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RIGHTS OF WOMEN IN CUSTODY: THE LEGAL FRAMEWORK IN INDIA

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ABSTRACT

The Constitution of India guarantees equality to women and various laws have been enacted to protect and empower women. She plays a vital role in the society. The important role she plays is in the capacity of mother. Constitution of India gives status of equality to the women in India. It also imposes obligation on the State to protect the rights of the women and to fulfil the requirements of international conventions regarding the rights of the 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 main purpose of this research paper is to itemise the rights of women in custody.

KEYWORDS: Rights of Women ,Legal Framework , Code of Criminal Procedure (CRPC).

INTRODUCTION

Our country has a total of 1391 jails out of which 19 are women jails. These women jails have capacity of 4827 (1.4% of total capacity). The total female inmates in the country are 18,188 who are 4.4% of the total inmates in all the jails as on 31.12.2013. The women

constitute 4.6% of the under trials of the country. A total of 342 women convicts with their 407 children and 1,252 women under trials with their 1,518 children were lodged in various prisons in the country at the end of 2013 Jails exclusively for women prisoners exist only in 12 States/UTs. Tamil Nadu & Kerala has 3 women jails each and Andhra Pradesh, Rajasthan & West Bengal have 2 women jails each. Bihar, Gujarat, Maharashtra, Odisha, Punjab, Uttar Pradesh and Delhi have one women jail

each. The total capacity of women inmates was highest in Tamil Nadu (1,569) followed by Rajasthan (469), Uttar Pradesh (420), West Bengal & Delhi (400 each), Andhra Pradesh (380), Punjab (320), Maharashtra (262), Kerala (272), Gujarat (200), Bihar (83) and Odisha (52) Women prisoners face multiple problems during imprisonment. Health issues, mothers who have dependent children, threat of sexual abuse as separate jails are not available, overcrowded jails etc are serious problems and



challenges to the security of rights of women prisoners.

In India the Code of Criminal Procedure (CRPC) is the main legislation on procedure for administration of substantive criminal law. It was enacted in 1973 and came into force on 1 April 1974. It provides the machinery for the investigation of crime apprehension of suspected criminals, collection of evidence, determination of guilt or innocence of the accused person and the determination of punishment of the guilty. Additionally, it also deals with public nuisance, prevention of offences and maintenance of wife, child and parents. At present, the Act contains 528 Sections, 2 Schedules and 56 Forms. The Sections are divided into 37 Chapters. This document is a lengthy document. The main features of the act (relevant to women) are discussed below:

Arrest:-

Our law provides certain detailed rules as to the mode of arrest by the police or other persons acting in aid of law enforcement. Section 46 of the Code of Criminal Procedure, 1973 lays down that in arresting a person, the police officer or other person making the arrest shall actually touch or confine the body of the person to be arrested, unless there is submission to the custody by word or action. Dealing with this section, the Law Commission, in its Report on Rape and Allied Offences expressed the view that a provision should be added to the effect that in the case of women, their submission to custody shall be presumed unless proved otherwise, and that the police officer should not actually touch the person of the woman for making arrest. The recommendation of the Commission in this regard was to add the following provision in section 46(1) of the Code: "Provided that where a woman is to be arrested, then, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed, and unless the circumstances otherwise require or unless the police officer arresting is a female, the police officer shall not actually touch the person of the woman for making her arrest." We are of the view that the above recommendation should be implemented by enacting a suitable provision.

In the same report, the Law Commission examined the question of the time of arrest of women and expressed the view that except in unavoidable circumstances, no woman should be arrested after sunset and before sunrise. In unavoidable circumstances, the police officer shall, by making a written report, obtain the prior permission of the immediate superior officer for effecting such arrest or, if the case is one of extreme urgency, he shall, after making the arrest, forthwith report the matter in writing to his immediate superior officer, with the reasons for arrest and the reasons for not taking prior permission as aforesaid

Medical examination: A number of sections of the Code of Criminal Procedure, 1973 deal with medical examination of the accused. Medical examinations are of two types.

- a. Medical examination of the accused in order to secure the evidence of crime.
- b. Medical examination on the demand of accused in order to prove his or her innocence.

