
JUDICIAL APPROACH TOWARDS SAFEGUARDING RIGHTS OF WOMEN PRISONERS IN INDIA

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ABSTRACT

The protection of the rights and dignity of female prisoners has emerged as a significant issue within India's criminal justice system which is particularly crucial against the backdrop of the constitutional guarantees of equality, life, and personal liberty enshrined in Articles 14, 15, and 21 of the Constitution of India. Women in prison often face various specific challenges due to gender-based vulnerabilities or risks, such as inadequate healthcare, unsanitary conditions, issues related to pregnancy and motherhood, violence within the prison, separation from their children, and obstacles to rehabilitation and reintegration into society. In the absence of specific and comprehensive legal safeguards for female prisoners, the Indian judiciary has played a groundbreaking role in expanding the scope of their fundamental rights and ensuring their enforcement through purposive interpretation and judicial activism. This research paper reviews the judicial approach adopted by our Hon'ble Courts regarding the protection of the rights of female prisoners. The article evaluates aspects such as status within the prison, reproductive health rights, legal aid, protection against torture and sexual abuse, the rights of incarcerated mothers including pregnant women and those with children, access to healthcare, speedy trial, and judicial measures regarding rehabilitation. This research argues that although judicial rulings have contributed significantly to strengthening the legal framework for the protection of female prisoners, major gaps remain in the implementation of these directives due to administrative shortcomings, infrastructural limitations, and inconsistent conduct by prison authorities. In conclusion, while the judiciary acts as a catalyst for prison reform and the recognition of gender-sensitive rights, sustained legal measures, institutional accountability, and effective oversight mechanisms are essential to translate judicial orders into tangible and meaningful improvements in the prison environment. This research emphasizes the need for a rights-based and gender-sensitive prison administration.

Keywords: Judiciary, Women Prisoners, Human Rights, Re-integration

INTRODUCTION

The judiciary plays a pivotal role in ensuring the rights, reformation, and reintegration of women prisoners. This role is multidimensional and spans constitutional safeguards, interpretation of laws, oversight of prison conditions, and progressive jurisprudence. The criminal justice system as followed in India is of the adversarial kind. Nonetheless, being primarily aimed at reforming the convicts and restoring order in society, there can be found certain traits of the restorative judicial system as well. The basic principle of criminal jurisprudence is that an accused is innocent until proven guilty. In India, the courts recognised the plight of women in prisons and issued directives to guarantee that women are furnished humane and considerate treatment during their incarceration. The Indian courts have issued several rulings that call for the protection of human rights of women prisoners, prevention of overcrowding, the appointment of counsellors, and the availability of telephone and video conferencing facilities so that they can remain in contact with their lawyers and family members. Hence, the Indian courts have taken a more aggressive and proactive approach to safeguard the rights of women prisoners.¹

The National Crime Records Bureau (NCRB) is an Indian governmental agency assigned to gather and analyse information on crimes. As on 31st December, 2022, 23772 women inmates were lodged in the jails of the country. Out of those, 4240 women inmates were lodged in prisons exclusively meant for women.² Rajasthan has the most women in prison (seven), followed by Tamil Nadu (five), Kerala (three), Andhra Pradesh, Bihar, Gujarat, and Delhi (2 each). There is a women's prison in each state of Karnataka, Maharashtra, Mizoram, Odisha, Punjab, Telangana, Uttar Pradesh, and West Bengal.³

LANDMARK DECISIONS

The Supreme Court has time and again protected the best interest of prisoners, particularly women and has reiterated that reformation and correction is way more important than punitive detention. For instance, in the case of, *D.K. Basu v. State of West Bengal*⁴ the Court observed

¹ Dr. Pelasur Chandra Kumar Swamy & Rakshith B.V., Role of Judiciary in Safeguarding Women Prisoners' Rights in India, 4 International Journal of Human Rights Law Review, 1145, (2025)

² Report on Prison Statistics India 2022, National Crime Records Bureau, available at: <<https://www.ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/psiyearchive2022/1701613297PSI2022ason01122023>> (last accessed on 06 August, 2024).

³ Ibid.

