



Women Prisoners' Rights Under the Criminal Justice System

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ABSTRACT

Women prisoners in the criminal justice system face significant challenges due to neglect of their gender-specific needs and systemic failures in ensuring their rights. Despite international and national legal safeguards, their plight underscores the urgent need for reforms. Internationally, the Mandela Rules (UN Standard Minimum Rules for the Treatment of Prisoners) and the Bangkok Rules (UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders) emphasize humane and gender-sensitive treatment, including healthcare, childcare, and protection against abuse. In India, constitutional provisions under Articles 14, 19, and 21 guarantee equality before the law, personal freedoms, and the right to life and dignity. Statutory safeguards include Sec.456 of BNSS, 2023 and Sec.480 of BNSS, 2023. The Prisons Act, 1894, requires prisons to ensure basic hygiene, safety, and healthcare, while the Juvenile Justice (Care and Protection of Children) Act, 2015, protects the rights of children living with incarcerated mothers. Despite these provisions, systemic issues persist. Overcrowding in women's prisons leads to inadequate sanitation, ventilation, and privacy, as highlighted in *Sheela Barse v. State of Maharashtra (1983)* where the Supreme Court directed authorities to ensure better facilities for female inmates. Pregnant and lactating women often lack proper medical care, violating their right to health. In *R.D. Upadhyay v. State of Andhra Pradesh (2006)*, the Supreme Court emphasized providing pregnant prisoners with adequate medical facilities and allowing children under six to stay with their mothers in humane conditions. Furthermore, abuse and exploitation remain rampant, with reports of custodial violence and

sexual harassment reflecting systemic failures. The Vishaka Guidelines, later codified under the Sexual Harassment of Women at Workplace Act, 2013, extend protections to women prisoners against harassment. In Hussainara Khatoon v. State of Bihar (1979), the Supreme Court underscored the importance of timely legal assistance as a facet of the right to life and liberty under Article 21. The treatment of women prisoners reflects a society's commitment to justice and equality. Upholding their rights through systemic reforms and strict enforcement of laws is essential to foster a just, equitable, and humane criminal justice system.

KEY WORDS

Women Prisoners, Mandela Rules, Bangkok Rules, Vishaka Guidelines, Gender-sensitive Treatment.

INTRODUCTION

The rights of women prisoners within the criminal justice system remain a crucial yet an overlooked issue. Incarcerated women face unique challenges that differ significantly from those of their male counterparts, necessitating a gender-sensitive approach in correctional policies. This article explores the legal, social, and human rights dimensions of women prisoners' rights, emphasizing the importance of reform in line with international standards. All human beings are born equal in dignity and rights, as stated in the moral articulations that are now widely known as human rights which are referred to as the fundamental and inalienable rights that every person is entitled to them simply because he or she is born as a human. The past century has seen a growing recognition with regards to the purpose of imprisonment i.e. it is not just punishment but also rehabilitation and reintegration into the society. Thus, leading to a greater prison reform aimed at improving the conditions of imprisonment, reducing recidivism and ensuring that the prisoner's human rights are protected. Prisons are the most sensitive area of human rights in civil society, especially for women. The ailing conditions of prison in which prisoners are held flagrantly violated their fundamental human rights often characterized by overcrowding, lack of basic amenities and inadequate healthcare. Despite progress made in the human rights protection, the rights of prisoners especially female prisoners, continue to be violated by being subjected to numerous violations of human their fundamental rights by the State as well as the public authorities. The very authorities that should be protecting these rights, such as police, judiciary, prison guards, foster care and other authorized agencies, are often the perpetrators of these violations. The aforementioned issues pose a significant as well as severe threat to the protection of human rights, yet it fails to receive adequate attention.

Historical Context and Gender Disparities in the Criminal Justice System

The historical context and gender disparities in the criminal justice system are significant issues that have long been overlooked. Historically, the criminal justice system was designed with male prisoners in mind, leading to policies and facilities that fail to address the specific needs of incarcerated women. The increase in the female prison population in many countries, driven by factors such as poverty, drug offenses, and domestic abuse, underscores the urgent need for reforms that recognize gender-specific concerns.

