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THE OVERLOOKED PLIGHT OF WOMEN IN INDIAN PRISONS AND THEIR LEGAL RIGHTS

~Samruddhi Joshi

"It is said that no one truly knows a nation until one has been inside the jails. A nation should not be judged by how it treats its highest citizens, but how its lowest ones"

- Nelson Mandela

According to the report of the National Crime Records Bureau (NCRB)[1], the population in Indian prisons is 56,69,37, including 5,44,153 men and 22,707 women and 82 transgenders. 4.1% of the overall prison population consists of women.

Women in India are considered equal under the Constitution and it is the state's responsibility to safeguard their rights and adhere to human rights principles when it comes to rights given to women. In the past, prison policies were designed with male inmates in mind due to their higher numbers, resulting in neglect of women's unique needs and exclusion from services accessible to men. As a result, women prisoners face the difficulties of incarceration more intensely than male inmates and encounter various challenges including blatant violations of their human rights. The main goal of this blog is to emphasize the issues faced by women as a result of male-centric structures in the criminal justice system. Taking a gender perspective is thus valuable when meeting women-specific needs in prisons and within the entire system.

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1 *Types of Indian Prison Inmates (Gender-wise) as on 31st December, 2022*. rep., pp. 1–2. Available at: https://ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/1701950487Table31-2022.pdf (Accessed: 28 May 2024).

PROBLEMS OF WOMEN PRISONERS

The inadequate state of many prisons in India remains poor, dehumanizing, and violates the residuary rights of prisoners. Regrettably, the state's oversight of daily events in these institutions is now just a formality. Reports[2] of human rights abuses, including police brutality, torture, and custodial violence resulting in prisoners' deaths have become a common phenomenon. The very institutions responsible for upholding these rights, like law enforcement, the legal system, prison staff, foster services, and other official organizations, are the perpetrators.

Committing sexual violence that includes custodial rape against imprisoned women is a blatant disregard for their fundamental rights to life, liberty, and dignity. Inadequately staffed or poorly supervised facilities expose women to sexual violence and abuse from other inmates. The media, NGOs that work on women and human rights, pressure parties, the National Commission for Human Rights, the National Women's Commission, civil societies, the State, its citizens, various Women Commissions, the Judiciary, and other agencies have contributed to addressing gender-based violence against women inmates and redressal of these issues.

LEGAL RIGHTS OF FEMALE PRISONERS

- **PRISONER'S ACT, 1894:** The Prisoner's Act of 1894[3] was a first of its kind in India that governed prisons, emphasizing the rehabilitation of inmates and the protection of their rights. **Section 24(3)[4]** mandates that female inmates should be assessed by a female healthcare provider and receive medical care from a female nurse or attendant. **Section 27(1)[5]** of the act states that male and female inmates must be housed separately within prison facilities.
- **CODE OF CRIMINAL PROCEDURE (CRPC), 1973:** Various rights of women prisoners have been protected under the Code of Criminal Procedure (CRPC)[6]. **Section 46(4)**[7] of CRPC states that a woman cannot be arrested after sunset and before sunrise,

[2] Kiran R. Naik, Women In Prisons India, International Journal of Research and Analytical Reviews (IJRAR), vol. 6, no. 2 (June 2019): 178.
[3] THE PRISONS ACT, 1894. ACT NO. 9 OF 1894.
[4] THE PRISONS ACT, Section 24(3)
[5] THE PRISONS ACT, Section 27(1)
[66] CRIMINAL PROCEDURE CODE, 1973 ACT NO. 2 OF 1974

[7] CRIMINAL PROCEDURE CODE, Section 46

however under special circumstances a female officer may arrest her after written permission from a first-class judicial magistrate with appropriate jurisdiction has been granted. According to **Section 51(2)**[8] of CRPC, a female arrestee is to be searched by a woman following the codes of decency. According to **Section 53(2),**[9] a female should be examined only by or under the supervision of a registered female medical practitioner.

- **IPC SECTIONS 376(A), TO 376(D)** punishes rape including custodial rape.[10]
- **THE NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS (NCPCR)** has suggested that pregnant, ill, or mothers with dependent children in jail be eligible for early release on personal bonds. The guidelines established by NCPCR emphasize that although the seriousness of the offense committed by them should not be ignored, it is important to consider the situation of female inmates particularly those who are poor and have young children.[11]

LANDMARK CASES IN THE RIGHTS OF WOMEN PRISONERS

- **R.D. UPADHYAY VS. STATE OF A.P. & ORS (2006)**[12]

  This landmark case held that there shall be no mention of the child's birth in prison on the birth certificate although that may be the case. Additionally, the honourable court also held that the child shall not be treated as an undertrial/convict while in jail with his/her mother. It also stated that female under-trial prisoners are entitled to live with their children until they attain 6 years of age.

[8] CRIMINAL PROCEDURE CODE, Section 51(2)

[9] CRIMINAL PROCEDURE CODE, Section 53(2)

[10] THE INDIAN PENAL CODE, 1860 ACT NO. 45 OF 1860.

[11] Kasera, P. (2020) *Rights of women prisoners in India*, *SSRN*. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3621467 (Accessed: 28 May 2024).

[12] • *R.D. Upadhyay vs. State of A.P. & Ors Vol 3* (2006).

- **SHEELA BARSE VS. STATE OF MAHARASHTRA (1983)[13]**

  This case held that it is important to ensure that legal assistance is granted to prisoners, under-trial, or convicted. It also stated that questioning of women should occur only while female police are present on guard. Furthermore, lock-ups that house female inmates should be guarded by female constables only and male suspects should not be kept in facilities where female suspects are housed.

LIMITATIONS

Numerous women prisoners, particularly those from marginalized communities, lack the opportunity to access legal assistance and guidance which makes it difficult for them to advocate for their rights or seek remedies in case of violation. It is more challenging and complex due to the patriarchal nature of Indian society. The police, judiciary, and prison authorities within the criminal justice system have faced criticism for failing to protect the rights of female prisoners. To address these problems, it is necessary to raise awareness and educate not just the prison staff and authorities but also the general public. The government must also make efforts to promote awareness about the rights of prisoners (men and women alike) through initiatives like organizing campaigns and offering legal aid and assistance to them.

CONCLUSION

It is important to address that issues like poverty, discrimination, and systemic oppression are the underlying reasons why women resort to criminal behaviour in the first place. By tackling these broader societal challenges, we can strive to build a fairer and more inclusive society where women can prosper. Moreover, it is crucial to confront and question the patriarchal structures that support these problems, aiming to establish a fairer and more inclusive society in which women aren't consistently marginalized and have equality in opportunity and success.

[13] *sheela barse vs. state of maharashtra Vol 2* (1983).