⁴ AIR 1997 SC 610

that to the extent possible, the medical examination of a woman should only be conducted by a female medical officer. The Supreme Court also mandated the installation of camera systems in all prisons and police stations to prevent torture and custodial death. Although not exclusively about women prisoners, the ruling has crucial implications for them. Women are particularly vulnerable to sexual violence, harassment, and torture in custody. These guidelines help protect them. The requirement to inform relatives and allow legal access acts as a safeguard against custodial abuse of women. The judgment strengthened the right to life and dignity under Article 21, vital for humane treatment of women prisoners.⁵

In another case, *R.D Upadhyay v. State of Andhra Pradesh & Others*⁶ the Court held that births to incarcerated mothers should not list 'prison' as the birthplace on birth certificates, preserving dignity and aiding re-integration. The case became a cornerstone in prison jurisprudence, emphasizing the unique needs of women prisoners as mothers. It shifted the narrative from punishment to human rights, welfare, and reformation, recognizing the special vulnerability of women inmates. The judgment influenced prison manuals, policies, and later legal reforms.⁷

*In Re Inhuman Conditions in 1382 Prisons*⁸, was begun *suo motu* by the Supreme Court in 2013 after receiving a letter about overcrowding, poor hygiene, and human rights violations in Indian prisons. It was titled “Inhuman Conditions in 1382 Prisons” because the issue spanned prisons across all States and Union Territories the Supreme Court stressed the need for all central and district prisons to install the primary information system software. The decision recognized special needs of women prisoners, including privacy, maternity care and facilities for children staying with mothers. The Court reinforced the principle that prisons must function as correctional institutions, not merely punitive spaces.⁹

In the landmark case of *Sheela Barse v. State of Maharashtra*¹⁰ the Supreme Court treated a journalist's letter about custodial abuses of women as a writ petition, leading to strong directives ensuring protection of women in custody like regulated interviews, legal aid access, and safeguards against torture. The case became a milestone in prison reforms, focusing on gender-

⁵ Ibid.

⁶ AIR 2006 SUPREME COURT 1946, 2006 AIR SCW 2274.

⁷ Ibid.

⁸ WRIT PETITION (CIVIL) NO. 406/2013, 2024

⁹ Ibid.

¹⁰ AIR 1983 SC 378

sensitive treatment of women prisoners. The Court reinforced the rights under Article 21 of the Constitution recognizing the dignity and safety of women in custody.¹¹

Custodial rape is common among women prisoners. In the case of *State of Maharashtra v. C.K. Jain*¹² rape in custody was addressed and it was emphasized that women prisoners deserve exemplary protection, their allegations shouldn't be dismissed, and the presumption favours their testimony unless proven unreliable. It contributed to legal reforms enhancing punishment for custodial rape. It further led to the development of protective laws, such as amendments to the then criminal laws and till date continues to influence cases involving women prisoners' safety and dignity.¹³

In the case of *Sunil Batra (II) v. Delhi Administration*¹⁴ the Apex Court addressed the ill-practice of solitary confinement. It was observed that a person should not be relegated to solitary confinement unless they are either suffering from a contagious disease or are a danger to the rest of the prisoners. The court acknowledged that the impact of solitary confinement on the mental health of the prisoner could have terrible and lasting effects. An important observation made by the court was that prisoners are doubly handicapped in prison. First, belonging to weaker sections of society comes from poverty and illiteracy. Secondly, because the prison is a confined area disconnected from the community, anything that may happen inside the closed walls may never reach out. This way, they are barely heard, and any injustice may befall them unheard. Therefore, to ensure that they are not treated like animals and that the principles of Article 21 are not violated, the prisoners should be extended the basic rights and dignity deserving of a human being. This decision is relevant as it helps ensure that the voices of female prisoners are not left unheard, and any custodial violence meted out to them is duly reported.¹⁵

In another matter the prisoner, had not received a copy of the judgment for three years after it was passed. To ensure that this situation was not repeated, the Supreme Court propagated some crucial guidelines to be adhered to ensure that the prisoners have proper access to justice such as, Courts shall forthwith furnish a free transcript of the judgement when sentencing a person

¹¹ Ibid.

¹² 1990 AIR 658

¹³ Ibid.

¹⁴ 1980 3 SCC 488

¹⁵ Ibid.

to a prison term.¹⁶ While the case was not specific to women prisoners, its principles are highly significant for them because many women prisoners are poor, marginalized, and often illiterate, making them vulnerable to injustice. They frequently lack awareness of their legal rights or the resources to pursue appeals or secure bail. The ruling underpins later reforms ensuring legal aid services in prisons, including special provisions for women.¹⁷

In the case of *Christian Community Welfare Council of India v. Government of Maharashtra*¹⁸, the Bombay High Court held that a woman should not be arrested after sunset and before sunrise and only in the presence of lady constables. The State Government was directed to set up a committee to make special provisions for women prisoners. This right is significant as it plays a major role in protecting female prisoners from sexual abuse and custodial violence.¹⁹

Consequently, it is clear that the decisions given by the Indian Courts have played a significant role in protecting and defending the rights of women prisoners. The approach and perspective of the Indian Judiciary are based on the reformation, restoration and rehabilitation of women prisoners into mainstream society. They have shown sensitivity towards the unique requirements of the women prisoners, as well as the social stigma they experience due to their gender. In the absence of specific legislation on the subject, the courts have played a vital role in developing progressive laws.

