-efficiency of resolving attention towards needs of women prisoners.

Undermentioned are some important rules for women prisoners as.

Rule-2 Adequate attention needs to be provided to newly arrived women prisoners.

Rule-4 Women prisoners shall allocated to prisons close to their homes or place of social rehabilitation.

Rule-5 As per specific hygiene needs, extra facilities needs to be provided to women prisoner.

Rule-6 Health Screening of women prisoners needs to done regularly.

Rule-8 Women prisoner has right of medical confidentiality with right not to share information related with health and reproductive history.

Rule-10 Gender Specific health care services needs to be provided.

Rule-16 Mental health care facilities needs to be developed and implemented to avoid risk of suicide or self-harm.

Rule-17&18- Preventive health care services like education and information of diseases like HIV, Breast Cancers, Gynecological cancer etc. needs to be given to women prisoners.

Rule-19- Dignity of women needs to be ensure during personal search procedures.

¹⁴ Rule 1.4, Chapter1 General Principles, The Tokyo Rules, 1990
<https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/tokyorules.pdf>

¹⁵ <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-rules-treatment-women-prisoners-and-non-custodial#:~:text=Women%20prisoners%20who%20report%20abuse,specifically%20the%20risks%20of%20retaliat ion.>

¹⁶ Para.2, Preliminary Observations, The Bangkok Rules, 2010.

¹⁷ Ibid, Table of Contents, Preliminary observations, Introduction, I. Rules of general application, II. Rules applicable to special categories, III. Non-custodial measures, IV. Research, planning, evaluation and public awareness-raising

Rule-23- Disciplinary actions should not be taken against women prisoners with prohibition on family contact and contact with children.

Rule-25- In monitoring committee or board of women prison, there should be inclusion of women staff.

Rule-27 Allowed conjugal visits to women prisoner.

Rule-29 to rule-35 are related with prison staff who is working in and for women's prisons.

Rule-36 to rule-39 are the rules specifies about juvenile female prisoner.

Rule-40 Classification methods of prisoners for early rehabilitation, treatment and reintegration of prisoner should be done.

Rule-42 Psychosocial support needs to be given especially to those who are subjected to physical, mental or sexual abuse.

Rule-43 to Rule-47 mentioned about the maintenance of social relation and measures to be taken under the heading of aftercare program.

Rule-48 to Rule-52 includes rules for pregnant women, breastfeeding mothers and mothers with children in prison.

Rule-53 considered woman prisoner who is foreign nationals. Under bi-lateral treaty and with the best of woman prisoner, such woman prisoner must be transferred in her home country and priority given to those who are mothers of child.

Indian Legislative framework on rights of woman prisoner

In India, the legislations were made and drafted with and after the recommendations of various committees or commissions.

Following are few notable committees played their role in shaping prison development.

Pre-independence Prison Committees

1. The Prison Discipline Committee, 1836 (Lord Bentick)
2. First Jail Reform Committee, 1838 (Lord McCauley)
3. The Fourth Jail Commission, 1888 (Lord Dufferin)
4. Indian Jail Committee, 1919-1920 (Sir Alexander Cardio)

Post-independence Prison Committees

1. All India Jail Manual Committee, 1957
2. Working Group on Prisons, 1972
3. All India Prison Reforms Committee, 1980-1983 (Mulla Committee)

4. All India Group on Prison Administration, Security and Discipline, 1986 (R.K. Kapoor Committee)

5. National Expert Committee on women Prisoners, 1987 (Justice Krishna Iyer Committee)

Important statutes which have a bearing on the regulation and management of prisons in the country are:

- i. The Indian Penal Code, 1860.
- ii. The Prisons Act, 1894.
- iii. The Prisoners Act, 1900.
- iv. The Identification of Prisoners Act, 1920.
- v. The Constitution of India, 1950
- vi. The Transfer of Prisoners Act, 1950.
- vii. The Representation of People Act, 1951.
- viii. The Prisoners (Attendance in Courts) Act, 1955.
- ix. The Probation of Offenders Act, 1958.
- x. The Code of Criminal Procedure, 1973.
- xi. The Repatriation of Prisoners Act, 2003.
- xii. Model Prison Manual (2016).
- xiii. Model Prisons And Correctional Services Act, 2023

Besides these above laws The Mental Health Act, 1987, The Juvenile Justice (Care & Protection) Act, 2000 etc. statutes also related with prisoners.

