



## RIGHTS OF WOMEN PRISONERS IN INDIA: PRESENT SCENARIO

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### ABSTRACT

*Women under custody are very much vulnerable in male-centric model of prison system especially in the common jails where men and women both are lodged. According to the National Crime Records Bureau's prison statistics, till the end of 2010, women formed 4.1% of the total prisoners. Till the end of 2013 there was 18188 jail inmates out of which 3396 were women prisoners consisting of 18.67% of jail inmates in India. Also the report mentions 34 deaths of women inmates in 2010, of which 5 were suicides. According to the Director General (Prisons), Tihar Jail, Neeraj Kumar, 73.5% inmates i.e. 8,911 out of 12,124 which also include 410 women from Tihar Jail, Delhi, was under trial prisoners. This is much above the national average of 66.4% under trials in Indian jails. Available reports show that many jails in the country are witness of torture and other cruel practices committed on prisoners, both women and men. At the same time, reports are also available on violence against women in custody in other state institutions, such as in shelters homes and remand homes, care taker homes etc. In view of this situation, the present paper is focusing upon prison conditions; highlight the conditions of women in custody and the violations of their rights as under trials and convicts. We need to formulate effective strategies to make state institutions more responsible and accountable and ensure that the rights of all people, including those of women, are not violated under any circumstances. It attempts to examine the applicability of the rights and privileges available to the women prisoners.*

*“... it is not my suffering alone ... there are many other women prisoners suffering ... like me, they were hunted and brought here, and then charged in false cases (Every) day people introduce me to new stories of their sufferings ... They tell me that they were not able to fight back because there was no one to support them ... After hearing their stories of torture, my own suffering appears small... (you) have to do something for these women also ... my struggle is not my struggle alone, but it has become everyone's struggle”*

*–From the letters of Soni Sori from prison, November 2011*

The Constitution of India guarantees equality to men and women, various laws have been enacted to protect and empower women. Some women have definitely benefited from these legal provisions; however the majority of poor and illiterate women's life still remains a struggle in a traditional male dominated society. The pitiable situation of women prisoners, recognized as bad women who deserve bad treatment, is not surprising. The concept of human rights is totally unknown to such women.

The needs of women prisoners often differ from their male counterparts. Women need gender precise facilities for healthcare, to help them in childbirth, to care for their children in prison, to receive counseling to guard against the possibility of rape and sexual assault and to maintain contact with their dependants outside the prison. This is reflected in the international standards on the treatment of prisoners and detainees. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment explicitly recognizes the need for specific measures to be adopted to protect the rights and special status of women, particularly pregnant women and nursing mothers.

## **RIGHTS RELATING TO THE WOMEN PRISONERS**

### **Pre-detention rules**

Women should not be called to the police station for investigation and all investigations should be carried out in the presence of a relative of the accused or her lawyer or a lady staff member. Women in police custody should invariably be under the charge of women police officials. A separate place with proper facilities should be provided on court premises for women prisoners awaiting production before presiding magistrates. Bail should be liberally granted to women under-trial prisoners. The Probation of Offenders Act should be extensively used for the benefit of women offenders.

### **Separate Institution for women inmates**

Standard Minimum Rules for the Treatment of Prisoners provides for separate institution for the female inmates. It further clarifies that in an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of that part of the institution. No male member of the staff shall be allowed to enter the part of the institution set aside for women unless accompanied by a woman officer. Women prisoners shall be attended upon and supervised by women officers only.<sup>1</sup> Model Prison Manual also states about separate institution for the women prisoners. It says that the State Government shall establish separate prisons for women offenders. Till separate prisons for women are established, both male and female inmates can be confined in the same prison on the condition that female offenders are to be kept in a strictly secluded female enclosure. Such enclosure should be, to the extent possible, independent in terms of infrastructural set-up.<sup>2</sup> According to the prison Manual, the women prisoners should be classified and kept separately as under:

- (i) Under trial prisoners shall be kept completely separated from convicted offenders, even when their number is small.
- (ii) Habitual prisoners shall be separated from casual offenders
- (iii) Habitual offenders, prostitutes and brothel keepers must also be confined separately.
- (iv) In no circumstances should adolescent girls be confined with adult women prisoners
- (v) Political and civil prisoners shall be kept separately from convicts and under trial prisoners.

<sup>1</sup> Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, Rules 8(a) and 53

<sup>2</sup> Bureau of Police Research and Development of India, Model Prison Manual 2003, Para 24.01  
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Similar views were expressed by the All India Committee on Jail Reforms 1983. 'Punjab State Policy on Prisons' emphasizes that women offenders shall as far as possible be confined in a separate institution specially meant for them. Wherever such arrangements are not possible, they shall be kept in separate annexes of prisons with proper arrangements. The staff for these institutions and annexes shall comprise women employees only. Women prisoners shall be protected against exploitation of any kind. Even in Maharashtra it provides that habitual women prisoners, prostitutes and procuresses and young women shall be segregated from other male prisoners,<sup>3</sup> If adequate arrangements for segregation cannot be made in the women's section of a prison then such women must be transferred to a prison for women prisoners irrespective of the length of their sentence, or to another prison where such facilities exist.<sup>4</sup> Men officers or prisoners shall not on any way enter women's sections of the prison except for reasons as provided under the manual.<sup>5</sup> In spite of this fact that much stress has been laid upon establishment of separate institution for the women, there are only 15 all-women jails in India.<sup>6</sup>

#### **Meeting with Relatives**

It is one of the basic rights of a prisoner to receive meetings with relatives and friends. It is necessary for them to stay in the jails near their homes so that visitors find it convenient to come for meetings. There should be separate interview room in Jail for the women inmates.