The first category of medical examination can be conducted with or without the consent of the accused. The examination is to be done by a registered medical practitioner at the request; of the investigating agency. Here, the Code makes a specific provision, by requiring that in the case of a female accused, the examination should be done by a female medical practitioner.

In the second category of medical examination , the accused himself or herself desires such examination, in order to prove his or her innocence (section 54). It is in this context that the Code has not specified any special provision for women. There is a need of improvement. The code permits a female accused who desires such an examination in order to prove her innocence, But, it is silent as to how rare a woman can insist that such examination must be done by a female registered medical practitioner and with strict regard to decency

Investigation of Offences.

The Code of Criminal Procedure has a long Chapter on the investigation of offences. This Chapter, gives various powers to police officers engaged in investigation. In general, the police can summon any person believed to be acquainted with the facts of the case and, such person can be directed to come to the police station for the purpose. But, in the case of persons below 15 years, and also in the case of all woman, it is

specifically provided in section 160(1), proviso, of the Code of Criminal Procedure, 1973 that they shall not be called to 'the police station for the above purpose, but they should be examined in their place of residence. Unfortunately this act is not followed in most of the cases. Law commission in its report on Rape and Allied offences suggested that women and children below the age of 15 must be examined in their houses only.

It also desirable and right to provide that when a young person below fifteen years or a woman is examined by the police during investigation, a relative or friend of such male person or woman or representative of any woman or social service organisation interested in women and children's welfare should be allowed to be present .

Capital sentence on pregnant woman.-Section 416 of the Code of Criminal Procedure, 1973 provides that if a woman sentenced to death is found to be pregnant the High Court shall order the execution of the sentence to be postponed and it thinks fit; commute the sentence to imprisonment for life

Detention in women's institutions: Section 417A, Cr.P.C, 1973 (proposed) 'In regard to the detention of a woman after arrest, a matter which requires consideration is the place where she is to be detained. This question was also _examined by the Law Commission in its Report on Rape and Allied Offences" The recommendation was that if there are no suitable arrangements in the locality for such detention, the women should be sent to an institution established and maintained under the Women's and Children's Institutions (Licensing) Act, 1956.

Grant of bail to women: Some issues relating to bail also need to be considered. At present, the Code of Criminal Procedure; 1973 when dealing with the question of bail, does take into account the fact that women deserve special consideration. While directing the court not to release a person on bail where he is accused of an offence punishable with death or with imprisonment for life, the Code [in section 437(1)] takes care to provide that this prohibition shall not apply where the accused is a woman . In general, the courts have taken due note of this provision and women are not ordinarily denied bail, even if the offence committed is a serious one.

Custodial rape.-- The Criminal Law Amendment Act (43 of 1983), focussing its attention on custodial rape, has, made the punishment for such rape more stringent. For this purpose, section 376 (2) of the " Code, as inserted in 1983, deals specifically with rape by 'a police officer in certain circumstances, (including rape of a woman in his custody), rape committed by a public servant on a woman in his custody as such public servant, rape by a person who is on the management or staff of a jail, remand home or other place of custody doctor of a women's or children's institution, when the rape is committed in respect of an inmate of such jail; etc., and rape by a person who is 'on the management or staff of a hospital, when the rape is committed on a woman in that hospital" For such custodial rape, the minimum punishment laid down in section 376 (2) is rigorous imprisonment up to ten years, which is higher than the minimum punishment of seven years imprisonment prescribed for an ordinary case of rape. of course, in both the cases, the imprisonment can be for life. The legally prescribed minimum can be relaxed by the court for adequate and special reasons

Custodial Sexual abuse: The second important amendment made in the Penal Code in 1983 (so far as is material for the present purpose) was the insertion of sections 376B, 376C and 376D to deal with custodial sexual abuse, not amounting to rape. These sections (omitting certain definitions given in sections 376C and 376D) are quoted below " Intercourse by public servant with woman in his custody.-- Whoever, being a public servant, takes advantage of his official position and induces or seduces, any woman, who is in his custody as such public servant or in the custody of a public servant subordinate to him, to have sexual intercourse with him, such sexual intercourse, not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine 376B Intercourse by Superintendent of jail, remand home etc. Whoever, being the superintendent. or manager of jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institutions takes advantage of his official position and induces or seduces any female inmate of such jail, remand home, place or institution to have sexual intercourse with him, such sexual intercourse not amounting to :he offers: of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.376D; Intercourse of any member of the management or staff of a hospital with any woman in that hospital-- Whoever, being on the management of a hospital or being on the staff of a hospital takes advantage of his position and has sexual intercourse with any woman in that hospital, such sexual intercourse, not amounting

to the offence of rape, shall be punished with imprisonment of either description and for a term which may extend to five years and shall also be liable to fine."

