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## PROTECTION OF HUMAN RIGHTS OF WOMEN PRISONERS BY THE INDIAN JUDICIARY



\* Ms. Kamla

\* Research Scholar, Dept of Political Science, Panjab University, Chandigarh.

The Constitution of India guarantees equality to women and various laws have been enacted to protect and empower women. But the pathetic situation of women prisoners languishing in jails is a serious social problem. The problems faced by them are outcome of the general societal indifference towards them. The concept of human rights is totally alien to such women. The press has frequently exposed the violence and sexual exploitation of women and youth in the jails.

Though there are elaborate rules in the jail manuals to protect women, very few women know about them. As "women have a special claim to compassion, defence of dignity, human rights, protection of her sensitive needs and personal integrity" society needs to be extra sensitive to female prisoners. The research paper is a humble attempt to highlight the violation of human rights of women prisoners and their protection by the Indian apex Court.

Problem of prisoners languishing in jails without trial is a very serious one confronting judiciary. Non-availability of separate prisons for women and their sexual exploitation are the common problems of Indian prison system.

The imprisonment of mother with dependent young children is a problematic issue. Female wards in prisons are mostly over crowded. Adequate clothing and toilet facilities are not made available. The general health care of women prisoners in prisons is not up to the mark. The facilities for education, vocational training and recreational facilities are also very limited. Majority of the women prisoners are from rural background, illiterate, shy and do not have courage to communicate their needs and grievances to the prison staff in the jails. They cannot also ventilate their sufferings and transmit the same to higher authorities.

In *Sheela Barse v. State of Maharashtra* the Court ruled that legal assistance to a poor or indigent accused arrested and put in jeopardy of his life or personal liberty is a constitutional imperative under Articles 39A, 14 and 21. Where

it is not provided, injustice is likely to result. The court directed the State of Maharashtra to provide separate lock ups for female suspects guarded by female constables, ensure interrogation of females by female police officers. Further, the magistrate before whom a women prisoner is produced should inquire whether she had any complaint of maltreatment in police custody. Legal assistance be provided to prisoners and a lady judge make periodical visits to police lock ups in the city of Bombay to hear grievances of women prisoners.

The province of prison justice, the conceptualization of freedom behind bars and the role of judicial power as constitutional sentinel in a prison setting, are of the gravest moment in a world of escalating torture by the minions of State. Where the prison process is dehumanized, forensic help, un-deflected by the negative crudities of the adversary system, makes us dare where we might have daunted. The finest hour of justice comes when court and counsel constructively collaborate to fashion a relief in the individual case and fathom deeper to cure the institutional pathology which breeds wrongs and defies rights.

Judicial activism of the Supreme Court gave a new dimension to the word 'personal liberty' where prisoners' rights were debated, observed Justice Krishna Iyer, in *Sunil Batra V. Delhi Administration (II)*. Justice Krishna Iyer said that "Prison Manuals are mostly callous colonial compilations and even their copies are mostly beyond the prisoner's ken. Punishments in civilized societies must not degrade human dignity.

The cardinal sentencing goal is occupational, changing the consciousness of the criminal to ensure social defence. Where prison treatment abandons the reformatory purpose and practices dehumanizing techniques it is wasteful, counter-productive and irrational hovering on the hostile brink of unreasonableness (Article 19)".

Justice Iyer acknowledged the prisoner's right to privacy also. Infraction of privacy may be inevitable, but guards must concede minimum human privacy in practice. If the prisoner desires loneliness

for reflection and remorse, for prayers and making peace with his maker, or opportunities for meeting family or friends, such facilities shall be liberally granted, having regard to the stressful spell of terrestrial farewell his soul may be passing through, the compassion society owes to him whose life it takes.

Hussainara Kahtoon v. State of Bihar was a landmark case in which the Court directed release of a large number of men and women awaiting trial in the courts. The Court held that delay in trial constitutes denial of justice and therefore the State should ensure speedy justice and provide legal aid

to the prisoners. Justice V.R. Krishna observed that "Part III of the Constitution does not part company with the prisoner at the gates, and judicial oversight protects the prisoner's shrunken fundamental rights".

Judiciary's role in issuing several directions to Central and State governments to prevent violations of human rights of the women prisoners is laudable. But to bring needed improvement, active cooperation of government is must. Judiciary needs adequate staffing to arrest the problem of pending cases of under-trials. It is high time the government, police, jail staff and judiciary become considerate to the special sensibilities of the women prisoners.

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