#### **Food and Accommodation**

According to the standards fixed by Mulla Committee an adequate and nutritious diet should be given to nursing women and children accompanying women prisoners. The medical officer should ensure that food is cooked under hygienic conditions and is nutritious. Clean drinking water should be supplied to prisoners and it should be tested periodically. Model Prison Manual lays stress upon hygienic and nutritious food for women. It says that there should be a separate kitchen for every 100 prisoners.<sup>7</sup>

#### **Medical Facilities**

The majority of women in prisons are amongst the poorest members of society and many arrive in prison with a range of prior-existing physical and mental health problems. International best practices state that the medical services provided for women prisoners should be of the same quality and standard as those available to the outside (free) community. The Model Prison Manual states that: "Only lady doctors shall look after the medical care of women prisoners during their stay in prison". Model Prison Manual provides for woman gynecologist as well as sufficient nursing and other supporting staff. Modern facilities like X-ray, ECG, ultrasound and sonography should be available to women in the prisons. Female offenders suffering from mental disorders, anxiety, drug addiction and sex perversion should get proper medical treatment and psychotherapy. Maharashtra prison Manual provides that

<sup>3</sup> Ch. XLI, Section II, Rule 3 MAHARASHTRA PRISON MANUAL, 1979

<sup>4</sup> Ch. XLI, Section II, Rule 3 MAHARASHTRA PRISON MANUAL, 1979

<sup>5</sup> Ch. XLI, Section II, Rule 4 MAHARASHTRA PRISON MANUAL, 1979

<sup>6</sup> National Crime Records Bureau of India, Prison Statistics 2006

<sup>7</sup> Bureau of Police Research and Development of India, Model Prison Manual 2003  
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women prisoners shall be supplied suitable clothes for sanitary and hygienic purposes.<sup>8</sup> Women prisoners shall be examined by the medical officer in the presence of a woman jailor or matron. This shall be done once a month and his observations shall be recorded in the medical sheet of the prisoner concerned.<sup>9</sup> The medical officer shall report the pregnancy of a woman prisoner to the superintendent. She shall then be medically examined at the hospital and proper prenatal and postnatal care shall be taken according to the requirements of each case as per medical advice.<sup>10</sup>

### **Children of Women Prisoners**

A child up to six years of age can be kept with his mother if there is no other arrangement for keeping him outside with relatives or otherwise. The Punjab Jail Manual provides that children born in prison may remain with their mothers up to six years of age, if they cannot otherwise be suitably placed. At the end of 2006, there were 339 women convicts with their 374 children and 1,031 women under trials with their 1,197 children reported to be in prisons in the country. Model Prison Manual says that there shall be a play school and a nursery school attached to a prison for women where the children of women prisoners shall be looked after. Children below three years of age shall be allowed in the play school and those between three and six years shall be looked after in the nursery school. The play school and nursery school shall be run by the prison administration preferably outside the prison. Scales of diet for children shall be decided keeping in view the energy requirements of growing children as per medical norms and climatic conditions. The children of women prisoners living in the prisons shall be given proper education and recreational opportunities. According to the Maharashtra prison Manual a woman prisoner may retain her child in prison till the age of four years.<sup>11</sup>

### **Legal Aid and Counseling**

Model Prison Manual says that Socio-legal counseling cell should be set up in each institution to be managed by volunteers from a designated law school, school of social work, or a non-governmental voluntary agency. Work done by students while working in such a cell should be given academic credit and should form a part of the student's graded curriculum.

### **Vocational Training**

Vocational training plays an important role in the reformation of prisoners and it is equally important for the women prisoners. Model Prison Manual states that as far as possible women prisoners shall be imparted training suited to their aptitude and background, making them economically self-reliant. Vocational training in useful trades shall be provided to women prisoners. The selection of vocational programmes shall be made in accordance with the marketability and profitability of the product, enhancing the prisoner's ability to earn their livelihood after release. Sufficient work or vocational trades shall be provided to keep prisoners actively employed for a normal working day. These may include tailoring, embroidery, needle-craft, candle making and toy making.