The Probation of Offenders The Law Commission made a few suggestions as to the release of women on probation. The Probation of Offenders Act, 1958, which is in force in most parts of India excepting certain areas where release on probation is governed by section 360 of the Code of Criminal Procedure, 1973 or by a local Act (as in U.P). The Central Act of 1958 reflects the increasing emphasis on the reformation and rehabilitation of offenders as useful and self-reliant members of society, without subjecting them to the deleterious effects of jail life. The Act contemplates release of an offender without sentencing him. The release is of two types, There may be release of the offender after "admonition" (section 3) or - which is more frequent - there may be release of the offender on probation of good conduct (section 4).

The Mental Health Act, 1987

An Act to consolidate and amend the law relating to the treatment and care of mentally ill persons, to make better provision with respect to their property and affairs and for matters connected therewith or incidental thereto.

Committees on Prisoners

There are two important committees on prison policy and prison reforms: Mulla committee and Iyer Committee

Mulla Committee

Mulla committee under the chairmanship of Justice A. N. Mulla (1980) have given recommendations for prison policy and reformation. The Mulla committee recommended that:

- + A separate place with proper toilet facilities should be provided on court premises for women prisoners availing premise before presiding magistrate.
- + Bail should be liberally granted to women under trial prisoners, and those not able to furnish surety might be released on personal recognizance.
- + The probation of offenders act should be extensively used for the benefit of women offenders.
- + Women prisoners should be lodged in separate institution meant exclusively for them.
- + Enclosures for women in common prisons should be so renovated as to ensure that women prisoners do not come in view of male prisoners. Their enclosures should have a proper double lock system.
- + All general duties with regard to women offenders should be performed by women staff only.
- + Newly admitted women prisoners should be medically examined for pregnancy. Pregnant women prisoners should be transferred to local maternity hospital for purposes of delivery.
- + While registering the birth of a child to a woman prisoner, the place of birth should not be mentioned as 'prison'. If such a birth takes place there, the name of locality is mentioned.
- + Pregnant and nursing women prisoners should be prescribed special diet and exempted from certain types of work.
- + There should be a separate women ward in prison hospitals.
- + Women prisoners should be permitted to retain their Mangal Sutra, glass or plastic bangles.
- + Women prisoners should be given adequate and proper clothing and facilities for personal hygiene and personal maintenance according to their customs.

Woman prisoners should be given the facility for maintaining contacts with their families through letters, visits from relations and leave.

- + Children (up to the age of 5 years) accompanying women prisoners may be allowed to be kept with them in specially organized crèches outside the main prison building.
- + State government should encourage and support voluntary women organizations in looking after women offenders.
- + Voluntary organizations should be encouraged and given financial aid to set up children institutions for

such children as they cannot be released on probation or on license.

- + Prison superintendent should take a monthly review of children in prison and send a report to the appropriation authorities for necessary action.
- + Juvenile probation and non-institutional services for children should be effectively organized.
- + Each state and Union Territory should prepare master plan for setting up a network of non-institutional and institutional services for children.
- + Children, dependent on prisoners, preferable be kept with the relatives or friends of such prisoners.