LATEST DEVELOPMENT

*In re Identification of Women for Release*²⁰ A recent Supreme Court ruling instructed jail superintendents to actively identify women prisoners eligible for release under the Bharatiya Nagarik Suraksha Sanhita, with special focus on gender-sensitive application. The ruling is significant for prison reforms and gender justice as it aims to reduce overcrowding, helps prevent unnecessary prolonged detention of vulnerable women and recognizes that women suffer disproportionately due to social and economic vulnerabilities when imprisoned.²¹ *In re Discrimination inside prisons in India*²² is an ongoing *suo moto* case extending across caste, gender, and disability in prisons. The Supreme Court struck down discriminatory rules in prison

¹⁶ M.H. Hoskot v. State of Maharashtra, 1978 3 SCC 544

¹⁷ Ibid.

¹⁸ 1996(1) BOM CR 70.

¹⁹ Ibid.

²⁰ 2024

²¹ Bharatiya Nagarik Suraksha Sanhita, 2023, §479

²² 2024

manuals and directed reforms within three months, with constant compliance monitoring. This case acknowledges unique challenges faced by women prisoners such as sexual harassment and safety concerns, lack of maternal and childcare facilities, restrictions on education and work opportunities compared to men.

Recently, the Apex Court observed that a reformatory approach must be adopted for women who commit crimes under compelling social circumstances and allowed a murder convict to seek Governor's pardon, while dealing with a case where the woman was convicted under Sections 302 and 120B of the IPC for the murder of her fiancé in 2003. At the time, she was a 20-year-old college student who had repeatedly expressed to her family that she did not want to get married. The Court noted that the main objective of the criminal justice system is to reform and rehabilitate the deviant person in order to bring him/her back into the fold of society. This reformatory part, thus, assumes a greater significance. It is more so, when the offender is not entirely responsible for the causes which led to the crime.²³

The Hon'ble Supreme Court of India, in line with the global laws, through a catena of judgments, has directed the authorities not to lose sight of the fact that the objective of the Indian Criminal Jurisprudence is to reform the convicts as far as possible. In line with this, orders have been passed by the court to make available to the inmates counselling appointments with psychiatrists to ensure their mental health is not hampered in the prison environment.²⁴

India is known to be the world's largest democracy and it is natural to expect that a codified law on the rights of prisoners ought to be in place by now. While there are multiple codified laws regulating the life of prisoners and the management of prisoners, most of the prisoner's rights come out of the other laws and by implication of the basic principles of natural justice as envisaged in the Constitution of India and criminal jurisprudence in general.²⁵

Apart from this, the Hon'ble Supreme Court has also taken cognizance of the issue and has issued several directions ensuring that the rights of prisoners, more specifically the female prisoners, are not violated on account of the callousness of the prison administration.²⁶

²³ India Today, available at:< Top court cites social constraint, allows woman to seek pardon for killing fiance - India Today> (last accessed on 20 January, 2026)

²⁴ *In Re: Illegal Detention of Machal Lalung* [2006 SC 1453, Writ Petition (Criminal) No. 296 of 2005.

²⁵ *Ibid.*

²⁶ *Ibid.*

Supplementing these orders are the guidelines which various committees have recommended over the past two decades. Further attempts have to be made to incorporate those suggestions.

The Apex Court has acknowledged the positive steps that had been taken in this regard. It has stated that a lot more is required to be done in the States and Union Territories for looking after the interest of the children.²⁷ It took a report from all the states and Union Territories with regard to the special facilities provided to women and children in prison. The states were directed to implement these measures and make appropriate changes to incorporate them.²⁸

CONCLUSION

The Apex court has made important observations after considering multiple committee recommendations and prison manuals and other statutory documents about the rights of incarcerated women population. The challenge that continues to exist is that of efficient implementation. Unless there is a genuine concern to rehabilitate the women prisoners in the society adequately, these reforms will remain mere suggestions on paper.²⁹ The lack of accountability and non-prioritising of the prison reforms is a glaring testament to the administration's failure to ensure its citizen's protection and the objective of reforming and rehabilitating these citizens. The failure of the system merely shows that despite the best efforts of our legislators and jurists, unless those employed at the grass root level are not trained in empathy and humanity towards the women prisoners, the reforms can never be successfully implemented. Furthermore, the Judiciary alone cannot re-integrate such released women offenders unless they are made economically independent. Lack of job opportunities plays a major role in the failure of successful re-integration of incarcerated women which unfortunately drives them towards recidivism and substance abuse.³⁰

²⁷ Supra note 6

²⁸ Supra note 20

²⁹ Supra note 20, 28

³⁰ Supra note 10