

## **AN ANALYSIS OF THE RIGHTS AND WELFARE OF INDIAN WOMEN PRISONERS**

<sup>1</sup>Priti Ranjan, <sup>2</sup>Pratiksha Bhagat, <sup>3</sup>Shruti Keshri, <sup>4</sup>Mohanish Deshmukh

<sup>1,2,3,4</sup>Students of BALLB 10<sup>th</sup> Semester

Kalinga University, Naya Raipur, C.G

<sup>1</sup>priti pratik1910@gmail.com, <sup>2</sup>mohanishdeshmukh351@gmail.com,

<sup>3</sup>pratikshabhagat847@gmail.com, <sup>4</sup>shrutikeshri032@gmail.com

### **ABSTRACT**

In the socio-cultural matrix of Indian society, women have always been accorded a position of reverence and dignity, particularly in their maternal capacity, which is often idealized as the cornerstone of familial and societal stability. The Constitution of India, through its egalitarian ethos enshrined in Part III and Part IV, unequivocally guarantees to women the right to equality before the law and equal protection of the laws under Article 14, alongside non-discrimination on the grounds of sex under Article 15. Moreover, the Constitution imposes on the State under Article 15(3) and Article 39 a positive duty to take proactive actions compatible with the international human rights law and treaties in order to protect and promote women's rights and entitlements.

The empirical situation of imprisoned women inside the Indian carceral system remains extremely troubling despite this normative framework and the judicial exhortations via various landmark pronouncements of the Hon'ble Supreme Court and High Courts, as well as the progressive recommendations put forward by several expert committees and commissions. Between constitutional principles and the actual experiences of women inmates, whose basic human rights inter alia, rights to dignity, health, privacy, and protection against custodial assault, are sometimes exposed to systematic neglect and institutional indifference, a striking contradiction endures.

The statistical minority of female convicts compared to their male counterparts aggravates this marginalisation by frequently causing prison administration, policy development, and infrastructure design to ignore or completely neglect gender-specific issues. The present study aims to critically investigate the several difficulties experienced by women prisoners in India, to specify the kind and degree of human rights violations committed against them, and to offer jurisprudentially sound and pragmatically feasible suggestions to correct these ongoing gaps, despite the presence of a thorough body of legal provisions and court orders meant to protect them.

**Keywords-** Prisons, Human Rights, Women, Article 21

### **INTRODUCTION**

Prisons in India have been infamous for the brutal and inhumane treatment of women detainees. Discrimination, overcrowding and a lack of access to proper healthcare are just a few of the numerous problems being faced by the women prisoners in India. To add to the problems, women

prisoners are repeatedly subjected to physical and sexual assault without any satisfactory recourse.<sup>1</sup> The aim of the Criminal Justice System is to rehabilitate the offender.

The issues faced by the women prisoners act as a huge hurdle in their reformation and ultimately risks the failure of the working of the reformatory objectives of the Criminal Justice System. The government is not ignoring the issue, however. Aiming to reduce the issues experienced by women detainees, the Ministry for Women and Child Development launched a scheme in 2018 to provide legal assistance to women prisoners.<sup>2</sup> Separate inmates for women were also established to help guarantee that the requirements of the women are addressed in a more efficient way, hence providing greater safety and security. Apart from official actions, the civil society has also undertaken many projects to improve the situation of women inmates. Many non-governmental organisations have launched relief initiatives and campaigns to enable women inmates live with dignity and safety. The Restorative Justice Initiative, a non-governmental group based in Delhi, for instance, tries to provide legal help, therapy, and vocational training to women inmates. NGOs have also worked to guarantee that female offenders have access to necessary goods such as sanitary napkins, fortifying meals, and clean water. Moreover, they have pushed for the funding of female inmates' rehabilitation and mental health programs.

Certain Fundamental Rights guaranteed to individuals by the Constitution cannot be abridged even if a person is convicted for a crime.<sup>3</sup> A person's Fundamental Rights and freedoms cannot be taken away even when they are arrested or incarcerated after a conviction. Though diminished as a result of imprisonment, Fundamental Rights do not disappear.<sup>4</sup> With the exception of rights that are inherently limited by imprisonment, the Constitution guarantees certain basic rights to all inmates irrespective of gender.

At their heart, human rights in India are fundamental rights that no one, not even the state, can ever take away—with a few notable exceptions. According to constitutionalists, inmates automatically have some rights simply by virtue of being a human. These rights are guaranteed by the Indian Constitution, which also makes the state responsible for protecting and preserving them.

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<sup>1</sup> Ashutosh, Rights of Accused. Delhi, India: Universal Law Publishing Co. Pvt. Ltd., 2009.