1) THE CONSTITUTION OF INDIA, 1950¹⁸

Specific guarantees to women as prisoner not provided under The Constitution of India. The Constitution of India is fundamental law of the country which specifically protects the human rights as Indian citizens. Preamble of Indian Constitution itself guarantees justice, equality, liberty to each and every Indian. Protection of life and maintaining the dignity of the individual also part of the Constitution of India.

Through Article 14 and Article-15, The Constitution of India guaranteed equality of status and opportunity and prohibits discrimination on the grounds of sex. Article-14 provides equal protection of laws to women in India and Article 15 prohibits discrimination on grounds of sex. It is Article-15 (3) of the Constitution which allows the State to make special provisions for women. Hence, it is obligation on the State to provide adequate facilities and to fulfil needs of

¹⁸ https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution_of_india.pdf

women prisoners by making special provisions. Article-21 guarantees the right to life and protects the human dignity of all citizens. This article also ensures due process must be followed by law during deprivation of life a person. Therefore, it protects the rights of women prisoners and ensures that they are not subjected to arbitrary detention or mistreatment. Constitution of India also provides and guarantees free legal aid under its directive principles of state policy.

2) THE PRISON ACT, 1894¹⁹

The rights of prisoners mentioned under the Prison Act, 1894. This Act of 1894 is the first legislation in India which regulates all subject matters of prison. The main focus behind enactment of this Act is of reformation of prisoners and of regulation of their rights. The rights like as separation of women prisoners from men prisoners²⁰, medical examination of women prisoner carried out of lady medical officer only²¹, suitable employment of women prisoner during day time²² etc. mentioned under different provisions of the Act of 1894.

3) THE PROTECTION OF HUMAN RIGHTS ACT, OF 1993

The Human Rights Act also important statutes enacted in 1993 with specific object of protection of Human rights. National Human Rights Commission works for the protection of women as most disadvantaged group of society. Under the chairmanship of NHRC, Justice Verma called meeting²³ to make prison reforms effective. NHRC²⁴ issued guidelines to prison authorities, high courts as well as to state governments to pay attention for promotion and protection of human rights of prisoners, from its inception.

¹⁹ <https://indiankanoon.org/doc/626516/>

²⁰ Section-27, The Prisons Act, 1894

²¹ Section-24, The Prisons Act, 1894

²² Section-59, The Prisons Act, 1894

²³ <https://nhrc.nic.in/press-release/nhrc%E2%80%99s-initiatives-prison-reforms>

²⁴ Ibid, NHRC has been focussing its attention on the promotion and protection of human rights of prisoners, from its inception. The Commission has issued instructions/guidelines that mentally ill person should not be kept in prison and if during jail inspection by the Commission, mentally ill persons are found in the prison it would award compensation to them or to their kin. The State government could recover such compensation from the erring jail officials. The Commission has also written to Chief Justices of all High Courts, for effecting speedy trials of cases and release of undertrials and to give appropriate instruction to district and Sessions Judges to ensure that they visit jails regularly as is envisaged in the State Prison Manuals. Again the Commission has issued instruction to all prison authorities requiring compulsory health screening of all prisoners and sending monthly report to the Commission. The issues of premature release of prisoners undergoing life imprisonment have also been taken up by the Commission.

4) THE NATIONAL COMMISSION FOR WOMEN ACT, 1990²⁵

The National Commission for Women is a statutory body set up in 1992 with the object to review the constitutional and legal safeguards for women. Its object is also to recommend remedial legislative measures. In short the Commission initiated various steps for improvement the status of women. Recently i.e. in 2018, a report was submitted by National Commission for Women (NCW) suggesting certain recommendations for improvement in the status of women prisoners.

