

Chapter 7

Human Rights of Incarcerated Women in India: Empty Rhetoric or Evolutionary Progress?

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ABSTRACT

The plight of female prisoners is not unknown globally; the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, popularly known as “Bangkok Rules”, is the primary international instrument dedicated to incarcerated women. The Indian National Prison Manual, 2016 is based upon the principles of these rules along with another UN-led “Nelson Mandela Rules”. However, the Ministry of Women & Children Development led an exclusive study in 2018 titled “Women in Prisons” that recorded the major issues & human rights violations of such women behind bars due to various reasons like inadequate female staff, accommodation, medical access along with basic right of healthy food. This paper hypothesized that according to the historical & current scenario, prisons in the country specifically still do not cater to the necessities for the subsistence of the incarcerated women. The study intends to analyze major concerns like obligations of the Indian Prison Administration vis-à-vis the progress made till now, specifically concerning Female Prisoners.

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1. INCARCERATED WOMEN 'OUT OF SIGHT, OUT OF MIND': AN INTRODUCTION

According to the Prison Statistics India Report of 2020, female prisoners constitute a minority population of 4% out of the total population of prisoners in India. However, the fact that Indian Judiciary even though being a staunch believer in rehabilitation & reformation of the incarcerated, often restricts itself to the prisoners in general ignoring the special needs of women prisoners. Although imprisonment limits, if not eliminates, many freedoms, it does not deprive people of their most fundamental constitutional and human rights. The unprecedented rise of human rights violation complaints in the recent year from the prisoners or in favor of prisoners to the National Human Rights Commission (NHRC) & State Human Rights Commission (SHRC) against the prison staff predicts the sad state of affairs. The category of female prisoners is worst hit at first instance by being incarcerated in a man's world.

Though India has signed agreements & commitments on the reformation of the women living in imprisonment. Yet there are just 29 dedicated female prisons in India, which cater to only 17% of the female inmates while the rest still adjust in female enclosures within the male prisons (Ministry of Women & Child Development, 2018). Thus, such an arrangement can be said as "Prison within the Prison" which is exclusively for one particular gender. Unfortunately, the so-called "minuscule prison population" is still on the backfoot after countless prison reforms committee & hon'ble supreme court & high courts judgments. Prisons being the state subject (The Constitution of India, 1950) also creates many differences in the progress of the states according to the respective budgetary allocation & administration mechanism.

This paper attempts to deal with the history & struggles of the women in prisons with access to a bare minimum. The study will try to the argument that it can be said that the criminal justice system has just ignored the existence of a minority population of general inmates in the prisons. Hence, the continuance violation of human rights is not a concerning issue for executives as of now.

This leads to the primary questions like, *Whether the Indian Criminal Justice system adheres to the minimum standards of protection & access for the incarcerated women in the prisons?* Basic entitlements like sanitation, adequate female prison staff, nutrition, child & pregnancy, menstrual health, and protection from sexual harassment or violence are some of the woman prisoners-oriented needs that the criminal justice system shall provide to the prison inmates without any discrimination. However, the menace of violation of human rights & unfair treatment raises the above-stated question concerning the Indian Prisons.

Secondly, *Do the incarcerated women have any mechanism or procedure to reiterate their right to live with dignity behind the bars?*

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