<sup>8</sup> Ch. XLI, Section II, Rule 5 MAHARASHTRA PRISON MANUAL, 1979

<sup>9</sup> Ch. XLI, Section II, Rule 6 MAHARASHTRA PRISON MANUAL, 1979

<sup>10</sup> Ch. XLI, Section II, Rule 7 MAHARASHTRA PRISON MANUAL, 1979

<sup>11</sup> Ch. XLI, Section II, Rule 9 MAHARASHTRA PRISON MANUAL, 1979

### Other facilities for women inmates

While bathing women prisoners shall be allowed soap for washing their hair at the rate of 28 grams per head.<sup>12</sup> Women prisoners sentenced to six months imprisonment or below should be issued two saris, two blouses, two petticoats, one towel and two sets of customary undergarments. Women prisoners sentenced to more than six months of imprisonment should be issued three saris, three petticoats, three blouses, two towels and three sets of customary undergarments. Adequate warm clothing, according to local conditions and change of seasons, shall also be provided. Women prisoners should be given one pillow with pillow cover and woolen blankets according to climatic conditions. Women prisoners shall be provided two cotton sheets for every six months. Women prisoners are allowed to retain their glass bangles, wear the vermilion mark and nose rings. Where religious custom makes wearing of bangles obligatory, women prisoners requesting for a supply of bangles at government cost shall be supplied with two bangles for each hand.<sup>13</sup>

### PRESENT SITUATION OF WOMEN PRISONERS IN INDIA

Women constituted 3.9 percent of the total prison population of India at the end of 2006. The total number of women prisoners was 14,657 in 2006,<sup>14</sup> till the end of 2010, women formed 4.1% of the total prisoners, at end of 2013 there were 18188 jail inmates out of which 3396 were women prisoners consisting of 18.67% of total population of jail inmates in India.<sup>15</sup> The National Human Rights Commission (NHRC) recorded a total of 14,231 deaths in custody in India between 2001 and 2010, which includes about 1,504 deaths in police custody and about 12,727 deaths in judicial custody.<sup>16</sup> The Asian Centre for Human Rights report observes that these are only the cases reported to the NHRC, and do not include all cases of custodial deaths. The report attributes the deaths in custody to torture, denial of medical facilities and inhuman prison conditions. Once a person is taken into custody, the responsibility for his/her life, health and safety lies with the authorities in whose custody he or she is, be it the police or the jail authorities.<sup>17</sup> Kiran Bedi has also expressed that women prisoners were subjected to the most humiliating experiences, which robbed them of what little dignity and self respect they reached in the prison.<sup>18</sup>

The All India Meet on Women Prisoners & Custodial Violence held in threw light on the difficulties of women prisoners in the country. Custodial violence, which is illegal and has no sanction under law, is a part and parcel of the system, with Soni Sori's case having brought it into the forefront. The speakers shared their concern over the use of women's sexuality to torture and criminalize them, with police reports usually mentioning these women as those with 'low' character. According to them around 99.9 per cent of women prisoners in the country belong to the backward Dalit, Adivasi and minority communities.<sup>19</sup>

<sup>12</sup> Ch. XLI, Section II, Rule 5 MAHARASHTRA PRISON MANUAL, 1979

<sup>13</sup> Ch. XLI, Section II, Rule 5 MAHARASHTRA PRISON MANUAL, 1979

<sup>14</sup> National Crime Records Bureau of India, Prison Statistics 2006

<sup>15</sup> National Crime Records Bureau of India, Prison Statistics 2013

<sup>16</sup> Report of the [Asian Centre for Human Rights](#), "Torture in India 2011",

<sup>17</sup> <https://kractivist.wordpress.com/2013/05/10/india-ignoring-custodial-deaths-prisons/>

<sup>18</sup> Parmesh Dangwal: I dare! Kiran Bedi A Biography, USB Publishers' Distributors Ltd, New Delhi, 1995.

<sup>19</sup> <http://www.thehindu.com/news/national/the-jails-are-full-of-soni-soris/article3276485.ece>



In practice, rights and health facilities available to women in prisons are ill-equipped and lack sufficient resources to adequately test, diagnose and treat inmates. However, the practical aspect was far from satisfactory and Supreme Court of India expressed its displeasure over the facilities available in the prisons for the care of children. In *RD Upadhyay vs. State of Andhra Pradesh and others*<sup>20</sup>, Supreme Court of India has given speaking orders to provide facilities for women prisoners accompanied by children. The court has directed in clear terms that a child shall not be treated as an under trial/convict while in jail with his/her mother. Such a child is entitled to food, shelter, medical care, clothing, education and recreational facilities as a matter of right. Strict guidelines have been issued to provide basic facilities to pregnant inmates and to arrange for delivery outside the prison. The court has prohibited writing 'Prison' as the place of birth in the birth certificate.

## CONCLUSION

The violation of women's fundamental rights through physical, mental, emotional, and sexual violence against women has become almost common place in the Indian situations. Women in the Tribal belts and amongst dalit populations are already vulnerable. There is therefore a pressing need for the judiciary and legislature to recognize and address the particular forms of violence levied against women who are discriminated by caste, class, religion, or in situations conflict. Customary routinely laws discriminate against women, both by denying justice to victims of violence and by dispossessing women from their shares in land and property. A number of laws that protect women from discrimination have also either inadequate, or have not been properly implemented. Basic facilities are lacking for the women and their children; also the prisoners are visibly scared of the prison staff. There is scope for vast improvement, on all levels, particularly in the attitude of the prison staff that need to learn to respect the human rights of women prisoners.

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<sup>20</sup> Writ Petition (Civil) 559 of 1994, Supreme Court Cases  
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