5) NEW CRIMINAL LAWS, 2023 AND WOMEN PRISONERS.

Recently, Central Government enacted new criminal laws and they were effected from date of first of July 2024. Now, Bharatiya Nyaya Sanhita, 2023 (Previously Indian Penal Code, 1860) provides separate i.e. chapter-iv for offences against women and children.

When we say it's Bharatiya Nyay Sanhita then the statute also must be in the form to give justice to Indian Citizen. Few provisions under specific headings as offences against women and children were added in BNS, 2023. Also new provisions which were added and amended in old criminal laws (Provisions added in post Nirbhaya period and added due to recommendations made by Justice Verma Committee appointed for revival of criminal laws) kept as it is in BNSS, BNS AND BSA statutes.

6) MODEL PRISONS AND CORRECTIONAL SERVICES ACT, 2023²⁶

Model Prisons and Correctional Services Act, 2023 in short Model Prisons Act, 2023 enacted by Ministry of Home Affairs of Government of India with basic purpose of safe custody, correction, reformation and rehabilitation of prisoners as law abiding citizens, and management of prisons and correctional services of the prisons in the State/Union Territories. Chapter- X with the title of Prison regimen for women prisoners added in Section 30 to Section 33 of the said Act of 2023.

In the preliminary part of the Act Government clears that Prison and it's management is related with State Government but to remove the irregularities from outdated colonial laws, new uniform law is prepared in 2023.

In the categorization of prisoner, women prisoners segregated on the basis of natural categorization. Women prisoners with children is subcategory added and segregated under this Model Prisons Act, 2023. Women prisoners are allowed to kept their children upto the age of six. But after six, who is guardian of that children was not specifically mentioned. Though, Central Government prepared this statute of 2023 which is related with correctional ideology but still its

²⁵ <http://ncw.nic.in/commission/about-us>

²⁶ https://www.mha.gov.in/sites/default/files/advisory_10112023.pdf

actual execution depends upon the will power of State Government. A provision has been made for the change in the designation of 'Inspector general' in 'Director General' in Model Prison Act, 2023. There is news²⁷ from Maharashtra that State cabinet of Maharashtra has approved the introduction of this Bill in the Maharashtra Legislature. State governments tries to take initiatives of adaptation of rules framed in Model Prison Act, 2023.

Generally, following are the prisoners' rights provided in Indian Statutes:

- a. Separation of prisoners
- b. Accommodation and sanitary conditions.
- c. Safety and Security from fellow prisoners
- d. Health check up
- e. Punishment
- f. Social and cultural rights

FEW RIGHTS NEEDS TO BE CONCERN

A) Right of progeny

This right is part of conjugal rights. In Nand Lal vs. State of Rajasthan²⁸, High Court granted parole to life convict²⁹ by mentioning that denial to prisoner to perform conjugal relation for progeny would adversely affect rights of his wife. Jodhpur High Court tested the right of progeny on legal, social as well as on religious level.

B) Rights on readmission after release

Bail, Parole, Furlough are the ways of release of Prisoner. But after such release woman prisoner must have special right of medical examination. Actually this right is available to all prisoners but on readmission after release, pregnancy issue must be properly handled by authorities. The same issue was highlighted in various provisions of the Bangkok rules³⁰.

As per the report prepared by BPRD³¹ every woman prisoner shall be examined by a lady Medical Officer. It is necessary on readmission after parole and furlough. After confirmation of pregnancy till the birth of child, each right of woman prisoner as well as the child who is in

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<https://epaper.loksatta.com/Pune-marathi-Late-epaper?eid=15&edate=09/07/2024&pgid=126122&device=desktop&view=3>

²⁸ D.B. Criminal Writ Petition No. 10/2022

²⁹ <https://indiankanoon.org/doc/153917496/>

³⁰ <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-rules-treatment-women-prisoners-and-non-custodial#:~:text=Women%20prisoners%20who%20report%20abuse,specifically%20the%20risks%20of%20retaliation.>

³¹ Model Prison Manual For The Superintendence And Management Of Prisons In India, Bureau Of Police Research And Development, Ministry Of Home Affairs, Government Of India, New Delhi, 2003

womb of such pregnant woman prisoner also needs to be protected. But if we see in general, ladies who are outside the prison their rights also number of times infringed by various strata of society. Hence, the rights of pregnant woman prisoner is crucial issue in front of Prison authorities.