<sup>2</sup> Rahul Tripathi, 'Jails at 14 per cent over capacity, two in three prisoners undertrials' *The Indian Express* (New Delhi, 10 April 2018) <https://indianexpress.com/article/explained/overcrowding-in-jails-prisos-reforms-tihar-jails-police-ncrb-5130869/> accessed 21 April 2025

<sup>3</sup> Ibid

<sup>4</sup> Declaration on women's health in prison: correcting gender inequity in prison health," Copenhagen & Vienna: World Health Organization Regional Office for Europe & United Nations Office on Drugs and Crime, 2009.

## **Constitutional Perspectives of the Rights of Women Prisoners**

Despite the fact that Fundamental Rights are, in fact, enforceable, it is essential to keep in mind that the Indian Constitution does not provide prisoners entire protection for all constitutional rights. The rights listed below are available to all inmates, regardless of their gender; however, only a handful of these rights are specifically relevant to female prisoners:

### **ARTICLE 14**

The idea of equality is articulated in Article 14 of the Constitution of India, which also ensures that men and women are afforded equal protection under the law.<sup>5</sup> Article 14 of the Constitution guarantees that every individual, including those who are incarcerated, is entitled to equal treatment without being subjected to discrimination on the basis of criteria such as religion, caste, sex, or race. Because the Supreme Court recognises that convicts are human beings, it is imperative that they be treated in a way that is in accordance with the concept of equality. In accordance with Article 14 of the Indian Constitution, any treatment that breaches human dignity, causes undue pain, or degrades a person to the level of a beast is considered to be arbitrary and may be challenged.

### **ARTICLE 15**

The Indian Constitution, specifically Article 15, makes it illegal to discriminate against people on the basis of their gender, among other reasons.<sup>6</sup> The third paragraph of Article 15 addresses the issue of protected discrimination as well. This provision is of particular importance for female inmates since it allows the state to take the required steps to meet their individual requirements. It assures that women who are incarcerated are provided with preferential treatment, which includes particular facilities, medical care, and safety from abuse and assault.

### **ARTICLE 19**

The right to communicate is included in the freedom of speech and expression that is guaranteed by Article 19(1) of the Constitution of India. Article 19 guarantees that inmates have the right to interact with their friends, legal representatives, and family members via the use of letters, visits, and telephone conversations.<sup>7</sup> This interpretation applies to convicts as members of the community.

### **ARTICLE 20**

The Indian Constitution, specifically Article 20(1), provides protection for people from ex post facto legislation. In other words, it implies that no one can be found guilty of a crime unless the crime in question was a breach of a law that was in effect at the time the conduct was performed. When a person is unjustly detained in a way that is not in accordance with the authorised legal requirements while they are committing a crime, this is considered to be wrongful confinement.

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<sup>5</sup> The Constitution of India; Article 14

<sup>6</sup> The Constitution of India, Article 15

<sup>7</sup> The Constitution of India; Article 19

The idea of "Double Jeopardy," also known as the rule of "Nemo Debet Vis Vexari," is enshrined in Article 20(2) of the Indian Constitution.<sup>8</sup> This policy assures that a person is protected from being prosecuted twice for the same act, hence assuring their safety and security. Article 20 (3) of the Constitution of India is one of the major protections that are useful for convicts who are going through the process of being tried. In it, it is stated that the authorities in charge of law enforcement cannot compel people to produce evidence.

#### **ARTICLE 21**

By virtue of the provisions of Article 21 of the Constitution of India, no one may be deprived of his life or personal liberty unless it is in accordance with the process that has been established by law.<sup>9</sup>

Within the context of the case between Maneka Gandhi and Ramakrishnan Reddy, the Supreme Court provided a wide interpretation of Article 21. Prisoners, regardless of whether they are currently awaiting trial or have been convicted, are still considered to be human beings and, as a result, they continue to possess their basic rights, including the right to life. As a result of the Court's interpretation and establishment, it has been determined that Article 21 stipulates that the process by which an individual is deprived of their life and personal liberty must be "right," "just," and "fair," avoiding any kind of arbitrariness or tyranny.

This interpretation includes the protection of female inmates from being subjected to torture, abuse, rape, harassment, and other forms of inhumane treatment at the hands of law enforcement and correctional institutional authorities.