National Expert Committee on Women Prisoners (Iyer Committee)

The government of India appointed a national expert committee on women prisoners (1986 - 87) with justice Krishna Iyer as chairman to examine the conditions of women prisoners which submitted its report in May 1987. The said committee inter alia recommended the following suggestions particularly towards reformation and rehabilitation of women prisoners:

- + "In women's rehabilitation, employment training has a pivotal role. Consequently work in prison has to be given such potential economic worth and utility that all women in custody are willing to engage in work programme. Recalling the large number of under trial women prisoners a dissenting view is of compulsory induction of under trial prisoners in any work activity as forced labour."
- + They argue training of women prisoners is an area of great relevance to correctional work and to the process of restoration of dignity of the women offender. There is no justification for protecting the prisoner's fundamental rights not to work. No one should have the luxury to enjoy that rights whether in or outside prison. The ethics and dignity of work are thus just as important to project as the economic necessity of everyone working rather than being allowed to idle on account of constitutional and human rights.
- + As far as practicable women prisoners shall be imparted training which will make them economically self-sufficient and capable of functioning independently in society.
- + Probation, parole and other non-institutional modalities of corrective treatment shall be widely used in case of women offenders save in exceptional cases where specified consideration of prisoners or security limits such options.
- + Women who pose no security risk and meet other suitability criteria may be housed in open jails where work facilities related to their agricultural or other occupational background should be available.
- + Women illegally detained in jails on ground of destitution, begging or vagrancy may be rehabilitated in appropriate institutional and community-based services and modalities.
- + Female prisoners shall be classified on the basis of the age groups, nature of crime, type and length of sentence, etc. And correctional treatment of prisoner shall be related to her specific problem and situation. For this purpose, treatment personnel trained in correctional approaches shall be appointed.
- + For the first time the situation of women in prisons was looked into by the Justice Krishna Iyer committee appointed in 1987 which recommended induction of more women in the police force in view of their special role in tackling women and child offenders. The main findings of the Justice Iyer report are as follows:
 - + Separate prisons for women are a more satisfactory custodial option. In the spirit of correctional justice, the smaller numbers of women prisoners, in comparison to men cannot be held as a valid factor limiting the creation of separate custodial facilities.
 - + In existing prisons where women are in sufficient numbers, a proper classification system must operate which should include medical, criminological and social assessment of the inmates and serve as basis for specialized and segregated case, treatment, employment, training, education and rehabilitation of the inmates.
 - + Medical diagnostic and care facility must be available to inmates routinely and by a female doctor and where full or part time women medical staffs are ill afforded local female doctors from government health facilities must be inducted to serve the prisoners on a visiting consultant basis.

- ✦ Diet, clothing and basic living facility (bath, toilet, personal and environmental hygiene) are due to every prisoner. Whatever adjustments within the prison procedures are possible should be made to help remove minor irritants.
- ✦ The physical state of most prison buildings is known and recognized to be bad. In certain states and below the level of central prisons especially, the situation is accepted. Immediate provisions must be made for upgrading structures, adding to them and replacing them as necessary and feasible. In setting up new structures, keeping in view the lesser security risk posed by women offenders, and to suit their psychological needs better, it may be advisable to consider cottage type, medium security provision which can provide less formal and more common type custodial experience.
- ✦ On the question of women prisoners neglect the committee observed that 'women in custody are tragic testimony of judicial futility, statutory importance and implementation calamity'.

CONCLUSION:

Problems of women in custody are multiple and complex in nature. The majority of women prisoners are facing these problems largely. There are very few number of women prisons in India. As a result there are no proper accommodation facilities, and adequate number of women personnel for women prisoners in India. Unavailability of separate prisons for women and sexual exploitation is the general problem faced by women in custody. Women require further amenities than men. Accordingly these prisons have limited recreational conveniences, sufficient clothing and toilet facilities. Another important problem of these females is having lack of caring facilities for their new born babies and young children. Women jail warden should be must for women prisoners.. Consequently female warden is suitable for the women prisoners. The women convicts lodged in Prisons are in highly unsatisfactory conditions. Basic facilities are lacking for the women and their children; also the prisoners are visibly scared of the prison staff. Besides suffering from physical ailments, the prisoner also undergoes considerable stress and trauma during his stay in prison. Imprisonment is often accompanied with depression and a feeling of isolation and neglect. It was therefore felt that active counselling must be made available to the prisoners to overcome these problems. Counselling should aim not merely at providing temporary relief by pulling them out of their depression, but at instilling hope and a sense of purpose in them and by equipping them with skills that may prove useful upon release.

Indian Legal system has addressed these problems of women in custody quite fairly . Law commission has also given its valuable suggestions in its reports. There is a need of more commitment to implement rules which are made for the protection of women in custody and this can be achieved only through creating awareness among the women prisoners and also among the police personnel.

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