C) Right of medical care during pregnancy and right of delivery outside the prison

If any woman found to be pregnant then she has very much right of medical care. In the same right she also possess right of delivery outside the prison. It was mentioned in that the birth place of such child should not include the name of prison.

D) Right of property regained after release

Stridhan (Woman's property) is also important economical part of woman. Her property received from parental house and from in-laws also needs to be protected. So, whatever property, woman prisoner owned and possessed before her arrest, after completion of period of punishment, she has this right to regain her property.

E) Right of bedding during menstrual cycle or pregnancy

Menstrual cycle or pregnancy is the natural gift of woman. So her proper hygiene and health is important which needs to be protected during the same. Hence woman prisoner has right of proper bedding with clean environment and supply of sanitary napkin during menstruation.

F) Rights after death of Woman Prisoner

Every person possess right whether of alive or after death. In the case of woman prisoner whose child is with her also in need of care and protection. If such woman dies in prison and leaves a child behind then child's future arrangements and care must be the duty of government. This right of woman prisoner after death taken into consideration.

G) Right of education

“You educate a man; you educate a man; you educate a woman; you educate a generation”- Brigham Young³²

After release of women prisoner she must be able to earn and for the same, she must be educated. So her right of education may be in the form of learning some skilled based vocational programs or the programs which builds her confidence to earn. It is easy for male prisoner to manage the

³² <https://www.goodreads.com/quotes/37892-you-educate-a-man-you-educate-a-man-you-educate>

jobs but hard for women prisoner to become self-dependent. So, education of women prisoners is important.

H) Right to take care of children

If the family members of women prisoners are not able to take sufficient care of children then such child should be placed in child care center. This right is directly related with child and indirectly related with women prisoner. If the child is in between seven to sixteen.

I) Right of health after abortion or miscarriage

In case of abortion or miscarriage of women prisoner, her right of proper health with due medical facilities should be protected. So, during sentence period, regular support of psychiatrist and health specialist (Especially Gynecologist) needs to be provided.

J) Right to live with human dignity (After release from prison)

After completion of prison sentence, it is difficult to person (Prisoner) to spend life with dignity. So, it is social and legal duty of each person not to violate human dignity of an imprisoned person. Imprisonment is one kind of social stigma attached to prisoner for lifetime and solution for the same is to create social awareness.

Also rehabilitation after release is most serious neglected part of the authority. This right is related with right to live with human dignity.

INDIAN WOMEN PRISONS AND RIGHTS - CURRENT SCENARIO

In India, few state run different programs for the rehabilitation of women prisoner. As per data mentioned by prison authorities, 41 women prisons³³ were established in India. Out of 41 jails, 34 jails are exclusively women jails which confines women prisoners only. The occupancy³⁴ rate in women jails was 60.10 %. Only 16 out of 36 states/union territories have their own set up for women prisons of India. As per prison statistics of India, 2022 there are 1537 women prisoners with 1,764 children were kept in the women prisons. 198 women prisoners are convicted women prisoners accompanying by 230 children.

Tamil Nadu State Government³⁵ created 3 women welfare officer posts for Special prison for women. These officers with considering welfare of women prisoners, act as intermediary

³³ <https://eprisons.nic.in/NPIP/public/ePrisonsLiveStatus>

³⁴ Pg.-x, PSI 2022, <https://ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/psiyearwise2022/1701613297PSI2022ason01122023.pdf>

³⁵ Pg. 206, PSI 2022, ibid

between prisoners and their families. Also Tamil Nadu government allowed emergency leave for a period of 15 days is being granted to the pregnant women prisoners for delivery.

In Maharashtra, “Nanhe Kadam Balwadi”³⁶ is the program launched by government for the children who are in Byculla women prison. 3 staffs for 12 hours appointed under this program.