#### **ARTICLE 22**

Article 22 of the Constitution of India enshrines specific procedural safeguards for individuals—irrespective of gender—who are arrested or detained under preventive detention statutes. Clause (1) of Article 22 stipulates that any individual who is arrested shall not be held in custody without being apprised of the grounds for such arrest.<sup>10</sup> Moreover, the arrested person is entitled to consult and be represented by a legal practitioner of their own choosing. Clause (2) of Article 22 mandates that every arrested individual must be produced before the nearest Magistrate within a period of twenty-four hours from the time of arrest, excluding the time necessary for transit. It further provides that no person shall be detained beyond this period without the Magistrate's authority. Clause (4) of Article 22 imposes limitations on the duration of preventive detention. It provides that no law permitting preventive detention shall authorize detention for a period exceeding three months unless:

1. an Advisory Board—comprising individuals who are, have been, or are qualified to be appointed as Judges of a High Court—has, prior to the expiry of the said three-month period, opined that there is sufficient cause for continued detention; and
2. the detention is in accordance with a law enacted by Parliament.

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<sup>8</sup> The Constitution of India; Article 20(2)

<sup>9</sup> The Constitution of India; Article 21

<sup>10</sup> The Constitution of India; Article 22

## THE PRISONS ACT, 1894 AND RIGHTS OF WOMEN DETAINEES

The Prisons Act, 1894 is the Fundamental legislation governing prison administration in India. In view of evolving standards and the need for a modernised correctional framework, the Government of India has proposed the **Model Prisons Act, 2023**, intended to supplant the archaic 1894 statute. However, as the proposed legislation is yet to be enacted, the 1894 Act remains in force and continues to govern prison administration, albeit offering only rudimentary protections for female inmates.

1. **Section 4** mandates the provision of adequate accommodation and sanitary conditions within prisons.
2. **Section 27(1)** prescribes that female prisoners must be confined either in separate buildings or in segregated sections of the same facility, arranged in a manner that precludes any form of visual, verbal, or physical interaction with male prisoners.
3. **Section 31** allows inmates to procure or receive essential items such as food, clothing, and bedding from private sources during designated hours. However, such items are subject to scrutiny and must receive the sanction of the Inspector General.
4. **Section 46** categorically prohibits the use of handcuffs, fetters, or corporal punishment such as whipping on female prisoners, irrespective of the prison offence committed.

## THE LEGAL SERVICES AUTHORITY ACT, 1987

Enacted by the Indian Parliament, the Legal Services Authorities Act, 1987 operationalises Article 39A of the Constitution, which envisages the provision of free legal assistance to provide equitable access to justice. Following this law, District Legal Services Authorities (DLSAs) have been constituted with particular duty to provide legal help to poor detainees, convicts, undertrial inmates, and economically disadvantaged litigants. This help includes court fee waiver, covering of litigation-related costs, and free legal counsel.

## JUDICIAL INTERPRETATION OF THE RIGHTS OF WOMEN PRISONERS

The most basic and most essential right given to inmates is the right to life, which provides the foundation for all other human rights. It has a respected place in the constitutional framework; without it, the life and exercise of other rights would be pointless. The Hon'ble Supreme Court categorically confirmed in the historic case of Challa Ramkonda Reddy v. State of Andhra Pradesh<sup>11</sup> that the right to life is an inherent and inalienable freedom granted to every individual under Article 21 of the Constitution. The ruling emphatically said that the State lacks any power to violate or suspend this right, not even during jail confinement. The court underlined that

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<sup>11</sup> 1990ACJ668, AIR1989AP235



imprisonment does not rob a person of their basic rights and that inmates still benefit from the Article 21 guarantees even while they serve their sentences.

Through time, the Supreme Court has often stressed that inmates remain human beings notwithstanding conviction or confinement. The court has created a strong framework of rights especially for inmates by using a liberal and broad reading of the phrase "life and personal liberty" under Article 21. Whether they are free citizens or imprisoned prisoners, all people have equal access to these rights, which are neither supplemental or secondary. The Court has noted that a prisoner, even behind bars, is a natural person, a legal person, and entitled to the dignity and rights that follow such identities. Any act of denial or infringement of these rights—whether performed by State authority or private individuals—constitutes a clear breach of Article 14, which guarantees equality before the law and equal protection of the laws.

Famous constitutional expert Upendra Baxi has astutely pointed out that the scope of Article 21 is so broad and extensive that it makes the presence of additional rights somewhat superfluous. The Supreme Court's progressive jurisprudence, in which the Court has read the right to life to include a broad spectrum of derived rights for inmates, supports this claim. Among others, they include the right to health, right to food, right to housing, right to bail, right to a timely trial, right to free legal assistance, right against custodial brutality, and right against death in police custody or phoney encounters. The Indian court system has thus been instrumental in strengthening the human dignity of inmates and has underlined the constitutional obligation that even behind prison walls justice, freedom, and equality be maintained.