Women in prison face unique challenges that differ significantly from those of their male counterparts. These include distinct healthcare needs, particularly concerning reproductive health, mental health, and chronic illnesses. Pregnant women and mothers with young children face unique hardships in prison, and the Bangkok Rules emphasize alternatives to incarceration for pregnant women and mothers. Sexual abuse by prison staff and fellow inmates remains a grave issue, with many women prisoners being survivors of prior domestic or sexual violence. Access to education, vocational training, and rehabilitation programs remains limited for female prisoners, reducing their chances of successful reintegration into society post-release⁵. Women prisoners often experience higher rates of mental health disorders, including depression, anxiety, and PTSD, often linked to histories of abuse and trauma. Many women's prisons are overcrowded, leading to unsanitary conditions, lack of privacy, and increased risks of violence and disease.

To protect the rights of women prisoners, comprehensive legal and policy reforms must be implemented. These include expanding community-based sentences for non-violent female offenders, ensuring access to gender-specific healthcare, independent monitoring bodies to prevent abuse and mistreatment, expanding access to vocational training, education, and psychological support services, and enforcing zero-tolerance policies for sexual violence and harassment in prisons.

By recognizing the unique needs of incarcerated women and implementing gender-sensitive policies, states can ensure that prisons uphold human rights and facilitate rehabilitation rather than perpetuate cycles of abuse and disadvantage. A shift towards restorative justice and community-based alternatives can help create a more just and humane criminal justice system for women worldwide.

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Legal Framework Governing Women Prisoners' Rights

In India, women prisoners are entitled to several constitutional rights and safeguards to ensure their dignity, safety, and well-being while in custody. These rights are derived from the Constitution of India, various Supreme Court judgments, and prison laws and regulations.

Women prisoners have the right to equal treatment under the law and cannot be discriminated against based on gender. Prisons must ensure equitable access to facilities and services for women, as guaranteed under Art. 14 of the Constitution. Additionally, Art. 15(3) allows the State to make special provisions for women to safeguard their interests, recognizing their vulnerability (Constitution of India, 1950). The Supreme Court has upheld that even prisoners retain fundamental rights, except for restrictions imposed due to imprisonment (*Sunil Batra v. Delhi Administration*, 1978). Women prisoners must be provided with hygienic living conditions, medical care, and basic amenities. Custodial torture and sexual abuse of women prisoners violate Art. 21, and women must be protected from any form of violence, exploitation, or harassment. (*Delhi Domestic Working Women's Forum v. Union of India*, 1995).

Women prisoners have the right to free legal aid and representation under Article 39A of the Constitution. Authorities must ensure that women prisoners are informed about their legal rights, including the grounds of arrest. A woman can only be arrested by a female police officer, and no woman can be arrested after sunset or before sunrise, except in exceptional cases with prior magistrate approval (Art.22, Constitution of India, 1950; (Sec.43(4), BNSS, 2023)). Pregnant women prisoners have the right to proper prenatal and postnatal care, and women prisoners are allowed to keep their children with them until the age of six. Prisons must provide crèche and nursery facilities for children of incarcerated mothers (*R.D. Upadhyay v. State of A.P.*, 2006).

Strip searches and medical examinations of women prisoners must be conducted only by female medical staff, as mandated by Sec.59(2) of the BNSS, 2023. Women prisoners must be housed separately from male prisoners, and no male officer is allowed to enter women's barracks without the presence of a female officer (Sec.187(1), BNSS, 2023). Women prisoners also have the right to remission, parole, and premature release as per law. They should be provided with education, vocational training, and skill development programs for rehabilitation.

Women prisoners who are illegally detained or wrongfully convicted may seek compensation from the State. Courts have ruled that rape in custody is a violation of fundamental rights, and victims are entitled to compensation (*Delhi Domestic Working Women's Forum v. Union of India*, 1995). The *Bhartiya Nyaya Sanhita*, 2023(BNS, 2023) criminalizes custodial abuse, including assault or criminal force against a woman

with intent to outrage her modesty (Sec. (Sec.73 BNS, 2023), custodial rape by police, public servants, or jail staff (Sec. 63(2)(a)-(c) BNS, 2023), and verbal abuse or gestures intended to insult the modesty of a woman (Sec. 80 BNS, 2023).