In Punjab, Teachers have been deployed for the children of women prisoner. Certain rehabilitative programs which improves skills also run by Punjab Govt.

In Gujarat Angadwadi³⁷ facilities also provided to the children who are kept with women prisoner. Also women prisoners are allowed and promoted for taking education in open universities.

There are 202³⁸ NGO’s working exclusively for women prisoners. A total 8,674³⁹ of women staff working in different cadre across Indian jails.

As per the report⁴⁰ prepared by National Commission for Women, 2018 most common observations found in women prisons are as follows..

- a) Over-crowding in female ward
- b) Lack of health-care facilities
- c) No involvement of NGO’/ Civil Society for cultural programs/ counselling etc.
- d) No proper skill development program / Vocational training programs.
- e) Illiteracy among women prisoners
- f) Inadequacy of staff
- g) No crèche facility is available.

JUDICIAL ROLE ON PROTECTION OF PRISONER’S RIGHT

The work of Judiciary is to adjudicate the laws. The judicial system work for the administration of justice. As rightly stated by William Gladstone about justice as “Justice delayed is justice denied.” Judges maintains a repo in delivering judgments. Judges are aware about the justice hurried is justice buried. Supreme Court of India as apex judicial body plays a crucial and important role in the protection of rights of prisoners. The Courts have onerous duty to protect detenues from the custodial tortures. Through its interpretations, courts gives landmark judgment

³⁶ Pg. 223 of PSI 2022, *ibid*.

³⁷ Pg. 222 of PSI 2022, *ibid*.

³⁸ Pg. 244 of PSI 2022,

<https://ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/psiyearwise2022/1701613297PSI2022ason01122023.pdf>

³⁹ Pg. 252 of PSI 2022, <https://ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/psiyearwise2022/1701613297PSI2022ason011220.pdf>

⁴⁰ <http://ncw.nic.in/ncw-report/report-improving-condition-women-inmates-prisons>

on the prisoner's right. Now, Supreme Court accepted that prisoner also have certain constitutional rights. Supreme Court is most vigilant about the protection of rights of neglected groups of the society. It is because of vigilance of Supreme Court, Article-21 broadly interpreted and day by day number of rights are parts of right to life and personal liberty. After interpretation following rights are the parts of Article-21 of the Constitution of India, 1950...

- a. Right to speedy trial:
- b. Right to free legal aid,
- c. Right to be prisoner to be treated with dignity and humanity,
- d. Right to bail,
- e. Right to privacy,
- f. Right to compensate for custodial death,
- g. Right of fair wage,
- h. Right to security,
- i. Right to education
- j. Right to healthy environment.

Following are the cases through which Supreme Court tries to protect the rights of prisoner. Such judgments also covers the rights of women prisoners.

In *Sunil Batra vs. Delhi Administration*⁴¹, the Supreme Court held that prisoners have the right to basic amenities in prison and protection from prison abuse and prison discrimination.

In *Hussainara Khatoon vs. State of Bihar*⁴², Supreme Court gives recognition on the free legal aid which should be provided by the State to an indigent prisoner.

Same in case of *Sheela Barse vs. State of Maharashtra*⁴³, Supreme Court established the right of person to legal aid and representation.

In *D.K. Basu vs. State of West Bengal*⁴⁴, Supreme Court specifically concentrated on custodial torture and mentioned that custodial torture is a naked violation of human dignity. Court also mentioned that law does not permit the use of third degree methods and right of human dignity must be protected.

In the case of *Prem Shankar Shukla vs. Delhi Administration*⁴⁵, Supreme Court highlighting on corrective justice, recognised the right of prisoners to conjugal visits. Supreme Court allows prisoners to release on parole and furlough to maintain family ties and relationships.

⁴¹ (1978) 4 SCC 409

⁴² 1979 AIR 1369

⁴³ 1983 AIR 378

⁴⁴ AIR 1997 SC 619

⁴⁵ 1980 AIR 1535

In *T. Vatheeswaran vs. State of Tamil Nadu*⁴⁶, Court held that Article-14, 19 and 21 are equally applicable to all persons and that person may be of prisoner.