The landmark case of **A. K. Gopalan v. State of Madras**<sup>12</sup> reveals the jurisprudential beginnings of prisoners' rights in India, when the Supreme Court conducted one of its first investigations of the constitutional legitimacy of preventive detention statutes. Detained under the Preventive Detention Act, 1950, the petitioner contested the Act on the basis that it violated his fundamental right to freedom of movement under Article 19(1)(d), which he claimed was a vital element of personal liberty safeguarded by Article 21 of the Constitution. He argued, moreover, that the Article 21 language "procedure established by law" should suggest a just, fair, and reasonable method rather than any arbitrary one the State used to rob people of life or personal liberty. The petitioner claimed that, having been denied his personal liberty and hence his freedom of movement, his basic rights were unfairly limited. The Hon'ble Supreme Court, on the other hand, ruled in a limited reading that "personal liberty" under Article 21 meant only freedom from physical restriction of the body and that Articles 19 and 21 were to be interpreted mutually exclusive of one another. Reflecting the court's early hesitance to take a holistic or broad view of

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<sup>12</sup> 1950 AIR 27, 1950 SCR 88

basic rights in the context of detention and incarceration, this ruling signalled a restrictive interpretation of constitutional safeguards.

Every person's right to live with dignity is guaranteed by the Indian Constitution; this right has been judicially construed and broadly extended to encompass even those behind bars. By means of a succession of historic decisions, the Supreme Court of India has unequivocally confirmed that, notwithstanding their conviction or incarceration, the right to live with human dignity—enshrined in Article 21 of the Constitution—extends to prisoners. The Apex Court firmly ruled in the famous case of **Maneka Gandhi v. Union of India**<sup>13</sup> that the right to human dignity is inseparably and naturally linked to the right to life under Article 21. The ruling set down the idea that the method set by law had to be equitable, fair, and reasonable and was a notable break from previous limiting readings. Particularly in relation to imprisoned women, the Court recognised that jail does not rob a person of their fundamental human qualities and thus the guarantee of dignity becomes much the more important during confinement. The ruling underlined that the prison administration has to be organised to show respect for the human value of every prisoner, thereby guaranteeing that all facets of prison life—such as housing, cleanliness, sanitation, food, clothes, and medical treatment—are in harmony with human dignity.

Likewise, the Supreme Court in **Charles Sobhraj v. Superintendent, Central Jail, Tihar**<sup>14</sup> (1978) underlined that every inmate, no matter the offence, has the right to be treated with decency and compassion. The Court forcefully noted that no one loses their basic rights only by virtue of imprisonment and underlined that prisoners should not be treated degradingly or inhumanly. The State was found to have a constitutional duty to supply the fundamental requirements of life within prisons, therefore safeguarding the mental and physical well-being of convicts. The Court further broadened the scope of the right to live with dignity to include freedom from arbitrary detention and violence, therefore requiring the State to make sure all processes connected to arrest, detention, and incarceration are carried out in rigorous respect of the rule of law. The court made clear that a prisoner's right to dignity is non-derogable and absolute; any breach of this would be a clear violation of constitutional protections.

## **SUGGESTIONS AND RECOMMENDATIONS**

International law mandates certain requirements for correctional facilities, and this report should hopefully start a conversation about the human rights challenges that women in jail confront.

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<sup>13</sup> 1978 AIR 597, 1978 SCR (2) 621

<sup>14</sup> 1978 AIR 1514, 1979 SCR (1) 512

Findings from the study stress the need for a specialised government body to research the demographics of female inmates, provide for their unique requirements, and monitor compliance on a global scale. Research shows that women in jail are more likely to be victims of abuse and neglect based on their gender, and that the government is doing nothing to address this pressing issue. To sum up, the study has provided sufficient evidence to support the hypotheses and questions put forward. The study's results and data have backed up the original questions, which has led to some great breakthroughs and increased our understanding of the subject. Significant future research and practical applications may build on this study's foundational findings. In order to achieve this goal, the research suggests the following measures:

1. State governments are obligated to guarantee that women's prisons have enough food, water, power, bedding, sanitation, clothes, and other basic facilities, notwithstanding any financial limitations. It is also necessary to expand the number of gender-separate jails so that female inmates have access to adequate facilities for menstruation hygiene and basic privacy.
2. A primary health care clinic staffed by female medical professionals and stocked with basic pharmaceuticals for common ailments should be established in women's prisons. All prison employees are required to get training on how to help female inmates with their unique physical and mental health issues.
3. The prevalence of HIV/AIDS and other infectious illnesses is a major concern in prisons for female inmates. For this reason, it has to establish programs that ensure inmates, particularly female inmates, have access to quality healthcare and other forms of affirmative action. In addition to suggesting preventative steps to restrict the spread of illnesses among inmates, the regulations should also protect the privacy of women prisoners who are sick.
4. It's critical to let female inmates know that they are eligible for free sanitary pads and to make sure they can easily get them if they need them.
5. In compliance with the legislation, pregnant women should be informed of the possibility of miscarriage and provided with the opportunity to get an abortion while incarcerated.
6. The norms and regulations regarding the circumstances and processes of body searches of female detainees should be clearly defined. Searches of the body's cavities should be avoided at all costs.
7. No prison policy or situation justifies denying a female prisoner the opportunity to see a loved one or legal counsel. For women inside bars, there has to be an increase in conjugal visits, phone calls, and video chats.
8. Assigning convicts to work without remuneration is the most common kind of prison labour that violates human rights. To solve this problem, the government should set aside money for prisons so that inmates, regardless of gender, may work and earn money.



9. Workers should not be required to put in more hours than is considered reasonable on a global scale. Participation in any employment programs designed to lessen or earn remissions must be entirely voluntary.
10. In order to help women convicts find jobs after their release, the state government should include initiatives run by the central government into the jail system. These programs include Skill India and Digital India.
11. We should think of ways to keep women out of prison, such remission, plea bargaining, community service, non-penal penalties, probation, etc.
12. Female inmates may do not have their entitlement to free legal representation fully exercised. Hence, to make sure that inmates have access to adequate legal counsel, NALSA and DALSA should do frequent prison inspections and raise public awareness.
13. It is also recommended that 'nari bandi sabhas,' which are councils for women in prison, be held either twice a month or once a week.
14. A senior female officer must be appointed to the Grievance Redressal Committee in prisons that contain female inmates. If the inspector finds evidence of sexual misconduct or torture, she may file a complaint on the victim's behalf, provided that the victim gives her approval.
15. The NHRC is unable to fully examine rapes and deaths in custody because the government and police are not following the letter of Section 176(1A), which requires a judicial probe. The government should fix this by making the section stronger so it can avoid these kinds of tragedies. The National Health and Rehabilitation Council (NHRC) also needs the resources (human and financial) to conduct thorough investigations.
16. In order to make the prison system safer and more accommodating for female inmates, it is essential to increase the number of female prison employees. Connecting on a regular basis with female medical professionals, gynaecologists, Auxiliary Nurse Midwives, social workers, solicitors and psychiatrists is also crucial. Doing so may help enhance behaviours that are sensitive to gender. Improved access to justice and more equitable treatment of female inmates are possible outcomes.

## CONCLUSION

It is indeed a matter of profound regret that a civilized and democratic nation such as India has yet to undertake the codification of prisoners' rights in a comprehensive legislative framework. Despite this legislative lacuna, the Indian judiciary, through its progressive and empathetic interpretations in a series of landmark judgments, has painstakingly delineated a wide array of prisoners' rights, thereby safeguarding the dignity and legal status of incarcerated individuals. These judicial pronouncements impose a mandatory duty upon prison authorities to uphold and implement such rights in both letter and spirit. However, in practice, the enforcement of these judicially recognised rights remains dismal, with prison administrations often failing to ensure substantive compliance. Consequently, prisoners—particularly the marginalised and uneducated

segments—derive little practical benefit from these constitutionally and judicially guaranteed protections.

The late Justice V. R. Krishna Iyer, a venerated champion of human rights, poignantly remarked that Indian prisons continue to function as 'laboratories of torture', where individuals are subjected to inhumane conditions and degrading treatment, and where detainees, ranging from juvenile delinquents to political dissenters, are confined as though they were commodities. This observation underscores the institutional apathy and systemic neglect that pervades the prison system. The plight of women prisoners is even more dire; their lack of legal awareness and procedural knowledge renders them exceedingly vulnerable to exploitation, abuse, and violations of fundamental rights.

Moreover, a significant dichotomy exists between statutory law and judicial precedent. While legislation is codified and readily available to the public, case law remains scattered across a multitude of legal reports and journals, often inaccessible and unintelligible to the layperson, especially those incarcerated. Despite its higher binding authority under the doctrine of precedent, case law lacks the uniformity and visibility of codified statutes. Therefore, to ensure clarity, accessibility, and enforceability, and to promote legal literacy among prisoners and accountability among prison staff, it is imperative that the rights of prisoners be explicitly codified through comprehensive legislative enactment. Such codification would bridge the gap between judicial pronouncements and practical implementation, advancing the cause of prison reform and human rights protection within the Indian criminal justice system.