The Supreme Court has emphasized the humane treatment of women prisoners and the need for legal aid in cases such as *Sheela Barse v. State of Maharashtra*. Sheela Barse exposed rampant custodial violence against women, leading to directives for gender-responsive prison reforms, separate facilities, female police escorts during interrogations, and access to legal aid. However, the promise of Sheela Barse is undermined by inconsistent application, evident in persistent issues like overcrowding and insufficient healthcare for women prisoners. Similarly, *Prem Shankar Shukla v. Delhi Administration*, challenged the dehumanizing practice of routine handcuffing, deeming it a violation of fundamental rights unless demonstrably justified by escape risk. The Court condemned the arbitrary classification of prisoners under the Punjab Police Rules, 1934, demanding dignity and equality for all detainees. The right of women prisoners to conjugal visits was recognized in *Prem Shankar Shukla v. Delhi Administration*, allowing them to maintain family ties and relationships.

These cases broadened the interpretation of Article 21 to include humane treatment in custody, setting the stage for pivotal judgments like *D.K. Basu v. State of West Bengal* (custodial rights), and *R.D. Upadhyay v. State of Andhra Pradesh*, (rights of children of prisoners). In *R.D. Upadhyay v. State of A.P.*, the Court laid down guidelines for the treatment of children born in prison. The *Delhi Domestic Working Women's Forum v. Union of India*, case focused on the rights of rape victims, including custodial rape cases. Additionally, *Sunil Batra v. Delhi Administration*, affirmed that prisoners, including women, have the right to basic amenities, medical care, and protection from abuse and discrimination.

Despite this progress, weak enforcement impedes the full transformative potential of these rulings, necessitating stronger oversight and accountability to ensure judicial mandates are effectively implemented and provide genuine protection for vulnerable prisoners. Ultimately, these decisions redefined imprisonment, particularly for women, shifting its focus from simple confinement to a period of reform and rehabilitation. The courts emphasis on supporting rape survivors led to the implementation of comprehensive, trauma-informed procedures within both custodial and investigative processes. Requirements for state-funded legal aid services significantly improved access to justice for impoverished women prisoners. Judicial recognition of children's rights within prisons resulted in the creation of specialized facilities and welfare programs for children born to incarcerated mothers. By opening conversations about prisoners' spousal and familial rights, the courts underscored the importance of maintaining personal identity and relationships, even while incarcerated. In essence, these decisions represent a transition from a system of punitive isolation towards one of restorative justice, establishing the groundwork for a correctional framework in India that is both gender-sensitive and rights-based.

International Standards and India's Compliance

India is a signatory to various international human rights treaties that influence its prison policies:

- A. **United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules):** Adopted in 1955 as the "Standard Minimum Rules" (SMRs), these guidelines were revised and renamed the "Nelson Mandela Rules" in 2015 by the UN General Assembly to honor Nelson Mandela's advocacy for human dignity and prison reform. The update modernized the rules to reflect contemporary human rights standards.

All prisoners must be treated with respect, free from torture, cruel/inhuman treatment, and discrimination. Protections apply regardless of race, gender, religion, or legal status, including pre-trial detainees. Absolute ban on torture and ill-treatment, with accountability for violations. Adequate space, ventilation, lighting, and sanitation. Separate facilities for vulnerable groups (women, juveniles, LGBTQ+ individuals). Equivalent to community standards, including mental health care and substance abuse treatment. Prohibits

corporal punishment, indefinite solitary confinement, and restricts solitary confinement to 15 days. Focus on education, vocational training, and social reintegration. Legal representation, complaint mechanisms without retaliation, and family contact. Mandates professional development for prison staff on human rights and de-escalation. Independent monitoring bodies to ensure compliance. Juveniles separated from adults, imprisonment as a last resort for minors. Pregnant women and disabled individuals receive tailored care.

- B. **Bangkok Rules (2010):** The Bangkok Rules, formally known as the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, were adopted by the United Nations General Assembly on December 21, 2010. These rules provide guidelines for the treatment of women prisoners and aim to address the specific needs and vulnerabilities of women in the criminal justice system.