*Francis Mullin vs. The administrator, union territory Delhi*⁴⁷ is also one of the landmark case where Court in its judgment allowed women prisoners to meet their children more frequently and directed to authority to be more liberal in case of under trial prisoners.

In *Prabhakar Pandurang vs. State of Maharashtra*⁴⁸, Supreme Court held that right to write and publish a book is part of right of personal liberty under Article-21 and the detenu has also this right.

In *R.D. Upadhyaya vs. State of Andhra Pradesh*⁴⁹, Court held that children born out to women prisoner during period of sentence should not be mentioned prison as birthplace of that child.

SUGGESTIONS

1. Panel of female advocates needs to be appointed.

Though our Constitution guaranteed free legal aid to each of the needy but absence of quality legal aid is serious issue in front of our legal system. In case of women prisoner, there is need to appoint panel of female advocates and such advocates must be skillful and capable to give support to women prisoner.

2. Well trained and sufficient women staff.

Increasing number of women prisoners gives an alarm as well as gives hint to appoint sufficient women staff to handle prison affairs. Hence, training with sufficient equipment needs to be provided to women staff.

3. Regular judicial visits.

Make it compulsory to all female judicial members to keep close watch over women prison management. Regular judicial presence may reduce the tense in women prison.

4. Allow regular conjugal visits.

Allow conjugal visits to needy women prisoner. Regular conjugal visits may reduce the psychological, emotional and social problems of women prisoner.

5. Create separate cells for women accused in each district jail.

There is no separate jail available at each of district of the State. Women Prisoners kept in the separate place of the district jail. It creates lot of tension between male prisoner and prison officials. So, creation of separate cells for women accused or prisoner is essential thing.

⁴⁶ AIR 1983 SC 361

⁴⁷ 1981, AIR 746

⁴⁸ AIR 1986 SC 424

⁴⁹ AIR 2006 SC 1946

6. Prison Survey should be conducted.

To ensure smooth working of prison administration, a survey should be conducted within fixed time slot.

7. Proper adoption and implementation of national laws and international conventions.

There is need for proper implementation of the national and international conventions. It may protect the rights of women prisoner.

8. Custodial sentence for violent and Community Sentence for non-violents.

There should be presence of custodial sentence for those women prisoners who are violent and threat to public at large. But presence of community sentence for non-violent prisoners may reduce psychological problems and leads reformation among prisoners.

CONCLUSION

The above mentioned rights are in the statutes, but in actual practice needs to be applied by authorities. Instead of the above discussed rights, woman prisoners have also religious, educational and social rights. There has been a lack of strict implementation of specific rules within criminal justice system.

In India, the percentage of women prisoners are far less than men prisoners. Though Constitution guarantees equality without discrimination on the basis of gender but still there is huge gap found in social status of women and men. Though rights under specific statutes mentioned but still women prisoners faces number of problems like as lack of legal aid, poor infrastructure, lack of well trained staff etc. Also lack of education and awareness regarding rights of prisoners are the main fields where government's special attention needs to be increased.

Indian prison history achieved a lot and since independence India follows the corrective approach. Substitution of transportation into imprisonment for life shows the clean object of prison reforms. Also adding prison in state list of seventh schedule of Constitution of India, 1950 and inviting to Dr. W.C. Reckless (United Nations expert on correctional work) in 1951 in India also gives blueprints of adaptation of prison policies of India.

Recently at central level government prepared Model Prison Manual in 2023 but its adaptation and implementation is great task in front of State Government. Prison history shows that number of times Central government prepared Model Prison Manual for maintaining uniformity of prison rules but such Manual has not been implemented by most of States⁵⁰.

⁵⁰ In 1983 Inter-State conference admitted the Model Prison Manual, 1959 but it was not implemented by number of States.

Once Gandhiji said about the women's freedom that "True freedom is when a lady with jewels can walk in the midnight." As per my view true freedom is that when we found our prisons but without bars.