Recognize the unique physical, mental, and social needs of women prisoners, including those related to pregnancy, childcare, and trauma. Emphasize the importance of providing healthcare, psychological support, and rehabilitation programs tailored to women. Encourage the use of non-custodial measures (e.g., community service, probation) for women offenders, particularly pregnant women and mothers with dependent children, to minimize the impact of incarceration on families. Advocate for humane living conditions, including access to sanitary products, adequate nutrition, and privacy. Prohibit invasive body searches by male staff and ensure that female prisoners are supervised by female staff. Provide specialized care for pregnant women, including prenatal and postnatal healthcare. Allow mothers to keep their children with them in prison when appropriate and ensure access to childcare facilities. Promote programs that support women's reintegration into society, such as education, vocational training, and counseling. Address the root causes of women's offending, including poverty, abuse, and discrimination. Ensure that women prisoners are protected from all forms of violence, harassment, and exploitation. Implement measures to prevent sexual abuse and provide support for survivors.

- C. **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW):** The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is an international treaty adopted by the United Nations General Assembly in 1979, often described as an international bill of rights for women. CEDAW aims to eliminate discrimination against women in all areas of life, including political, economic, social, cultural, and civil spheres. It defines discrimination against women as "any distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field" (United Nations, 1979, Article 1). The Convention requires states parties to take all appropriate measures, including legislation and temporary special measures, to ensure the full development and advancement of women, guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men. As of 2023, CEDAW has been ratified by 189 countries, making it one of the most widely supported human rights treaties globally (United Nations, n.d.).

- D. **Model Prison Manual, 2016:** The Model Prison Manual, 2016 is a comprehensive document issued by the Government of India, aimed at providing guidelines and standards for the management and administration of prisons across the country. It serves as a framework to ensure the humane treatment of prisoners, uphold their rights, and improve prison conditions in line with constitutional and international human rights standards. The manual covers various aspects of prison administration, including inmate classification, healthcare, education, vocational training, rehabilitation, and reintegration into society. It also emphasizes the importance of transparency, accountability, and the use of modern technology in prison management. The 2016 revision of the manual reflects updated policies and practices to address

contemporary challenges in the correctional system, promoting a more reformatory and rehabilitative approach to incarceration.

CONCLUSION

Women prisoners' rights are a crucial aspect of criminal justice reform that demands urgent attention. By recognizing the unique needs of incarcerated women and implementing gender-sensitive policies, states can ensure that prisons uphold human rights and facilitate rehabilitation rather than perpetuate cycles of abuse and disadvantage. A shift towards restorative justice and community-based alternatives can help create a more just and humane criminal justice system for women worldwide.

It is true that living in a patriarchal society where women are systematically subjugated by men lead to feelings of disappointment, frustration and even desperation for some women. This can be exacerbated by other social issues such as poverty, discrimination and victimisation, which can further limit women's opportunities and agency.

In some cases, these circumstances may lead to some women resorting to criminal behaviour as a means of survival or as a response to their experiences of oppression. However, it is important to recognise that criminal behaviour is not the fault of an individual alone, but rather a reflection of larger systemic issues that need to be addressed.

It is crucial to provide support, resources, and opportunities for women in these circumstances to prevent them from re-offending. This can include vocational programs, economic assistance, education and job training, as well as mental health support and counselling. It is also crucial to create spaces for women prisoners to access resources and support. Additionally, it is also important to implement effective legal provisions in the form of rules, and guidelines that protect women from violence, discrimination, exploitation and other forms of mistreatment in prison. This will ensure that women are guaranteed their basic human dignity and are not subject to further harm while serving their sentences.

Also, it is important to address the root causes of why women may turn to criminal behaviour in the first place, such as poverty, discrimination and systemic oppression. By addressing these larger societal issues, we can work towards creating a more equitable and just society where women have the opportunity to thrive and are not forced to resort to criminal behaviour as a means of survival. Furthermore, it is important to address and challenge the patriarchal systems that underpin these issues, working towards creating a more equitable and just society where women are not systematically oppressed and have equal opportunities to thrive.

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